



## **OMBUDSMAN'S REPORT**

### **Complaint Investigation & Findings**

*OMB07/0013 - January 8, 2008*

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

In the early morning hours one day in the fall of 2006, security personnel assigned to the Idaho State Capitol made contact with two men, the Complainant and Witness #1. This took place on the west side of Capitol Boulevard, several yards north of Bannock Street. The security personnel alleged that Witness #1 had damaged one or more flagpoles that were situated in the grass along the west edge of the sidewalk. The security personnel called the Boise Police Department (BPD) and, after some time, a BPD police car arrived with Officer #1 and Officer #2 inside. Officer #1 made contact with the security personnel and then with Witness #1. After a brief interaction between Officer #1 and Witness #1, Officer #1 took the Complainant to the ground by force and arrested him. The Complainant was charged with Malicious Injury to Property and Resisting and Obstructing and booked into the Ada County Jail. Witness #1 was cited for Malicious Injury to Property and released.

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

On January 26, 2007, an attorney representing the Complainant submitted a completed complaint form via FAX to the Office of the Community Ombudsman. Through his attorney, the Complainant alleged that Officer #1 used unnecessary and excessive force on him. In a letter included with the complaint, the Complainant's attorney stated that his client was currently the subject of a criminal prosecution. As such, the attorney requested that the Office of the Community Ombudsman stay commencement of its investigation of the Complaint until criminal proceedings are completed. This request was granted.

On May 11, 2007, I received a letter from the Complainant's attorney notifying me that the criminal matter against the Complainant had been fully adjudicated and requesting that the Office of the Community Ombudsman commence and complete its investigation relative to this matter. At this time Officer #1 was notified of the complaint and the investigation commenced.

During my subsequent interviews of the Complainant and Witness #1, both men alleged that material statements of fact contained in the police report of the incident filed by Officer #1 were false. This additional allegation was added to the complaint. In the course of the investigation, it was also found that audio recordings of some portions of Officer #1's personal contacts with the Complainant and Witness #1 did not exist. The additional allegation of failure to record an enforcement contact was then added to the investigation.

## **THE ALLEGATIONS**

The Complainant alleges that, without warning, Officer #1 made physical contact with him by bumping him with his body. The Complainant further alleges that Officer #1 grabbed him and threw him bodily to the ground. Once the Complainant was lying face down on the ground, according to the Complainant, Officer #1 used what felt like a knee to place weight on his back and pin him to the ground. The Complainant claims that he offered no resistance to the actions of Officer #1; nor did he make any threatening gestures or movements. If these allegations are true, Officer #1's actions as described would be a violation of BPD's policy § 1.01.02 – Authorization (for the use of force).

The Complainant and Witness #1 both allege that Officer #1's police report of the incident contains false statements about what was said and done by Officer #1 and the Complainant immediately preceding Officer #1's use of force. If this allegation is true and Officer #1

knew these statements to be false at the time the report was submitted, this would be a violation of BPD's policy § 11.03.16B – False Reporting.

Finally, it is alleged that Officer #1 failed to record the entirety of his personal contact with the Complainant during an enforcement contact. If this allegation is true, this would be a violation of BPD policy § 8.05.03 – Cassette and Digital Voice Recorders.

## ***THE COMPLAINT INVESTIGATION***

### Interviews

The following persons were interviewed in the course of this investigation.

1. Officer #1
2. Officer #2 (He arrived with Officer #1 at the scene and was present at the time of the incident.)
3. The Complainant
4. Witness #1 (He was with the Complainant at the time of the incident.)
5. Witness #2 (He was a Capitol Mall Security officer present at the time of the incident.)
6. Witness #3 (He was a Capitol Mall Security supervisor viewing the incident at the time via a closed circuit security video system.)
7. Witness #4 (He was a Capitol Mall Security officer present at the time of the incident.)
8. Witness #5 (He was a Capitol Mall Security officer present at the time of the incident.)
9. Witness #6 (He was the Capitol Mall Security manager in charge of the closed circuit security video system and custodian of archived video from that system.)

### Records Review

The following written and electronic records were reviewed in the course of this investigation:

1. The police report submitted by Officer #1 in connection with this incident.
2. The Incident History Report for this incident from the Ada County computer-aided dispatch system.
3. All Digital audio recordings made in connection with this incident by Officer #1, Officer #2, Officer #3 (an assist officer who arrived after the arrest of the Complainant), and Officer #4 (an assist officer who arrived after the arrest of the Complainant).
4. Certain related records from the BPD Office of Internal Affairs.
5. Digital video recordings made by Capitol Mall Security before, during, and after the incident.
6. Notes, statements, and photographs related to the incident and offered by the Complainant and Witness #1.
7. Court records and audio recordings of testimony given at trial related to criminal charges against Witness #1 stemming from this incident.

### Forensic Analysis

The contact between Officer #1, the Complainant, and Witness #1 was captured on the digital video recordings supplied by Capitol Mall Security. In order to thoroughly and objectively investigate the allegation that Officer #1's use of force against the Complainant was excessive given the circumstances, I employed the services of a court recognized forensic video examiner, Mr. Grant Fredericks of Forensic Video Solutions. Mr. Fredericks is a court recognized expert in the forensic examination of video evidence. His expert testimony has been admitted into evidence in 29 trials in the United States and 26 in Canada

since 1998. Mr. Fredericks is a forensic video analysis instructor for the University of Indianapolis and the FBI Academy in Quantico, Virginia.

Mr. Fredericks examined the video using specialized methods and equipment and reported his findings to me. Found below is a summary of what Mr. Fredericks found. All times noted below appeared on the video images provided.

At 02:28:45 a police car arrives and parks on the west side of Capitol Blvd, just north of Bannock. Two police officers get out of the police car. Officer #1 gets out of the passenger door of the police car and Officer #2 exits the driver's door.

At 02:30:00 Officer #1, who is standing next to the sidewalk and the southern most flag, raises an arm in the direction of where the Complainant and Witness #1 are standing under some trees along with one of the security officers. Witness #1 immediately begins to walk towards Officer #1. After Witness #1 takes a few steps, the Complainant begins to walk towards Officer #1 in the same direction as Witness #1.

At 02:30:08 Witness #1 reaches the curb along the sidewalk on the west side of Capitol. The Complainant is several steps behind Witness #1, still walking towards Officer #1. The Complainant has his hands in his pockets and is walking at a slower pace than Witness #1.

