



**OMBUDSMAN'S REPORT**  
Complaint Investigation & Findings

*OMB03/078 – October 20, 2003*

***EXECUTIVE OVERVIEW***

The Complainant and his wife alleged that three officers from the Boise Police Department did nothing in response to a battery they had reported to the police. An eighteen year-old woman had pulled off the head covering that the Complainant's wife was wearing as she and her husband were shopping at a department store. The ombudsman's investigation found that the primary police officer did not conduct an adequate investigation to determine what, if any, law enforcement action should be taken.

Despite the Complainant's request that the young woman be given a citation, the primary officer did not identify witnesses to the event, wrote no report, and issued no citation. This officer took no official action other than to warn the young subject that she should act more responsibly in the future. As a result, the ombudsman sustained a violation against the primary officer for not performing his duty as required by police department policy.

***THE SITUATION***

While shopping at the Franklin Road Fred Meyer on September 4, 2003, at approximately 8:00 p.m., the Complainant's wife reported that a young woman (the Subject) approached her from behind and pulled her head-scarf off. Another shopper (the Witness) witnessed the event and contacted a store employee. The employee (Store Employee) notified the police. First to arrive was Officer #1. Two other officers (Officer #2 and Officer #3) arrived soon after. A friend of the Subject's was also present.

### ***THE COMPLAINT***

The Complainant said that he wanted the police to do something about the actions of the Subject. He said that he thought the Subject's actions were significant, as his wife's head-scarf is a symbol of their religion. The Complainant felt ignored by the police who, in his opinion, did not take the situation seriously. The Complainant was upset that the police refused to do anything about the situation.

### ***THE COMPLAINT INVESTIGATION***

The assistant ombudsman conducted the investigation. She interviewed both the Complainant and his wife. The assistant ombudsman also interviewed the Store Employee and all three Boise Police officers who had responded to the scene of the incident. As part of the investigation, the assistant ombudsman also carefully reviewed audio recordings that each of the three officers had made during their contacts with the parties involved in the incident. Finally, all police and dispatch records related to the incident were reviewed.

### ***WHAT THE COMPLAINT INVESTIGATION FOUND***

Based on the preponderance of the evidence obtained in the assistant ombudsman's investigation, the ombudsman has issued the following findings of fact.

1. The Complainant and his wife were shopping at the department store on September 4, 2003.
2. The Subject and her friend were shopping at the department store on September 4, 2003.

3. The Complainant's wife was wearing a head-scarf. The head-scarf covered her hair and was secured at the neck and mid-chest area.
4. Cultural differences and communication difficulties existed between Officer #1 and the Complainant and the Complainant's wife (the Complainant and his wife do not speak English as a first language).
5. The Subject approached the Complainant's wife from behind and pulled her head-scarf off. While doing so, the Subject told the Complainant's wife that she was beautiful. The action of pulling the head-scarf caused the Complainant's wife's head to move in a backward motion and put pressure on her neck where the scarf was secured.
6. An unknown person observed and reported the incident to a store employee.
7. The Store Employee notified the police of the event.
8. The Store Employee wrote down the name and telephone number of the Witness.
9. Officer's #1, #2, and #3 responded to the store (in that order).
10. The Store Employee gave Officer #1 the witness information she had collected.
11. Officer #1 and Officer #2 interviewed the Complainant, the Complainant's wife and the Subject.
12. The Subject admitted to police that she pulled the Complainant's wife's head-scarf off of her head.
13. The Complainant told Officer #1 that the Subject pulled his wife's head-scarf off and that her head-scarf was significant to their religion.
14. The Complainant disagreed with Officer #1 that the Subject was "joking."
15. Officer #1 was aware that the Complainant's wife was frightened because of what had happened.
16. Officer #1 was aware that the Subject told the Complainant's wife that she was beautiful.
17. Officer #1 was aware that the Subject and her friend departed the store immediately after the incident and returned approximately 30 minutes later to apologize for their behavior.
18. Officer #1 made no attempt to locate or interview the Witness.

19. The Subject's friend was not interviewed by any of the officers.
20. The Complainant asked the police to write a citation and take formal action against the Subject.
21. Officer #1 said that he was not going to write a citation as he believed the Subject was a juvenile.
22. Officer #1 and Officer #2 each told the Complainant that they would talk to the Subject and explain why her behavior was not acceptable.
23. Prior to the departure of the Subject and the Complainant, the officers learned that the Subject was 18 years old.
24. No citation was written.
25. No report was written.
26. Officer #3 conducted a records check of the Subject through dispatch.

#### ***OMBUDSMAN'S ANALYSIS AND FINDINGS***

Officer #1, as the first officer to respond and as the Acting Field Commander, was primarily responsible for any action taken by the police. The information he was given was that the Subject had pulled the Complainant's wife's head-scarf from her head. The Subject did so without any provocation on the part of the Complainant's wife. The Subject admitted to doing so and told the officers that she did it on a dare.

Idaho State Criminal Code §18-903 defines a battery as:

*(a) Willful and unlawful use of force or violence upon the person of another; or (b) Actual, intentional and unlawful touching or striking of another person against the will of the other; or (c) Unlawfully and intentionally causing bodily harm to an individual.*

Did Officer #1 have adequate information to pursue an investigation into whether the crime of a battery had been committed? Clearly, the report from the Complainant and his wife that her head-scarf had been pulled, combined with the admission from the Subject, provided enough information for Officer #1 to pursue an investigation. While Officer #2 interviewed the Subject, Officer #1 did not seek out the Witness who had observed the event. He also did not interview the Subject's friend. Officer #1 did not direct Officer #2 or Officer #3 to pursue any additional investigative steps. Additionally, Officer #1 did not get a written statement from the Complainant's wife or the Complainant and did not determine if the Complainant had witnessed the event.

