United States Department of State

*Washington, D.C. 20520*

April 15, 2015

The Honorable Trey Gowdy, Chairman
Select Committee on Benghazi
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in response to your letter of March 26, 2015, to Secretary Kerry regarding the status of certain Select Committee's requests to the Department of State.

Today we are making a substantial production of documents responsive to your January 27, 2015 subpoena relating to the investigation and proceedings conducted in 2012 by the Benghazi Accountability Review Board (ARB); last week we provided a staff briefing at your request; this week we have facilitated your interviews of two Department employees; and another briefing is scheduled for tomorrow. In short, our cooperation with your Committee continues apace.

Since your Committee's inception less than a year ago, the Department has provided five briefings, witnesses at each of the Committee's three hearings, eighteen witness interviews (since February), and over 40,000 pages of documents, many of which were produced in multiple formats at the Committee's request. We have delivered on these items in the order the Committee has requested, based on constructive dialogue with the Committee and taking into account the Department's resources. At the request of your staff, we changed the way the Department provides documents to the Committee – now providing them with few redactions, better organized, and Bates stamped.

Accordingly, I cannot agree that the Department has "hindered" the Committee's work or has "yet to substantially comply" with its requests. It is true that the Department's ability to quickly produce documents has been hindered by resource and technological constraints. The State Department is not set up to deal with the large increase in Congressional investigations which involve hundreds of requests – both for information and for hundreds of thousands of documents. But we are

working to improve our methods and to reprogram funds for new technology and staff.

Of course, our resource constraints are compounded when faced with broad requests for documents spanning large periods of time and covering far-reaching subject matters. To address this, we have asked your staff, on multiple occasions, to focus and prioritize your requests. When this is done, we can much better meet your requests in a timely way.

Notwithstanding the challenges described above, we have been working in good faith—and as fast as we can—to facilitate the Committee's work. Committee members and staff have easy and frequent contact with the Department, including at biweekly interviews of Department employees, at briefings, at hearings, and during numerous phone calls and email exchanges. The Department has endeavored to answer members' and staff's questions as they arise and to provide timely, accurate information. There are many examples of our cooperative formal and informal information sharing. We thought the following chronology would be helpful:

## Chronology of the Department's Cooperation

**June 26, 2014**
Soon after the Committee was established, the Department proactively reached out to engage the Committee. The Department pledged its cooperation and the Committee agreed to work collaboratively to identify its highest priorities.

**July 23, 2014**
In order to expedite production, the Department and the Committee reached an agreement whereby the Department agreed to produce its documents with limited redactions and the Committee agreed that, "[i]n the event that the Committee considers the public release of information falling under categories [that are generally redacted] to be integral to satisfaction of the mandate of the Committee, the Committee will identify the relevant documents and information therein to the State Department and give the Department of State a reasonable opportunity (five days or more) to make its case why such information should be redacted prior to public release. The Committee will consider such requests in good faith before making any such release."

**August 11, 2014**
As part of its rolling production to Congress, on August 11, the Department provided to the Committee approximately 15,000 pages of documents responsive to prior Congressional Committee requests. The production included, among other things, emails including former Secretary Clinton's "hdr22@clintonemail.com" address.

**Late August 2014**
Following the Department's August 11 production, the Department engaged with the Committee to discuss its next priorities. The Committee asked the Department to focus on re-producing previously produced documents in less redacted form. The Department turned to those priorities and completed that process, which involved lifting redactions and re-producing tens of thousands of pages of material, in November.

**September 4, 2014**
The Department provided a Committee-requested briefing for Committee staff regarding the Department's progress implementing the Benghazi ARB's recommendations.

**September 17, 2014**
Assistant Secretary of State for Diplomatic Security Greg Starr testified before the Select Committee at a hearing regarding the Department's progress on the recommendations of the Benghazi ARB.

**November 3, 2014**
The Department provided a Committee-requested briefing for Committee staff regarding the benefits available to the families of Department employees who died in the Benghazi attacks.

**November 18, 2014**
On November 18, 2014, the Department received its first document request from the Committee, which sought documents from eleven current and former Department officials, including former Secretary Clinton, regarding our Benghazi presence and "weapons" in Libya over a two-year timespan. The Committee's letter asked that the production of emails include documents from the former Secretary's non-government email account. The Department agreed to meet, at the Committee's request, with the Chairman and Ranking Member to discuss the November 18 letter and a meeting was set for December 11.

**November 19, 2014**
The Department provided a Committee-requested briefing for Committee members and staff regarding the benefits available to the families of Department employees who died in the Benghazi attacks.

**December 10, 2014**
The Committee canceled the scheduled December 11 meeting with Department personnel at which they were to have discussed the November 18 document request. The Department then reached out proactively to schedule a time to speak with Committee staff instead.

Assistant Secretary of State for Diplomatic Security Greg Starr testified before the Select Committee at a hearing regarding the Department's further progress on the recommendations of the Benghazi Accountability Review Board.

