WHAT AGENCY IS CLAIMING HILLARY RECEIVED SAP EMAILS?

The political world is a-twitter over the latest in the Hillary email scandal, Fox News' report that there were emails sent to Hillary classified at the Special Access Program level. To Fox's credit, Catherine Herridge liberated the letter itself.

> To date, I have received two sworn declarations from one IC element. These declarations cover several dozen emails containing classified information determined by the IC element to be at the CONFIDENTIAL, SECRET, and TOP SECRET/SAP levels. According to the declarant, these documents contain information derived from classified IC element sources. Due to the presence of TOP SECRET/SAP information, I provided these declarations under separate cover to the Intelligence oversight committees and the Senate and House leadership.

Note, the letter makes clear that those reporting Hillary had two SAP emails may not be correct: Charles McCullough's letter doesn't say how many emails were SAP and how many were CONFIDENTIAL. And the letter is conveniently written in a form that can be shared with the press without key information that would allow us to test the claims made in it.

For example, one critical detail in assessing claims about classification pertains to which IC element claims Hillary received SAP email.

That's relevant because some agencies have more credibility in their classification claims than others. If this is CIA making the claim, for example, we should assume it's bogus, because CIA — and its Chief of Litigation Support, Martha Lutz — routinely makes bogus claims.

I described, for example, how Lutz shamelessly claimed documents dating to 1987 on dialing a rotary phone were
appropriately retroactively classified SECRET after 2006 to back the only piece of evidence admitted at trial that Jeffrey Sterling mishandled classified information.

> Martha Lutz, the CIA's Chief of Litigation Support and the bane of anyone who has FOIAed the CIA in the last decade, was on the stand, a tiny woman with a beehive hairdo and a remarkably robust voice. After having Lutz lay out the Executive Orders that have governed classified information in the last two decades and what various designations mean, the government introduced four documents into evidence — three under the silent witness rule — and showed them to Lutz.
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> "When originally classified were these documents properly classified as secret," the prosecution asked of the three documents.
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> "They weren't," Lutz responded.
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> "But they are now properly classified secret?"
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> "Yes," Lutz answered.
>
> [snip]
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> [T]he defense explained a bit about what these documents were. Edward MacMahon made it clear the date on the documents was February 1987 — a point which Lutz apparently missed. MacMahon then revealed that the documents explained how to use rotary phones when a CIA officer is out of the office.

That's a big part of why Sterling is sitting in prison right now: because Lutz was willing to claim, under oath, that a 28-year old document on dialing rotary phones still (rather, newly)

needed to be protected as SECRET.

But it's not just this one case: pretty much everyone who has FOIAed CIA in recent years has a Martha Lutz story, because the agency has such a consistent history of making transparently false classification claims to hide CIA's activities, even those that are widely known.

Just as an example, the torture program was (and possibly the still-classified aspects continue to be) a SAP. Keep that — and the many publicly known details, such as that Alfreda Bikowsky was central to some of the biggest abuses about torture, that CIA managed to bury in the Torture Report not because they're secret but because having them officially discussed puts CIA at legal risk — in mind as everyone wags around that SAP label. If CIA is making the SAP claim, the claim itself should be suspect, because there's such an extensive history of CIA making such claims when they were transparently bogus. Earlier in this FOIA, CIA claimed that Hillary's staffers could only learn about the Pakistani drone program from classified information, when you're actually better off learning about such things from Pakistani and NGO reporting; in the end McCullough sided with CIA, not because it made sense, but because that's how classification works.

I'm on the record as thinking Hillary's home brew server was an abuse of power and really stupid to boot. But I'm also really hesitant to make blind claims from unnamed Original Classification Authorities on faith, because the record shows that those claims are often completely bogus.

Hillary receiving a SAP email may say terrible things about her aides. Alternately, it may reinforce the case that the CIA is an out-of-control agency that makes ridiculous claims of secrecy to avoid accountability. We don't know which of those things this story supports yet.

Update: Told ya.

> The Central Intelligence Agency is the agency that provided the declarations about the classified programs, another U.S. official familiar with the situation told POLITICO Wednesday.
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> The official, who spoke on condition of anonymity, said some or all of the emails deemed to implicate "special access programs" related to U.S. drone strikes. Those who sent the emails were not involved in directing or approving the strikes, but responded to the fallout from them, the official said.
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> The information in the emails "was not obtained through a classified product, but is considered 'per se' classified" because it pertains to drones, the official added. The U.S. treats drone operations conducted by the CIA as classified, even though in a 2012 internet chat Presidential Barack Obama acknowledged U.S.-directed drone strikes in Pakistan.
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> The source noted that the intelligence community considers information about classified operations to be classified even if it appears in news reports or is apparent to eyewitnesses on the ground.

Update: I meant to link this earlier. It's a complaint submitted to ISOO from Katherine Hawkins detailing all the things CIA kept classified in the Torture Report that aren't, or were improperly classified.