The Boise Police Policy Manual §21.0114 Duty to Report Information states, in part:

*a. It shall be the duty of every employee to properly and expeditiously report or act on any information given to him/her in good faith by any person regarding matters that indicate the need for action by the Department.*

Based on the limited information that Officer #1 was aware of, did he have an obligation to file a report? The decision to file a report would have required a more thorough investigation in order to identify the type of report. Were all parties (victims, suspects, witnesses, etc.) identified and interviewed? Were the basic questions asked: who, what, when, where, why? Officer #1 was aware that the Complainant wanted a citation or some type of formal action to be taken by the police. Initially, Officer #1 believed that the Subject was under 18 years of age. Officer #1 made a statement to the Complainant that he was not going to issue a citation. He based that decision on his belief that the Subject was under 18 years of age. Officer #1 went on to tell the Complainant that he (Officer #1) would talk to the Subject and explain why her behavior was not acceptable. When it was found that the Subject was, in fact, 18 years of age, the course of action taken by Officer #1 did not change. It is likely that a report should have been written. However,

the type of report would have depended on the outcome of any investigation performed by Officer #1. Since the investigation conducted by Officer #1 was incomplete, the type of report that should have been filed is not known.

The Boise Police Policy Manual §13.0000 begins by citing the Idaho State Code, Title 18, Chapter 79, Malicious Harassment and continues to state (in part):

*The Boise Police Department also maintains a policy of safeguarding the rights of all people, as guaranteed by the Constitution and applicable federal and state laws, regardless of race, religion, ethnic background, disability, and/or sexual orientation. Any acts or threats of violence, property damage, harassment, intimidation, or other crimes designed to infringe upon these rights are viewed seriously by the Boise Police Department and will be given a high priority. We are dedicated to the vigorous investigation and prosecution of crimes motivated by hate or bias as well as addressing the security and related concerns of the immediate victims, as well as their families and others affected by these crimes.*

The policy goes on to provide definitions of bias, hate incident, hate-motivated crime, race, religious group, ethnic group, disability, and sexual orientation. It also lists detailed procedures for the first responder (Officer #1) to follow once he or she becomes aware that a crime motivated by hate or bias may have been committed.

The policy to address hate and bias crimes is a proactive policy. The training that officers receive was developed to ensure that officers have the ability to recognize the potential that a given action might be motivated by hate or bias. In this case, Officer #1 was aware that the Complainant and his wife were Muslim. Officer #1 was also aware that the headscarf worn by the Complainant's wife had religious significance. However, Officer #1

was not presented with any specific information that would indicate that the Subject pulled the Complainant's wife's head-scarf off based on hate or bias. In fact, the Subject and her friend departed the store immediately after the incident, only to return 30 minutes later to apologize for their behavior. Such behavior (returning to apologize) could be seen as being inconsistent with a motivation of hate or bias. Had Officer #1 completed a more thorough investigation, by pursuing statements from the Complainant's wife, the Complainant, the witness, and the Subject's friend, he may have determined that recording the incident as a potential "Suspected Bias Incident" would have been appropriate.

The Boise Police Policy Manual §21.012 Performance of Duty, states in part:

*a. Officers shall perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the Department. Satisfactory performance and competence is demonstrated by:*

- 1) Adequate knowledge of the application of laws required to be enforced.
- 2) Willingness and ability to perform assigned tasks properly.
- 3) Conformance to the work standards established for the officer's rank, grade, or position.
- 4) Taking appropriate and timely action when a crime, disorder, or other condition requiring police action occurs.

Officer #1, as the first officer to respond and as the Acting Field Supervisor, had the primary responsibility to assess the situation, direct any investigative steps, and identify which, if any, laws required enforcement action. He was also responsible to take appropriate and timely action when a crime, disorder, or other condition requires police action. Officer #2 and Officer #3 arrived at the scene after Officer #1. They both acted under his supervision. Therefore, neither Officer #2 nor Officer #3 can be held personally

accountable for the manner in which this incident was handled.

Officer #1 did not demonstrate satisfactory performance in his response to the situation that was reported to him. Officer #1 acted on minimal information and did not pursue a thorough investigation in order to determine what action, if any, should have been taken by the department. In addition, Officer #1 did not preserve the witness information provided to him by the Store Employee.

For these reasons, the ombudsman issued the following finding regarding the actions of the three officers.

1. Officer #1:  
P.M. 21.0102 Alleged poor performance of duty **SUSTAINED**
  
2. Officer #2:  
PM 21.0114 Alleged failure to report information **UNFOUNDED**  
PM 13.0000 Alleged failure to report and investigate a  
suspected hate/bias crime **UNFOUNDED**
  
3. Officer #3:  
PM 21.0114 Alleged failure to report information **UNFOUNDED**  
PM 13.0000 Alleged failure to report and investigate a  
suspected hate/bias crime **UNFOUNDED**

A handwritten signature in black ink, reading "Pierce Murphy". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Pierce Murphy  
Community Ombudsman  
P.O. Box 500  
Boise, Idaho 83701-0500  
(208) 395-7859  
[mailbox@boiseombudsman.org](mailto:mailbox@boiseombudsman.org)