



## **OMBUDSMAN'S REPORT**

### **Complaint Investigation & Findings**

*OMB05/0205 - March 20, 2006*

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

The Complainant drove to the Boise Airport on the afternoon of December 13, 2005, to pick up several friends flying into Boise. The Complainant drove around the airport “loop”, passing through the lower level four or five times. She stopped twice, the first time to get out of her truck and interact on the curb with one of the people she was meeting. The second time she stopped, remained in her truck, and was contacted by Officer #1 of the Boise Airport Police (APD).

That same day, after she returned home, the Complainant called the APD office to complain about her contact with Officer #1. She spoke with a staff person who had Supervisor #2 call back to take her complaint. Supervisor #1 determined that the incident took place when another supervisor was on duty. He forwarded the complaint to Supervisor #1 who contacted the Complainant by phone the next day and accepted responsibility for handling her complaint.

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

The Complainant first contacted the Office of the Community Ombudsman by phone on December 13, 2005. She said she had already filed a complaint directly with APD. The Complainant was encouraged to call the ombudsman's office back if she was not satisfied with the outcome of her interaction with the APD supervisor who took her complaint.

The Complainant contacted the Office of the Community Ombudsman again on December 28, 2005. She expressed her dissatisfaction with the manner in which the APD supervisor handled her complaint. She stated a desire to have her original complaint and her complaint against the supervisor investigated by the ombudsman.

#### Officer #1

The Complainant alleged that Officer #1 pulled open the passenger door to her pickup truck with out permission and told her he would give her a \$100 fine if he saw her stop at the curb again. The Complainant said she asked Officer #1 what she was supposed to do while she waited for the people she was picking up to come out of the terminal, and he replied that he didn't care what she did, she could go to McDonalds or the Chevron station. The Complainant felt Officer #1 was rude and aggressive.

Alleged violation of § 21.0306 (Relationships with Others) of the APD Policy, Procedures and General Orders Manual.

#### Supervisor #1

The Complainant alleged that Supervisor #1 failed to thoroughly and objectively investigate her complaint. She said that, after Supervisor #1 told her he could not determine which officer had contacted her at the curb, he refused to allow her to look at pictures of officers so she could identify the one involved. The Complainant also said that Supervisor #1 refused to review the audio recordings of the officers on duty in order to locate the contact with the Complainant.

Alleged violation of §§ 22.100 – 22.116 (Department Personnel Investigations) of the APD Policy, Procedures and General Orders Manual.

## ***THE COMPLAINT INVESTIGATION***

In the course of my investigation, I took the following steps:

1. Reviewed documentation related to Supervisor #1's handling of the Complainant's original complaint.
2. Reviewed video recordings from airport security cameras.
3. Conducted a photo line-up with the Complainant to identify the involved officer.
4. Searched for an audio recording of Officer #1's contact with the Complainant.
5. Interviewed the Complainant, Officer #1, and Supervisor #1.

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

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

1. On or about December 13, 2005, in the area of the Boise Airport lower level curb, Officer #1 opened the front, passenger side door of the Complainant's pickup truck.
2. A conversation took place between the Complainant and Officer #1 having to do with the airport requirement that vehicles not remain stationary at the curb.
3. Officer #1 did not create an audio recording of his personal contact with the Complainant on December 13, 2005.

4. That same day, some time after her contact with Officer #1, the Complainant contacted the Airport Police Department to complain about what Officer #1 said, how he said it, and that he had opened her truck door without her permission.
5. Supervisor #2 was advised of the complaint, determined that it took place during Supervisor #1's shift, and forwarded the complaint to Supervisor #1.
6. On December 14, 2005, Supervisor #1 contacted the Complainant by phone, gathered additional information from her about the incident, and had a conversation with her that he audio recorded. The Complainant described her truck as black with a camper shell and said she had two children in the truck with her.
7. Supervisor #1 obtained a copy of the airport surveillance video of the lower level curb and viewed it to search for evidence of the alleged contact between the Complainant and Officer #1. Supervisor #1 saw a pickup truck matching the description the Complainant gave him of her truck. He also saw Officer #1 walking along the lower level curb at the same time. He did not see any direct contact between Officer #1 and the Complainant's pickup truck.
8. On December 14, 2005, Supervisor #1 questioned Officer #1 regarding any possible contact with the Complainant the previous day.
9. Officer #1 told Supervisor #1 that he recalled contacting a female driver at the lower level curb by opening the door of a pickup truck. Officer #1 described this truck as being silver or gray, stated it did not have a camper shell, and did not recall it being occupied by two children, in addition to the driver.
10. Officer #1 told Supervisor #1 that, during his brief contact with the female driver of the gray or silver truck, he did not say the things alleged by the Complainant.

