



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB06/0103 - November 6, 2006

THE SITUATION

On April 9, 2006, Officer #1, Officer #2, and Officer #3 responded to the Complainant's residence shortly before 9:00 p.m. The officers had been dispatched to a possible case of domestic violence following a telephone call to the dispatch center in which the caller hung up. The dispatcher heard a female yelling at a male about not protecting her and dragging her down the stairs. When the officers arrived they could hear loud voices from what appeared to be the upstairs bedroom. The husband (Witness#1) of the Complainant answered the door and told the officers that he and the Complainant had been arguing. He then let the officers into the residence. Officer #1 spoke with both the Complainant and Witness #1. Witness #1 was arrested for Domestic Battery. He was transported to the jail and served with a No Contact Order.

THE COMPLAINT

The Complainant contacted the Office of the Community Ombudsman by phone on August 2, 2006. She alleged that Boise Police Department (BPD) officers came to her residence on April 9, 2006, between 7:00 and 8:00 p.m., in response to a 911 call. The Complainant said that Witness #1 was arrested for domestic assault when she was the one who caused the trouble. In her opinion, the officers were unprofessional and left her alone in the residence when she was reportedly suicidal. The Complainant also claimed that the police report does not document a significant interaction between the Complainant and Officer #1.

THE COMPLAINT INVESTIGATION

The following steps were taken in the course of this investigation:

- The Complainant was interviewed during the initial intake. She also provided six pages of notes, which she compiled within two weeks of the incident.
- The police report detailing the arrest of Witness #1 was reviewed.
- Audio recordings made by BPD officers at the time of the incident were reviewed.
- Interviews were conducted with the Officer #1, Officer #2, and Officer #3.

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. Officers #1, #2, and #3 responded to the Complainant's residence after a call to 911 in which no one spoke to the operator, but, reportedly, the operator heard a male and female arguing in the background.
2. After speaking with both parties, officers felt there was probable cause to arrest the husband for domestic battery.
3. The Complainant's husband was arrested without incident and a No Contact Order was issued to him.

OMBUDSMAN'S ANALYSIS AND FINDINGS

The Complainant alleged several actions, which if true, would be violations of Department policy. They are:

1. Officers failed to document an incident in which she exposed her buttock to Officer #1 when he questioned her about injuries.
2. Her husband was arrested when she (in her mind) caused the altercation.
3. She was left alone when she was suicidal.
4. Officer #1 was unprofessional when he exclaimed, "Yippee," following her disclosure that her husband had battered her.

Allegation #1

There is nothing in the audio recordings made at the scene by the officers to substantiate the Complainant's allegation. Officer #1 asked her at one point, "There is no bruising on your bottom? I don't want to look." There is no pause between the two comments and the Complainant replies, "I'm sure I don't." Officer #1 says, "Okay." Officer #1 in his interview reports when he asked about any bruises, the Complainant moved as if to show him. Before any portion of her body was visible, Officer #1 told her he didn't want to see.

Allegation #2

The Complainant's husband was arrested for domestic battery. She feels that she caused the altercation. Even if this were true, her verbal actions do not excuse his resort to physical violence. The law exists to protect domestic partners from physical assaults, not necessarily verbal assaults. Whatever culpability the Complainant may or may not have in starting or

continuing the verbal argument with her husband, the fact remains that he escalated the argument by physically assaulting her. The officers properly recognized this and arrested the husband as the primary aggressor in the physical violence.

Allegation #3

There was no discussion regarding the Complainant being suicidal. Her husband told officers that she usually threatens suicide, but that night she hadn't. She did threaten her family several nights earlier. Officer #1 asked her if she was suicidal and she replied calmly, "No." The Complainant mentioned calling her therapist the next day.

In her initial complaint to the Ombudsman's Office and in her notes of April 21, the Complainant made reference to threats and thoughts of suicide that night. She mentioned threats to her family that night. She reported that was why her husband pulled her down the stairs so as to calm her. However, the night of the incident, none of this information was presented to the officers. That night, both the Complainant and her husband told officers about her long-time anger with her family. They talked about her anger over the fact that everyone loved the husband and everyone hated the Complainant. The Complainant's husband told officers that she told him to leave the house. He got angry and tried to carry her out of the house. He dropped her at the top of the stairs and then dragged her down the stairs.

There is no explanation to the officers of her being suicidal. They were not told that he was trying to calm her when he pulled her down the stairs. The officers acted upon the information available that night, not the information that was made months later in the complaint.

Allegation #4

There is no evidence on the audio recording to substantiate the Complainant's assertion that Officer #1 yelled, "Yippee," when she told him that her husband assaulted her. There is no evidence that he yelled jubilantly to the other officers that, "We've got him; she says he pushed her down the stairs." Officer #1 is heard walking down the stairs and talking with the husband. According to Officer #1, his decision to arrest was not made until after he spoke with the husband who corroborated the statement of the Complainant.

There is no evidence that any of the officers took any joy or pleasure in arresting the Complainant's husband. Officer #3 reported that he sometimes feels bad arresting people in these cases, as they are not "bad" people.

In addition to the complaints outlined, the Complainant was concerned that BPD's policy mandates an arrest in every reported domestic violence incident. She inquired if this was, in fact, the department policy.

The department's policy, while pro-arrest, does not mandate an arrest in every situation. However, if there is probable cause to believe that a crime has occurred, officers are encouraged to make an arrest, even if the victim does not wish prosecution.

BPD Policy and Procedure Manual § 2.01.07 - Arrests for Domestic Violence states:

BPD has a pro-arrest policy regarding domestic violence. Each officer shall take appropriate enforcement action:

- *When there is probable cause to believe that the terms of a protective order or no contact order have been or are knowingly being violated, even if the victim does not wish to sign a complaint or make a citizen's arrest.*

- *When there is probable cause for an arrest for domestic assault or battery. The arrest should be made whether or not the victim will sign a complaint and regardless of his/her desire that no arrest occur.*
- *Whenever a complainant in a domestic dispute alleges that an assault or battery has occurred and the complainant wishes to sign a complaint.*

Note: When both parties appear to have been violent toward one another, it will be necessary to attempt to determine who is the predominant aggressor. The factors guiding such determination include: the spirit of the law, which is to protect victims of domestic violence; the relative degree of injury or fear inflicted on each individual; and any other pertinent facts.

It is easy to understand how the Complainant might misunderstand the distinction between pro-arrest and mandatory arrest. This is especially true given the highly emotional conditions that existed the night of the incident. It is possible that the officers may not have made the distinction clear. However, it is clear that, during their interviews, the involved officers clearly understood the department's policy.

RECOMMENDED POLICY FINDINGS

Officer #1

PM § 11.01.07 - Relationships with Others and Demeanor - based on the preponderance of evidence, I have issued a finding of unfounded.

PM § 11.03.02 – Improper Duty Performance – based on the preponderance of evidence, I have issued a finding of unfounded.

Officer #2

PM § 11.01.07 - Relationships with Others and Demeanor - based on the preponderance of evidence, I have issued a finding of unfounded.

PM § 11.03.02 – Improper Duty Performance – based on the preponderance of evidence, I have issued a finding of unfounded.

Officer #3

PM § 11.01.07 - Relationships with Others and Demeanor - based on the preponderance of evidence, I have issued a finding of unfounded.

PM § 11.03.02 – Improper Duty Performance – based on the preponderance of evidence, I have issued a finding of unfounded.



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