At 02:30:15 the Complainant reaches the curb, seven seconds behind Witness #1. The Complainant's hands continue to remain in his pockets.

Between 02:30:20 and 02:31:03 (a time period of 43 seconds) the Complainant stands stationary with his hands in his pockets. He appears to be facing Officer #1 the entire time. His only movement is a forward motion of his head at the second of two frames both labeled as 02:30:58.

At 02:30:56 Witness #1's right shoulder moves back and an object likely to be his right elbow appears behind Officer #1, consistent with Witness #1 reaching back with his right hand.

There is no frame for 02:30:57.

There are two frames in sequence that are both labeled as 02:30:58.

At 02:30:58 (#1) Witness #1's right elbow and right shoulder move forward and his left arm is extended out in front of him.

At 02:30:58 (#2) Witness #1's left arm drops.

At 02:30:59 the Complainant's head juts forward. The Complainant's feet do not move and his hands remain in his pockets. Witness #1's right elbow and right shoulder move forward more and his left hand moves to the area of his waist. Witness #1 looks down towards the area of his left hand.

At 02:31:00 the Complainant's head moves back to its original position, his hands remain in his pockets, and his feet do not move.

At 02:31:02 Officer #1, with his left hand extended, takes a step towards the Complainant. Witness #1 also takes a step towards the Complainant at the same time.

At 02:31:03 Officer #1 and Witness #1 step closer to the Complainant. The Complainant has not moved and his hands remain in his pockets.

At 02:31:04 Officer #1 moves closer to the Complainant and appears to be standing between the Complainant and Witness #1. The Complainant still has his hands in his pockets and has

moved slightly to his right and backwards (away from Officer #1). There is a dark area on the Complainant's left upper arm that appears to be a shadow rather than the arm of Officer #1.

At 02:31:05 Officer #1 has come between the Complainant and Witness #1. Witness #1 has not moved since the last frame, one second before. Officer #1 is leaning forward towards the Complainant. The Complainant has moved more to his right and his left shoulder is nudged upward. A hand is visible to the left of Officer #1's head. It is not possible to tell if this is the officer's hand or if it belongs to the Complainant. Officer #1's right arm is not visible indicating it is in front of his body (his back is to the camera).

At 02:31:06 the Complainant is off balance and moving backward. Officer #1 is moving forward towards the Complainant. Both of Officer #1's hands are in front of him and he appears to be in contact with the Complainant. Officer #1's left hand is close to the Complainant's chin. Witness #1 is reaching forward between the Complainant and Officer #1. It cannot be determined if Witness #1 is in contact with either one of them.

At 02:31:07 the Complainant's face is turned to his right and away from Officer #1. Officer #1 has moved forward about three feet. The Complainant is moving in the same direction as Officer #1, but backward and to his (the Complainant's) right. Witness #1 is moving between Officer #1 and the Complainant. Witness #1's body position is consistent with being in a pushing position.

There are two frames in sequence that are both labeled as 02:31:09.

At 02:31:09 (#1) Officer #1 is holding the Complainant from the back. Officer #1's left heel is off the ground and the Complainant is being twisted backwards by Officer #1. The right front of Witness #1 appears to be in contact with Officer #1's left back and shoulder area.

At 02:31:09 (#2) the Complainant is being picked up from the rear by Officer #1. The Complainant's left foot is off the ground and Officer #1's left heel is further off the ground than it was in the previous, most immediate image. Officer #1's back is twisted to his left. Witness #1 appears to still be in contact with the back of Officer #1.

At 02:31:10 Officer #1 is in contact with the Complainant and on the Complainant's left side. The Complainant is falling forward and landing on the ground. His right arm is in contact with the ground. Witness #1 appears to have his hands on Officer #1's back.

At 02:31:11 Officer #1 is moving on top of the Complainant and Officer #2 is moving toward Witness #1.

At 02:31:12 Officer #1 is on top of the Complainant who is on the ground. Officer #2 is pushing Witness #1 backward.

Between 02:31:12 and 02:31:27 Officer #1 is on top of the Complainant and appears to be attempting to control his arms behind his back.

At 02:31:28 Officer #1 begins to handcuff the Complainant.

At 02:31:56 Officer #1 stands up and steps away from the Complainant.

## **ANALYSIS OF THE EVIDENCE AND RECORDS**

It is without dispute that, shortly before 2:30 a.m., Officer #1 used physical force on the Complainant. It is also undisputed that this force included the use of Officer #1's hands, limbs, and body weight to bring the Complainant from a standing to a prone position on the sidewalk. It is generally agreed by the involved parties and witnesses that the Complainant

said, "Whoa, whoa, whoa," or something similar toward the end of Officer #1's initial interrogation of Witness #1. All parties are also in agreement that Officer #1 made some verbal response to the Complainant's statement, although the parties do not agree on the precise nature of Officer #1's verbal response.

Clearly in dispute and the main focus of this investigation are the actions and statements of the primary actors (Officer #1, the Complainant, and Witness #1) in the roughly 58 seconds that elapsed between when Witness #1 arrived at the sidewalk to speak with Officer #1 and when Officer #1 began to take the Complainant to the ground. In the course of this investigation, three different versions of what happened in the 58 seconds before Officer #1 took the Complainant to the ground have emerged. I will now examine each of these versions, in light of the evidence and testimony available.

#### Version #1

This is the version presented by Officer #1 and supported, in whole or in part, by Officer #2 and Witness #5. The main elements of this scenario include:

- A. Officer #1 directed Witness #1 to come to the sidewalk to question him about his involvement in damaging the flags and the flagpoles.
- B. Witness #1 complied with this direction and Officer #1 began to conduct his investigation.
- C. Officer #1 was calm and direct in his statements and questions to Witness #1 and said nothing unusual to intimidate or threaten Witness #1.
- D. During Officer #1's questioning of Witness #1, the Complainant remained some distance away from Officer #1, but slowly drifted toward the spot where Officer #1 and Witness #1 were standing on the sidewalk.
- E. Officer #1 asked Witness #1 to produce some identification. As Witness #1 began to extract his wallet from his pocket, the Complainant moved towards Officer #1 and

said, "Whoa, whoa, whoa, whoa." The obvious intent of the Complainant's statement was to prevent Witness #1 from producing his identification and cooperating with Officer #1's investigation.

