



OMBUDSMAN'S REPORT

Complaint Investigation & Findings

OMB09/0023 – June 8, 2009

THE SITUATION

Shortly after 11:00 p.m. on a weekend night in March 2009, a person living in the area of the 500 block of S. 15th Street in Boise called the Ada County Dispatch Center (Dispatch) to complain about a loud party nearby. Two Boise Police Department (BPD) officers, Officer #1 and Officer #2, were sent to handle the call. After making contact with the calling party and obtaining a signature on a summons for violating the City's ordinance against disturbing the peace, the officers approached a nearby residence from which were coming loud music and raised voices. Officer #2 made contact with a small group of people standing outside in the yard and began the process of issuing the summons to a resident. Officer #1 stood back some distance and provided Officer #2 with security by watching the people and the surrounding area. A full-sized "Red Heeler" dog exited the residence through the open front door and ran directly at Officer #1. As the dog came within a few feet of Officer #1, Officer #1 drew his handgun and fired two shots at the dog. One round struck the dog in the back, causing the dog to turn and run to another part of the yard. The dog died after being taken to an emergency veterinary clinic.

THE COMPLAINT

The owner of the dog that was shot by Officer #1 contacted the Office of the Community Ombudsman and filed a complaint alleging that Officer #1's use of deadly force on the dog was unreasonable and unnecessary to prevent injury to Officer #1 or others. If this were true, the use of the firearm would have violated BPD policy § 1.01.03 – Use of Firearms in the Line of Duty.

THE COMPLAINT INVESTIGATION

The following steps were taken in the course of investigating this complaint.

1. Personal interviews were conducted with the following individuals who were present in and around the residence and its yard at the time of the incident:
 - a. The Complainant.
 - b. Witness #1.
 - c. Witness #2.
 - d. Witness #3.
 - e. Officer #1.
 - f. Officer #2.

2. The yard in which the incident took place was inspected, photographed, and measured.

3. The following records were reviewed:
 - a. Dispatch records of the call that gave rise to this incident.
 - b. The police report relating to the charge of Disturbing the Peace that was filed by Officer #2.
 - c. BPD's own review, completed by Supervisor #1, of Officer #1's use of a firearm against the dog.
 - d. Photographs of the dog while it was alive, taken at some point prior to the incident by an unknown person and provided to the ombudsman by the Complainant.
 - e. Photographs of the deceased dog taken by an unknown person and provided to the ombudsman by the Complainant.

- f. Photographs of the scene of the incident taken less than an hour after the incident by a BPD crime scene investigator.
 - g. Photographs of the deceased dog taken by another law enforcement agency officer at the veterinary clinic where the dog was taken after the shooting.
 - h. Medical records from the veterinary clinic where the dog was taken after the shooting.
4. The following officer-produced digital audio recordings were carefully examined and documented:
- a. Officer #1's continuous recording of the entire incident, beginning with the officers' contact with the person who called about the loud party and going until some minutes after the shooting.
 - b. Officer #2's continuous recording of the entire incident, beginning with the officers' contact with the person who called about the loud party and going until some minutes after the shooting.
 - c. Three separate recordings created by Supervisor #1 of his conversations with the officers and the witnesses after the shooting as he investigated Officer #1's use of a firearm.

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. Officer #1 and Officer #2 entered the yard adjacent to the entrance to a residence in the 500 block of S. 15th Street. The officers were there to serve a summons for Disturbing the Peace signed by a neighbor.
2. The officers had been informed by the person who signed the summons that, in addition to loud music and raised voices, sounds consistent with dogs barking and fighting with each other, along with people shouting encouragement to the dogs, had been heard coming from the residence and its yard.
3. The officers verified with another neighbor that dogs were known to be present at residence.
4. Officer #2, acting as the primary officer, entered the yard first and made contact with four individuals standing and/or sitting near an outdoor fire pit located several feet northwest of the front door and an adjacent porch.
5. While Officer #2 engaged in conversation about the summons with one of the residents of that house, Officer #1 positioned himself southwest of the front door on a spot in the grass from which he could observe Officer #2, the other persons in the yard, the walkway from the street, and the alley to the west of the house.
6. While standing and observing what Officer #2 was doing, Officer #1 visually scanned the yard and the alley to provide security for himself and for Officer #2. Officer #1 made no sound and did not speak to anyone after he entered the yard.
7. At this time, the door leading into the residence from the porch stood open.
8. At the time of the incident the following lighting and weather conditions were present: it was nighttime, there were scattered clouds, and it was a nearly moonless