11. Officer #1 told Supervisor #1 that he did not create an audio recording of his contact with the female driver of the gray or silver pickup truck.
  
12. On December 28, 2005, Supervisor #1 called the Complainant and gave her the following information:
  - a. He could not find any video images of a direct contact between Officer #1 and the Complainant or her truck.
  
  - b. At the time of the incident, the airport was having problems with its video camera system on the lower level that made it difficult for him to research the incident.
  
  - c. None of the officers on duty matched the description given by the Complainant.
  
  - d. None of the officers on duty at the time recalled having a contact similar to the one described by the Complainant.
  
  - e. He was not willing to listen to the audio created by the officers on duty December 13.
  
  - f. He was not willing to allow the Complainant to view pictures of the officers on duty December 13 for the purpose of identifying the officer she alleges contacted her.
  
  - g. If the Complainant wanted her complaint further investigated, she was required to submit a written complaint to either the APD chief or the ombudsman.

## **OMBUDSMAN'S ANALYSIS AND FINDINGS**

### Allegation Against Officer #1

The Complainant alleges that Officer #1 spoke to her in a threatening manner, told her he would issue a \$100 citation to her if she stopped at the curb again, and was unhelpful when she asked him what she should do while waiting for her friends to obtain their luggage. The Complainant also alleges that Officer #1 opened the front, passenger door of her vehicle without her permission or a reason to do so.

§ 21.0306 (Relationships with Others) of the APD Policy, Procedures and General Orders Manual reads as follows:

*An employee shall treat all other persons in a civil and respectful manner. He/she shall not use profanity or uncomplimentary speech in the presence of members of the public, prisoners, or other people he/she has contact with nor shall he/she intentionally antagonize any person.*

The preponderance of the evidence proves that Officer #1 opened the Complainant's truck door and had some sort of personal contact with her. While opening the door of the Complainant's vehicle may have been a poor tactical choice by Officer #1, there is no evidence to suggest that he did it in order to be disrespectful or antagonistic towards the Complainant. With regard to the actual content of Officer #1's speech during his contact with the Complainant through the open door, there is insufficient evidence to prove what he said. The recollection of the Complainant differs significantly from that of Officer #1. For this reason, not sustained is the appropriate finding for the allegation that Officer #1 violated § 21.0306.

Officer #1 did not create an audio recording of his contact with the Complainant on December 13, 2005. General Order #7 (Use of Audio Cassette/Digital Tape Recorders) in the APD Policy, Procedures and General Orders Manual requires APD officers to, "activate

assigned tape/digital recorder as soon as practical prior to contact with victims, suspects, witnesses or complaining parties or prior to engaging in enforcement action.”

This was not a sudden or unanticipated contact by Officer #1. He had seen the Complainant's truck stop at the curb more than once and he made a deliberate effort to walk over to the truck and speak with the Complainant. Officer #1 had the time necessary to activate his recorder and chose not to. When he approached the Complainant's vehicle, opened the door, and communicated to her (according to his own account) the legal requirement that she move or face a possible citation, he was engaging in enforcement action. The Complainant's vehicle was stopped at the curb and she was not actively engaged in loading or unloading. Officer #1 made contact with her to give her a verbal warning. Under certain conditions and/or if she had refused to move the vehicle, Officer #1 had the authority to issue her a citation. Contacting a violator is always enforcement action, regardless of whether a citation or a warning is issued.

However, Officer #1 considers this and similar contacts at the curb not to be enforcement actions unless an arrest is made or a citation is given. He believes he is only required to record when an arrest is made, a citation is given, or when a contact becomes or looks like it will become confrontational. Independent discussions with other APD supervisors and officers confirmed this as the common understanding among APD officers.

Due to this ambiguity on the specific requirements for recording curb interactions, I have elected not to raise this issue to the level of a policy violation in connection with Officer #1's failure to record his contact with the Complainant on December 13, 2005.

This situation points to the need for resolution of the question about audio recording contacts along the curbs (upper and lower) of the airport. Consideration should be given to obtaining recorders with sufficient memory such that an officer can record the entire 30 minutes of his

or her several assigned rotations on the curb each shift. Setting a clear expectation of continuous recording of all curb duty would remove the ambiguity that currently exists.

### Allegation Against Supervisor #1

APD policy (§§ 22.100 – 22.116 ) establishes clear guidelines for how supervisors are to respond to Citizen Complaints. A Citizen Complaint is defined in § 22.102, which reads, in part, as follows:

*For the purposes of this policy, “**complaint**” shall be defined as an allegation received from a citizen alleging conduct which, if sustained, would constitute a violation of law or of the policies and/or procedures of the Boise Airport Police Department.*

The statements attributed to Officer #1 and reported by the Complainant to Supervisor #1, if true, would be a violation of § 21.0306 (Relationships with Others) of the APD Policy, Procedures and General Orders Manual, specifically as it requires officers to treat others in a, “civil and respectful manner,” and where it prohibits officers from speech or action designed to, “intentionally antagonize any person.” For this reason, the Complainant’s allegations were a “Citizen Complaint” as defined by APD policy.