- F. In response to the Complainant's interjection, Witness #1 stopped what he was doing, put his wallet back in his pocket, and took one or more steps back.
- G. Officer #1 asked the Complainant if he was involved in damaging the flags and the flagpoles. The Complainant replied that he was not.
- H. Officer #1 then ordered the Complainant to move back and get away from the immediate area. The Complainant replied, "No," to this order.
- I. Officer #1 walked up to the Complainant, took hold of his left wrist and shoulder, and began to push, walk, move, or escort him from behind down the sidewalk and away from the immediate area.
- J. The Complainant either pushed Officer #1 or tensed his body in resistance to Officer #1 and began to turn towards Officer #1.
- K. Officer #1 countered this resistance by grabbing the Complainant with both hands and taking him to the ground.

Key elements of version #1 are not supported by the strongest evidence available, the video recording from Capitol Mall Security. The Complainant did not "drift" towards Officer #1 while the officer was questioning Witness #1, nor did the Complainant move toward Officer #1 as he (the Complainant) said, "Whoa, whoa, whoa." The video clearly shows that the Complainant followed behind Witness #1 as he walked to the sidewalk in response to Officer #1's summons. The Complainant reached the sidewalk only seven seconds after Witness #1. Once on the sidewalk, the Complainant took a position several feet to the right of Officer #1 and remained there for 43 seconds without moving. During the entire time the Complainant stood still on the sidewalk, his hands remained in his pockets and he made no gestures or other discernable movements, except one brief forward motion of his head approximately three seconds before Officer #1 began advancing on him.

Version #1 contains the assertion that Officer #1 and the Complainant had an interchange of words between when Witness #1 began to produce his identification and when Officer #1 made physical contact with the Complainant. According to this version, Officer #1 asked the Complainant if he was involved in damaging the flagpoles. The Complainant said he was not. Officer #1 then told the Complainant to leave, to which the Complainant replied, "No." It was then that Officer #1 went over to the Complainant and took hold of him in an escort hold. The video evidence supports the assertion that Witness #1 removed or began to remove something from his pocket. At about the same time, the Complainant's head jutted forward for a moment, his first movement in over 40 seconds. Two seconds later, the video shows that Officer #1 beginning to step over to the Complainant. If there was any conversation between Officer #1 and the Complainant other than an exchange of, "Whoa, whoa, whoa," the video appears to show that it took place in the space of two to three seconds. There does not appear to be time for the exchange of words described by the security officers and the two BPD officers.

The video evidence also does not support version #1's assertion that Officer #1 took hold of the Complainant's left shoulder and wrist in a police hold and escorted him down the sidewalk. Instead, the video appears to show that Officer #1 used the front of his body to bump the Complainant and push him several feet before taking him down to the sidewalk. In addition, Officer #2's audio recording of Officer #1's verbal exchange with the Complainant after Officer #1 took him to the ground contains a statement by Officer #1 that supports the Complainant's allegation that Officer #1 pushed him, rather than escorting him down the sidewalk, although this may be explained as a difference in meaning for the word "push". The following is a brief portion of that exchange:

Complainant: "Have I ever resisted you?"

Officer #1: "Of course you did."

Complainant: "When?"

Officer #1: "I tried to push you along and you decided to push against me."

Complainant: I never pushed you, dude.”

Officer #1: “Oh, yeah, you did.”

Regarding the assertion in version #1 that, in response to Officer #1’s attempt to escort the Complainant down the sidewalk, the Complainant tensed his body and began to turn towards him, Officer #1’s accounts of this have not been entirely consistent. Officer #1 asserted in the above cited exchange recorded by Officer #2 that the Complainant pushed against him. This is also what Officer #1 wrote in his report, that the Complainant, “pushed back against me and attempted to turn towards me.” However, when I interviewed Officer #1, he said that he felt the Complainant tense up and begin to push back. Officer #1 said that this pushing by the Complainant was nothing drastic or major.

Officer #2 reported to me in his interview that, in response to Officer #1’s effort to escort the Complainant down the sidewalk, the Complainant turned his head towards Officer #1 while beginning to turn his shoulder as well into Officer #1. Officer #2 said that the Complainant did nothing else that could be considered threatening or aggressive.

The video evidence does not reveal any overt act by the Complainant that could be construed as a push. At the same time, the video does not rule out the possibility that the Complainant tightened, stiffened, or engaged in some other form of passive resistance (whether voluntary or involuntary) after Officer #1 bumped him and began to push him along the sidewalk. While this apparent inconsistency could be explained as a matter of Officer #1 using the word “push” to mean something other than an overt act, it is crucial to consider that the alleged “push” by the Complainant was proffered in Officer #1’s police report as evidence of resisting an officer and justification, in part, for Officer #1’s subsequent use of force in taking the Complainant to the ground. Also of note is the fact that Officer #1 used “push” to describe both his attempt to move the Complainant away and the Complainant’s reaction to this.

Regarding Officer #1's demeanor toward Witness #1, it was apparent from my interviews that Officer #1 was not calm while he questioned Witness #1. Officer #1 was clearly unhappy about what had happened to the flags and said something about the dishonor shown to the soldiers who were represented by each flag.

### Version #2

This is the version presented by two of the Capitol Mall Security officers, Witness #2 and Witness #3. The main elements of this scenario include:

- A. Officer #1 directed Witness #1 to come to the sidewalk to question him about his involvement in damaging the flags and the flagpoles.
- B. Witness #1 complied with this direction and Officer #1 began to conduct his investigation.
- C. Officer #1 was calm in his statements and questions to Witness #1 and said nothing about dishonoring the flags or the troops.
- D. During Officer #1's questioning of Witness #1, the Complainant interrupted Officer #1, told Witness #1 that he did not need to answer Officer #1's questions, and tried to convince Witness #1 to get away.
- E. The Complainant became a little aggressive and moved towards Officer #1.
- F. Officer #1 told the Complainant that, since he was not involved and was not being questioned, that he was free to leave. The Complainant kept "butting in" and moving towards Officer #1.
- G. Officer #1 told the Complainant to go away, gently took hold of the Complainant, and began to guide the Complainant away.
- H. The Complainant said, "Get your hands off me," and used one or two hands to shove or hit Officer #1 in the chest.
- I. Officer #1 countered this resistance by taking the Complainant to the ground.

