



## **OMBUDSMAN'S REPORT**

### **Complaint Investigation & Findings**

*OMB08/0014 - July 3, 2008*

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

In the middle of the afternoon on a weekday in January 2008, the Complainant, his fiancée (Witness #1), and the Complainant's four-year-old daughter were crossing Barrister Drive in the crosswalk that goes from the Sheriff's Work Release Center to the parking lot in front of the Public Safety Building (PSB). As the three persons began to cross Barrister Drive heading north from the Work Release Center, a Boise Police Department (BPD) patrol car was driving south in the driveway that leads from behind the PSB through the west end of the PSB parking lot. The driver of the patrol car began to turn right onto Barrister Drive but stopped before entering the crosswalk in which the Complainant and his two companions were crossing. The patrol car stopped and allowed the Complainant and the two persons with him to finish crossing the street. The driver of the patrol car then completed his right turn onto Barrister and proceeded west towards Cole Road. The two pictures below show the scene of the incident. The picture on the left faces north and the one on the right faces south.



## ***THE COMPLAINT***

The Complainant alleges that the driver of the BPD police car (Officer #1) did not come to a complete stop at the stop sign at the end of the driveway, but rolled past the sign and began to turn right without looking to see if anyone was crossing Barrister Drive in the crosswalk. Furthermore, the Complainant asserts that Officer #1's vehicle stopped suddenly and just a few feet from him (the Complainant) and the other two people with him, thus causing them to be frightened.

The BPD Policy and Procedures Manual (PM) § 7.02.00 requires that officers operate BPD vehicles, "in a safe and prudent manner." If the Complainant's allegation is true that Officer #1 failed to come to a complete stop prior to leaving the driveway and entering Barrister Drive, this may have constituted a violation of PM § 7.02.00.

## ***THE COMPLAINT INVESTIGATION***

In the course of investigating this complaint, the following steps were taken.

1. Interviews of the following persons:
  - a. Officer #1
  - b. The Complainant
  - c. Witness #1
2. A review of records from the Ada County Emergency Dispatch Center relating to the activities and calls for service assigned to Officer #1 that day.
3. A review of the weather conditions reported for that day.

4. Personal examination of the scene where the incident took place.

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

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

1. On the day in question, the Complainant, Witness #1, and the Complainant's four-year-old daughter were crossing Barrister Drive in the crosswalk from the south side of the street to the north side of the street.
2. At approximately the same time, Officer #1 was driving his patrol vehicle south along the driveway on the western side of the parking lot of the Public Safety Building. The vehicle being operated by Officer #1 at that time was not displaying a visible and/or audible emergency signal or siren.
3. There is a stop sign located along the west side of the driveway approximately 13 feet and 9 inches north of the sidewalk on the northern side of Barrister Drive.
4. After Officer #1 drove his police car out of the driveway and began to turn right onto Barrister Drive, he stopped the vehicle prior to entering the crosswalk that goes across Barrister Drive. At that time, this same crosswalk was occupied by the Complainant, Witness #1, and the Complainant's four-year-old daughter.
5. Officer #1 waited for the three persons in the crosswalk to finish crossing the street and to step onto the sidewalk on the north side of Barrister Drive before completing his right turn and driving through the crosswalk.

## **OMBUDSMAN'S ANALYSIS**

The Complainant and Witness #1 both expressed concern and agitation that Officer #1 almost did not stop for them and the Complainant's four-year-old daughter. Understandably, they are bothered by the probable consequences had Officer #1 failed to stop his police car and had it collided with them. I have no doubt that the experience frightened them.

It appears that the incident was significant for Officer #1 as well. Soon after the encounter, he called his acting supervisor and told him what happened. Officer #1 assumed, correctly it turned out, that the people he had just encountered might call and complain about him.

As upsetting and potentially dangerous as the incident was, the fact remains that Officer #1 followed the requirements of IC § 49-702 (Pedestrians' Right of Way in Crosswalks) and yielded to the Complainant and his companions. This fact is not in dispute.

What is in dispute is whether or not Officer #1 came to a complete stop prior to, "driving onto ... the sidewalk area extending across the ... driveway," as required by IC § 49-651. The Complainant and Witness #1 both assert without reservation that Officer #1's police car continued its forward motion as it drove south along the driveway, past the stop sign, and began to turn right onto Barrister. With equal conviction, Officer #1 asserts that he came to a complete stop at the stop sign and looked both ways before moving the vehicle forward and entering Barrister Drive.

In response to the obvious question about how, if he looked both ways, Officer #1 did not see the two adults and one child making their way across Barrister Drive in the crosswalk, Officer #1 said that he thinks his view of the crosswalk was blocked by the rearview mirror of his police car. During my examination of the site of this incident, I observed that it was possible for my view of the crosswalk to be blocked by the rearview mirror of my vehicle while stopped at the same stop sign. This does not prove that Officer #1's view of the

crosswalk was, in fact, blocked by the mirror of the police car he was driving. It only shows that it is possible.

In weighing the evidence accumulated in this investigation, I find that the testimony of the three involved parties (the Complainant, Witness #1, and Officer #1) is the only evidence that speaks directly to the fact in question. In addition, I find no reason to question the veracity or credibility of any one of them. When attempting to determine if a preponderance of the evidence either proves or disproves the allegation that Officer #1's police car did not come to a complete stop before it left the driveway, it might be tempting to apply a simple arithmetic formula and find that the statements of two people (the Complainant and Witness #1) automatically outweigh the testimony of one (Officer #1). However, the Complainant and Witness #1 were not independent actors in this incident. They were, at the time, in a dating relationship. Both of them were involved in the incident in the same way and at the same location. The cumulative impact of their two accounts is not the same, qualitatively, as a hypothetical situation in which the statement of one person crossing the road is corroborated by a completely independent witness who also saw the police car fail to stop. However, in this case, no such independent witness has been found.

In summary, I simply cannot tell, based on the evidence available from this investigation, whether or not Officer #1 brought his police car to a complete stop as required by Idaho Code before he drove onto the crosswalk area extending across the driveway. For this reason I have issued a finding of not sustained for the allegation made against Officer #1 by the Complainant.

***OMBUDSMAN'S FINDINGS***

Officer #1:

P.M. § 7.02.00 –A finding of not sustained is issued.



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