night. In addition to any ambient light from the sky and the surrounding neighborhood, lighting in the yard came from three sources: artificial light from inside the house through the open front door, a single-bulb porch light affixed to the exterior wall of the house just north of the door, and flames from a wood fire burning in the fire pit outside.

9. A full-size adult "Red Heeler" dog ran from the porch in a southwesterly direction directly at Officer #1.
10. Officer #1 drew and fired his Glock 45 caliber handgun twice in the direction of the approaching dog.
11. One round from Officer #1's handgun struck the dog in the back.

OMBUDSMAN'S ANALYSIS

The Boise Police Department's Policy and Procedures Manual (2007 Edition) includes the following sections that relate to an officer's use of deadly force on an animal:

1.01.02 Authorization

An officer shall use only the amount of force that is reasonable and necessary to protect life, effect a lawful arrest, and/or gain control in any lawful circumstance. An officer may use deadly force when necessary to defend himself/herself or others when the officer reasonably believes that imminent danger of death or serious bodily injury exists. An officer may also use deadly force when necessary to effect the capture or prevent the escape of a subject, whose freedom is reasonably believed to represent an imminent danger of death or serious bodily injury to the officer or to others. When authorized techniques are not available or practical, an officer may also use any other reasonable force to gain control of the situation.

1.01.03 Use of Firearms in the Line-of-Duty

An officer shall be authorized to discharge firearms in the line-of-duty under the following conditions:

- *To use his/her firearm to protect himself/herself or others from what he/she reasonably believes to be an imminent danger of death or serious bodily injury.*
- *To use his/her firearm to effect the capture or prevent the escape of a felony suspect whose freedom is reasonably believed to represent a significant threat of serious bodily injury or death to the officer or other persons.*
- *During firearms training sessions as directed by the firearms instructors.*
- *To shoot an animal as outlined in **11.03.24 Treatment of Animals**.*

An officer shall not discharge firearms:

- *As a warning*
- *In any misdemeanor case*
- *When the discharge of the weapon may unreasonably endanger the lives of persons not involved in the commission of the crime in progress*

11.03.24 Treatment of Animals

No employee shall willfully subject any animal to cruel treatment or willfully neglect the necessary humane action which the circumstances may require. The killing of animals shall be justified:

- *To prevent injury to the officer or others*
- *Upon supervisor authorization when the animal must be destroyed to prevent further suffering for humanitarian reasons under the following conditions:*
 - *After the failure of attempts to obtain quick assistance from an agency responsible for the disposal of animals.*
 - *In the case of domesticated animals, only at the owner's request or attempts to contact the owner have been unsuccessful.*
 - *When the supervisor has determined that the animal can be shot without posing a hazard to persons or property.*

BPD officers are authorized to use deadly force (a firearm) against an animal to prevent injury to themselves or others. The injury prevented need not be life-threatening or even grave. Under such a policy, any bite wound would reasonably be considered injurious. Thus, the prevention of a dog bite by means of deadly force would be authorized under existing BPD policy.

The central question to be addressed in this case is whether or not Officer #1 reasonably believed that the dog was about to injure him and, as a consequence, shot the dog to prevent such an injury.

