

NYSSA POLICE DEPARTMENT

"The Gate City to Oregon"

Incident Report: N202100273

Current As Of:

3/2/2021 11:16:54 AM

Offense:	Obtaining contents of communications Obstructing governmental or judicial admin AGENCY ASSIST	Reported Department End	2/22/2021	Rcvd Disp Crd	9:18 AM	Dispatcher: 61275 Officer: 35469 BALLOU, Don
Location:	1115 W Idaho Ave					
CityState:	Ontario	Apt:		Grid:	03	
Incident Summary:	AGENCY ASSIST					

On February 22, 2021 at about 0942 hrs, I began an investigation into a Ontario High School teacher surreptitiously recording a staff meeting and providing that recording to Ontario School District Board Member Derrick Draper. Chief Steven Romero with the Ontario Police Department formally requested the Nyssa Police Department to investigate into this matter on February 19, 2021. Through investigation, I gathered information until Malheur County District Attorney Dave Goldthorpe consulted the Oregon Department of Justice and found that this recording would not constitute a crime. As a result, I submitted a report to the MCDA's Office with the facts I obtained during my investigation into this case regarding the charges of Obtaining Contents of Communications and Obstructing Governmental or Judicial Administration.

People Involved:

Involvement	Name / Address	Sex / Race Phone/ Cell Phone	DOB / AGE	Citation/Charge/Offense eMail	Date Officer
Mentioned	BEGGS, Tyson Oliver [REDACTED]	M W	[REDACTED]		2/22/2021 BALLOU
Mentioned	DELOSRIOS, Elisa	F W			2/22/2021
Suspect	DRAPER, Derrick Charles [REDACTED]	M W	[REDACTED]		2/22/2021 BALLOU
Victim	ELIZONDO, Jodi Lynin C/O Ontario High School Ontario, OR	F W	[REDACTED]		2/22/2021 BALLOU
Mentioned	EVANS, Eric Tyler [REDACTED]	M W	[REDACTED]		2/22/2021 BALLOU
Mentioned	HUSS, Sarah c/o OHS Ontario, OR	F W	[REDACTED]		2/22/2021 BALLOU

Officer: BALLOU

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Mentioned	MARTINEZ, Kenneth OHS administrator Ontario, OR	[REDACTED]	2/22/2021 BALLOU
Mentioned	ONTARIO, High School 1115 W Idaho Ave Ontario, OR	541-889-5309	2/22/2021 BALLOU
Mentioned	POFF, Carron Melissa	F W [REDACTED] [REDACTED]	2/22/2021 BALLOU
Mentioned	PRESLEY, Anne Marie	F W [REDACTED] [REDACTED]	2/22/2021 BALLOU
Complainant	ROMERO (CHIEF), Steven C/O ONTARIO PD Ontario, OR	[REDACTED]	2/22/2021 BALLOU
Mentioned	WILLIAMS, Rod C/O Ontario HS Ontario, OR	[REDACTED]	2/22/2021 BALLOU

Property Involved:

File#	Property Type	Description	Loss / Recovered Amt.	Date Recover
54863	290	Audio Recording of Interview w/ Mrs. Presley.	[REDACTED]	[REDACTED]
250606	290	Audio Recording of Interview w/ Mr. Beggs.	[REDACTED]	[REDACTED]
273654	290	Audio Recording of Interview w/ Mrs. Huss.	[REDACTED]	[REDACTED]
291008	290	Audio Recording of Interview w/ Mrs. De los Rios.	[REDACTED]	[REDACTED]
52747	290	Audio Recording of Interview w/ Mr. Williams	[REDACTED]	[REDACTED]
268779	290	Audio Recording of Interview w/ Mr. Martinez.	[REDACTED]	[REDACTED]
76150	290	Audio Recording of Interview w/ Mrs. Poff.	[REDACTED]	[REDACTED]
7498	750	Sarah Huss Computer Usage Log.	[REDACTED]	[REDACTED]
277532	750	OPD Formal Request + emails from Dr. Elizondo & Director Draper	[REDACTED]	[REDACTED]
7498	750	Emails from Dr. Elizondo for Zoom IDs.	[REDACTED]	[REDACTED]
7498	750	Documents + 17 signed complaints from staff by Dr. Elizondo	[REDACTED]	[REDACTED]

Totals -->

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Continuation Report

Officer: BALLOU, Don

Summary

INCIDENT REPORT. --- LT. Don Ballou

Obtaining Contents of Communications & Obstructing Governmental or Judicial Administration.

