



## **OMBUDSMAN'S REPORT**

### **Complaint Investigation & Findings**

*OMB09/0126 - March 3, 2010*

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

Two Boise Police Department (BPD) officers, Officer #1 and Officer #2, made contact with the Complainant, one of two suspicious subjects in the area of a public parking structure. When asked if he had any weapons on him, the Complainant stated that he had knives in his backpack, but denied having any weapons on his person. He consented to a search of his backpack by Officer #2, which produced two knives. Officer #1 then conducted a pat-down search of the Complainant. Officer #1 was almost finished searching the Complainant when he felt a bulge in the Complainant's right front pocket. Officer #1 asked the Complainant what the item was. In response, the Complainant pulled his right arm away from Officer #1's grasp and began turning into Officer #1. The Complainant was taken to the ground by Officer #1, handcuffed, and booked into jail on misdemeanor Resisting and Obstructing charges. The Complainant claimed minor injuries to his right forearm as a result of being pushed to the ground.

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

The Complainant alleged that Officer #1 pushed him to the ground and handcuffed him without necessity or cause. The Complainant claimed that he only stumbled a little while Officer #1 was searching him and did not resist Officer #1, or do anything that warranted having force used on him. This allegation, if proven true, would be a violation of the Boise Police Department's Policy § 11.01.02 Authorization (for the use of force).

## ***THE COMPLAINT INVESTIGATION***

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

1. The following persons were interviewed:
  - a. The Complainant
  - b. Officer #1
  - c. Officer #2
  
2. The following documents were reviewed:
  - a. Computer-aided Dispatch records of this incident
  - b. The police report of Officer #1's arrest of the Complainant
  
3. Digital audio recordings of Officer #1's contact with the Complainant at the time of the incident were reviewed.
  
4. The Complainant's arm, which he indicated had been bruised and scratched as a result of being pushed to the ground, was examined and photographed.
  
5. The area where the incident took place was inspected.

## ***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. Officer #1 and Officer #2 made contact with the Complainant who had been observed acting in a suspicious manner in and around a public parking garage.

2. Officer #1 questioned the Complainant about his activity in the area. The Complainant admitted that he ran from officers earlier because he had been drinking, which is a violation of his probation.
3. The Complainant was intoxicated.
4. When asked about weapons, the Complainant indicated that he had knives in his backpack and gave Officer #2 permission to search his backpack.
5. Officer #2 searched the Complainant's backpack and found a folding pocket knife and a box cutter/multi-tool.
6. Officer #1 questioned the Complainant about his activities. The Complainant answered most questions with "yes sir" or "no sir", and was apologetic.
7. Officer #1 asked the Complainant, "Anything on your person? Don't reach into your pockets, I'm just asking." The Complainant answered, "No."
8. Officer #1 told the Complainant to put his hands on top of his head and interlace his fingers.
9. Officer #1 stood behind the Complainant, took hold of both of the Complainant's hands, and began a pat-down search of the Complainant.
10. While patting the Complainant's right front pants pocket, Officer #1 asked the Complainant, "What's that?"

11. The Complainant began pulling his right arm away from his head and Officer #1's grasp. The Complainant also began to turn his upper body to the right, turning into Officer #1.
12. Officer #1 forced the Complainant to the ground and handcuffed him.
13. After the Complainant was arrested, Officer #1 found a hard pack of cigarettes and candy in the Complainant's right front pants pocket. No weapons were found on his person.
14. The Complainant was arrested for Resisting and Obstructing an Officer and booked into jail.

### **OMBUDSMAN'S ANALYSIS**

The Boise Police Department's (BPD) 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, effect 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 effect 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.*

Officer #1's use of force came immediately after the Complainant pulled his right hand out of Officer #1's grasp and began to rotate his upper body to the right and towards Officer #1. These actions by the Complainant resulted in the Complainant's right elbow, which was roughly level with Officer #1's jaw and neck, moving rapidly towards Officer #1. Officer #1 perceived the Complainant's actions as the possible beginning of an act of aggression and feared that he was about to be struck in the face by the Complainant's elbow. In response, Officer #1 used force to protect himself. Even if it is true that the Complainant was not resisting or attacking Officer #1, but merely lost his footing and stumbled, Officer #1's perception of an imminent threat to his personal safety was objectively reasonable given the totality of the circumstances. As a result, Officer #1 was authorized to use reasonable force to protect himself from possible injury.

The only force used by Officer #1 was soft empty-hand control to push the Complainant to the ground and handcuff him. Officer #1 did not strike the Complainant, nor did he use pepper spray, a Taser, an impact weapon, or any other device. BPD officers are trained to take a person to the ground if a subject becomes physically resistant or poses an immediate threat to the officer. This is recommended because it is much easier to control and contain a person on the ground, than one that is upright. In taking the Complainant to the ground, Officer #1 merely used his strength to push the Complainant off balance and down to the ground. Officer #1 then used his body weight to pin the Complainant to the ground until he was securely placed into handcuffs. Such force has a low probability of causing pain or injury to the subject beyond minor bruising and/or abrasions from contact with the ground. Given the circumstances, Officer #1's use of force on the Complainant was about the least amount of force necessary to control the Complainant and protect Officer #1 from possible injury.

For the reasons stated above, it is my finding that the force used by Officer #1 during this incident was well within the requirements of § 1.01.02 of the BPD Policy and Procedures Manual.

***OMBUDSMAN'S POLICY FINDING***

Officer #1

With respect to the allegation that Officer #1 violated § 11.01.02 – Authorization (for the use of force) – of the BPD Policy and Procedures Manual, I have issued the following finding:

**Exonerated**



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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)