



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB06/0014 - June 5, 2006

THE SITUATION

In the early morning hours of February 12, 2006, Ada County Dispatch received a 911 hang-up call. When Dispatch called back, the operator spoke to a man who was out of breath and reluctant to answer questions. Dispatch then alerted officers in the area and asked them to perform a welfare check at the apartment from which the call came.

Four officers from the Boise Police Department, including an officer in training and a supervisor, responded to the call. As the officers approached the apartment, they heard arguing and swearing. Officer #1 knocked at the door. When the Complainant answered, the officer informed him that they were there to check on the situation. The Complainant stated that his girlfriend, Witness #1, was in the apartment. When Officer #1 asked to come in to see her, the Complainant refused and said that he would get Witness #1 and bring her to the door. The door, which had an automatic closing mechanism, began to close as the Complainant walked away.

Concerned that the Complainant would allow the door to close completely and use the opportunity to hurt Witness #1 or to retrieve weapons, the officers pushed through the door as it was closing and entered the apartment. Officer #2 stopped the Complainant from going down the hallway to the bedroom. Then he and Officer #1 went to locate Witness #1.

Supervisor #1 stayed in the living room area with the Complainant. The Complainant's dog, which resembled a pitbull, was in the living room area. Though the dog was not behaving aggressively, Supervisor #1 told the Complainant to get the dog under control before it

became necessary to shoot it. The Complainant held the dog by the collar while Officer #3 attempted to engage the Complainant in conversation.

While Officer #1 questioned Witness #1, Officer #2 conducted a limited search of the premises to determine if any other persons were in the apartment. The officers concluded that the incident involved no domestic violence. They made no arrests and left the apartment.

THE COMPLAINT

The Complainant contacted the ombudsman's office by phone on February 13, 2006. He alleged that four or five Boise Police Department officers entered his apartment without a warrant after he refused their request to come in to speak with his girlfriend. When he refused their request, they forced entry by pushing themselves through the open doorway into his apartment. He also alleged that one of the officers tried to antagonize him by threatening to shoot his dog. The dog was unleashed inside the apartment and was not behaving in an aggressive manner.

THE COMPLAINT INVESTIGATION

The investigation into this complaint included a review of the dispatch records, which identified the officers involved in the incident, and a review of the recordings of the 911 hang-up call and the call back by Dispatch. Two digital audio recordings made by officers during the incident, as well as digital recordings of the Complainant's phone conversation with a BPD supervisor on the date of the incident were reviewed and analyzed for relevant evidence. Interviews of Officer #1, Officer #2, Officer #3, Supervisor #1, the Complainant, and Witness #1 were also conducted.

WHAT THE COMPLAINT INVESTIGATION FOUND

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

1. Ada County Dispatch received a 911 hang-up call from a phone number at the Complainant's address.
2. Dispatch called the number back, spoke to the Complainant, and then dispatched officers to the Complainant's address to perform a welfare check.
3. Officer #1, Officer #2, Officer #3, and Supervisor #1 went to the Complainant's apartment.
4. When the officers arrived at the apartment, they could hear the voices of a man and a woman arguing inside.
5. When the officers knocked on the door, the Complainant answered the door, opened it slightly, and told the officers that everything was fine.
6. Officer #1 asked to speak to Witness #1.
7. The Complainant told the officers that he did not want them to come into the apartment, but that he would go and get Witness #1.
8. The Complainant went back into the apartment and allowed the door, which had an automatic closing mechanism on it, to begin to close.
9. As the door to the apartment was closing, the officers pushed the door open and entered the apartment.
10. The officers conducted a premises search in which they looked in places where a person could be hiding or could be concealed. The officers did not search drawers or cabinets.
11. When the officers entered the apartment, the Complainant's American Staffordshire Terrier (the dog), a breed that bears a resemblance to a pitbull, was unleashed in the apartment.

12. The dog, which was large, was not barking and was not engaging in aggressive behavior.
13. The dog had its ears back in a position that can signal fear of the situation and that can be a precursor to aggression.
14. Supervisor #1 told the Complainant to get the dog under control.
15. The Complainant was arguing with the officers and failed to get the dog under control.
16. Supervisor #1 then directed the Complainant to get the dog under control before it had to be shot.
17. After the Complainant understood that there was a possibility that the dog could be shot, he brought the dog under physical control.
18. Officer #1 interviewed Witness #1 and determined that no crime had been committed.
19. The officers left the apartment. No report of the incident was filed.