This version is similar to version #1 in its basic outline. The Complainant is said to have verbally intervened in Officer #1's interrogation of Witness #1 which resulted in an exchange of commands and refusals between Officer #1 and the Complainant. The two versions are also similar with respect to the assertion that Officer #1 responded to the Complainant's refusal to leave by taking hold of the Complainant and beginning to physically escort him down the sidewalk.

New material is included in this version; an assertion not made by either of the two BPD officers, Witness #1, or the Complainant. Version #2 asserts that, right after Officer #1 took hold of the Complainant and began escorting him down the sidewalk, the Complainant shoved or hit Officer #1 in the chest with one or two hands. This alleged battery of Officer #1 by the Complainant is clearly refuted by the video evidence. In addition, Officer #1 categorically denies any such act by the Complainant. It is important to note that this claim of physical aggression on the part of the Complainant came from a witness (Witness #2) who admitted that he and Witness #3 compared their versions of the incident, and who also claims that Officer #1 solicited his support along with the support of Witness #3 should a complaint or law suit be filed against Officer #1.

It should be noted that both Witness #4 and Witness #5 reported to me that the Complainant did not strike or push Officer #1. I consider Witness #5 to be particularly reliable because he worked for Capitol Mall Security for only a short time, has not worked for them since the beginning of 2007, has no on-going working relationship with the police (Officer #1 in particular), and was not contacted by Officer #1 after the trial of Witness #1.

### Version #3

This version of events was the one presented by the Complainant and Witness #1.

- A. Officer #1 directed Witness #1 to come to the sidewalk so he could question Witness #1 about his involvement in damaging the flags and the flagpoles.
- B. Witness #1 walked over to the sidewalk where Officer #1 was standing. The Complainant followed Witness #1 and stood on the sidewalk several feet away from him and Officer #1.
- C. Officer #1 asked Witness #1 about what had happened to the flags. As Witness #1 began to explain how he and the Complainant had accidentally knocked them over, Officer #1 became agitated, raised his voice, and scolded Witness #1 for desecrating the flag and dishonoring the troops.
- D. At some point in this conversation, Officer #1 pulled his hat from his head and waved it around.
- E. Officer #1 did not ask Witness #1 for his ID and Witness #1 made no attempt to remove his ID or wallet from his pocket.
- F. While Officer #1 was questioning Witness #1 and expressing agitation regarding the desecration of the flags, the Complainant remained stationary with his hands in his pockets.
- G. After listening to Officer #1 harangue Witness #1 for some time, the Complainant said, “Whoa, whoa, whoa,” in an attempt to deescalate things.
- H. Officer #1 turned to the Complainant, replied, “Whoa, whoa, whoa, what?,” and rushed towards the Complainant.
- I. This exchange of, “Whoa, whoa, whoa,” is all that was said between the Complainant and Officer #1 before the Complainant was taken to the ground.
- J. Officer #1 pushed the Complainant with his body, grabbed him, and threw him to the ground.
- K. The Complainant offered no resistance to Officer #1, other than an attempt to maintain his balance.

The video evidence is generally supportive of this version of events. The video shows that the Complainant arrived at the sidewalk seven seconds after Witness #1 and stayed

motionless on the same spot until Officer #1 made physical contact with him. It also shows that Officer #1's hat was removed sometime during his contact with Witness #1, but before he made physical contact with the Complainant. The assertion in version #3 that Officer #1 rushed at the Complainant, pushed him with his body, and took him to the ground is also supported by the video evidence.

As noted above, however, the video evidence appears to support the assertion in version #1 that Witness #1 removed or began to remove something from his pocket shortly before Officer #1 advanced on the Complainant.

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

Based on the preponderance of the evidence obtained and reviewed in the course of this investigation, I issue the following findings of fact:

1. On the day in question, at approximately 2:20 a.m., Officer #1 and Officer #2, a two-person BPD unit, were dispatched to a report that Capitol Mall Security officers were detaining two persons suspected of vandalizing the flags and flagpoles in the area of N. Capitol Blvd. and W. Bannock St. in downtown Boise. Both officers were on duty, in uniform, and driving a marked BPD police car.
2. Upon arrival at the scene, Officers #1 and #2 made contact with Capitol Mall Security officers and inspected the reported damage.
3. At that time, Witness #1 and the Complainant were standing with the Capitol Mall Security officers on the grass, some distance west of where Officer #1 was standing.

4. Officer #1 asked who was involved in damaging the flags and flagpoles. Witness #1 replied that he was the involved person.
5. Officer #1 signaled for Witness #1 to come over to him. Witness #1 complied with this request, walked east towards Officer #1, and stopped on the sidewalk, just a few feet from Officer #1.
6. Once Witness #1 reached the sidewalk, Officer #1 questioned him about what had happened to the flags and the flagpoles. This questioning lasted for approximately 50 seconds.
7. The Complainant, who had been standing on the grass near Witness #1, followed Witness #1 to the sidewalk, walking several feet behind him. The Complainant arrived at the sidewalk approximately seven seconds after Witness #1 got to the sidewalk.
8. Once the Complainant reached the sidewalk, he stood stationary several feet north of Officer #1, who was standing between the Complainant and Witness #1. The Complainant remained in the same spot for approximately 43 seconds with his hands in his pockets while Officer #1 questioned Witness #1.
9. Officer #1 activated his digital audio recorder as Witness #1 came near him and before Officer #1 began his questioning. The unit recorded the first 32 seconds of Officer #1's contact with Witness #1. The remainder of the contact that took place before Officer #1's use of force on the Complainant was not recorded. Also not recorded on Officer #1's digital recording unit was any verbal contact between Officer #1 and the Complainant prior to and during Officer #1's use of force against the Complainant.

10. Approximately 7 to 14 seconds after the Complainant came to a standstill on the sidewalk, the dark hat on Officer #1's head was removed and remained off for the duration of the incident.
11. Approximately 38 seconds after the Complainant came to a standstill on the sidewalk, Witness #1 gestured with his left hand, moved his right hand back towards the area of his right hip, brought both hands together in front of his waist, and looked down at his hands.
12. Approximately one second after Witness #1 brought both hands together in front of his waist, the Complainant's head jutted forward and then back, but his feet remained motionless and his hands remained in his pockets.
13. The Complainant said, "Whoa, whoa, whoa." Officer #1 responded by saying something to the Complainant.
14. Approximately three seconds after the Complainant's head moved forward and back, Officer #1 began to move toward the Complainant. It took about three seconds for Officer #1 to reach the Complainant and make physical contact with him. During this time, Officer #1 gestured with his left hand while the Complainant kept his hands in his pockets and moved slightly back and to his right, away from Officer #1.
15. While the Complainant's hands were still in his pockets, Officer #1 initiated physical contact between himself and the Complainant, bumping the left front and left side of the Complainant's body. Officer #1 then physically pushed the Complainant a few feet south along the sidewalk.