**December 19, 2014**
On December 19, 2014, the Department engaged in a constructive telephone conversation with Committee staff about how to prioritize the multiple requests outlined in the Committee's November 18 document request to the Department. The Committee said that its top priority was to receive former Secretary Clinton's emails. The Department agreed to review and produce those documents first.

**Late December 2014**
On December 22, former Secretary Clinton's attorney forwarded to the Department the Committee's December 2, 2014, request to Secretary Clinton for documents. The Department agreed to respond to that request in conjunction with the Committee's November 18 request to the Department. In response to a question from Committee staff, the Department confirmed that its production would include emails from the former Secretary's non-government email account.

**January 13, 2015**
The Department proactively offered and provided a classified briefing for Committee members and staff regarding the Benghazi attacks.

**January 27, 2015**
Deputy Assistant Secretary for House Affairs Joel Rubin testified before the Select Committee at a hearing regarding the Department's compliance with the Committee's requests. Specifically, he stated that the Department was working to

produce former Secretary Clinton's emails, consistent with the Committee's stated priority.

**January 28, 2015**
The Committee subpoenaed the Department for documents related to the Benghazi Accountability Review Board.

**February 10–April 15, 2015**
The Department scheduled and facilitated eighteen interviews of current or former Department employees. This effort included bringing employees back to Washington from abroad for the purpose of providing interviews with the Committee.

**February 13, 2015**
On February 13, 2015, the Department produced to the Committee its top priority: emails to and from former Secretary Clinton, which the Department had received from the former Secretary in December. Greater detail about the contents of that production is provided below. In addition, the Department began its response to the Committee's January 28 subpoena and committed to continuing its work on the Committee's November and other requests.

**February 18, 2015**
On February 18, the Department and Committee staff held a telephone conference at the Committee staff's request. During the conversation, Committee staff for the first time asked whether former Secretary Clinton had any email address during the relevant period beyond the clintonemail.com address shown in the Department's document productions of August 2014 and February 2015. The Department responded that, to its knowledge, she did not.

**February 27, 2015**
The Committee staff requested a follow up in-person meeting for February 27. During the meeting, Committee staff asked again whether former Secretary Clinton used email accounts other than the clintonemail.com address during the relevant time period. The Department again responded that, to its knowledge, she did not. Having produced the former Secretary's emails, the Department also discussed a path forward on the Committee's November 18 document request. With over 40,000 pages produced to the Committee to date, including documents related to each of the individuals named in the Committee's November 18 request, the Committee agreed to identify specific issues, time periods, and documents to prioritize. As the Department explained, targeting specific issues and terms would

improve the Department's ability to search for and produce responsive documents and reduce the likelihood of duplication. The Committee did not suggest any narrowing or targeting of its request until March 23.

**March 4, 2015**
On March 4, the Committee issued a second subpoena to the Department that broadened the scope of the Committee's November 18 request, expanding it from matters pertaining to the attacks in Benghazi to all documents from ten current and former Department employees covering a two-year span "referring or relating" to either the country of "Libya" or to "weapons" (defined as "any instrument, tool, or device for use in attack or defense") "located or found in, imported or brought into, and/or exported or removed from Libya."

**March 12, 2015**
The Department responded to the March 4 subpoena by letter, noting that by its own terms, the subpoena called for information unrelated to the Benghazi attacks and that the Department still needed the Committee's list of specific issues and search terms as well as further input in order to proceed.

**March 23, 2015**
The Committee sent the Department a partial narrowing of its March 4 subpoena, identifying a subset of time periods and former Department employees for the Department to focus on. The Committee did not narrow the subpoena's scope in terms of subject matter, for example by excluding issues about "Libya" that might be irrelevant or clarifying what "weapons" in Libya it is interested in.

**April 10, 2015**
The Department provided a Committee-requested briefing for Committee staff regarding how the Executive Secretariat maintains records. Department and Committee staff discussed potential next steps to move forward on compliance with the March 4 subpoena.

## Current Status of Certain Committee Requests

As the above record demonstrates, the Department is committed to cooperating with the Committee to get it the information it needs. We look forward to continuing to engage with the Committee to ensure that we are properly prioritizing our resources. To that end, and in the interest of transparency, here is where the Department stands with respect to the Committee's pending document requests.

**November 18, 2014 Document Request**
On February 13, the Department produced STATE-SCB 0045000 – STATE-SCB 0045895, which included just under 300 email records from former Secretary Clinton in the requested date range of January 1, 2011, to December 31, 2012. The Committee had identified these documents as its top priority.

The Committee's request to the Department focused on Benghazi and the Chairman's letter to Secretary Clinton explicitly stated that the "Committee has no interest in any emails, documents, or other tangible things not related to Benghazi." Nonetheless, the Department erred on the side of inclusion when determining whether a document was responsive to the Committee's requests. The documents produced relate to the security of, and attacks on, the State Department facility in Benghazi; the United States' diplomatic presence in Libya, including Benghazi; and the U.S. weapons programs related to Libya, such as discussions about whether to arm Libyan forces that were opposed to the Qaddafi regime. As described in our February 13 cover letter, and as discussed with Committee staff on February 27, 2015, a small number of documents were not included in the production because they implicate important Executive Branch institutional and confidentiality interests. In addition, documents of a personal nature and unrelated to the former Secretary's official capacity were not produced.

