



OMBUDSMAN'S SPECIAL REPORT

Review of the Boise Police Department's Boise Area Narcotic and Drug Interdiction Team (BANDIT)

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by

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Interim Community Ombudsman



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AUTHORITY

The Boise City Council created the Office of the Community Ombudsman (OMB) on July 20, 1999 and amended the ordinance on August 25, 2009. Under this ordinance, the Office of the Community Ombudsman has the authority to exercise its duties and responsibilities with regard to any and all law enforcement and police activities. In addition, the OMB has the authority to develop specific policy recommendations. The goals of policy recommendations include improved professionalism, safety, effectiveness, and accountability.

BACKGROUND

The Boise Area Narcotic and Drug Interdiction Team (BANDIT) is a unit of the Boise Police Department. A small group of BPD detectives and sometimes persons assigned from other agencies are headed by a sergeant assigned full time to the unit. A lieutenant oversees BANDIT and another specialized unit. Both of these units fall under the command of the Criminal Investigation Division, headed by a captain. BANDIT is responsible for investigation of major narcotics and drug trafficking cases. They also often work on other vice related cases such as gambling, prostitution, and human trafficking.

In the spring 2011 a member of the Boise Police Department (BPD) Command Staff received an anonymous report of inappropriate conduct on the part of a member assigned to BANDIT. After some preliminary investigation showed there was cause, the commander sent the information to the Office of Internal Affairs (OIA) for investigation. In the course of this investigation other allegations of misconduct against this officer and others came to light. Subsequently, a complaint was made to the Federal Bureau of Investigation (FBI) by a citizen and an FBI criminal investigation was opened.

BPD opened several investigations to review potential policy violations. As a result of those OIA investigations, two employees no longer work for BPD and one employee was suspended, all for violations of BPD policy. The FBI presented a case to the Federal Grand Jury, but no indictment was returned. When all possible criminal and personnel investigations were completed, it was determined that an OMB inquiry was warranted.

The purpose of this inquiry was to review policy, procedure, practices, and training of the BPD's BANDIT unit. In order to accomplish this goal, the OMB interviewed many past and current members of BANDIT, including supervisors and managers. Also interviewed was a member of the City Staff who has conducted reviews of the BANDIT unit. Past and current policies and procedures were reviewed. These were examined and compared with best practices of other agencies.



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In comparison to the problems other narcotics units have faced (Detroit, Philadelphia, and Los Angeles, to name a few) the problems confronted by BPD are relatively minor. But even these minor problems, given the standards expected of them, are unacceptable.

SITUATION

It should be remembered that most of the alleged policy violations discussed in this report occurred nearly four years ago and many of them allegedly occurred even years before that. Most of the current staff were not part of BANDIT when the violations were alleged to have occurred.

The alleged policy violations reported to OIA included misuse of department equipment, using assets before cases had been adjudicated, misuse of department vehicles, and improper handling of evidence. Each of the specific allegations was investigated by OIA and has been reviewed by the OMB. The OMB found all of the OIA investigations were fair, complete, objective, and thorough and the findings were supported by the evidence. BANDIT has been put under a microscope and, as in any agency put under that level of scrutiny, areas of improvement were found. As a result, several Department and unit policies and procedures have already been changed.

Assignment of Personnel

Previously, officers applied for open vacancies in any specialized unit, including BANDIT. A key component of the selection process was an interview panel composed of BANDIT detectives and narcotics detectives from other agencies. Selected officers were then appointed to the position. Officers remained in the position until they selected to transfer to another unit.

Oftentimes, officers who desired to promote to sergeant would request assignment to patrol as this increased their chances of promotion given the heavy dominance of patrol related material on the promotional examination. Officers could also bid for other specialty positions such as other detective or traffic unit assignments. It also happened, that for one reason or another, the unit supervisor might suggest to someone that his performance in the unit was not meeting expectations and it would be suggested that he should request a transfer to another unit.

Recognize that undercover narcotics work is a specialized, very different type of police work. It generally means working nights and being subject to long days and call outs during time off duty. The work is different from patrol or other specialized assignments. A good patrol officer or detective might not flourish as an undercover narcotics officer.

Given the then policies of BPD an officer could remain in the unit for many years. Ten or fifteen was not unheard of. However, in recent years, BPD revised its practice regarding the assignment of personnel to specialized units. Currently, all specialty assignments are for a maximum of six years with the possibility of the assignment being extended for one additional year. This new



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practice is applicable to all Department specialty assignments, not just BANDIT. However, the practice is not retroactive and officers assigned under the old practice will be allowed to stay beyond six years as allowed under the old system. Only one detective currently assigned to BANDIT was assigned under the old system and he will be allowed to serve beyond six years should he so choose.