16. As the Complainant was being bumped and physically pushed by Officer #1, the Complainant tensed his muscles and attempted to prevent himself from falling. The Complainant turned his head in the direction of Officer #1, who was behind the Complainant pushing him. The Complainant did not push or strike Officer #1, at this or any other time.
17. Officer #1 used both hands to grab the Complainant around the middle of his body, turn him over, and put him, face-down, on the sidewalk.
18. Prior to the time when Officer #1 initiated physical contact with the Complainant, he (the Complainant) neither acted nor spoke in a threatening manner towards Officer #1, or any other person in the presence of Officer #1.
19. At the time of this incident there were seven persons present in the immediate area: two suspects (the Complainant and Witness #1), three Capitol Mall Security officers (Witness #2, Witness #4, and Witness #5), and two BPD officers (Officer #1 and Officer #2).
20. At the time of the incident, Officer #1 was approximately six inches shorter and 35 pounds lighter than the Complainant.

## ***OMBUDSMAN'S ANALYSIS***

### Use of Force By Officer #1

The Boise Police Department's policy (§ 1.01.02) Authorization (for the use of force) states:

*An officer shall use only the amount of force that is reasonable and necessary to protect life, affect (sic) a lawful arrest, and/or gain control in any lawful*

*circumstance. An officer may use deadly force when necessary to defend himself/herself or others when the officer reasonably believes that imminent danger of death or serious bodily injury exists. An officer may also use deadly force when necessary to affect the capture or prevent the escape of a subject, 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, an officer may also use any other reasonable force to gain control of the situation.*

This policy reflects what the United States Supreme Court has said concerning police officers and the use of force: when making an arrest, a police officer must not subject the person being arrested to any more force or restraint than is necessary to perform his or her lawful duties. The factors to be taken into consideration in deciding whether the force is excessive are summarized in BPD Policy § 1.01.03, which states:

*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 subject resists arrest or detention*
- *Attempts by the subject 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*

For the purpose of this analysis, I will exam Officer #1's initial physical contact, or push, of the Complainant separately from Officer #1's actions that resulted in the Complainant being taken to the sidewalk.

It is appropriate to begin this analysis of Officer #1's use of force by reviewing what the preponderance of the evidence shows Officer #1 knew, or reasonably should have known, at the time he used force:

- Security officers from Capitol Mall Security were holding two men for damaging flagpoles and flags near the Borah Building in the area of Bannock and Capitol.
- The time was approximately 2:30 a.m.; it was a cold and cloudy night, a nearby streetlamp provided illumination; and the pavement and grass were wet from a recent rainfall.
- Three security officers and two police officers (including Officer #1) were present at the time, in addition to the two male subjects.
- Neither subject was known to Officer #1.
- One subject, Witness #1, was identified by a security officer, Witness #2, as the one who had caused the damage.
- The security officer told Officer #1 that Witness #1 had been cooperative. No mention was made to Officer #1 regarding the presence of weapons or any potential for violence from either subject.
- Both subjects were taller than Officer #1, Witness #1 by about four inches and the Complainant by approximately six inches. Witness #1 weighed about the same as Officer #1 while the Complainant was about 35 pounds heavier than Officer #1.
- Both subjects appeared to have been drinking.
- Neither subject made any statements to Officer #1, nor to any other person in the presence of Officer #1 that could reasonably be taken as threatening or aggressive.
- Neither subject made any gesture, movement, or other physical act that could reasonably be taken as aggressive, threatening, combative, or violent.
- Witness #1 answered Officer #1's questions and followed his directions regarding where to stand.

- After following Witness #1 to where he (Witness #1) had been directed by Officer #1, the Complainant stood several feet away from Witness #1 and Officer #1 in a stationary position with his hands in his pockets.
- Neither subject was under arrest, although Witness #1 was being detained by Officer #1 as he investigated the reported vandalism of the flagpoles and flags.
- No other persons were present besides the two police officers, the three security officers, Witness #1, and the Complainant

I cannot determine, based on a preponderance of the evidence, whether Officer #1 ordered the Complainant to leave after the Complainant said, "Whoa, whoa, whoa." Similarly, I am unable to determine if the Complainant verbally refused such an order and/or failed to immediately comply. It is clear, based on the evidence, that, if any such refusal or failure to comply took place, it lasted less than four seconds.

### **Officer #1's First Use of Force**

Officer #1 walked directly over to the Complainant, who had been standing stationary for approximately 40 seconds with his hands in his pockets, and bumped into him with his body. As the video shows, this physical contact caused the Complainant to be pushed back and slightly off balance. The contact was initiated by Officer #1.

Officer #1 asserts that he was merely escorting the Complainant away from the area following the Complainant's refusal to follow Officer #1's command to leave the area. The Complainant maintains that no such command was given. Even if Officer #1's assertion were true, this did not give him the authority to use force against the Complainant by making unwanted physical contact with the Complainant and pushing him along the sidewalk.

BPD policy authorizes an officer to use, "only the amount of force that is reasonable and necessary to protect life, affect (sic) a lawful arrest, and/or gain control in any lawful

circumstance (§ 1.01.02).” Clearly no lives were in danger at this point and, as the Complainant stood motionless nearby with his hands in his pockets, he posed no danger to Officer #1 or any other person.

The second question to be addressed is whether Officer #1’s use of force at this point was a reasonable part of a lawful arrest. Officer #1 was conducting an investigation into a misdemeanor crime (malicious injury to property) that had been reported to him. He was in the process of questioning the person who was suspected of committing the crime (Witness #1). Clearly Officer #1 was acting within the scope of his position as a police officer and had the lawful authority to detain and question Witness #1. The Complainant stood several feet away from Officer #1 and watched for approximately 40 seconds as this questioning took place. During this time the Complainant made no attempt to interfere with the performance of Officer #1’s duties; in fact he stood by motionless with his hands in his pockets. Neither Officer #1 nor Officer #2 said anything to the Complainant, nor did they do anything to indicate that they perceived him as either a threat to their safety or a hindrance to their investigation.

