



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB07/0082 - December 20, 2007

THE SITUATION

The incident in this case occurred in the early afternoon of a late spring day. Responding to a call regarding an unconscious subject, four members of the Boise Fire Department (BFD) arrived at an apartment building, followed shortly thereafter by personnel from the Ada County Emergency Medical Services (EMS). The firefighters found the Complainant lying on the floor of the building's elevator in a state of intoxication. When the Complainant exhibited behavior that indicated that he might become violent toward the emergency responders, a BFD firefighter requested assistance from the police. Officer #1 and Officer #2 responded to assist the BFD and EMS personnel. After it had been determined that the Complainant did not have a medical emergency, Officer #1 and Officer #2 helped the Complainant to a standing position and helped him walk outside. Officer #2 issued a citation to the Complainant for Disorderly Conduct. The Complainant crossed the street and walked away.

THE COMPLAINT

The Complainant came in person to the Office of the Ombudsman three days after the incident occurred. He filled out a complaint form alleging that paramedics and police officers assaulted him, kidnapped him, and held him prisoner. After he filled out the complaint form, the Complainant was interviewed in person. In the interview, he explained that he was simply exiting the building when the paramedics and the police officers rushed in to the foyer. He alleged that the police officers pinned him to the wall and told him he would be arrested if he did not undergo medical testing. At the time he came to the office, the

Complainant allowed the ombudsman to take photographs of the injuries that were allegedly caused by the incident. The Complainant's allegations, if proved to be true, would be a violation of the Boise Police Department's Policy § 1.01.02 Authorization (Use of Force). The case was opened as a Class I Complaint for the allegation of the use of unreasonable and unnecessary force.

THE COMPLAINT INVESTIGATION

The investigation into this complaint included a review of the audio recordings made by Officer #1 and Officer #2, and Officer #2's police report. It also included an interview with the Complainant, interviews of three members of the Boise Fire Department (Witness #1, Witness #2, and Witness #3), an interview of one civilian witness (Witness #4), and interviews with Officer #1 and Officer #2. The investigation further included a review of police department and fire department dispatch records, a BFD incident report, a copy of the citation issued to the Complainant, and seven photographs taken by the ombudsman.

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. In the early afternoon on a spring day, the Boise Fire Department received a call regarding an unconscious person in an elevator in an apartment building.
2. Four firefighters responded to the call and were the first emergency personnel to arrive at the scene. EMS personnel arrived approximately two minutes after the firefighters.

3. The Complainant was lying in the elevator and was unresponsive when the firefighters arrived.
4. The firefighters were able to awaken the Complainant, who was intoxicated.
5. Two firefighters moved the Complainant from the floor of the elevator to the bench or to chairs that were located in the glass-enclosed foyer on the ground floor of the building.
6. After being awakened, the Complainant was uncooperative and verbally abusive toward the emergency responders.
7. Based on the Complainant's behavior, a firefighter requested assistance from the police.
8. Officer #1 and Officer #2 arrived to assist the emergency responders. A civilian passenger in a police ride-along program (Witness #4) accompanied Officer #2 and observed the events that occurred.
9. The firefighters and the EMS personnel had completed providing medical treatment at the time the officers arrived. They had determined that no medical emergency existed.
10. Officer #2 requested the Complainant's identification. Officer #1 assisted the Complainant to get his identification out of his wallet.
11. Officer #1 and Officer #2 assisted the Complainant to a standing position by placing their hands under the Complainant's arms.

12. Officer #1 led the Complainant outside by placing one hand under the Complainant's bicep and the other hand around his forearm.
13. Outside the building, Officer #2 served a citation for Disorderly Conduct to the Complainant.
14. After the Complainant received the citation he walked away.
15. At the time the Complainant reported the alleged incident to the Office of the Community Ombudsman, three days later, he had bruises under his right arm.

OMBUDSMAN'S ANALYSIS

The only question in this case is a question of fact. The Complainant said that he was assaulted by paramedics and police officers as he was leaving through a back exit of an apartment building. He said that the police officers and the paramedics charged through the door from the parking garage into the foyer of the building. The Complainant was trying to get out of their way; but the police officers grabbed him, pinned him against the wall, and told him that if he did not allow unwanted medical tests to be performed, he would be placed under arrest. The only question in this case is whether this actually happened.