The mandatory rotation of personnel is not without its detractors. Valued, experienced, high performing personnel are required to leave only because of some arbitrary time limit. The personnel leave and take valuable training and experience with them. Some argue that this is balanced by placing that training and experience in other units within the department where this experience can be shared. A continued rotation also opens specialized assignments to other personnel allowing them to grow in terms of training and experience.

Recommendation:

It is recommended that BPD review the six year assignment to specialized assignments several years from now to make sure that the pros continue to outweigh the cons of such a policy.

It is recommended that the current practice of six year specialized assignments be formalized through a written policy as is the norm. An unwritten policy or practice is too easily changed or ignored. The assignment of officers to specialty positions is an important part of the culture and attitude of the Department. As such it should be incorporated into the framework of the Department.

It is recommended that the Department consider using other personnel selection processes in addition to those already used. These extra processes would be especially applicable to undercover narcotics units such as BANDIT. These additional processes could include polygraph examinations, psychological examinations, and/or personal financial examinations for those applying to certain specialized units.

The polygraph examination would be used to make sure that no applicant had committed any serious violations as a police officer, i.e. accepting a bribe, planting evidence, stealing evidence, etc. It should not be used to ferret out minor previous policy violations. The psychological examination would be used to screen for officers suited for the very different work required of an undercover detective. The financial screening for large debts would assist in identifying personnel susceptible to temptations related to bribery or theft.

Handling of Items Seized for Asset Forfeiture

Certain seized items can be ordered forfeited if it can be shown that they were obtained illegally used in the furtherance of a crime. The police regularly seize items during drug investigations



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because they were the proceeds of a criminal act, i.e. money obtained by selling illegal drugs or were purchased using illegally obtained monies. Items used in furthering the crime may also be seized, i.e. vehicles used to transport drugs, computers used to exchange information about drug sales.

There are strict legal processes that must be followed before an item seized can be forfeited. These processes are civil in nature and are handled separately from the criminal case. The Ada County Prosecutor's Office handles these cases, but they are handled by two separate units, criminal and civil, and they operate independently of one another.

In the past, some detectives would place items into Department use as soon as it had been seized and before the asset forfeiture process had begun. This is no longer allowed and is being strictly monitored by unit administrators. The unit currently has stricter standards on what and when assets will be seized pending civil forfeiture. In the past, sometimes objects would be seized in which the value potentially recovered would not justify the time and effort necessary to complete the civil forfeiture.

BANDIT currently has standards which quickly determine whether the value of the seized asset will justify the efforts to go through the civil forfeiture process. This determination is made quickly so the item may be returned to the owner before expensive storage costs are incurred.

Recommendation:

It is recommended that the department continues to closely monitor the civil asset forfeiture program to maintain the current stringent standards and follow the advice of the Ada County Prosecutor's Office regarding the handling of these potential forfeiture pieces of property.

Evidence Handling and Processing

One of the concerns raised during the series of investigations was that evidence seized during arrests and the execution of search warrants was not being handled properly. There were even allegations that property was stolen by some detectives for their own use. One of the problems discovered was inadequate procedures existed for the handling of some evidence and that some of the then existing procedures were not rigorously followed. The previous practice was for some evidence to be held at the BANDIT office and some was to be placed into evidence at the Ada County Property facility where BPD normally placed evidence.

Generally, when a search warrant is executed, pairs of officers search specific areas and when an item to be seized is located they call it to the attention of the officer designated as the evidence collection officer. The evidence is then generally photographed in place, documented in the evidence log, packaged, marked with an evidence tag, and transported to the Ada County Property facility for booking.



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The distinction between evidence held at BANDIT and that booked at Ada County Property is generally dependent on size and type. One example was of marijuana plants and related equipment seized from large growing operations. The plants and equipment were large, bulky and the uprooted plants needed to be dried before disposing of them. Then as now, these large, bulky items are held in a secure facility at the BANDIT office. Currently, the items are better sorted, labeled, and stored with evidence bar codes attached. Procedures have been updated to reflect the current needs of the unit and are rigorously enforced through internal audits by the unit supervisor and manager.

Currently, the unit procedures for disposing of this equipment is logical and well thought out. Cases are monitored and, as soon as practical, when the evidence is no longer needed for court, it is disposed of. Some items are donated to schools or other community groups where practical, and in some cases the items are sold at auction or destroyed.

