

INTERNAL MEMO

Theresa,

On Wednesday April 13 during the annual TSA inspection with the North Bend airport, the Transportation Security Inspector, Alexandra Bentley, and myself conducted a meeting with the interim chief of police Gary McCullough. In this meeting Mrs. Bentley informed Chief McCullough of the response time that the local police department had to respond to the airport if there was an emergency.

Chief McCullough was not informed that there was an actual response time that the police department had to abide by. Mrs. Bentley showed Mr. McCullough the last Memoranda of Understanding that the North Bend Police Department would respond to the airport in 15 minutes or less in the event of an emergency as per TSA Security Directive 1542-18-01 since there was not local LEOs onsite during flight operations. Chief McCullough advised that he was unaware of that particular protocol since he was police chief of a department that didn't have airport responsibilities.

Chief McCullough did advise that there may be slight tensions between the city council and the airport due to the fact that the airport is NOT a tax paying entity, and they would be taking away from the tax payers if they responded. Mrs. Bentley did advise that the airport was in North Bend police department's jurisdiction and that would have to respond anyways. She also informed Chief McCullough that in the past, there was an LEO that would be stationed at the airport during flight times. And that the MOU was put into place so that it would not tie up an officer since there was few issues that would occur at the terminal. Chief McCullough understood and advised that NBPd would respond, but would like to revisit the MOU and get an updated signed copy.

After the conversation with the MOU was resolved, Mrs. Bentley brought up the test that TSA would have to run on the police department's response time. She advised what that test would entail of. That there would be a call to the 911 dispatch center from a TSA agent requesting to have law enforcement be present for a weapon (gun) found in the check point in a passenger's belongings. Mrs. Bentley requested that Chief McCullough not inform his officers, as that may influence the response time. Chief McCullough agreed to just inform his captain, but not anyone else.

Thursday April 14th: in the afternoon of the 14th during check in times before the commercial flight, TSA supervisor Josh Scarberry made the call the 911 center to report a weapon found in the TSA check point in the terminal and requested local law enforcement to respond. Transportation Security Inspector Alexandra Bentley was with supervisor Scarberry when he made the call and started the stop watch for the response time. A NBPd officer arrived in approximately 9 minutes.

When the officer arrived in the terminal, he was met by TSA supervisor Josh Scarberry, and Inspector Alexandra Bentley. They advised him that he was called in for a "test" that TSA has to run on the local police department for response time to the terminal. They also advised the officer that his captain and chief were aware of this test and thanked him for his response.

When the officer departed the terminal and went over to Mr. Scarberry and Mrs. Bentley and inquired about the response time. They advised it was in the 9 minute mark meeting the 15 min response time requirement. After a few more moments Mrs. Bentley and myself went back down to the badging office to finish out some lists on the annual inspection.

Russell Corona, Airport Operations Supervisor



U.S. Department of Homeland Security
Transportation Security Administration
Portland International Airport
7240 NE Airport Way, Floor 2
Portland, OR 97218

July 21, 2022

Theresa Cook
Executive Director
Coos County Airport District
North Bend, OR 97459

RE: OTH Action against TSA Employee

Dear Ms. Cook:

This letter is in response to your email dated July 21, 2022, that you sent TSA Assistant Federal Security Director (AFSD) Don Wilson. In that email, you informed AFSD Wilson that you were terminating the airport access media of TSA STSO [REDACTED], effective immediately. This regrettable incident provides an excellent opportunity to educate OTH personnel about the limitations placed upon them for enforcing airport rules against TSA employees.

In your email, you claim specific violations of the Oregon Revised Statutes (ORS). Specifically, you stated that North Bend City Manager David Milliron had made accusations that our TSA employee had made "a false 911 report, and under state law ORS 162.375; Initiating a false report is a Class A misdemeanor; and under ORS 165.570 - Improper use of emergency communications Systems is also a Class A misdemeanor." No such criminal violations occurred.

Please be advised that on April 14, 2022, STSO [REDACTED] was performing his duties and responsibilities within the scope of his TSA employment and pursuant to authorities granted to TSA by Title 49 of the Code of Federal Regulations. Also, both OTH Airport Security Coordinator (ASC) Russell Corona and North Bend Chief of Police Gary McCullough were notified in advance of the Law Enforcement Incident Response Test scheduled to be performed on April 14, 2022 as required by TSA's testing protocols. The Transportation Security Inspector (TSI) contacted Chief McCullough by email on April 13, 2022 regarding the test that was going to be performed. On the following morning, April 14, 2022, the same TSI met in person with OTH ASC Corona and Chief McCullough, informing them both of the test that was scheduled to occur later that same day and to answer any questions. The TSI reviewed the testing protocols with both individuals, and they raised no objections, but instead expressed appreciation for the information.

The Supremacy Clause of the U.S. Constitution dictates that federal Transportation Security Administration (TSA) employees who are acting within the scope of their employment, are immune from criminal prosecution and regulatory actions by non-Federal entities. As such, there is no authority for a regulated entity to take an adverse action against a Federal employee who is acting within the scope of their employment.

TSA and its employees followed testing protocols and conducted them within the scope of the authority granted by Congress in 49 U.S.C. §114(f) and TSA's federal regulations. Under the authority of 49 CFR 1542.5, TSA has inspection and testing authority over airport operators, in this instance Southwest Oregon Regional Airport (OTH). 49 C.F.R. 1542.5(a) provides that "each airport operator must allow TSA, at any time or place, to make any inspections or tests, including copying records, to determine compliance of an airport operator, aircraft operator, foreign air carrier, indirect air carrier, or other airport tenants" with any security program under subchapter 1542. (emphasis added).

Moreover, 49 C.F.R. 1542.5(d) provides that "at the request of TSA and upon the completion of SIDA training as required in a security program, each airport operator promptly must issue to TSA personnel access and identification media to provide TSA personnel with unescorted access to, and movement within, secured areas, AOA's, and SIDA's."

Based on the information provided in this email, and the authority granted to TSA by Congress and through its federal regulations, it is our expectation that OTH will swiftly reinstate the access media of STSO [REDACTED]. We appreciate this opportunity to provide this clarifying information to OTH and trust the matter will be resolved expeditiously. My team is happy to discuss further with OTH personnel if needed. I appreciate your continued partnership in transportation security.

Sincerely,

Mathew Ketchum

Acting Federal Security Director

State of Oregon

**MATHEW
KETCHUM**

Digitally signed by
MATHEW KETCHUM
Date: 2022.07.21
21:05:12 -07'00'

Cc: Kathleen McDonald, FSD-Oregon; Judith Crowell, Senior Counsel, TSA; Bob Scott AFSD-Regulatory Oregon; Donald Wilson AFSD Generalist, Jeffrey Ley AFSD-Law Enforcement – Oregon.