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One Hundred Thirteenth Congress  
U.S. House of Representatives  
Committee on Foreign Affairs  
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May 1, 2014

The Honorable John Kerry  
Secretary of State  
Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520

Dear Mr. Secretary:

As you know, the Committee on Foreign Affairs has been investigating the facts and circumstances surrounding the deadly September 11-12, 2012 terrorist attacks on the U.S. Special Mission Compound (SMC) in Benghazi, Libya. Among other critical matters, this includes a review of staffing and security at the Benghazi SMC, as well as the Administration's response to the attacks. To conduct a thorough investigation, the Committee requires prompt and unfettered access to all relevant information in the Department's possession.

I am thus extremely concerned by the Department's ongoing failure to disclose records pertinent to this investigation to the Committee in a timely manner. This was demonstrated recently by the Department's April 17, 2014 release of more than 100 pages of documents to a non-governmental organization pursuant to a Freedom of Information Act (FOIA) request.<sup>1</sup> These records, which document extensive email consultations among senior Administration officials immediately after the attacks, had never been produced to the Committee before April 17. Instead, on or about the same day the Department provided them to the FOIA requestor, it also produced *some* of them to the Committee as part of a larger set of previously undisclosed documents.

Among these documents are some very troubling emails that show the Administration's priorities in the aftermath of the Benghazi attacks. They document something that many of us have known for some time: that the Administration was more concerned with protecting itself politically than communicating the facts to the American people. It is unfortunate and

<sup>1</sup> Catherine Herridge, "Benghazi emails suggest White House aide involved in prepping Rice for 'video' explanation," April 29, 2014, FOXnews.com, <http://www.foxnews.com/politics/2014/04/29/benghazi-emails-suggest-white-house-aide-involved-in-prepping-rice-for-video/>.

unacceptable that it took the Administration 19 months to reveal this information about the Benghazi tragedy. These emails should have been included with earlier submissions in 2012 and 2013, along with other documents authored by the same individuals on related matters.

Aside from the disturbing information in these documents, I am further concerned about the circumstances of how they were disclosed. The Department appears to have withheld important documents from Congress that should have been produced long ago. Further, the documents are more redacted than those provided under the FOIA request. Unfortunately, this is not the first time the Committee has experienced difficulties obtaining critical information from the Department. As the following timeline shows, the Department has exhibited a pattern of behavior that has unnecessarily delayed the Committee's investigation into the Benghazi attacks:

- On September 20, 2012, Congress made its first request to the Department for Benghazi-related records.
- On October 9, 2012, the Department produced the first set of relevant documents. However, and without providing any legal justification, it permitted review only under unprecedented and highly restrictive *in camera* conditions, requiring the Committee to review documents only in the presence of Department personnel and preventing the Committee from making or retaining copies of these documents.
- On January 23, 2013, the Department completed its initial production totaling eight tranches of approximately 25,000 pages of documents, all subject to the same *in camera* review restrictions.
- On July 8, 2013, coinciding with witness interviews, the Department produced additional documents, but again permitted only the same restrictive, *in camera* review.
- On December 5, 2013, after repeated requests by the Committee, the Department began producing for the Committee's permanent retention a set of the 25,000 pages of documents it had previously provided for *in camera* review. However, the Department redacted substantial portions of email communications in this set, without providing any applicable legal justification for withholding that information from the Congress.
- On March 26 and April 8, 2014, the Department continued to turn over redacted copies of the 25,000 pages of documents, but mixed in responsive documents not previously disclosed.
- On April 17, 2014 – 19 months after the Congress's initial request – the Department disclosed to a private FOIA requestor approximately 100 pages of documents that should have been part of its first productions to the Committee. At the same time, it produced *some* of these documents to the Committee, albeit in a more redacted form.

Shortly after becoming Secretary, you assured the Congress that you would fully cooperate in facilitating its investigation of the Benghazi terrorist attack. On April 17, 2013, you testified before this Committee that the Department's insistence on *in camera* review was "no position by me" and that you would "work with [the Committee] in good faith."<sup>2</sup> In subsequent press

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<sup>2</sup> Testimony of Secretary of State John Kerry before the House Committee on Foreign Affairs, April 17, 2013, available at <http://docs.house.gov/meetings/FA/FA00/20130417/100679/HHRG-113-FA00-20130417-SD003.pdf>. Also: "But now that I am the Secretary, and I am responsible to you and the Congress, I can promise you that if you

statements, you further pledged to assist congressional inquiries.<sup>3</sup> However, the Department's conduct has been inconsistent with these assurances.

In keeping with your commitment, I ask that you turn over copies of **all** relevant documents and communications in the Department's possession to Committees of jurisdiction without further delay. These documents and communications should appear in their original and unredacted form, with classified material produced separately and marked appropriately. If the Department believes that certain redactions are necessary, then it should provide in each instance the legal basis for withholding that information.

In addition I ask that the Department please provide written answers to the following questions **no later than 5:00 p.m. on May 15, 2014:**

1. Why did it take almost 19 months for the Department to produce the most recent set of documents to the Committee, when related emails by the same authors were submitted for congressional review in 2012 and 2013?
2. When did the Department first discover the documents released pursuant to the FOIA request?
3. Why did the Department's release pursuant to the FOIA request include documents not produced to the Committee?
4. Why do the documents produced to the Committee contain more redactions than those released under the FOIA request?
5. What is the Department's legal basis for redacting the documents it has provided to the Committee to date? Please provide specific citations to any relevant statutes and/or case law for each instance.
6. What is the Department's legal basis for requiring *in camera* review for documents responsive to a legitimate congressional inquiry? Please provide specific citations to any relevant statutes and/or case law.
7. Has the Department produced all documents in its possession regarding the Benghazi attacks and the Administration's efforts to develop and implement a media strategy? If not, what remains?
8. Were all of these documents produced to date – including new information produced after January 23, 2013 – made available to the Accountability Review Board during its 2012 investigation?

When producing documents to the Committee, please deliver production sets for the Majority and Minority Staff's permanent retention to Room 2170 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic and hard copy format. Please see the attached Definitions of Terms for further information regarding this request.

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are not getting something that you have evidence of, or you think you ought to be getting, we will work with you. And I will appoint somebody to work directly with you starting tomorrow with you, Mr. Chairman, to have a review of anything you don't think you have gotten that you are supposed to get."

<sup>3</sup> See, e.g., "Kerry pledges to answer Benghazi questions, laments 'misinformation,'" April 30, 2013, Reuters.com, <http://www.reuters.com/article/2013/04/30/us-usa-benghazi-kerry-idUSBRE93T0ZL20130430>

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Thank you for your attention to this important matter. The immediate disclosure of all information related to this subject must occur so that the appropriate individuals can be held accountable, both here and abroad. If your staff has any questions about this request, they may contact Chief Counsel for Oversight and Investigations Thomas Alexander at 202-225-5021.

Sincerely,

A handwritten signature in blue ink that reads "Ed Royce". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

EDWARD R. ROYCE

Chairman

Attachment

## DEFINITIONS OF TERMS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, whether classified or unclassified, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone calls, meeting or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.

4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.
6. The terms "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.