



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB09/0044 – January 27, 2010

THE SITUATION

Officers from the Boise Police Department (BPD) were called to the scene of a collision between a vehicle and a bicycle in the Boise downtown core. The cyclist sustained minor injuries and there was significant damage to his bicycle. The cyclist reported that the driver of the car had intentionally cut in front of him and jammed on the brakes, thus causing the cyclist to run into the back of the vehicle. After the impact, the vehicle in question sped off and turned the corner before the cyclist or anyone else could get the car's license plate number. Moments after the vehicle took off, a witness went after the vehicle. This witness obtained a license number from a vehicle that matched the color, make, and model of the suspect vehicle.

That same day, in the course of investigating what appeared to be a case of felony hit-and-run (due to the cyclist's injuries), and a possible aggravated battery, Officer #1 made contact by phone with the registered owner of the vehicle whose license plate number had been obtained by the witness. With the assistance of the registered owner, Officer #1 was able to inspect the vehicle and speak with the registered owner's girlfriend, who had control of the vehicle at that time. No arrests were made on the day of the incident.

Officer #1 conducted a follow-up investigation, gathering evidence and statements. At the end of his investigation he wrote a report and routed it to the Ada County Prosecutor, who declined to file any criminal charges.

THE COMPLAINT

The Complainant, who is the registered owner of the vehicle whose license number had been obtained by a witness, contacted the Office of the Community Ombudsman and filed a complaint about the actions of Officer #1. The Complainant, who is an attorney licensed to practice in the State of Idaho, alleged that Officer #1 threatened to arrest the Complainant's girlfriend (Witness #1) because she had invoked her rights under the Fifth Amendment to the United States Constitution, declining to answer any questions put to her by Officer #1. The Complainant further alleged that Officer #1 threatened to arrest him for advising Witness #1, as her attorney, not to answer any of Officer #1's questions. The Complainant asserted that both threats were an abuse of power by Officer #1.

These allegations, if proven true, could be a violation of § 11.03.02 Performance of Duty of the Boise Police Department's Policy and Procedures Manual.

THE COMPLAINT INVESTIGATION

The following steps were taken to investigate this complaint.

1. Interviews were conducted of the following persons:
 - a. The Complainant
 - b. Witness #1
 - c. Witness #2 (the Complainant's relative)
 - d. Officer #1
 - e. Officer #2 (a BPD officer who assisted Officer #1)
 - f. Officer #3 (Officer #1's supervisor at the time)

2. The following documents were reviewed:

- a. The computer-aided dispatch Incident History of the reported collision
 - b. Photos taken by a BPD crime scene investigator in connection with Officer #1's investigation into the incident
 - c. The police report and narrative reports associated with Officer #1's investigation into the incident
 - d. Supplemental reports submitted by other BPD officers in connection with Officer #1's investigation
3. A search was conducted for all related audio recordings created by Officer #1, Officer #2, and Officer #3 on the day of the incident. It was found that no audio recordings existed of any contacts between Witness #1 and either Officer #1 or Officer #3. Similarly, no audio recordings could be located of any of the telephone conversations Officer #1 had with the Complainant. A very brief portion of Officer #1's contact with Witness #1 was found on a recording created by Officer #2.

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. A vehicle and a bicycle collided in the Boise downtown core. The cyclist was injured and the vehicle sped away following the collision. Emergency Dispatch was notified and Officer #1 responded to assist and investigate.
2. A witness went to find the suspect vehicle that was reportedly being driven by a male, with a female passenger in the front seat with him. A few blocks away, the witness saw a vehicle matching the same description pulling away from the curb.

This vehicle was being driven by a female who matched the description of the passenger in the vehicle that had left the scene of the collision. No one else was in the vehicle at the time. The witness wrote down the license plate number, drove back to the scene of the collision, and dropped off a piece of paper with the license number written on it.