It was not until the Complainant said, “Whoa, whoa, whoa,” that Officer #1 directed any attention towards him. Officer #1 asserts that this statement was intended by the Complainant to dissuade Witness #1 from providing his identification to the police. Furthermore, Officer #1 perceived that the Complainant was verbally interfering with his investigation. In light of this, Officer #1 may have had the authority to order the Complainant to cease his perceived interference. Had the Complainant persisted in delaying or obstructing Officer #1’s investigation in any material way, Officer #1 may then have had probable cause to arrest him for violation of Idaho Code § 18-705 Resisting and Obstructing Officers. As it was, Officer #1 did not arrest the Complainant, nor did he have probable cause to do so. Instead, Officer #1 advanced on the Complainant, bumped him with his body, and began to push him down the sidewalk.

Finally, it is necessary to consider whether or not Officer #1's use of force was justified under the rubric of, "gain[ing] control in any lawful circumstance." The Complainant was not out of control; quite the opposite, as the video makes clear, he was standing passively with his hands in his pockets several feet away from Officer #1. The preponderance of the evidence shows that, until Officer #1 began to advance toward the Complainant, the situation was well within the control of the two police officers and three security officers present.

Implied in Officer #1's justification for making physical contact with the Complainant is the assertion that he (Officer #1) had the lawful authority to order the Complainant to, "go that way," and leave the area. According to Officer #1, he was investigating a reported crime by interviewing a suspect (Witness #1) and the Complainant's presence was interfering with that investigation. As already discussed above, Officer #1 had the authority to order the Complainant to stop interrupting the interview of Witness #1, if indeed that is what was happening. However, Officer #1 lacked authority to order the Complainant to walk south on the sidewalk and leave the area. The Complainant posed no threat and had not been acting violently or in a threatening manner. He was standing several feet away from Officer #1 on a public sidewalk. He was not standing in the middle of a crime scene or in an area requiring restricted public access for investigative or safety reasons. The Complainant was simply standing in a public place watching a public officer in the performance of his duties. Lacking authority to order the Complainant to leave the area, Officer #1 was not authorized to use force of any kind or level to compel the Complainant to follow his order.

In summary, the situation at the time met none of the three criteria listed in policy § 1.01.02 that authorizes officers to use force. There was no need for Officer #1 to bump into the Complainant and physically push him along the sidewalk at that time. Therefore, this use of force by Officer #1 was not authorized by BPD policy. As a result, a sustained finding for violating the policy is appropriate.

## **Officer #1's Second Use of Force**

Fewer than four seconds after he began to push the Complainant, Officer #1 grabbed the Complainant from behind, picked him off his feet, and forcibly put him down on a concrete sidewalk. The Complainant landed face-down on the sidewalk, avoiding injury by using his knees and hands to break his fall.

Officer #1 asserts that he used this force because the Complainant tensed his body and began to turn towards him, a move that would have placed the two men face-to-face. Officer #1 interpreted the Complainant's "tensing" as an act of resistance; the Complainant's turning towards him as a potential threat. Both Officer #1 and Officer #2 explained that their training and experience has taught them that a close quarters face-to-face encounter with a resistant subject increases the likelihood that they will be attacked by the subject. As a result, it is their practice to take immediate action to prevent a subject from turning towards them and gaining such an advantage. By way of further justification for taking the Complainant to the ground, Officer #1 offered the observation that the Complainant had clearly shown himself to be a, "No Person." According to Officer #1, 'No People' are subject to being forcibly taken to the ground, regardless of any other consideration.

Officer #1's assertion that, regardless of any other factors or the totality of the circumstances, he has the authority to throw to the ground any person he determines to be a 'No Person' is utterly indefensible. The display of a defiant attitude and/or vocalization of opposition to a police officer's instructions or commands does not, in and of itself, give an officer carte blanche for the use of force. It is one factor among many to be taken into consideration by a reasonable officer.

There is little doubt that the Complainant tensed his body in response to Officer #1 bumping into him and physically pushing him down the sidewalk. The video clearly shows the Complainant being knocked off balance and pushed by Officer #1. Officer #1 interpreted the

Complainant's muscle tensing as an act of resistance. Officer #1 asserts that the Complainant's "tensing" in response to being pushed was an act of physical resistance to his lawful actions as a police officer. It seems equally likely that the Complainant was merely reacting instinctively to being thrown off balance by Officer #1's sudden and unexpected bump and shove along the sidewalk.

The video also shows that, as the Complainant was being pushed by Officer #1, he first turned his head in the direction he was being pushed and then looked back at Officer #1. Both Officer #1 and Officer #2 interpreted the Complainant's turning towards Officer #1 to be the precursor to a potential attack. While it is possible that the Complainant was preparing for an attack, it is equally possible that the Complainant was merely turning to look at or speak with Officer #1; or that he turned for any number of other reasons. The fact is that Officer #1 did not know why the Complainant began to turn his head back towards him.

At issue is whether either act by the Complainant (tensing and/or turning his head), or both acts in combination, were sufficient under the totality of the circumstances to justify Officer #1's take-down of the Complainant. Turning once again to § 1.01.02 of the BPD Policy and Procedures Manual, officers may use reasonable and necessary force in order to, "protect life, affect (sic) a lawful arrest, and/or gain control in any lawful circumstance."

It has already been established that the Complainant was not a threat to anyone's life. However, Officer #1 reported that he considered the Complainant a potential assailant based on the Complainant's tensing of his body and turning of his head. I will consider this possible justification for Officer #1' use of force later when I examine whether the force was reasonable and necessary to gain control in a lawful circumstance.

Officer #1 lacked authority to order the Complainant to leave the area and was not authorized under BPD policy to use force to compel the Complainant to follow this order. As a result, it would be inaccurate to characterize any muscle tensing or bodily resistance to Officer #1's

push of the Complainant as willfully resisting Officer #1 in, “the discharge, or attempt to discharge, of any duty of his office (Idaho Code § 18-705 Resisting and Obstructing Officers).” Consequently, it cannot be argued that Officer #1 was arresting the Complainant for violating I.C. § 18-705 and used reasonable and necessary force to effect a lawful arrest.

