



## **OMBUDSMAN'S REPORT**

### **Complaint Investigation & Findings**

*OMB04/0237 - August 10, 2005*

#### ***SUMMARY***

A complaint was filed with the ombudsman's office, by Complainant #1, alleging that Officer #1 used unnecessary force when he arrested Complainant #2. Complainant #1 also alleged that Officer #1 needlessly and unnecessarily escalated the situation. The allegations were investigated. However, Complainant #2 did not respond to interview requests. Based on the extended length of time the investigation was open (seven months), the investigation was closed with no findings. An interview with Complainant #2 was imperative to the investigation, as one of the allegations was that Officer #1 used unnecessary force against Complainant #2.

Shortly after the investigation was closed, the Boise Police Department requested the ombudsman reconsider the lack of findings and attempt to reach a more definitive conclusion. The ombudsman agreed to this request. Complainant #2 agreed to an interview. Officer #1 was then interviewed. Ultimately, findings of exonerated and unfounded were issued in connection with the allegations made by Complainant #1.

#### ***THE SITUATION***

On November 11, 2004, Officer #1 was dispatched to respond to a "runaway" call made by the mother of her teenage daughter. The teenage daughter was staying at the home of Complainant #1 and Complainant #2. After contacting Complainant #2, Officer #1 directed that the teenage daughter be released to her mother's custody. Complainant #2 refused and

obstructed the teenager from complying by placing his arm in front of her. Officer #1 attempted to move Complainant #2's arm. Upon doing so, Complainant #2 pushed Officer #1 away. Officer #1 used his Taser to gain compliance from Complainant #2. The Taser was not effective, however, Complainant #2 was finally arrested. Complainant #2 was charged with Battery on a Peace Officer, Resisting and Obstructing, and Providing Shelter to Runaway Children.

### ***THE COMPLAINT***

Complainant #1 contacted the Office of the Community Ombudsman on December 18, 2004, regarding an incident that occurred at her residence on November 11, 2004. Complainant #1 and Complainant #2 agreed to allow a friend of their teenage daughter stay the night. The mother of the friend at first agreed to allow her daughter to stay. However, at some point later that day, requested police assistance in having her daughter return home. Officer #1 arrived at Complainant #1's and Complainant #2's residence and told them they must allow the daughter to return home. Complainant #1 and Complainant #2 wanted Officer #1 to talk with them about the situation before allowing her to return to her mother. Officer #1 refused to do so. When Complainant #2 blocked the daughter from departing his residence, Officer #1 grabbed him by the throat and then tased him.

The following allegations were made:

- P.M. § 1.0100            Alleged excessive use of force
- P.M. § 21.0102        Alleged unprofessional performance of duty

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

All dispatch and police reports and records pertaining to this incident, which included witness statements, were reviewed in the course of this investigation. The Use of Force

report completed by Officer #1's supervisor (Officer #2) was reviewed. Audio recordings made by Officer #1 and Officer #2 were also reviewed. Interviews of Complainant #2 and Officer #1 were conducted.

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

Based on the preponderance of the evidence, I made the following findings of fact:

1. Complainant #2 physically obstructed his daughter's 15-year old friend, from complying with the demands made by Officer #1, by placing his arm in front of her.
2. Officer #1 placed his hand somewhere on Complainant #2's upper body and directed him to step away from the 15-year old.
3. Complainant #2 took hold of Officer #1's arm and pushed him away.
4. Officer #1 made several demands that Complainant #2 put his hands behind his back.
5. Complainant #2 refused to comply with the demands made by Officer #1.
6. Officer #1 fired his taser at Complainant #2.
7. Complainant #2 complied with Officer #1's commands, after Officer #1 fired his taser.
8. The taser probes did not penetrate Complainant #2's skin.
9. Complainant #2 did not sustain any injuries during his contact with Officer #1.
10. Complainant #2 interviewed with the assistant ombudsman on July 21, 2005.

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

Complainant #1 made two allegations in her complaint, that Officer #1 used unnecessary force against Complainant #2 and that Officer #1 needlessly escalated the situation.

The Boise Police Department's Use of Force Policy (P.M. § 1.0100), in effect at the time of this incident, states:

### *§ 1.0101 Authorization*

*Officers shall use only the amount of force that is reasonable and necessary to protect life, affect a lawful arrest, and/or gain control in any lawful circumstance. Officers may use deadly force when necessary to defend themselves or others when the officer reasonably believes that imminent danger of death or serious bodily injury exists. Officers may also use deadly force when necessary to effect the capture or prevent the escape of a suspect, whose freedom is reasonably believed to represent an imminent danger of death or serious bodily injury to the officer or to others. When authorized techniques are not available or practical, officers may also use any other reasonable force to gain control of the situation.*

### *§ 1.0102 Criteria for Use of Force*

*The appropriateness of an officer's actions will be determined by the totality of the circumstances and by the reasonableness of the officer's perceptions at the time of the incident.*

*The criteria for determining use of force shall include, but not be limited to,:*

- *The severity of the crime*
- *The nature and extent of the threat posed by the suspect*
- *The degree to which the suspect resists arrest or detention*
- *Attempts by the suspect to evade arrest by flight*
- *Other factors, including:*
  - *Nature and quality of intrusion upon the individual*
  - *Duration of that intrusion*
  - *Severity of injuries inflicted, if any*
  - *Officer/subject size and other physical attributes*
  - *Environmental considerations*
  - *Reaction time*
  - *Totality of circumstances*

Officer #1 gave lawful commands to Complainant #2 to return the girl to her mother. Complainant #2 delayed and obstructed the girl's departure from his home. As Officer #1 attempted to intervene, Complainant #2 pushed Officer #1. Officer #1's use of his taser was a reasonable response to the active physical threat posed by Complainant #2. There is no evidence to indicate that Officer #1 used unnecessary force during his contact with Complainant #2.

The Boise Police Department's Performance of Duty Policy (P.M. § 21.0102), in effect at the time of this incident, states, in part:

*Employees 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:*

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

Officer #1 was assigned as the primary officer to respond to a report of a runaway. Officer #1, after learning that the "runaway" was staying at the home of Complainant #2, responded to Complainant #2's home. Officer #1 gave a lawful order for Complainant #2 to release the girl to her mother. Complainant #2 refused the lawful command. Officer #1 showed a willingness and ability to perform this assigned task properly. Officer #1 took appropriate action in this case by locating the girl and returning her to her mother.

I have issued a finding of exonerated regarding the allegation that Officer #1 used excessive force against Complainant #2. Based on the evidence, the amount of force used by Officer #1, given the circumstances he was facing, was reasonable and necessary.

I have issued a finding of unfounded regarding the allegation that Officer #1 needlessly escalated the situation. The evidence showed that Officer #1 responded in a manner

consistent with the policy.

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