3. Officer #1, using the license number supplied by the witness, obtained the name of the registered owner (the Complainant) and tracked down his cell phone number.
4. Officer #1 called the cell phone and spoke with the Complainant, telling him that his vehicle had been involved in hit-and-run collision involving personal injuries. The Complainant told Officer #1 that he was in a city hundreds of miles from Boise, but that his girlfriend, Witness #1, may have been driving the vehicle. The Complainant told Officer #1 that he would check on the vehicle's location and call him back.
5. The Complainant called Witness #1 and asked about the vehicle. Witness #1 told the Complainant that the vehicle had not been involved in a collision and that only she had been driving it. The Complainant called a relative, Witness #2, and asked him to go to the parking lot where the vehicle was parked and look at it.
6. After inspecting the vehicle, Witness #2 called the Complainant back and told him that there was no visible damage to it.
7. During one of his conversations with Witness #1, the Complainant, who is an attorney, told her not to answer any of the police officer's questions until he returned to Boise and could be present.

8. After speaking with Witness #1, the Complainant told Officer #1 that the vehicle was parked in front of the business where Witness #1 worked.
9. Officer #1, joined by Officer #2 and Officer #3, went to the parking lot where the Complainant's vehicle was parked. Examination showed a mark on the vehicle's rear bumper that looked like it could have been made by a bicycle tire striking it.
10. Officer #1 made contact with Witness #1, who was working inside that business at the time, and began to ask her questions about the Complainant's vehicle and the collision involving the bicycle.
11. Witness #1 declined to answer any of Officer #1's questions, stating that her attorney, the Complainant, had advised her to remain silent until he could be present.
12. Officer #1 told Witness #1 that she was going to jail. He ordered her to sit on the rear of the Complainant's vehicle. Witness #1 complied with this order.
13. Officer #1 had one or more additional phone conversations with the Complainant.
14. Witness #1 was not arrested and, after being detained for several minutes, she was released and allowed to return to work.
15. Officer #1 conducted a follow-up investigation, including checking for other vehicles in Ada and Canyon Counties that may have matched the description of the suspect vehicle.

16. Officer #1 showed a photo line up, including a photograph of the Complainant, to several witnesses. One witness identified the Complainant as the driver of the vehicle at the time of the collision.
17. Officer #1 obtained a search warrant for the Complainant's cell phone records. An examination of these records showed that, on the day of the incident, the Complainant's cell phone was located hundreds of miles from Boise.
18. The Ada County Prosecutor declined to file charges against either the Complainant or Witness #1 based on the evidence obtained by Officer #1 in the course of his investigation.

OMBUDSMAN'S ANALYSIS

The Boise Police Department Policy and Procedure Manual (P.M.) § 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*

The core of the Complainant's allegation is that Officer #1 misused his power as a police officer by threatening to arrest both Witness #1 and the Complainant because Witness #1 invoked her right to remain silent under the Fifth Amendment to the United States Constitution.

Factually, there is no dispute that Officer #1 threatened Witness #1 with arrest.

However, the preponderance of the evidence neither confirms nor denies the allegation that Officer #1's threat was in retaliation for Witness #1's refusal to answer Officer #1's questions. Similarly, there is no preponderance of the evidence to either support or refute the allegation that Officer #1 suggested to the Complainant that he, too, was being considered for arrest for having advised Witness #1 not to answer Officer #1's questions.

For these reasons, I have concluded that the allegation made by the Complainant against Officer #1 can neither be unfounded nor sustained. As a result, I have issued a finding of not sustained.

Audio recordings of Officer #1's conversations with Witness #1 and the Complainant may have provided enough evidence to form a preponderance in answer to the questions discussed above. However, no such recordings could be found. Officer #1's reason for not recording was that, at the time he began his conversation with Witness #1, she was merely a witness. As such, according to BPD policy, the contact was not enforcement in nature and Officer #1 was not required to audio record it. Officer #1 further stated that he never arrested Witness #1 and, since she told him that she was not going to answer his questions, there was no reason for him to activate his recorder. This is a reasonable conclusion based on Officer #1's perspective at the time.

While Officer #1's decision not to record his conversations was permitted under BPD policy, there was also nothing in policy that prevented him from recording his in-person conversations with Witness #1, as well as his side of the phone conversations he had with the Complainant. This incident is a good example of how a broader use of audio recording might have helped clear up any doubt about what was said or done.

OMBUDSMAN POLICY FINDINGS

Officer #1

P.M. § 11.03.02 – Performance of Duty – Based on the preponderance of the evidence, a finding of not sustained was issued.



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