

C A M P A I G N F O R ACCOUNTABILITY

April 5, 2016

BY FACSIMILE: (703) 604-8567

Glenn A. Fine
Acting Inspector General
U.S. Department of Defense
Office of Inspector General
4800 Mark Center Drive
Alexandria, VA 22350-1500

Re: Request for Investigation of Secretary Ashton Carter

Dear Inspector General Fine:

Campaign for Accountability (CfA) respectfully requests that your office open an investigation into Secretary Ashton Carter's misuse of a private email account to conduct agency business. The facts surrounding this misuse support the conclusion Secretary Carter violated the express policy of the Department of Defense (DoD) and acted in knowing and flagrant disregard of the security risks to national security information posed by his use of his private email account. Further, there is room to conclude he may have been attempting to avoid public scrutiny of his actions that both the Freedom of Information Act (FOIA) and the Federal Records Act afford.

In December 2015, the *New York Times* reported that during his first few months in office, Secretary Carter used his personal email account to conduct official business concerning "a variety of work-related matters[.]"¹ He continued this practice "for at least two months" after the public learned of the exclusive use of a personal email account by former Secretary of State Hillary Clinton to conduct government business. *Id.* According to DoD spokesperson Peter Cook, after reviewing this practice "earlier this year," Secretary Carter concluded it "was a mistake" and, "[a]s a result, he stopped such use of his personal email and further limited his use of email altogether." *Id.* Although DoD minimized Secretary Ashton's use of his personal email account as limited to "a very small group of senior advisors," one of his former aids said "the defense secretary used the personal account so frequently that members of his staff feared he would be hacked and worried about his not following the rules." *Id.*

Those worries were well founded; a DoD policy dating back to 2012 states unequivocally:

Barring absence of official communication channels,

¹ Michael S. Schmidt, Defense Secretary Conducted Some Official Business on a Personal Email Account, *New York Times*, December 16, 2015, available at <http://www.nytimes.com/2015/12/17/us/politics/defense-secretary-ashton-carter-conducted-some-official-business-on-a-personal-email-account.html>.

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personal accounts shall not be used to conduct official DoD communication.

Department of Defense Instruction, Number 8550.01, Enclosure 3, 5b(3)(a), September 11, 2012 (emphasis added).

Reportedly, in May 2015, White House Chief of Staff Denis R. McDonough learned about Secretary Carter's use of his personal email account to conduct agency business and directed that DoD be asked why he was using that account. Schmidt, *New York Times*, Dec. 16, 2015.

Recently disclosed emails in response to several FOIA requests reveal that despite the White House inquiry, the public uproar over Secretary Clinton's use of a private email account, and DoD's prohibition dating back to 2012 on using personal email accounts to conduct government business, Secretary Carter continued to use his personal email accounts for work-related business for many months.² The *New York Times* reported that use continued at least until September 2015, *id.*, while the *Washington Post* reported Secretary Carter did not discontinue his use of a personal email account until December 2015, when news of this use first broke.³

Secretary Carter's knowing and continued use of his personal email account to conduct agency business violates DoD's express ban on such use and raises the possibility that sensitive information was compromised. It also appears to conflict with his responsibilities under the Federal Records Act to:

make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities.

44 U.S.C. § 3101. While a spokesperson for Secretary Carter has claimed the emails sent from his personal account were "properly backed up," he provided no evidence to support this claim. Schmidt, *New York Times*, Dec. 17, 2015. Similarly, Secretary Carter's

² Michael S. Schmidt, Pentagon Chief Used Personal Email After White House Inquiry, *New York Times*, March 25, 2016, available at <http://www.nytimes.com/2016/03/26/us/pentagon-chief-used-personal-email-after-white-house-queries.html>.

³ Robert Burns, Pentagon Chief Used Personal Email Account for Nearly a Year, *Washington Post*, March 26, 2016, available at https://www.washingtonpost.com/world/national-security/pentagon-chief-used-personal-email-account-until-december-20/2016/03/26/4c872634-f36a-11e5-a2a3-d4e9697917d1_story.html.

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spokesperson has claimed the misuse of his personal email account did not compromise any classified information, but provided no evidence or “independent confirmation of that claim.” *Id.* Moreover, accessing a personal email account through a work computer may compromise the security of the government email system and make it, as well as the outside system, vulnerable to hackers.⁴

Finally, that Secretary Carter continued to use his personal email account in violation of DoD policy, notwithstanding the known security risks such misuse poses and the concerns communicated by the White House, taken as a whole, suggest he may have been trying to avoid his responsibilities under the FOIA. The FOIA is a mandatory disclosure statute intended to give the public a means by which to learn what its government is up to through access to agency records, upon request. To the extent emails sent by Secretary Carter on his personal account were not captured in DoD’s recordkeeping system, they would not have been available in responding to a FOIA request.

The use of personal email accounts to conduct agency business has emerged as a growing problem, especially by agency heads such as Secretary Carter. When such use occurs at an agency like DoD that deals routinely with classified information, the security risks are especially high. Given the importance of this issue to the security of our nation and the significant public interest in accessing information that reveals what an agency is doing and why, it is critical that you immediately open an investigation into this matter and determine whether, and to what extent, Secretary Carter violated federal laws and DoD policy.

Sincerely,



Anne L. Weismann
Executive Director

⁴ See, e.g., John Patrick Pullen, What’s More Secure: Gmail or Government Email?, *Time*, March 3, 2016, available at <http://time.com/3731044/hillary-clinton-email-gmail/>.