



## **OMBUDSMAN'S REPORT**

### **Complaint Investigation & Findings**

*OMB08/0110 – January 30, 2009*

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

In the early morning hours during the Summer of 2008, the Complainant was traveling as a passenger in a vehicle operated by his girlfriend, Witness #1. The vehicle, a low-rider style truck, was pulled over two times in the downtown area of Boise because it was missing its rear license plate. About 12 minutes after the end of the second stop, the truck was stopped a third time in the area of 22<sup>nd</sup> Street and State Street. Officer #1, who made this stop, was not one of the officers who had previously stopped the truck. Officer #1 had contact with both Witness #1 and the Complainant. A two-person police unit came to assist Officer #1. Officer #1 issued a citation to Witness #1 and then ended the enforcement contact. This contact was recorded on a digital recorder by Officer #1.

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

The Complainant contacted the Office of the Community Ombudsman by telephone the day after the incident. The Complainant called about the demeanor of a Boise Police Department (BPD) officer who pulled over the car in which he was traveling as a passenger the previous night. The Complainant alleged that Officer #1 had spoken to him and his girlfriend, who was driving the pickup truck, in a rude manner and had told them to “shut up,” or words to that effect. This allegation, if proven true, would be a violation of the BPD’s Policy § 11.01.07 Relationships with Others and Demeanor.

## ***THE COMPLAINT INVESTIGATION***

The complaint investigation included conducting an interview with the Complainant and Witness #1, reviewing dispatch records, reviewing text message transmissions between Officer #1, Dispatch, and the other officers who had previously stopped the Complainant's pickup truck that same night. The audio recordings made by Officer #1, and the other officers were also reviewed.

## ***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. Shortly before 1:00 a.m., two BPD officers in a single patrol car stopped the vehicle containing the Complainant and Witness #1 for a violation relating to the display of the rear license plate and taillights. A warning was given with no citation.
2. About 17 minutes after the first traffic stop began, two different BPD officers operating in a single patrol car stopped the vehicle containing the Complainant and Witness #1 for a violation relating to the display of the rear license plate and taillights. A warning was given with no citation.
3. Twenty-six minutes after the start of the first traffic stop, Officer #1 stopped the vehicle driven by Witness #1 with the Complainant as a passenger.
4. Officer #1 issued a citation to Witness #1 for not having a rear license plate and gave her a warning regarding the taillights.

5. Officer #1 did not tell either the Complainant or Witness #1 to, "Shut up," or similar words.

### **OMBUDSMAN'S ANALYSIS**

The Boise Police Department Policy and Procedure Manual § 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.*

Witness #1 reported that Officer #1 was forceful, challenging and accusatory from his initial conversation with her. Actually, according to the digital audio recorded by Officer #1, he first asked, "How is it going?" She replied, "Just fine." Officer #1 asked, "You know why I'm stopping you obviously, right?" Witness #1 replied, "No. I don't know." After being stopped twice in the last 40 minutes for the same violation, it is likely that Witness #1 did not know why Officer #1 was stopping her. Nothing in Officer #1's tone of voice suggests that he was acting in a forceful, challenging or accusatory manner as he first made contact with Witness #1 at the driver's window. However, a few moments later Officer #1 told Witness #1, "You don't need to get an attitude with me." No "attitude" is apparent in the voice of Witness #1, other than what sounds like exasperation at being stopped three times in less than 40 minutes for the same violations. However, it should be noted that only the vocal comments of Witness #1 can be heard on an audio recording, not any non-verbal communication or behavior that may have taken place. Nonetheless, Officer #1's remark about Witness #1's "attitude" did not help the situation, but only served to add to Witness #1's sense of aggravation.

Later in the contact, Witness #1 spoke to the Complainant about calling someone named

Scott. Officer #1 interjected, "Tell Scott I said 'Hello'". Witness #1 seemed to misunderstand what Officer #1 said and said, "You said, 'Oh whoa?'" Officer #1 repeated his comment about saying hello. This extraneous exchange created added confusion and contributed to the growing animosity that Witness #1 and the Complainant were feeling.

The Complainant and Witness #1 said in their complaint that they felt demeaned when Officer #1 asked them if they had jobs. Both felt their employment status was irrelevant and an unwarranted intrusion on the part of the officer. Based on a close review of the audio recording, it appears that Officer #1 was trying to ask them how they would feel if someone told them how to do their job when they were doing it correctly. Given the already present communication problems between them and the officer, Officer #1's question about their job status served no useful purpose and merely created further misunderstanding.

The Complainant reported that Officer #1 yelled at them and told them to keep their mouths shut. Officer #1 also allegedly kept interrupting the Complainant and Witness #1. Officer #1's audio recording shows that he did raise his voice and, at times, interrupted either the Complainant and/or Witness #1. However, these interruptions seem to be the result of Officer #1 attempting to be heard over the background noise. At times, Officer #1 had to respond to both individuals simultaneously. As he would be responding to Witness #1, the Complainant would say something. This would prompt Officer #1 to reply to what the Complainant just said, which in turn would result in Witness #1 adding a comment. At times, all three of them were speaking at the same time. At one point, the Complainant interrupted Witness #1 to tell her, "Stop and listen to him for a second." At no time did Officer #1 tell either of them to, "Shut up," or words to that effect.

Witness #1 also complained that Officer #1 asked her about her criminal history and if she had been previously arrested. No such questioning is present on the audio recording made by Officer #1. It should be noted that, during one of the earlier stops, a different officer asked Witness #1 some questions related to a criminal history.

Officer #1 was dealing with two people who were annoyed by the fact that they were stopped three times in the space of less than an hour for the same equipment violation. There is no evidence that Officer #1 was aware of the previous traffic stops when he made his initial stop on the truck. His attempt at humor (Tell Scott 'hello') and his attempt to gain some understanding from them (How would you feel about your job?) only seemed to make the situation worse. But the words were not in and of themselves uncivil, uncomplimentary or designed to intentionally antagonize someone. There is no evidence that other comments attributed to Officer #1 ("Shut up," and questions about criminal records) were actually made by him.

For the reasons stated above, I have issued a finding of unfounded for violating § 11.01.07 Relationships with Others and Demeanor.

### ***OMBUDSMAN'S POLICY FINDING***

I have issued the following policy finding in response to the following allegation:

#### **Officer #1**

It was alleged that Officer #1 violated BPD Policy § 11.01.07 Relationships with Others and Demeanor by engaging in one or more of the following acts:

- Telling the Complainant and/or Witness #1 to, "Shut up," or words to that effect.
- Speaking to the Complainant and/or Witness #1 in a rude and disrespectful manner.
- Asking whether either the Complainant or Witness #1 were employed.

**UNFOUNDED**



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