Mentioned

ELIZONDO, Jodi Lynn - [REDACTED]
DRAPER, Derrick Charles - [REDACTED]
BEGGS, Tyson Oliver - [REDACTED]
DELOSRIOS, Elisa - [REDACTED]
WILLIAMS, Rod - [REDACTED]
EVANS, Eric Tyler - [REDACTED]
HUSS, Sarah - [REDACTED]
MARTINEZ, Kenneth - [REDACTED]
ONTARIO, High School - [REDACTED]
POFF, Carren Mellisa - [REDACTED]
PRESLEY, Anne Marie - [REDACTED]
ROMERO (CHIEF), Steven - [REDACTED]

Action Taken

On February 19, 2021, Chief Steven Romero with the Ontario Police Department (OPD) sent a formal request to Nyssa Police Department (NPD) Chief Raymond K. Rau asking for NPD's assistance in investigating a case of Obtaining Contents of Communications (ORS: 165.540). Chief Romero cited that he believed that a conflict of interest exists in having OPD investigate this case. As a result, Chief Rau accepted the request and assigned me to this case. Chief Romero attached a copy of an email sent to him by Dr. Jodi Elizondo, principal of the Ontario High School (OHS) and with that email included another email from Director Derrick Draper, an Ontario School District (OSD) board member.

In reading Dr. Elizondo's email, she disclosed that a staff meeting was held on January 20, 2021 at OHS, however was conducted via Zoom in place of the usual in person staff meetings due to COVID-19 restrictions. Initially, I learned that a potential of 60 staff members attended this meeting that was set up by Dr. Elizondo. She reported that these staff meetings are held in private and among staff members only. She added that at times, private student and family information is talked about in these meetings, which is information that is confidential and prohibited from public access. Dr. Elizondo added that at this meeting, many staff members voiced their concerns and frustrations over the school board members and their decisions in general and specifically over the school reopening plan due to COVID-19.

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Dr. Elizondo advised that on January 22, 2021, the school board chose to meet again instead of waiting for the usual monthly meeting date due to the reopening plan needing to be discussed further. Prior to the meeting, Director Draper sent out an email to board members, in which he specifically stated that he had a recording in his possession from an OHS staff member of a meeting held on January 20. Dr. Elizondo was concerned that a staff member(s) surreptitiously recorded this meeting on a separate recording device. Dr. Elizondo chose to report this matter separate of any other OHS staff member as she was one of the victims being recorded without her knowledge in this case.

I reviewed the email uttered by Director Draper to other board members on January 22, 2021 at 1034 hrs. In his email, Director Draper opens with 'I have in my possession a recording from a HS staff meeting held Wednesday January 20 that a teacher gave to me.' Director Draper later in the email states '...they (teacher) recorded the last staff meeting and asked to bring it to my home for me to listen to for recorded proof.' Director Draper went on to say, 'I have tried numerous times to get some of the recording out to the board last night and this morning, due to technology issues I have haven't been able to.' At the conclusion of his email, Director Draper states, 'I would be happy to play this recording at a board meeting.'

This email by Director Draper indicated to me that he knows the identity of the teacher who recorded this conversation and that he has possession of a copy of said recording. The email Director Draper sent was electronically signed by 'Derrick C. Draper' and was sent from email address: [REDACTED]

On February 22, 2021, I was on duty, in plain clothes while carrying my badge and police identification and driving an unmarked yet fully equipped police vehicle. I was working investigations for the City of Nyssa located within Malheur County and the State of Oregon.