OMBUDSMAN'S ANALYSIS AND FINDINGS

I. Alleged Unlawful Entry.

The Boise Police Department's policy (§ 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*

A police officer must know and be able to enforce the laws that apply to a given situation. The Fourth Amendment to the United States Constitution protects the privacy of persons' homes. Under the Fourth Amendment, a police officer cannot enter a person's home without a search warrant, except under certain limited circumstances.

One of the situations that would justify the police in entering a home without a warrant is a situation where there is a risk of danger to the police or to other persons inside or outside the home. The question a police officer must ask himself or herself in this type of situation is whether there are facts that would cause a reasonable person to believe that entry is necessary to prevent physical harm either to the officers or to other persons.

Officer #2, Officer #3, and Supervisor #1 clearly saw the need to enter the Complainant's apartment the morning of the incident. During the investigation, Officer #3 quickly stated the reasons that the officers needed to go into the apartment without a warrant:

1. There was a 911 hang-up call;
2. When Dispatch called back, the Complainant did not have a good explanation for the 911 hang-up;
3. The Complainant was out of breath when Dispatch called him back;
4. When the officers arrived at the residence, they could hear loud arguing from inside the apartment;
5. The Complainant did not want the officers to come into the house; and
6. The Complainant was going to shut the door on the officers.

These factors would cause a reasonable person to believe that the other person in the apartment was in danger of being harmed. Officer #2 said that he was concerned for the same reasons. The fact that there had been a 911 hang-up call together with the fact that the officers could hear a heated argument coming from inside the apartment created the type of circumstance that justified the officers' entrance into the residence. Supervisor #1, an experienced police officer who is also supervisor, stated that it was obvious to him, before they even knocked at the door, that they would have to go in because of the argument going on inside.

The situation became more obvious after the Complainant opened the door and told the officers that he was out of breath from moving boxes. Supervisor #1 did not believe the Complainant's story. Supervisor #1 explained that officers frequently get this type of explanation in domestic violence situations when people are out of breath from fighting. As Officer #3 told the Complainant during the incident, officers have been summoned to similar situations in which the woman is already dead.

Being able to take quick and appropriate action when an incident occurs is required under the Boise Police Department's policy (§ 11.03.02). Officer #2, Officer #3, and Supervisor #1 demonstrated a clear understanding of the law. They also demonstrated an ability to size up the situation quickly, apply the law to the facts, and take decisive action to enter the apartment. Even though this situation did not involve domestic violence, the officers' knowledge of the law and their ability to act quickly could have meant the difference between life and death had someone been in life-threatening danger. For these reasons, Officer #2, Officer #3, and Supervisor #1 did not violate the law or the Boise Police Department's policy when they entered the Complainant's apartment.

II. Alleged Attempt Intentionally to Antagonize a Member of the Public.

The Boise Police Department's policy (§ 11.01.07) Relationships with Others and Demeanor states:

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 persons he/she has contact with nor shall he/she intentionally antagonize any person.

The question presented here is whether Supervisor #1 was trying to antagonize the Complainant when he allegedly threatened to shoot the Complainant's dog.

When the officers arrived at the apartment, the situation was "chaotic." The parties had been drinking, a large dog was unleashed inside the small apartment, and the officers did not know if Witness #1 had been harmed. The Complainant was upset that the officers were in his home and was arguing with them. Because the other officers were trying to secure the premises and make sure that Witness #1 was all right, Supervisor #1 was alone in the living room for a short period of time trying to control both the Complainant and the dog.

During the course of the investigation, both Supervisor #1 and Officer #3 expressed concern that, in the event it had become necessary to arrest the Complainant, the dog might have attacked the officers in an attempt to protect its master. Had the dog attacked the officers, they would have had the authority to shoot it under Boise Police Department's policy (§ 11.03.24). Both Officer #3 and Supervisor #1 said that they did not want to have to shoot someone's dog.

There is no question that Supervisor #1 told the Complainant to get his dog under control or it might need to be shot. The issue whether Supervisor #1 intended to antagonize the Complainant does not turn on the question whether Supervisor #1 made the statement; instead, it turns on the question whether he gave the direction to bring the dog under control

more than once before saying that the dog might be shot. If he gave the command more than once, he would be justified in giving the final and more serious warning that the dog might have to be shot. On the other hand, if Supervisor #1 had simply walked in the door and threatened to shoot the dog, it would seem that he was trying to antagonize the Complainant rather than give him a fair warning.

The evidence provides no clear answer to the question regarding the number of times Supervisor #1 told the Complainant to get the dog under control. In the telephone interview on May 16, 2006, the Complainant said that he had been asked only one time to control his dog; however, in the intake interview, he mentioned that the request had been made twice. These statements are contradictory.