Officer #1 argues that his use of force was necessary to gain control over the Complainant and prevent him from attacking and or injuring Officer #1. However, even if one grants Officer #1 his claim that the Complainant physically resisted Officer #1’s attempt to “escort” him away from the scene of a police investigation, the Complainant’s level of physical resistance (tensing his body) hardly justified Officer #1’s reaction. BPD policy § 1.01.03 identifies several factors that can be considered in evaluating the reasonableness of an officer’s use of force for a lawful purpose:

*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 subject resists arrest or detention*
- *Attempts by the subject 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*

The following is an examination of these criteria and factors in light of the facts of this case.

## SEVERITY OF THE CRIME

Officer #1 was investigating a report of a misdemeanor malicious injury to property. This was not a crime of violence against a person or persons and, by its nature, did not carry with it any concern for public safety and order. Officer #1 also asserts that the Complainant was in technical violation of I.C. § 18-705 Resisting and Obstructing Officers when he (the Complainant) allegedly refused to walk away from the area when ordered by Officer #1 to do so. This too, if it occurred, would be a misdemeanor crime with, at that time, no violent component.

## THE NATURE AND EXTENT OF THE THREAT POSED BY THE SUSPECT

Officer #1 reported that the Complainant "tensed" as he was pushed and then began turning his head and shoulder back to face Officer #1. No one alleges that the Complainant uttered a threat of violence; he was not known or even suspected of being armed; and he made no overt gesture of threat or violence. Other than the Complainant tensing and turning, Officer #1 had no reason to believe that the Complainant posed any danger whatsoever. As a result, no amount of force was reasonable and necessary in this instance in response to the Complainant's actions.

## THE DEGREE TO WHICH THE SUBJECT RESISTS ARREST OR DETENTION

At the time Officer #1 took the Complainant physically to the ground, the Complainant was not under arrest. He clearly was not being detained, since Officer #1 reports that he was in the process of escorting the Complainant out of the area. As a result, no amount of force would have been reasonable and necessary in this instance to overcome resistance to a lawful arrest or detention.

#### ATTEMPTS BY THE SUBJECT TO EVADE ARREST BY FLIGHT

The Complainant had not been placed under arrest, nor was he even subject to arrest at that time. The Complainant made no attempt to flee, he in fact clearly wanted to stay in the area and observe. As a result, no amount of force would have been reasonable and necessary in this instance to prevent the escape of a person subject to arrest.

#### NATURE, QUALITY AND DURATION OF INTRUSION UPON THE INDIVIDUAL

Officer #1 used both hands to grab the Complainant from behind, lift him at least partially off the ground, and then throw him face-down onto a concrete sidewalk. The entire process of taking the Complainant to the ground took between four and five seconds.

#### SEVERITY OF INJURIES INFLICTED, IF ANY

The Complainant was not injured as a result of being thrown to the ground. However, the action carried with it the potential for injury to the Complainant, including serious injury caused by sudden impact with a concrete sidewalk.

#### OFFICER/SUBJECT SIZE AND OTHER PHYSICAL ATTRIBUTES

At the time of the incident, Officer #1 was approximately six inches shorter and 35 pounds lighter than the Complainant. Had the two been alone, the Complainant's larger size relative to Officer #1 may have become a significant factor. However, a second BPD officer was nearby at the time, as were three civilian Capitol Mall Security officers and Witness #1.

## REACTION TIME

Officer #1 and the Complainant were right next to each other at the time Officer #1 took him to the ground. Officer #1 placed himself in close proximity to the Complainant when he (Officer #1) walked over to him and began to push him along the sidewalk. Nonetheless, Officer #1 had very little time to react or counter any threat, had the Complainant become threatening or aggressive.

## TOTALITY OF THE CIRCUMSTANCES

At issue here is whether there were any other factors inherent in the situation or the environment, and known to Officer #1 at the time, that would contribute to the necessity and reasonableness of Officer #1's decision to take the Complainant to the ground. For example, a nearby crowd of intoxicated persons with sympathy for a subject engaged in a struggle with the police could pose a danger to officers. In such cases it may become necessary for officers to take a subject to the ground to quickly control both the subject and the crowd. However, such was not the case in this situation. There was no crowd nearby that might become dangerous to the officers should the Complainant actually become aggressive. Clearly the Capitol Mall Security officers could be relied upon to support the police officers, and Witness #1 could be (and was) easily controlled by Officer #2. In addition, no other necessity or environmental factor was known to Officer #1 at the time that would justify his decision to take the Complainant to the ground.

Taking into consideration the criteria and factors listed in policy and given the totality of the circumstances at the time Officer #1 took the Complainant to the ground, he was not authorized to use force to protect life, effect a lawful arrest, and/or gain control in any lawful circumstance (BPD policy § 1.01.02). Similarly, although the tensing and turning of the Complainant may have raised a concern in Officer #1's mind regarding the possibility that the Complainant might become aggressive, picking the Complainant up and putting him

face-down onto the sidewalk was an unreasonable and unnecessary response. This use of force was out of proportion with the actions of the Complainant and unnecessarily exposed him to potential injury.

For all the reasons stated above, and with respect to both instances of force used by Officer #1 on the Complainant, I find that Officer #1 violated § 1.01.02 of the BPD Policy and Procedures manual. I have issued a sustained finding in this regard.

### Officer #1's Police Report

In § 11.03.16B – False Reporting, the BPD Policy and Procedures Manual states:

*No employee shall knowingly enter or cause to be entered any inaccurate, false, or improper information or misrepresent the facts in the Department records or reports. The violation of this policy may result in discipline up to and including termination.*

The Complainant alleged that Officer #1 included statements in an official police report that he knew or reasonably should have known to be false. Specifically, the Complainant alleged that the following statements in Officer #1's police report (DR# 636-447) were not accurate.

### **Statement #1:**

*He said that he and [Witness #1] were walking down the street and they started to wrestle. He said that he accidentally bumped into the flag, causing it to bend. While I was interviewing [Witness #1], [the Complainant], later identified as [the Complainant] approached.*

The Complainant said that this is not true. The Complainant asserted that he remained standing in the same spot while Officer #1 interviewed Witness #1.

The video evidence clearly shows that the Complainant followed right behind Witness #1 and arrived at the sidewalk only seven seconds after Witness #1. The Complainant then remained stationary and came no closer to Officer #1 for approximately 40 seconds, at which time Officer #1 began to advance on the Complainant.