At about 0942 hrs., I responded to the OHS located at 1115 W Idaho Ave in Ontario, Oregon and met with Dr. Elizondo in her office. I interviewed Dr. Elizondo and audio recorded the conversation, which I advised her prior to recording. In summary (not verbatim), Dr. Elizondo stated that the school district has been working on reopening the school for in school instruction. As a result, the school board had a meeting prior to January 20th in which the school reopening plan was discussed, and a preliminary decision was made by the board.

On January 20th, Dr. Elizondo called for two staff meetings, one at 0740 hrs. and one at 1400 hrs. Dr. Elizondo invited only high school staff members to the meetings where staff members openly discussed issues with the school. Dr. Elizondo told me that staff members openly voiced their opinions and frustrations with the school board and its decision regarding the reopening of their school district. Dr. Elizondo stated that she could not recall everything that was talked about, however knows that at times, private information about students and their families is shared among staff members. She added that this is a confidentiality issue if that information gets out to

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the public. Dr. Elizondo stated that both meetings were conducted via Zoom, in which staff members were required to have their video cameras on and to be in their assigned rooms in the school.

I researched Zoom and found it to be a cloud-based peer-to-peer software platform and is used for teleconferencing, telecommuting, distance education, and social relations (Wikipedia). In early 2020, Zoom's software usage significantly increased due to COVID-19 quarantine and restrictions (Wikipedia).

On January 22, 2021, the school board decided to have a special meeting to revisit the plan of reopening the school district. On that day at about 1034 hrs., Director Draper uttered the email to board members regarding possessing the recording and that a teacher provided him with the recording. The January 22nd meeting took place at 1200 hrs. where Director Eric Evans referenced his knowledge of OSD staff members and their unfavorable views toward the board and its members. Director Evans' intentions were to explain at this meeting that the board supported OSD staff and appreciated their efforts to ease the staff members' opinions of the board and its members. Dr. Elizondo stated that Director Evans used language describing the unease that he could have only learned from the January 20th staff meeting(s). After seeing the email that Director Draper sent out to board members, Dr. Elizondo concluded that one of her staff members surreptitiously recorded one of the January 20th staff meetings and took that recording to Director Draper who then shared it with Director Evans resulting in Director Evans' comments in the January 22nd meeting.

Dr. Elizondo advised that she was concerned about staff secretly recording meetings where confidential information could be leaked to the public who do not have privilege to that information. Additionally, Dr. Elizondo was concerned that a staff member(s) has violated criminal law by recording their conversation without other staff members' knowledge and sharing it with a board member, Director Draper, who also violated criminal law by receiving and attempting to share that recording with other board members in a public meeting.

Dr. Elizondo was referring to the State of Oregon's Revised Statute (ORS) 165.540 Obtaining Contents of Communications, specifically:

'(1)(c) Obtain or attempt to obtain the whole or any part of a conversation by means of any device, contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, if not all participants in the conversation are specifically informed that their conversation is being obtained.'

And:

'(1)(d) Obtain the whole or any part of a conversation, telecommunication or radio communication from any person, while knowing or having good reason to believe that the conversation,

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telecommunication or radio communication was initially obtained in a manner prohibited by this section.'

'(e) Use or attempt to use, or divulge to others, any conversation, telecommunication or radio communication obtained by any means prohibited by this section.'

I confirmed with Dr. Elizondo that she did not know who recorded the meeting(s) and provided it to Director Draper, however believed Director Draper knows the staff member and has a copy of this recording based on his January 22nd email to board members. As with any other criminal investigation, I asked Dr. Elizondo if she had any ideas who may have secretly recorded the staff meeting. Dr. Elizondo thought Sarah Huss, an AG teacher with OHS, may have motive to record a conversation based on her experiences with Mrs. Huss. Dr. Elizondo told me that she has no definitive proof of Mrs. Huff secretly recording the January 20th meeting(s).