Citizen Complaints are to be classified as either Class I or Class II. The definition for Class II Complaints is as follows:

*Class II Complaints include very minor offenses, such as general officer demeanor (“the officer talked mean to me”; or implying the officer was moody or rude) and selective enforcement complaints (§ 22.105 B.).*

This definition clearly applies to the allegations against Officer #1 made by the Complainant to Supervisor #1.

APD policy requires supervisors who receive a Class II complaint to:

- Obtain complete information from the complainant and report it to the APD chief (§ 22.103 E.).
- Conduct an investigation, “sufficient to determine the merits and disposition of the complaint,” (§ 22.105 B (1)).
- Notify the complainant, “regarding the full disposition [of the complaint investigation],” (§ 22.105 B. (6)).

Supervisor #1 interviewed the Complainant on the phone and gathered information about the incident and her specific allegations. He could have been more thorough in this interview, asking the Complainant which door Officer #1 opened and specifically where along the curb she was parked when Officer #1 opened the door and spoke to her. If Supervisor #1 had obtained this information, he may have discovered the video images of the contact and been able to identify the involved officer and obtain more information from him. Supervisor #1 did notify the chief that he had received a complaint and he provided the chief with a summary of the allegations and his actions to investigate the complaint.

Officer #1 admitted to Supervisor #1 that he contacted the female driver of a silver or dark gray pickup truck on December 13 at the lower curb. This admission, together with the fact that the incident took place during Officer #1's assigned shift on the lower curb and Supervisor #1's observation that the video showed the Complainant's truck and Officer #1 in the same area at the same time, were enough to form a preponderance of evidence in favor of the conclusion that Officer #1 was the one who made contact with the Complainant and opened her vehicle door.

The Complainant offered to look at photographs to aid in the identification of the officer. If Supervisor #1 was not already convinced by the evidence at hand, this would have been a

logical and appropriate investigative step to take. Telling the Complainant that he could not identify the officer involved while, at the same time, refusing her request to look at photographs indicates an unwillingness to conduct a sufficient investigation as required by policy.

During his December 28<sup>th</sup> phone conversation with the Complainant, Supervisor #1 was less than candid. In fact, when one looks at the conversation as a whole, Supervisor #1's statements had the effect of misleading the Complainant to believe that:

1. Supervisor #1 had no idea which officer contacted her on December 13,
2. none of the officers recalled having a contact like the one she described,
3. the airport video cameras suffered some sort of malfunction on the 13<sup>th</sup>, and
4. Supervisor #1 had no information about whether the interaction she described had been audio recorded.

Supervisor #1 admitted in his ombudsman interview that he thought Officer #1 was the one who had the curbside interaction with the Complainant. Even though Officer #1's description of the truck and its occupants did not exactly match the Complainant's truck, Officer #1 told Supervisor #1 that he opened the door of a pickup truck that day on the lower curb. Supervisor #1 told the Complainant that the airport had been having "problems" with its video camera system on the lower level. While Supervisor #1 says he only meant to suggest a systemic or design flaw resulting in video quality not good enough to see the officer and the interaction, the Complainant reasonably concluded that the video system had experienced some sort of malfunction the day of the incident. Supervisor #1 knew at the time of his December 28<sup>th</sup> phone conversation with the Complainant that Officer #1 had no

audio of the contact. Nonetheless, Supervisor #1 gave the impression that he had no information about the existence of an audio recording of the contact.

Also problematic was Supervisor #1's assertion to the Complainant that, unless she submitted her complaint in writing to either the chief or the ombudsman, a more complete investigation of her complaint would not be conducted. No such requirement for a written complaint exists in APD policy. When asked his reason for asserting this requirement, Supervisor #1 stated that his previous employer required this and he assumed the same was true for APD. Unfortunately, the Complainant perceived this as an obstacle placed in her way to discourage her from pursuing the complaint and a confirmation of her earlier impression that Supervisor #1 was being less than candid with her and trying to sweep her complaint under the rug.

Supervisor #1 did not meet the overall requirements of § 22.105 B. in his investigation and resolution of this complaint. His actions, omissions, and statements left the Complainant with the impression he was unwilling to thoroughly investigate her complaint. Supervisor #1 failed to take reasonable steps to establish the identity of the involved officer and made ambiguous statements to the Complainant regarding the findings of his investigation that had the effect of misleading her. For this reason, I have issued a sustained finding against Supervisor #1.



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