



## **OMBUDSMAN'S REPORT Complaint Investigation & Findings**

*OMB07/0048 - July 30, 2007*

### ***THE SITUATION***

In January 2007, the Complainant attended a concert at the Taco Bell Arena along with his wife and friends. The Complainant went outside the perimeter gate. When he tried to come back inside, he found the gate locked. When he climbed over the fence, a security guard escorted him back outside since no reentry is allowed. However, the Complainant climbed the gate again. This time the security guard called for assistance from the Boise Police Department (BPD) and two officers arrived at the scene. After a short period of time one of the two officers deployed a Taser at the Complainant, but it was not effective and the Complainant ran from the officers and away from the arena. A few minutes later the Complainant appeared on the other side of the arena where he was arrested by BPD officers and taken into custody for trespassing and resisting and obstructing officers.

### ***THE COMPLAINT***

The Complainant filed a complaint on April 12, 2007. In his complaint, he alleged that Officer #1 used excessive force during his arrest at the Taco Bell Arena in January 2007, specifically the use of the Taser. This allegation, if proven true, would be a violation of the Boise Police Department's Policy § 1.01.02 Authorization (Use of Force).

## ***THE COMPLAINT INVESTIGATION***

The complaint investigation consisted of obtaining information from the Complainant, reviewing dispatch records, police reports, interviewing three witnesses, and interviewing three BPD officers. There was no audio recording of the initial contact Officer #1 had with the Complainant (during which the Taser was deployed). However, Officer #1's second contact with the Complainant, the one that resulted in his arrest, was recorded.

## ***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. The Complainant was ejected from the Taco Bell Arena after he left the premises and twice attempted to reenter by climbing the fence.
2. Several security personnel told the Complainant that he could not return to the arena after leaving and that he was subject to arrest for trespassing.
3. The Complainant shouted loudly, used profanity, and challenged security personnel to fight.
4. Officer #1 and a second officer were monitoring a security radio and responded to the scene.
5. The Complainant refused to leave the arena and took a combative stance with the two BPD officers.
6. Officer #1 fired his department-issued Taser at the Complainant.

7. The Taser did not function properly. The Complainant fell to the ground, but was not incapacitated and immediately got up.
8. The Complainant ran from the scene and the officers did not pursue him.
9. The Complainant later returned to a different arena entrance to which Officer #1 was again summoned.
10. Officer #1 told the Complainant that he was under arrest and ordered him to put his hands behind his back. Officer #1 grabbed the Complainant's arm and the Complainant attempted to pull his away.
11. Officer #1 placed the Complainant into a Lateral Vascular Neck Restraint (LVNR) and began to apply pressure.
12. Before the Complainant exhibit any effects from the LVNR, he ceased his resistance and was taken into custody without further incident.

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

The Boise Police Department's policy (§ 1.01.02) Authorization (Use of Force) states:

*An officer shall use only the amount of force that is reasonable and necessary to protect life, affect a lawful arrest, and/or gain control in any lawful circumstance.*

The Complainant attempted to return to the Taco Bell Arena after having left the grounds, something which is not allowed under the terms of admission. The Complainant was warned repeatedly to leave or face arrest. The Complainant climbed over the fence twice to get back inside. Each time, the security officers told the Complainant that he could not reenter the

arena and that he was subject to arrest for trespassing. Officer #1 also told the Complainant that he had to leave the arena and that failing to leave would result in his arrest for trespassing. Officer #1 and the two other BPD officers who assisted him reported that the Complainant took an "aggressive" posture and moved toward Officer #1. In response, Officer #1 deployed his Taser. The preponderance of evidence shows that the Complainant failed to follow officers' repeated verbal commands, displayed a belligerent demeanor, and took aggressive action toward Officer #1. In light of this, Officer #1's conclusion that the Complainant presented an imminent threat of physical harm to him and other police and security personnel was reasonable, as was his use of force (Taser deployment).

When the Complainant ran away, the officers did not chase after him. They only wanted him to leave which, they thought, he had done. Only when the Complainant returned to another arena entrance was he arrested for trespassing. He attempted to pull away from this arrest and was subdued using a Lateral Vascular Neck Restraint. The preponderance of evidence shows that this use of force was also reasonable, given the Complainant's lack of compliance with the officers' verbal commands and his active resistance by pulling away from Officer #1.

For these reasons, Officer #1's use of force on the Complainant was reasonable and necessary to affect a lawful arrest and/or gain control in any lawful circumstance, thereby meeting the requirements of § 1.01.02 of the BPD Policy and Procedures Manual. Therefore, I have issued a finding of exonerated in connection with the Complainant's allegation.



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