



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB03/0180 - March 31, 2004

THE SITUATION

On September 4, 2003, at approximately 2:30 in the afternoon, the Complainant was driving a tractor-trailer westbound on I-84 when, according to the Complainant, a black pick-up attempted to get between him (the Complainant) and the vehicle in front of him. The Complainant observed the black pick-up drive off the side of the interstate into a construction area. The Complainant said that he observed the black pick-up return to the interstate and begin to follow him. The Complainant exited the interstate at milepost #44 and continued to drive approximately 10 miles to Kuna. He said that the black pick-up followed him. The Complainant said that he did not know if the driver of the black pick-up was dangerous, so he drove upwards of 70 miles per hour and the black pick-up stayed up with him. The Complainant said that when he arrived in Kuna, he drove to the Ada County Sheriff's Substation to report the incident. The Complainant learned at the substation that the driver of the black pick-up was an off-duty Boise police officer (the Officer).

THE COMPLAINT

The Complainant alleges that the Officer drove in a reckless manner as he (the Officer) followed the Complainant's truck. If this allegation were true, it would be a violation of the Boise Police Department's Policy and Procedure Manual § 21.0124 - Off-duty Officer Action.

THE COMPLAINT INVESTIGATION

The assistant ombudsman, Michelle Callaham, investigated this complaint. In the course of the investigation, Ms. Callaham reviewed the police report of the incident filed by the Ada County Sheriff's deputy. This report included statements written by both the Complainant and the Officer. Ms. Callaham also listened to a recording of the phone call made by the Officer to the Ada County Dispatch Center in which he reported the Complainant as a reckless driver. Ms. Callaham reviewed the statement made by the Complainant at the time the complaint was filed. She also interviewed the Officer.

WHAT THE COMPLAINT INVESTIGATION FOUND

Based on the evidence obtained and the records reviewed during this investigation, the following findings of fact were made:

1. The Officer and the Complainant were both driving westbound on I-84 on September 4, 2003 at approximately 2:30 in the afternoon.
2. Due to the speed at which the Complainant was driving, the Officer was not able to merge safely when his lane, the north lane of I-84, ended.
3. The Officer was forced into a construction area where his vehicle struck two construction barrels.
4. The Officer re-entered I-84 and followed the Complainant for approximately 10 miles to the Kuna substation of the Ada County Sheriff's Office.
5. The Officer did not exceed the speed limit or drive in a reckless manner.

6. The Complainant and the Officer each met, individually, with an Ada County Sheriff's Deputy and provided separate statements regarding the incident.

OMBUDSMAN'S ANALYSIS AND FINDINGS

The Complainant alleged that, after his encounter with the Officer on I-84, the Officer followed him in a reckless manner. The Officer was off-duty at the time. Section 21.0104 of the Boise Police Department (BPD) Policy and Procedures Manual governs all off-duty enforcement action taken by BPD officers. This policy states:

In cases where an off-duty officer witnesses a criminal violation, he/she should either take enforcement action or act as a trained observer and communicator. The following factors should be considered in deciding which course to take:

- (a) Whether the crime is a serious crime involving the need for immediate intervention to protect life or property. (Off-duty enforcement of minor violation is discouraged).*
- (b) Whether the officer can reasonably expect to exercise control of the situation while acting alone and without benefit of radio communication.*
- (c) Whether the officer is armed and in possession of police identification.*
- (d) Whether the officer is within his/her jurisdiction.*

The test is met when the officer can reasonably expect to exercise the same high degree of professionalism in his/her actions as he/she would in an on-duty capacity.

The Officer, in this situation, did not take enforcement action. The Complainant did not allow the Officer to merge ahead of the Complainant when his (the Officer's) traffic lane ended. The Complainant's action caused the Officer to collide with construction barrels, potentially causing damage to the Officer's personal vehicle. The Officer had two legitimate concerns. In the event that there was damage to his own vehicle, he needed

to know the identity of the other driver (the Complainant). The Officer was also concerned about the potential danger the other driver posed to the public.

In order to address both of these concerns, the Officer followed the Complainant and used his cellular telephone to report the incident to police dispatch. The Officer made no attempt to stop the Complainant or influence the Complainant's driving in any way. Other than the Complainant's allegation, there is no corroborating evidence that the Officer was driving recklessly. Based on the preponderance of the evidence, the Officer took no enforcement action. The Officer acted as directed by § 21.0124 of the BPD policy manual. He acted as a trained observer and communicator.

For these reasons, I have issued a finding of **UNFOUNDED** in connection with the allegation that the Officer violated the provisions of § 21.0124 of the Boise Police Department's Policy and Procedures Manual.

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