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Stunning: Justice Department lawyers argue Hillary Clinton had the right to delete any emails she chose

By [Thomas Lifson](#)

Using laugh-out-loud justification, Justice Department lawyers have asserted to a federal judge that Hillary Clinton should be trusted to decide what records she chooses to delete, with no outside review. Ruby Kramer of [Buzzfeed](#) is correct: a brief filed by Justice Department attorneys on Wednesday, was “little-noticed.” Yet it contains a shocking position for federal lawyers to assert to a court.

Department of Justice lawyers outlined a comprehensive defense of the contentious decision by Hillary Clinton to wipe the private email server she used as secretary of state: The attorneys assert that, regardless of whether she used a personal or government account, Clinton was within her legal right to handpick the emails that qualified as federal records — and to delete the ones she deemed personal.

“There is no question that former Secretary Clinton had authority to delete personal emails without agency supervision — she appropriately could have done so even if she were working on a government server,” write the Justice Department attorneys, representing the State Department in [the brief](#).

The lawyers add that under policies issued by the State Department and by NARA, the National Archives and Records Administration, government employees “are permitted and expected to exercise judgment to determine what constitutes a federal record.”

It should be noted that the brief was filed in a FOIA lawsuit brought by Judicial Watch, which has uncovered so much shocking material in the Hillary email scandal. And those DoJ lawyers are acting to represent the State Department, which has consistently stonewalled and taken a hard line in defense of Clinton.

The attorneys, representing the State Department, filed the brief in response to [a proposed “preservation order”](#) by Judicial Watch: essentially [a request](#) that the State Department obtain and/or preserve the 31,830 emails not turned over in December “until the court can fully brief and consider relevant questions of law.” The sought preservation order, proposed to the federal court last week, is part of a Judicial Watch Freedom of Information Act case, re-opened this spring following the disclosure of Clinton’s personal email server. (Of the 30 outstanding FOIA suits relating to Clinton’s tenure at the State Department, Judicial Watch has filed 16.)

But perhaps the most shocking position taken by the DoJ lawyers is this:

[T]he lawyers argue that, without reason to believe that Clinton was not honest and forthcoming in selecting and turning over her federal records, no government agency would be required to “recover deleted material based on unfounded speculation that responsive information had been deleted.” Such was the case with Clinton, the lawyers say.

Ahem... “honest and forthcoming” are the two most inappropriate adjectives possible to describe Hillary Clinton’s approach to her emails. She after all contended that she neither sent nor received any classified information, a contention that is now revealed by multiple government analysts to be false.

Update. Michael Nadler adds:

In fact, don't the emails obtained from Sid Blumenthal, which were not among those turned over by Clinton, demonstrate unequivocally that the premise of the lawyers' argument is false. While the Blumenthal emails do not prove dishonesty, at the least they prove that "responsive information had been deleted" for whatever reason, thus completely undermining the argument that we should trust Hillary's decisions on which emails she had the right to delete.

Jazz Shaw of [Hot Air](#) had exactly the same reaction that first occurred to me:

Say... I wonder if the IRS would be willing to allow me to go through all of my tax documents, decide which ones were “relevant” and just toss the rest in the old burn barrel? I mean, there’s no reason to think I wasn’t being honest and forthcoming, so pesky little details such as those should be left to my discretion. Even more to the point, if something of interest to the police takes place on my property and it’s captured by my security cameras, I suppose I can decide which footage is relevant and worthy of retention.

But we are being silly by pretending that the same rules would apply to us as to Hillary Clinton.