Officer #1 clearly felt threatened by the sudden approach of a medium size (approximately 50 to 60 pounds) dog. Officer #1 described how he was not aware of the dog's presence until it came off the porch and began running directly at him with its teeth bared. In addition, it must be considered that Officer #1 had been told by the person who signed the summons that the sound of dogs fighting and people shouting encouragement to them had been heard coming from the residence. Given such information, upon entering the yard Officer #1 was alert for any sign that dogs, especially ones who might be vicious, were present.

Both Witness #2 and Witness #3 stated that they watched from where they were standing near the fire pit as the dog ran off the porch and charged directly at Officer #1. Witness #2, who, by all reports had not been drinking that night, said that she saw the dog run right at Officer #1 and get within 2 to 3 feet of him before Officer #1 fired his gun. Witness #2 and Witness #3 both told Supervisor #1, and me several days later, that Officer #1 had no other real choice and that they would have done the same thing had they been in Officer #1's position. All three witnesses expressed regret that the dog had been shot, but none were critical of Officer #1 for having used his handgun to protect himself in that situation. The witnesses also expressed the belief that officers should have access to something other than a gun to stop a dog from biting them.

Finally, Officer #1 also reported that the dog came off the porch and began running directly at him. He recalled seeing the dog's teeth bared and immediately concluded that the dog was about to bite him. Fearing that he was about to be injured, perhaps seriously, Officer #1 reached for his handgun, the only thing he had with him that he thought could be counted on to stop the dog and prevent it from biting him.

It should be pointed out that a dog bite can cause great harm and pain. Informal research conducted by my office produced several on-line medical and advocacy websites that document the disease and damage that can result from a dog bite to a human subject. These injuries include:

1. Infections (15% to 20% infection rate):
 - a. Bacterial infection (e.g., tetanus, pasteurella multocida, staphylococcus, capnocytophaga canimorsus, etc.)
 - b. Viral infection (herpes simplex virus, cytomegalovirus, etc.)
2. Bone and tissue damage associated with the bite
3. Pain
4. Permanent disfigurement
5. Minor to severe disability (including career-ending disabilities)
6. Medical costs
7. Lost wages
8. Reduced job productivity
9. Death

Given the totality of the circumstances, I find that it was objectively reasonable for Officer #1 to conclude that the dog running directly at him might bite him if he did not take

immediate action to defend himself and stop the threat. Given that BPD policy permits officers to use a firearm against an animal to prevent injury to self or others, I have issued a finding of exonerated for the allegation that Officer #1 violated BPD policy § 01.01.03 Use of Firearms in the Line of Duty when he fired two rounds at the dog.

OMBUDSMAN'S POLICY FINDINGS

Officer #1:

For the allegation that Officer #1's use of deadly force (his handgun) on the dog was unreasonable and unnecessary to prevent injury to Officer #1 and/or others and that it, therefore, violated BPD policy § 01.01.03 – Use of Firearms in the Line of Duty:

EXONERATED

OMBUDSMAN'S POLICY AND TRAINING RECOMMENDATIONS

Summary of Research

Informal research conducted by my office produced the following information regarding the tools that may be available for use by a BPD officer in stopping a dog attack

1. Impact weapons

The most common type of impact weapon available to BPD officers is the 21 inch expandable baton. Most uniformed officers carry this on their belt so it can be easily accessed for use in defending themselves against assault and/or to bring an aggressive person under control.

Clearly the person or animal to be controlled or deflected from attack must get extremely close to an officer (less than two feet) for an impact weapon such as an expandable baton to be effective. In the case of a dog running at an officer, such as the one under consideration in this case, it seems unreasonable to expect that the expandable baton would be anything but a weapon of last resort. The probability that an animal allowed to come within 21 inches of an officer would bite the officer is far too high for an impact weapon to be given any serious thought as a first or even a second line of self-defense.

2. O.C. (Pepper) Spray

Uniformed BPD officers are required to carry either O.C. Spray or a Taser on their duty belt. Some carry both. At the time of the incident, Officer #1 was not carrying O.C. Spray.

