



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB05/0161 - March 21, 2006

THE SITUATION

The Complainant is a motor route carrier for a local newspaper. On October 2, 2005, at about 5:27 a.m. she was delivering her papers in the area of Latah and Rose Hill. As the Complainant delivered papers, she drove on both the left and right sides of the two-way roads. Near the intersection of Latah and Grover, the Complainant was stopped by Officer #1. The Complainant got out of her car and walked up to a house to deliver a newspaper. Officer #1 called out to the Complainant that she was not allowed to drive on the wrong side of the road. The Complainant apologized, got back in her car, and drove away. Officer #1 followed the Complainant and pulled her over a second time. He then issued the Complainant a citation for failure to drive on the correct side of the roadway.

THE COMPLAINT

The Complainant contacted the ombudsman on October 3, 2005, to complain about an incident that took place early in the morning on October 2, 2005. The Complainant provided the following information:

She was on Latah at Rose Hill delivering a local newspaper. She was driving on both sides of the road. A police car pulled up behind her and the officer told her she could not drive on the wrong side of the road. She said, "okay," and drove away on the correct side of the road to continue her route. The police car drove up behind her with its lights and siren on. She stopped and the officer made contact with her a second time. She asked why he was stopping her, since she had complied with his request. He asked for her license, registration,

and proof of insurance. When she produced these, the officer went back to his car. He came back and told her he was going to give her a warning instead of a citation, but not to drive on the wrong side of the road. She told him that she did not appreciate his attitude and asked for his name so she could file a complaint about him. The officer said that if that's how she felt she could just wait there. He walked back to his car and several minutes later came back and handed her a citation.

The complainant believes the officer gave her the ticket in retaliation for her criticism of him and her statement that she would file a complaint. She considers this official harassment and thinks the officer should not do this to anyone else.

It is alleged that Officer #1 issued a moving violation citation to the Complainant in retaliation for her stated desire to complain about his demeanor. Such behavior, if proved to be true, may be in violation of one or more of the following sections of the Boise Police Department Policy and Procedures Manual:

§ 11.03.04 General Discharge of Duties

§ 11.02.01 Law Enforcement Code of Ethics and Conduct

§ 12.02.05 Complaints Received By Employees

THE COMPLAINT INVESTIGATION

In the course of this investigation I reviewed the audio recording Officer #1 made of his contact with the Complainant. I also interviewed the Complainant and Officer #1.

WHAT THE COMPLAINT INVESTIGATION FOUND

Based on the preponderance of the evidence available in this case, I came to the following findings of fact:

1. On or about October 2, 2005, Officer #1 observed the Complainant driving her vehicle on Latah on the wrong (left) side of the road.
2. Officer #1 used the emergency lights on his marked police vehicle to signal the Complainant to stop her vehicle, which she did.
3. The Complainant drove away from Officer #1 before he told her she was free to leave.
4. Officer #1 used the emergency lights and siren on his marked police vehicle to signal the Complainant to stop her vehicle a second time, which she did.
5. Officer #1 made an enforcement contact with the Complainant and created an audio recording of this entire contact.
6. Officer #1 attempted to explain the observed violation to the Complainant.
7. The Complainant interrupted Officer #1 twice during his attempt to explain the violation.
8. The Complainant asked for Officer #1's name and indicated her intention to file a complaint about him.

9. Officer #1 ceased his attempt to explain the violation and issued the Complainant a citation.

OMBUDSMAN'S ANALYSIS AND FINDINGS

Officer #1 made at least three attempts to explain to the Complainant that she was not allowed to drive on the left side of the roadway. On the first attempt, the Complainant drove off. She interrupted Officer #1 during his second and third attempts. Officer #1 then made the decision to issue the Complainant a citation. He said he based this on his assessment that a citation would be the most effective means of modifying the Complainant's unsafe driving behavior.

Officer #1 told the Complainant that he was going to give her a second warning about driving on the wrong side of the road. The first warning was when he called out to her as she got out of her car and delivered a newspaper. As Officer #1 began to give this second warning, the Complainant interrupted him, asked his name, and said she was going to complain about him. Officer #1 tried a third time to give the Complainant the warning, but she interrupted him again. At this point, Officer #1 went back to his patrol car and wrote out a citation.

Police officers are given a large amount of discretion, particularly in their enforcement of traffic laws and minor misdemeanors. Officers must not use this discretion for vengeance, punitive purposes, personal gain, or out of prejudice or bias. They also may not use their enforcement power to punish those who express a desire to complain about the officer's behavior.

The Complainant heard Officer #1 say he was going to warn her and assumed he changed his mind because she said she would complain. Officer #1 says he decided to issue the citation because the Complainant would not listen to his warning, not because she said she would

complain. The audio recording of the contact supports Officer #1's explanation more strongly than it does the Complainant's conclusion. Officer #1 tried three times to talk with her about driving on the wrong side of the road. The Complainant interrupted him and prevented him from giving her the warning.

I find that the preponderance of the evidence supports the conclusion that Officer #1 used his discretionary power to issue a citation for a legitimate law enforcement purpose and not to retaliate against the Complainant or in response to her statement of intent to file a complaint. Therefore, I have issued findings of "unfounded" for the alleged policy violations.

§ 11.03.04	General Discharge of Duties	UNFOUNDED
§ 11.02.01	Law Enforcement Code of Ethics and Conduct	UNFOUNDED
§ 12.02.05	Complaints Received By Employees	UNFOUNDED



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