The Complainant's statements are unclear on other facts as well. His memory of which officer made the alleged threat is hazy. When he reported the incident to Supervisor #2, he insisted that one of the patrol officers had made the threat. The officers at the scene all said that Supervisor #1 made the statement. More importantly, even Supervisor #1, who has been charged with violating policy, has consistently claimed personal responsibility for having made the alleged threat. The Complainant's testimony regarding the sequence of events is less dependable than Supervisor #1's because of these inconsistencies.

The other three officers heard Supervisor #1 tell the Complainant to control the dog before it had to be shot. They heard the command one time. Officer #1 explained that he might not have heard any earlier command because he and Officer #2 were directing their attention to reaching Witness #1. While audio recordings would generally answer this question, they do not in this case because Officer #2's audio recorder got turned off as the officers behind him pushed him through the door, and Officer #3 turned his recorder on just as the warning was being given. Thus, there is no audio recording to document the full sequence of events.

Supervisor #1 stated that he gave the order three times. The first two times he gave the command he was alone in the living room area with the Complainant and the dog. Because the Complainant had not listened to him, Supervisor #1 wanted to ensure that the Complainant understood the seriousness of the situation. He wanted to warn the Complainant of the potential consequences of failing to get the dog under control.

The dog's size and its breed are also important factors in this situation. The dog resembled a pitbull. There have been numerous media reports of pitbulls causing serious injury or death. Owners of pitbulls, and owners of dogs that look like pitbulls, should be aware of the well-founded fear their dogs may create. Even if dogs are well-trained and well-socialized, strangers, including police officers, have no way of knowing that. Had the dog been a small breed with no reputation for hurting human beings, the need to get the dog under control would have been less urgent.

There were a number of factors in play here: the commotion, the alcohol use, the argument, the close confines of the apartment, the size of the dog, the breed of the dog, the nature of the call, and the possibility of arrest. Given these circumstances, it was important that the officers get control of the situation as quickly as possible. Making sure that the dog was not in a position to attack the officers was an important part of getting the situation under control. While the dog never behaved aggressively, the concern was that the dog could quickly become aggressive if his master was threatened.

The facts do not show that Supervisor #1 entered the apartment and immediately started to make threats to shoot an innocent dog. The preponderance of the evidence indicates that Supervisor #1 directed the Complainant to get his dog under control more than one time. The Complainant may not have heard the command because he was distracted by the police intrusion and the ensuing tumult; or he may simply have been arguing with the officers and neglected to comply with the order. Whatever the reason, the Complainant failed to comply with a police officer's order.

Because the Complainant failed to comply with the first directive to get the dog under control, it became necessary for Supervisor #1 to warn the Complainant of the potential consequences of failing to get the dog under control. Supervisor #1 said something to the effect of, "Get the dog under control before we have to shoot it." The warning, which the Complainant perceived as a threat, was not intended to antagonize the Complainant or escalate the situation. Had Supervisor #1 entered the Complainant's apartment and immediately threatened to shoot the dog, the statement would have been an unfounded threat rather than a warning. However, the facts do not support a conclusion that Supervisor #1 tried intentionally to antagonize a member of the public.

One of the issues that became apparent during the last phases of the investigation is that a direction to place a dog under control may have a different meaning to a police officer than it has to a devoted dog owner. It appears that much of the indignation surrounding this incident was the result of a misunderstanding. To Supervisor #1, controlling the dog meant placing the dog under some sort of physical restraint, such as placing the dog on a leash. To the Complainant, the term "under control" meant that the dog was well behaved in its own home.

Because the term, "under control," can have reasonably different interpretations to different people, it may help for officers to use more specific words when talking to the members of the public. It may ease situations if police officers ask people in similar situations to put their dogs on a leash. "Under control" to a dog owner may mean that the dog should be under control by verbal command alone. It might not even occur to a dog owner that it would be necessary to put the family pet on a leash inside the family home; yet, that may be exactly what the police officer is expecting the person to do. If the dog needs to be placed on a leash, put outdoors, put in another room, or put in a kennel, it may be helpful if the police officer makes that request in clear, simple language.

For the above stated reasons, I have issued a finding of exonerated for the alleged violation of § 11.03.02 Performance of Duty with respect to the actions of Officer #2, Officer #3, and

Supervisor #1. I have also issued a finding of exonerated for the alleged violation of § 11.01.07 Relationships with Others and Demeanor with respect to the actions of Supervisor #1.



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