Oleoresin Capsicum (O.C.) aerosol, often called pepper spray, has as its active ingredient, a naturally occurring inflammatory agent derived from the cayenne pepper plant. When the active ingredient in O.C. spray makes contact with the mucous membranes of the eyes, nose, and throat of human subjects, they become immediately inflamed and swollen. According to a research bulletin issued by the National Institute of Justice (NIJ) in February 1997, this, "symptomatic swelling produces involuntary eye closure due to dilating capillaries; nasal and sinus drainage; constricted airway; and temporary paralysis of the larynx, causing gagging, coughing, and shortness of breath."

This same NIJ research bulletin cited a field study of O.C. Spray conducted with the Baltimore (Maryland) County Police Department. The study found that, of the 20 reported incidents in which officers used O.C. Spray to thwart a dog attack, there was a 100% effectiveness rate in stopping or slowing the attack. Only one out of the 20 incidents resulted in a dog bite to an officer, and that bite was so minor that no medical treatment was necessary. Ten of the 20 dogs sprayed weighed between 25 and 50 pounds, six weighed more than 50 pounds, and the remaining four weighed less than 25 pounds. One other

interesting fact reported from the study was that the officers deployed O.C. Spray against the animals at distances between three and eight feet, while the distances from which it was deployed against human subjects were much less, from one to three feet.

Our research of the use of O.C. Spray against dogs to stop an attack yielded these additional observations:

- The U. S. Postal Service has been using O.C. Spray as a dog repellent since 1961. (source: The Police Policy Studies Council)
- O.C. Spray is effective against bears and dogs, although trained dogs who are highly goal-oriented have been shown to withstand its effects. (source: The Police Policy Studies Council)
- Mace Security International, Inc., produces and markets a product (Mace® Muzzle® Dog Pepper Spray) designed to deliver a stream of O.C. Spray up to ten feet away. (source: www.mace.com)
- O.C. Spray is effective enough against dogs that Police Service Dogs must be introduced to the substance and trained to overcome its painful and negative effects so that they can continue to apprehend a suspect and/or protect their handler. (source: Connecticut Police Work Dog Association – www.cpwda.com)

The National Animal Control Association (NACA) has the following policy statement on its web site (www.nananet.org):

POLICY STATEMENT

Pepper Spray and Citronella may be used as non-lethal deterrents to deal with aggressive dogs, wildlife, or hostile people in accordance with specific training. Pepper Spray or Citronella should never be used on cats.

BASIS FOR POLICY

Chemical deterrent sprays are viable alternatives to lethal force when dealing with some aggressive animals and may provide a level of protection against hostile people. NACA recognizes that these chemicals do not work on all species of animals or people in all situations.

3. Taser

At the time of the incident, Officer #1 was carrying a TASER® Model X26 Electronic Control Device. The following description of this device appears on the website (www.taser.com) of its manufacturer, TASER International:

The TASER X26 Electronic Control Device (ECD) uses a replaceable cartridge containing compressed nitrogen to deploy two small probes that are attached to the TASER X26 by insulated conductive wires with a maximum length of 35 feet (10.6 meters). The TASER X26 transmits electrical pulses through the wires and into the body affecting the sensory and motor functions of the peripheral nervous system. The energy can penetrate up to two cumulative inches of clothing, or one inch per probe.

In training documents provided by TASER International through the same web site, the following appears:

Law Enforcement TASER devices have been an effective option for dealing with aggressive animals (mostly dogs) and have generally been successful in over 100 reported incidents as of 6/07.

Note: The animals hit thus far have been incapacitated/stunned but usually recovered instantly. The vast majority of the animals quickly left the scene and broke the wires.

When dealing with an aggressive animal, consider the difficulty involved with accurately firing the TASER device at a small, possibly moving target.

However, the Operating Manual for the TASER® Model X26 contains the following section:

EFFECTS ON ANIMALS

The nervous systems of animals differ greatly from human beings. The TASER X26C is designed to be effective on a human subject. Accordingly, it may not be as effective at incapacitating an animal as it is on a human being. The TASER X26C should not be used as sole protection from wild, uncontrollable, or attacking animals.