Officer #1 stated during his interview that he paid no attention to the Complainant until he (the Complainant) said, "Whoa, whoa, whoa." Officer #1 was under the impression that the Complainant had walked up to the sidewalk right before he interrupted.

Conclusion: This written statement is not accurate. However, Officer #1 may reasonably have believed it to be true.

**Statement #2:**

*I asked [Witness #1] for some identification.*

The Complainant stated that Officer #1 did not ask Witness #1 for identification.

The preponderance of the evidence indicates that Officer #1 did ask Witness #1 for his identification.

Conclusion: This written statement is accurate.

**Statement #3:**

*When I asked for the ID, [the Complainant], who was now standing directly in front of me, stated, "Whoa Whoa Whoa" directing [Witness #1] not to comply.*

The Complainant stated that, while he did say, "Whoa, whoa, whoa," he was not standing directly in front of Officer #1. The Complainant stated that he was six or seven feet away.

The video evidence refutes Officer #1's written statement that the Complainant was standing directly in front of him at any time prior to when Officer #1 advanced on the Complainant and bumped him.

Conclusion: The written statement that the Complainant was standing directly in front of Officer #1 is not accurate.

**Statement #4:**

*[Witness #1], who had been in the act of getting his ID from his pocket, stopped and began to slowly back away.*

The Complainant stated that Witness #1 did not begin to retrieve something from his pocket, nor did he begin to back away from Officer #1.

The video evidence supports Officer #1's statement that Witness #1 began to retrieve an item from his back pocket. However, the video does not support Officer #1's written statement that Witness #1 began to back away from Officer #1.

Conclusion: This written statement is partially accurate, partially not accurate.

**Statement #5:**

*I asked [the Complainant] if he was involved in damaging the flag poles.  
[The Complainant] said that he had nothing to do with the vandalism.*

The Complainant stated that Officer #1 did not ask him anything about whether he damaged the flagpoles.

Conclusion: I was unable to determine if this written statement is accurate.

**Statement #6:**

*I then asked [the Complainant] to step away and leave the area to stop him from obstructing my investigation.*

The Complainant stated that Officer #1 did not ask him or direct him to step away or leave the area.

Conclusion: I was unable to determine if this written statement is accurate.

**Statement #7:**

*[The Complainant] told me that he was not going to leave.*

The Complainant stated that he never said he was not going to leave.

Conclusion: I was unable to determine if this written statement is accurate.

**Statement #8:**

*I attempted to escort [the Complainant] away from the scene, at which point he pushed back against me and attempted to turn towards me.*

The Complainant stated that this did not happen and that the statement as written in the police report is false.

The video evidence clearly shows that Officer #1 walked up to Complainant, bumped into him, and began to push him down the sidewalk. Characterizing this action as an “escort” is potentially misleading and could be construed as a misrepresentation of the facts.

Officer #1's use of the word "pushed" to characterize what he later described as a "tensing" of the Complainant's muscles was also potentially misleading. The reader of the report is not told how the Complainant pushed back against Officer #1, and could easily conclude that the "push" was an overt act, such as a shove with the hands. Interestingly enough, Witness #2 and Witness #3 both reported to me that the Complainant shoved Officer #1 with his hands immediately before Officer #1 took the Complainant to the ground. The video evidence clearly shows that this did not happen.

The video evidence also shows that, as the Complainant is being pushed down the sidewalk by Officer #1, he turns his head back over his left shoulder in the direction of Officer #1, who is behind him. It was accurate to report this as a turning towards Officer #1.

Conclusion: Two words (i.e., escort and pushed) used in this written statement may be misleading.

In summary, Officer #1's written statements in his police report concerning his interaction with the Complainant in the moments before he took him to the ground were accurate in some respects and not accurate in others. With regard to those statements which were clearly inaccurate, i.e., (a) that the Complainant approached Officer #1 after he had already been interviewing Witness #1, (b) that the Complainant was standing directly in front of Officer #1 when he said, "Whoa, whoa, whoa," and (c) that Witness #1 stepped backwards as he put his ID back in his pocket, it is arguable that Officer #1 reasonably believed them to be true at the time that he wrote the report. In addition to the three inaccuracies noted above, Officer #1 used the words "escort" and "pushed" in such a way that the reader may have been misled to think that Officer #1 used less force than he actually did to move the Complainant down the sidewalk and that the Complainant pushed or shoved Officer #1, rather than tensing his muscles in response to being bumped and pushed by Officer #1.

While Officer #1's written police report is hardly a model of clarity and precision, it does not contain statements so inaccurate that the preponderance of the evidence shows that Officer #1 clearly knew or should have known that they were false. For this reason, I have issued a finding of not sustained for the allegation that Officer #1 violated § 11.03.16B – False Reporting, of the BPD Policy and Procedures Manual.

Even though it cannot be proven by a preponderance of the evidence whether or not Officer #1 knowingly entered false or misleading information in his police report, the evidence does support the conclusion that Officer #1 failed to author an official report that met the standards established for a Boise Police officer. Prosecutors, defense attorneys, juries, judges, and others depend on police officers to write reports that clearly and precisely document what the officer saw, did, and was told.

The Boise Police Department's policy (§ 11.03.02) Performance of Duty states:

*An employee shall perform his/her duties in a manner which will maintain the highest standards of efficiency in carrying out the Department's functions and objectives. 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 situation requiring police action occurs*

In light of the evidence discussed above, I find that Officer #1 violated § 11.03.02 with respect to certain statements included in his police report. I have issued a sustained finding in this regard.

Officer #1's Audio Recordings

The Boise Police Department's policy (§ 8.05.03A) Cassette and Digital Voice Recorders 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.*

The evidence clearly shows that Officer #1 did not record his entire contact with Witness #1, nor did he record his entire contact with the Complainant once it became confrontational. Officer #1 was unable to articulate a reason that would explain this failure to record. For these reasons, I have issued a sustained finding for Officer #1's failure to comply with the requirements of BPD policy § 8.05.03A.

## ***FINDINGS***

1. That Officer #1 violated BPD policy § 1.01.02 – Authorization (for the use of force)

SUSTAINED

2. That Officer #1 violated BPD policy § 11.03.16B – False Reporting

NOT SUSTAINED

3. That Officer #1 violated BPD policy § 11.03.02 – Performance of Duty

SUSTAINED

4. That Officer #1 violated BPD policy § 8.05.03a – Cassette and Digital Voice Recorders

SUSTAINED



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