Dr. Elizondo was specific that she only invited staff members, however due to these January 20th meetings being conducted in Zoom it is possible that an uninvited person off-screen or via a phone call could hear and record the conversation without knowledge of the participants. This a cause for concern under ORS: 165.540(1)(a):

'(1)(a) Obtain or attempt to obtain the whole or any part of a telecommunication or a radio communication to which the person is not a participant, by means of any device, contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, unless consent is given by at least one participant.'

During this interview with Dr. Elizondo, she provided me with several documents she felt may be pertinent to this investigation and is listed as follows:

- 1)A list of current OSD Board Members.
- 2)Copy of Director Draper's January 22nd email to board members.
- 3)Letter from Butler & Looney, P.C. to OSD Superintendent (records request).
- 4)Screenshot of January 22, 2021 OSD board meeting.
- 5)OHS Staff grievance letter regarding the OSD Board regarding the secret recording signed by 35 OHS staff members.
- 6)Dr. Elizondo's formal complaint via email to Chief Romero.
- 7)Letters from 17 OHS staff members wishing to file formal compliant to police regarding recording.

At about 1349 hrs., I met with Director Draper at the Fiesta Guadalajara Restaurant located at 336 S. Oregon St in Ontario, Oregon. When I explained my reason for meeting with him today, Director Draper stated that he was not going to answer questions regarding this case and deferred me to speak with his lawyers instead. As a result, I concluded my contact with Mr. Draper and left.

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the business.

At about 1430 hrs., I met with Director Evans at the Malheur County Courthouse located at 251 "B" Street W in Vale, Oregon. Director Evans stated that he did not have a copy of the recording nor did he know the identity of the teacher that took the recording. Director Evans stated that he did not listen to, but only heard about the recording. He added that he did speak at the January 22nd meeting, but based off the information he heard and had obtained from numerous OSD staff in the past. I concluded my brief meeting with Director Evans.

Following my meeting with Director Evans, I met with Malheur County District Attorney (DA) Dave Goldthorpe and Chief Deputy DA Brendon Alexander and updated them on this case. DA Goldthorpe advised that they would speak with the Oregon DOJ regarding this case due to the meeting being conducted over Zoom because of COVID-19 restrictions instead of the usual in-person meeting.

After my meeting with the DA, I contacted Dr. Elizondo and requested to meet with some of the teachers on February 23, 2021 and interview them regarding this case. I had already received written letters (statements) from 17 staff members and, at his time, believed it was pertinent to speak with other staff members who attended the January 20th meetings. Dr. Elizondo advised that she would accommodate my request by providing me with a room to be discrete as possible while conducting this investigation.

On February 23, 2021 at about 0736 hrs., I returned to the Ontario High School and met with Dr. Elizondo who advised me that she was providing me with a room to meet with staff members respective to their specific locations in the building. Between 0839 hrs. and 1309 hrs., I interviewed seven staff members to include: Elisa de los Rios, Tyson Beggs, Sarah Huss, Caren Poff, Anne Marie Presley, Rod Williams, and Ken Martinez.

At about 0839 hrs., I met with Elisa de los Rios. I explained why I was meeting with her and that I would be recording the conversation. I asked Mrs. Rios if she had any concerns before we began the interview and/or with recording, which she advised she did not. I then activated my audio recorder and advised Mrs. Rios that I was recording. In summary (not verbatim), Mrs. Rios stated that she is new to the OSD and started at the end of August 2020. She continued by saying that she attended a staff meeting on January 20, 2021 where the meeting was recorded without her knowledge and was provided to Director Draper. Mrs. Rios advised that this is a concern to her as she knows that confidential student information is, at times, shared among staff members as well as personal feelings. Mrs. Rios told me that she only found out that she was recorded several days to a week after the meeting when she was told about it by a co-worker.