TASER International also markets a similar device (TASER C2) to the general, non law enforcement, public. In its answer to the question, "Does it work on animals?" the company's web site has the following:

Law enforcement officers have successfully incapacitated vicious animals with various TASER systems. The TASER C2 was designed for human use which is why the probes are deployed vertically. Most animals [sic] bodies are horizontal to the ground, so you will have to adjust the way you hold the device in order to get both probes to hit your target.

In addition, TASER International manufactures and markets a device designed specifically for use against large animals. This device has been called the TASER MX or Animal TASER. Training materials and the operating manual for this device clearly state that the device carries seven times the current as does the TASER X26 and, as such, may lead to serious injury or death if used against human subjects or small animals.

While noting the difficulty in properly aiming a Taser so that both probes make contact with the animal's body, a variety of law enforcement related web sites carry the claim that Tasers can be effective on dogs.

Finally, the National Animal Control Association (NACA) has issued the following policy statement on its web site (www.nananet.org):

POLICY STATEMENT

The use of any EMDD (more commonly known by the trade name "Taser") is not recommended by NACA for use on animals.

BASIS FOR POLICY

NACA recognizes the use of certain weapons originally designed for human restraint may cause serious injury or death to animals in situations of normal use. There is no current data to support the use of any EMDD on animals for capture or restraint. NACA does not support the use of these instruments in normal animal control activities. These of such equipment may lead to serious liability.

POLICY RECOMMENDATIONS

NACA does not recommend the use of any EMDD for control or capture of animals.

4. Firearm

All on-duty BPD officers carry a Glock 45 caliber semi-automatic handgun. This is the weapon Officer #1 used during the incident under review.

Current Relevant BPD Training

Every new peace officer in Idaho must complete a ten week Basic Patrol Academy certified by the Idaho Commission on Peace Officer Standards and Training (POST). In addition to the POST academy training, new BPD officers also complete a several weeks long Advanced Academy run by BPD's training staff, followed by a rigorous field training program. Finally, BPD provides its officers with regular in-service and block training throughout the year.

To the best of our knowledge and based on statements made by POST and BPD training personnel, BPD officers have not been given any specific education or training dealing with how best to respond to and protect themselves from dogs and other animals. At the same time, it must be noted that all BPD officers receive extensive initial and on-going training on defensive tactics and the use of force. In this training, officers are taught to respond with

reasonable force, up to and including deadly force, when they perceive a threat to their own safety or life and/or the safety or lives of others.

Recommendations

1. POLICY RECOMMENDATION: None

BPD's policy with regard to the treatment of animals (§ 11.03.24) makes it clear that, when having to chose between the safety of a person (be that an officer or any other person) and the possibility of harming an animal, officers have the authority to use necessary force to prevent human injury. I do not recommend any change to this common-sense policy.

2. TRAINING RECOMMENDATIONS:

- a. I recommend that BPD conduct additional research concerning the effectiveness and viability of officers using a Taser and/or O.C. Spray to stop the threat of a charging or attacking animal.
- b. Based on the results of the research recommended above, and with the assistance of those skilled in defensive tactics training, I recommend that BPD regularly train its officers on those tactics that will most effectively prevent them from being injured by animals while minimizing (to the extent possible) injuries inflicted on an animal and clearly placing the highest value on human safety.



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MEMORANDUM

June 9, 2009

TO: Pierce Murphy
Boise City Ombudsman

FROM: Captain William Bones
Office of Internal Affairs

RE: OMB 09/0023

I have directed follow up research on the use of OC Spray and Tasers on animals and if we need to update our training models to include greater direction on their use against animals. Included will be recommendations for tracking use of either Tasers or OC on animals and the effectiveness of the application. We will also conduct training on dangerous animals and how do deal with them within the next year.

If you have any questions, please call me at 570-6161. Thank you.

Boise Police Department