



OMBUDSMAN'S REPORT Complaint Investigation & Findings

OMB05/0157 - December 23, 2005

THE SITUATION

On his way home for an authorized meal break, a Boise Police Department (BPD) officer (the Officer) stopped a vehicle at Pine and Ten Mile in Meridian on September 15, 2005, at approximately 10:00 p.m. The vehicle failed to stop at a stop sign and was nearly hit by the Officer's patrol car. The Officer issued a citation to the driver for reckless driving.

THE COMPLAINT

On September 22, 2005, the Complainant contacted the ombudsman's office regarding a traffic stop made in Meridian on September 15, 2005. The stop was made by the Officer at Pine and Ten Mile. The Complainant is a friend of the person stopped, (the Driver), who lives in California and does not speak English as a first language. The Complainant was told by the Driver that the Officer was aggressive. The Complainant asked the ombudsman to look into the matter and see if there was an explanation for the Officer's behavior. In the course of reviewing the incident, it was discovered that the Officer failed to create an audio recording of his enforcement contact with the Driver.

THE COMPLAINT INVESTIGATION

This case was initiated by a third party (the Complainant) who had been given the impression that the Officer was rude and threatening during his enforcement contact with the Driver.

Subsequent follow-up by the Complainant revealed that his initial understanding that the Officer used profanity and was threatening was incorrect. Nevertheless, the Complainant asked the ombudsman to look into the incident and review the Officer's audio recording to see if any improvement could be made in how the Officer interacts with persons whose English language abilities are not strong. No specific allegation of a policy violation was noted at the completion of the intake process. Therefore, the Complainant's request was handled as an inquiry.

An attempt was made to locate a recording of the Officer's enforcement contact. Once it was found that no audio recording of the enforcement contact could be found, the case was reclassified as a Class II complaint (alleged failure to record an enforcement contact) and investigated as such.

In the course of this investigation the following steps were taken:

1. The Complainant was interviewed two times over the telephone.
2. Audio recordings made by the Officer on September 15, 2005, were examined to determine if any audio existed of the Officer's contact with the Driver.
3. The Officer was interviewed.

Since it was determined at the completion of the intake process that no specific allegation of policy violation was being made by the Complainant or the Driver, no attempt was made to interview the Driver or any of the passengers.

WHAT THE COMPLAINT INVESTIGATION FOUND

Based on the preponderance of the evidence obtained and reviewed in the course of this investigation, the following factual findings were made:

1. The Officer conducted a traffic stop in the area of Ten Mile and Pine in Meridian on a vehicle being operated by the Driver.
2. The Officer's purpose in conducting the traffic stop was enforcement-related.
3. The Officer made personal contact with the Driver and other passengers in the vehicle.
4. The Officer issued a traffic citation to the Driver charging him with reckless driving.
5. The Officer did not create an audio recording of his personal contact with the Driver during this enforcement contact.

OMBUDSMAN'S ANALYSIS AND FINDINGS

The BPD Policy and Procedures Manual (§ 8.05.03A) states (in part):

A uniformed officer shall ensure that his/her recorder is recording during the full duration of all personal contacts with suspects and persons complaining of officer misconduct while engaged in enforcement action or when any contact is anticipated to be confrontational in nature, unless an articulated reason justifies otherwise. The officer shall make every effort to record the entire contact in a manner which will provide a clear audio recording.

No audio recording of the Officer's enforcement contact with the Driver could be found and the Officer admitted to not recording the contact. Other than the fact that he was upset by the

near collision with the Driver and its possible implications for injury to himself and others, the Officer was not able to offer a specific reason why he was unable to record the contact. There was no safety reason or element of surprise that would have made it unreasonable to expect the Officer to record the contact as required by policy.

For these reasons, I have issued a sustained finding for the Officer's failure to record an enforcement contact as required by § 8.05.03A of the BPD Policy and Procedures Manual.



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