



## **OMBUDSMAN'S REPORT**

### **Complaint Investigation & Findings**

*OMB05/0025 - April 28, 2005*

#### ***EXECUTIVE OVERVIEW***

The ombudsman received a complaint from an employee of the Boise Police Department (BPD) alleging that an officer used the emergency equipment on an unmarked police car to respond “code three” to a non-emergency situation and caused a three-car injury collision at Capitol and Myrtle. The investigation revealed that the officer responded “code three” to the scene of an officer-involved shooting approximately 25 minutes after the shooting. A three-car collision did take place, but there were only minor injuries. The officer driving the unmarked car did not cause the collision. It was the result of another driver failing to notice that cars ahead had stopped for the emergency vehicle. The ombudsman sustained a violation of police department policy against the officer because he was not responding to an emergency, as defined in the policy.

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

On December 18, 2004, at approximately 5:09 p.m. an officer-involved shooting took place in the 1300 block of Parkhill, in the Boise foothills. At approximately 5:28 p.m. a page was sent to all BPD command personnel notifying them of this fatal critical incident. At approximately 5:36 p.m. Officer #1 notified Ada County Dispatch via radio of an “officer-related but not officer-involved” accident with injuries at Capitol and Myrtle.

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

The complainant alleged that Officer #1 violated the following section of BPD policy:

*§ 4.0301 Emergency Response Defined*

*An emergency response shall be defined as the expeditious response of an officer to any emergency situation in which the officer utilizes the emergency lights or lights and siren to facilitate a quick and safe arrival.*

*§ 4.0302 Emergency Response Authorized*

*Emergency responses shall be authorized only when one or more of the following emergency conditions exist or are believed to exist based upon reliable information:*

- When the situation involves the imminent potential for serious injury or death to any person*
- In order to prevent or halt a crime of violence*
- When a serious public hazard exists*
- When an emergency response will enhance the likelihood of apprehending a felony suspect*

***THE COMPLAINT INVESTIGATION***

I reviewed the following police department records:

1. Audio recording of the radio transmissions associated with this incident.
2. Computer-aided dispatch (CAD) records related to this incident.
3. Collision report filed in connection with the three-car collision at the intersection of Capitol and Myrtle on December 18, 2004, at approximately 5:36 p.m.
4. Audio recording made by the first patrol officer on the scene of the collision after Officer #1.

I interviewed the following people:

1. Officer #1.
2. The first patrol officer to arrive on the scene.
3. The STEP officer who investigated the collision and wrote the report.
4. An uninvolved witness to the collision.

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

Based on the preponderance of the evidence available in this investigation, I reached the following findings of fact:

1. On December 18, 2004, at approximately 5:09 p.m. an officer-involved shooting took place in the 1300 block of Parkhill in Boise.
2. At approximately 5:28 p.m. a command page was sent informing BPD commanders that there had been an officer-involved shooting and that the person shot was deceased. Officer #1 received and read this page.
3. At approximately 5:36 p.m. Officer #1 used the police radio in his assigned BPD unmarked car to inform dispatch that an injury accident had just occurred at the intersection of Capitol and Myrtle.
4. Sometime between 5:28 p.m. when the command page was sent and 5:36 p.m. when Officer #1 radioed in his report of the collision, Officer #1 drove his assigned BPD unmarked vehicle from his home in Boise to the intersection of Capitol and Myrtle. During this drive, Officer #1 operated the emergency lights and sirens on his assigned unmarked vehicle and drove in a "code three" mode.
5. Officer #1 decided to respond "code three" to the critical incident. He was not directed, requested, or otherwise assigned by anyone else to respond "code three."
6. At the time Officer #1 was responding "code three" to the incident, Officer #1 had no knowledge of any on-going criminal activity or other threat to officer and/or public safety at the scene of the critical incident or in any other way associated with the critical incident.

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

There is not doubt, based on witness accounts and his own statements, that Officer #1 was utilizing the emergency lights and siren of his assigned BPD vehicle. The facts also support the conclusion that this took place approximately 25 minutes after the incident to which he was responding (an officer-involved shooting). At the time Officer #1 chose to respond "code three" it was known to him that the officer-involved shooting and its precipitating event (a juvenile beyond control with a weapon) were no longer active and/or in-progress. In other words, at the time Officer #1 operated the emergency equipment on his unmarked police car, neither the critical incident nor the juvenile beyond control incident met the criteria listed in § 4.0302, above.

Did some other "emergency condition" (as defined in § 4.0302) exist that required Officer #1's "code three" response to the area of the Parkhill address? Officer #1 maintains that, in the immediate aftermath of an officer-involved shooting, the absence of a commander (a police captain or above) on scene at the command post is an emergency. Officer #1 said that the patrol officers and front line supervisors at the scene of a critical incident can quickly become overwhelmed with the many tasks and issues that arise. Officer #1 said it is imperative that an experienced police commander get to the scene as quickly as possible to assume and maintain command and control. Officer #1 said that, after speaking on the phone with Dispatch and the Valley Division captain, he determined that he was the closest commander and should respond "code three" to the scene.

It is difficult to argue with Officer #1's position that command and control at the scene of a critical incident are extremely important. Decisions made and actions taken can effect the collection and preservation of crucial evidence, the extent to which surrounding residential and commercial properties are negatively impacted by after-incident police activities, traffic flow, and a host of other issues. It is important that supervisors, technicians, investigators, and command personnel get to the scene as quickly as possible. However, these needs must

be balanced against other considerations, such as safety and liability. This is why BPD's policy places specific restrictions on the operation of emergency equipment ("code three" responses) by its personnel. Every time an officer responds "code three," the potential for a collision and the liability profile of both the City and the officer are increased. Only the urgent need to get to a true emergency, as set out in policy, outweighs these risks.

In my judgment, a critical incident that has already taken place, which is not on-going (such as armed subjects still at-large or continuing violent criminal activity) does not meet the conditions articulated in § 4.0302. In the situation under review, Officer #1 admits that he had no reason to believe he was responding to a situation that posed imminent death or serious bodily to anyone. Officer #1 did not respond to the area of 15<sup>th</sup> and Parkhill to prevent or stop a crime of violence. There was no felony suspect at the scene in need of capture. There was no serious "public hazard" at or in the vicinity of the 1300 block of Parkhill. In summary, this investigation failed to find any evidence to support the conclusion that the one or more of the conditions laid out in § 4.0302 was present at the time Officer #1 used emergency lights and siren to drive from his home to the intersection of Capitol and Myrtle.

Officer #1's also asserts that it has been past practice in BPD for commanders (some, but not all) to respond "code three" to critical incidents after the fact. He cites this "past practice" as sufficient reason for exoneration. I do not find this to be sufficient grounds to exonerate Officer's clear violation of the restrictions contained in § 4.0302.

For these reasons I have issued a sustained finding for Officer #1's violation of § 4.0302 of the BPD policy manual.

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