Recent public statements have referred to perceived "gaps" in the production of responsive emails involving Secretary Clinton from the 2011-2012 timespan produced to the Committee. The Department does possess emails involving Secretary Clinton sent and received during the former Secretary's 2011 trip to Tripoli, which also included stops in Malta, Afghanistan, Uzbekistan, and Tajikistan. However, the Department has not identified emails from that timeframe containing information related to the attacks in Benghazi in 2012. With that said, the Department remains willing to engage with the Committee about any perceived concerns with any of our productions, including our recent production of the former Secretary's emails.

The November 18 request also sought documents related to the attacks in Benghazi from ten other current and former State Department officials. At the Committee's request, the Department prioritized first former Secretary Clinton's emails and more recently, the ARB documents, and thus, has not yet been able to focus its efforts on these other individuals. We now understand that the Committee's March 4 subpoena supersedes the November 18 request.

**December 4 Interview Requests**
Beginning on February 10, the Department began to make available for interviews the more than twenty current and former State Department employees that the Committee requested. As of this writing, eighteen Department employees have voluntarily been interviewed by your Committee, many of whom were brought back to Washington from abroad for that purpose. We have agreed, after consultation with your staff, to focus our efforts in the near term on document production and briefings, rather than additional scheduling of interviews.

**January 28, 2015 Subpoena**
Today, the Department is producing to the Committee STATE-SCB0046038 – STATE-SCB0047796, in response to the Committee's January 28, 2015 subpoena for documents related to the Benghazi ARB. This production continues our delivery of ARB documents that were physically set aside following the ARB's completion and archived. They include agendas of the ARB, summaries of interviews conducted by the ARB, as well as documents reviewed by the ARB. We expect to complete our production of these archived documents in the coming weeks. Of course, as we have told the Committee, our ability to maintain production schedules depends, in part, on the Committee's other priorities, including requests for briefings, witness interviews, hearings, or requests to prioritize other document requests first.

To our knowledge, the Benghazi ARB is the only ARB whose investigative files have been produced to Congress. By statute, the State Department sends Congress a report on actions taken in response to the recommendations of an ARB, not its entire report, and not its investigative files. As we have said on numerous occasions, we believe that disclosing these files will have significant negative consequences. The prospect of Congressional scrutiny could have a chilling effect on the deliberations of future ARBs, on their ability to conduct needed reviews efficiently, and on the willingness of witnesses to engage in full, frank and unguarded discussion that is critical to an ARB's being able to make informed recommendations designed to prevent future security-related incidents. Admiral Mullen, the Vice Chair of the Benghazi ARB, stated that the loss of anonymity could dissuade witnesses from coming forward in the future.

In order to mitigate these concerns to the greatest extent possible, when the Committee publishes its final report, it must return these ARB files along with the classified ARB reports in its possession, as it agreed to do when it received them in September 2014. In addition, you have agreed to treat these documents as subject to our August 2014 agreement concerning the treatment of sensitive information.

Also, as with our prior productions, please note that these documents include classified material, as well as sensitive information that is protected from public disclosure under the Freedom of Information Act, 5 U.S.C. § 552, the Privacy Act, 5 U.S.C. § 552a, and Department regulations. Therefore, we request that the Select Committee share these materials only with members and appropriately-cleared staff of the Select Committee who must review them as part of their official duties. Moreover, we ask that you ensure that all classified information is properly handled and stored to prevent unauthorized disclosures. Please note that in order to expedite its review and production, the Department has not conducted a classification review of these documents. However, in our review for production we identified documents without classification markings that we believe could be classified. We would be happy to review any particular document for classification, but request that in the meantime that you treat unmarked documents as classified.

**March 4, 2015 Subpoena**

The March 4, 2015 subpoena broadened the scope of the Committee's November 18, 2014, document request with respect to documents sought regarding ten current and former Department officials. As described above, the Department has been working with the Committee for some time to focus its requests to enable the Department to better search for and produce responsive documents. One challenge is that, as phrased, the Committee's requests would require the Department to manually sift through a large volume of potentially duplicative records without the benefit of targeted search terms or topics.

The Department continues to stress that searching for all documents related to "Libya" and "weapons" will cause our search and review to take longer and we invite the Committee to provide us with additional guidance on exactly what it is looking for. We are asking the Committee to help us identify relevant information while excluding irrelevant information so we can provide you documents more quickly. We will continue our collaborative conversations with Committee staff and provide the Committee a timeframe when it is available.

The Department is committed to cooperating with the Committee and to getting it the information it needs. We hope that the foregoing information is helpful in that regard.

Sincerely,

Julia Frifield

Julia Frifield
Assistant Secretary
Legislative Affairs

Enclosures:
As stated.

cc: The Honorable Elijah E. Cummings