There is absolutely no evidence to support the Complainant's claims. The overwhelming majority of evidence indicates that the Complainant was drunk and had passed out in the elevator of a private residential building. After a report was made to Ada County Dispatch regarding an unconscious person in the elevator, a fire engine team responded to the scene. EMS personnel arrived shortly after the firefighters. Officer #1 and Officer #2 arrived nearly fifteen minutes later. The police officers and the paramedics did not even arrive together as the Complainant had claimed.

The Complainant was not simply leaving the building. He was lying on the floor of the elevator suffering the apparent effects of extreme intoxication. He was conscious, but unresponsive. When the firefighters roused him, he became belligerent and used vulgar language toward the emergency responders. One of the firefighters requested police assistance because of his concern that the Complainant might become violent.

When Officer #1 and Officer #2 arrived, the Complainant was sitting on a bench in the glass-enclosed foyer. The firefighters had already determined that there was no medical emergency and pulled the Complainant out of the elevator. They did this to give the EMS professionals more room in which to work.

Officer #1 and Officer #2 requested the Complainant's identification, and made the decision to issue a citation for Disorderly Conduct. Officer #2 went to his car to get his citation book. When he came back into the foyer, the Complainant was refusing to leave.

Officer #1 and Officer #2 helped the Complainant from a sitting position to a standing position. Officer #1 then led the Complainant outside, where Officer #2 served the Complainant with the citation for Disorderly Conduct. The Complainant then crossed the street and walked away.

Based on Officer #1's and Officer #2's description of the way they touched the Complainant to help him to a standing position, it is highly unlikely that the Complainant's bruises were caused by either Officer #1 or Officer #2. The officers' description of how they touched the Complainant was confirmed by a civilian witness who was riding with Officer #2. There is no indication that the officers engaged in any kind of tussle with the Complainant; and there are no facts to support a claim that the officers used any force against him.

Though it is unlikely, based on the facts developed during the investigation, it is possible that the Complainant sustained the bruising when the firefighters lifted and pulled the Complainant out of the elevator and onto the bench in the foyer. Under either scenario, there is no evidence to support the Complainant's claims that the police officers pinned the Complainant against the wall and told him they would arrest him if he refused to undergo medical testing. For this reason I have issued findings of unfounded for the alleged violations of P.M. § 1.01.02 – Authorization (Use of Force) by Officer #1 and Officer #2.

Simply to ensure that any possible issue regarding the interaction between the officers and the Complainant has been addressed, I will briefly discuss the officers giving physical assistance to the Complainant. The officers stated in their interviews that they had touched the Complainant when they helped him stand up and led him out of the building. It is certainly questionable whether this could even be considered a use of force. I conclude that the officers' touching of the Complainant was more in the nature of rendering assistance and was not a use of force.

While I conclude that the officers did not use force against the Complainant, assuming that the officers' actions were a use of force and that they had somehow caused the bruising under the Complainant's arm by helping him to stand up, there is no evidence to support that this was a violation of BPD policy. The Boise Police Department policy authorizes the use of force by its officers; BPD Policy § 01.01.02 – Authorization (Use of Force) states:

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

Assuming that the officers used force (which they did not), the question in this case would be whether the force used was reasonable and necessary to gain control in a lawful circumstance. Looking at the fact, the Complainant had violated the law by sleeping in an elevator in a private apartment building (Boise City Code § 6-01-05). It required the assistance of both emergency personnel and the police to remove the Complainant from the

elevator, and then from the building. After the Complainant was out of the elevator, he did not want to leave the foyer. As one witness explained, the Complainant wanted to fall back asleep in a private building where he had no lawful reason to be.

Since the Complainant could not stay where he was, sitting in the foyer, the officers needed to remove the Complainant from the building. They used their hands to help the Complainant stand up. Officer #1 then placed one hand under the Complainant's upper arm and one hand on his forearm and led the Complainant out of the building. Assuming, but not conceding, that this was a use of force, it would have been reasonable and necessary to gain control of the situation.

OMBUDSMAN'S FINDINGS

Officer #1

P.M. § 1.01.02	Authorization (Use of Force)	Unfounded
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Officer #2

P.M. § 1.01.02	Authorization (Use of Force)	Unfounded
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