Mrs. Rios did not know for sure who recorded the meeting, but thought it could have been Sarah Huss, Tyson Beggs, or Anne Marie Presley as she had heard from others. She added that she

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believes it could be Mrs. Huss because she has ties to Director Draper through FFA (Future Farmers of America) and has animosity toward administration. She added that the suspect could have been Mrs. Presley or Mr. Beggs due to animosity toward administration as well. Mrs. Rios stated that she personally did not think Mr. Beggs would do this though as he is in her 'cohort' building and has gotten to know him.

At about 0856 hrs., I met with Tyson Beggs. I explained why I was meeting with him and that I would be recording the conversation. I asked Mr. Beggs if he had any concerns before he began the interview and/or with recording, which he advised he did not. I activated my audio recorder and advised Mr. Beggs that I was recording. In summary (not verbatim), Mr. Beggs told me that he was not sure about this specific meeting, but afterward he went to Dr. Elizondo and told her about a staff member who had provided information to Director Draper from past meetings. Mr. Beggs told me that the staff member was a friend of his and that he later talked to this staff member who told him that she was not there for this meeting as she was in the "ER" the night before due to pregnancy complications. Mr. Beggs said that this staff member disclosed to him that she shared information with Director Draper in the past due to hard feelings between building administration and herself. When asked, Mr. Beggs disclosed that the staff member is Sarah Huss.

Mr. Beggs told me that he hears that staff members talk about confidential student information during meetings, however they do not. Mr. Beggs stated that they usually talk about policies, procedures, and general information about running the school and its programs. He added that administration routinely talks down upon the (school) board. Mr. Beggs told me that he does not contact Director Draper, nor does he have a way to get in touch with him. Mr. Beggs told me that he believes that Mrs. Huss is the one who done this but does not have any proof of this.

At about 0939 hrs., I met with Sarah Huss. I explained why I was meeting with her and that I would be recording the conversation. I asked Mrs. Huss if she had any concerns before we began the interview and/or with recording, which she advised she did not. I then activated my audio recorder and advised Mrs. Huss that I was recording. In summary (not verbatim), Mrs. Huss stated that she heard about this meeting, but was not there due to being in the ER. She advised that she had another staff member fill her in on the meeting. She stated that the meeting was over by 0930 hrs. when she got to work and could not remember (but did not believe) if they had another meeting that day. She advised that she would check into this and email me back, which she has not as of the time of this report.

At about 1009 hrs., I met with Caren Poff. I explained why I was meeting with her and that I would be recording the conversation. I asked Mrs. Poff if she had any concerns before we began the interview and/or recording, which she advised she did not. I then activated my audio recorder and advised Mrs. Poff that I was recording. In summary (not verbatim), Mrs. Poff stated that on January 20th she attended an OHS staff meeting over Zoom at 0740 hrs. The topic was over the school board and the plan for reopening the school district. Mrs. Poff referred to these staff

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meetings as their "little family meeting" where they can voice their concerns. She learned that the meeting was recorded without her knowledge through word of mouth the next day, but she did not know who recorded it. Mrs. Poff's concern is that their private conversation was being recorded. She is also concerned as to why it was being recorded and was it requested by a board member. In asking Mrs. Poff who she thought may have recorded this meeting, she thought Sarah Huss because she works with Director Draper's kids in FFA. Mrs. Poff recalled Mrs. Huff was at this meeting by seeing her there.

At about 1058 hrs., I met with Anne Marie Presley. I explained why I was meeting with her and that I would be recording the conversation. I asked Mrs. Presley if she had any concerns before we began the interview and/or recording, which she advised she did not. I then activated my audio recorder and advised Mrs. Presley that I was recording. In summary (not verbatim), Mrs. Presley did not recall any confidential information being discussed at this meeting. She remembered that the topics discussed was the reopening of the district and discontent between board and administration. Mrs. Presley did not know that the meeting was recorded, nor did she know whom may have. Mrs. Presley was ambivalent regarding the meeting being recorded.

At about 1118 hrs., I met with Rod Williams. I explained why I was meeting with him and that I would be recording the conversation. I asked Mr. Williams if he had any concerns before we began the interview and/or recording, which he advised he did not. I then activated my audio recorder and advised Mr. Williams that I was recording. In summary (not verbatim), Mr. Williams that he does not know for sure that the meeting was recorded but it has been alleged based on evidence from outside parties. What concerns him most is that they discuss sensitive and confidential information in staff meetings and has an issue with that information getting out to the public. Mr. Williams said that he found out that the meeting was potentially recorded when Director Draper sent the email out to board members on January 22nd and that Director Evans made specific comments in the January 22nd meeting.

Mr. Williams added that Director Draper paraphrased him in the email, which leads him to believe that the meeting may have been recorded. Mr. Williams felt that whoever the recording teacher was, he/she was specifically targeting him. When asked, Mr. Williams suspected Sarah Huss or Jason Sherman who are both AG teachers and FFA coaches. Mr. Williams stated that in their most recent meeting on Friday, it looked like Mrs. Huss was on her phone. He suspected that she was not recording but may have been on a call whom the person she was talking to could hear the meeting, such as, Director Draper.

Mr. Williams did tell me that he thought it would be good for me to speak with Caren Poff, Elisa de los Rios and Ken Martinez for more information into this case.

At about 1149 hrs., I met with Ken Martinez. I explained why I was meeting with him and that I would be recording the conversation. I asked Mr. Martinez if he had any concerns before we

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began the interview and/or recording, which he advised he did not. I then activated my audio recorder and advised Mr. Martinez that I was recording. In summary (not verbatim), Mr. Martinez stated that he attended the January 20th meeting, which was about the reopening of the school district and regarding the board. He heard that the meeting was recorded but did not have proof of it. He chose not to say who he thinks as he did not have proof of any teacher that recorded the conversation.

After speaking with these teachers, I met with Dr. Elizondo regarding the Zoom information that may contain who logged into the meeting. Dr. Elizondo was able to provide me with the Zoom IDs for the meetings at 0740 hrs. and 1400 hrs. Also, she was later able to have their technology department provide me with logs showing Sarah Huss only attended the afternoon meeting. I attached a copy of the emails, Zoom IDs, and logs for evidence.

I left the OHS and contacted Chief Deputy DA Alexander on this case. I spoke with him about the possibility of speaking with Director Draper's lawyer(s) to ask about the specific information regarding the teacher who provided him with the recording and possession of the recording itself. I advised that this information was pertinent to this investigation and would help with this investigation. I asked about the potential crime of Obstructing Governmental or Judicial Administration or Interfering with a Peace Officer if that information was not provided. DA Alexander advised that he would look into this and get back to me tomorrow.

On the morning of February 25, 2021, I received an email sent to Chief Rau and Chief Romero from DA Dave Goldthorpe regarding this case. DA Goldthorpe advised that he had consulted with two criminal attorneys with the Oregon Department of Justice (DOJ) and their opinion (of this case) is '...that this recording would not be a crime.' As a result, I concluded my investigation into this matter and will submit this report to the Malheur County District Attorney's Office for review on the charges of Obtaining Contents of Communications and Obstructing Governmental or Judicial Administration.

Statements

Refer to Action Taken.

Evidence/Property

- 1 - OPD Formal request for investigation + copies of emails by Dr. Elizondo & Director Draper.
- 2 - Documents provided by Dr. Elizondo at initial meeting.
- 3 - Audio recordings - Interviews with Dr. Elizondo, Mrs. Rios, Mr. Beggs, Mrs. Huss, Mrs. Poff, Mrs. Presley, Mr. Williams & Mr. Martinez.
- 4 - Emails for both meeting Zoom IDs.
- 5 - Log with detailed Computer Usage for Sarah Huss on January 20, 2021.

Action Recommended

Forward to the Malheur County District Attorney's Office.

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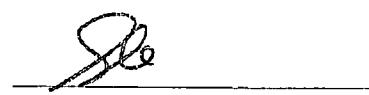
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Officer's Signature:



Date:

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