Recommendation:

It is recommended that BPD continue to closely monitor and audit the evidence handling and processing procedures and practices within BANDIT. This may include increasing the role of units from outside of BANDIT such as OIA in conducting regular audits.

Handling of Cash

It is not uncommon for large amounts of cash to be involved in drug enforcement investigations. Often, the undercover detectives use department funds to purchase drugs and when arrests are made or search warrants executed, cash controlled by the suspects is seized. In large cases, tens of thousands of dollars in cash may be seized. In the past, the cash would be counted by two officers, sometimes with cash counting machines, placed into evidence, tagged, and booked into evidence.

On a least two occasions when the money was taken out of evidence, the amount did not match the amount reported at time of the seizure. Subsequent internal investigations showed that the error was caused once by a human counting error and once by an apparent misuse of the currency counting machine.

Current procedure has been changed to reduce the chance for errors by the persons handling cash. The current procedure is to seal large cash seizures into evidence bags tagged with the usual information including the names of the officers handling the cash. The cash will then be taken to a local bank by a supervisor/manager and the bank will count the cash in the presence of the officer. The bank will use bank certified counting machines and will involve multiple employees. The cash will be resealed in the evidence bag and placed into Ada County property.



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The BANDIT unit maintains a not unsubstantial amount of cash to use in its investigations (referred to as Buy/Investigation funds). This cash is maintained almost like a petty cash fund with a certain figure maintained and funds added regularly as funds are withdrawn. Withdrawals are documented in a written form signed off by the detective receiving funds and a supervisor approving the use of funds. The regular accounting of the funds is done by civilian administrative staff subject to audits by the supervisor. The unit manager does unscheduled audits on a regular basis. Audits are also performed by staff from the Police/Fire Finance Unit which is separate from the BANDIT unit. During the OIA investigations of the past, there were no allegations made concerning the potential misuse of these funds.

An audit of these funds by the Boise City Office of Internal Audit in 2008 found a strong set of processes and procedures in place. The personnel handling the funds were reported to be diligent in the performance of their duties. However, the auditor found that there was a basic set of accounting controls was lacking. Following that report, procedures were modified to comply with the auditor's recommendations.

Recommendations:

The reported purpose of maintaining the cash as evidence is to allow the prosecutor to show the jury the cash that was seized. This is rarely actually done. For security purposes, large amounts of cash are not brought to court. Testimony is generally given as to the amount of cash and the denominations seized. Photographs can then be shown to the jury of the actual cash which shows them the physical size of the stack of bills. Currently, large cash seizures are taken to the bank to count them. The cash is then taken to be booked into property. Instead of counting the cash at the bank and removing it, it could be deposited into a special account at the bank and left there. This would simplify the handling and documentation of the cash as evidence.

Many other law enforcement agencies (including Federal) allow cash seized to be directly deposited into a special bank account maintained for this purpose. The cash is then disposed of according to the courts after the case is decided. The cash can be seized through a civil forfeiture case or it can be returned to the owner or other party as dictated by the court.

It is recommended that BPD work with the Ada County Prosecutor's Office to review the treatment of cash as property that must be held as evidence.

It is recommended that BPD continue to follow the current procedures regarding the use of the Buy/Investigation funds with regular audits by the unit supervisor, manager, and Police/Fire Finance staff as is currently practiced.

Use of Department Equipment

In the past, detectives were often allowed to take department equipment home for their personal



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use. This equipment included a ladder, pressure washer, and safes. The use of this equipment at home presented no cost or loss to the department. However, some people may have seen this as an open door and allegations were made about some detectives using other Department equipment which had not been authorized. This equipment included cameras, computers, and video recording equipment.

These practices ended years ago. No employee is allowed to use any department equipment for their personal use. The culture and attitude has changed and detectives no longer think that they could or should use Department equipment for personal use.

Recommendation:

It is recommended that BPD continue to maintain their oversight of the use of Department equipment and their vigilance against any back sliding to the old standards.

Use of Department Take Home Vehicles

Allegations were made that some detectives violated the department's policy regarding the personal use of take home vehicles. None of the allegations were sustained. However, the general attitude within the department seems to be that generally "we trust our officers" not to violate the policy, but will deal with any possible violation when it is brought to our attention.

Many BPD officers have take home vehicles, some marked units and some unmarked units. The value to the officers is obvious and not insubstantial. They save the cost of driving to and from work. The Department gains officers who are able to respond directly to incidents with their equipment when needed. Those working at sites other than the police facility (school resource officer) can respond directly to their other work site (school). Many officers, supervisors, and managers are subject to being called out when off duty.

There does not appear to be any audit mechanism in place to find potential violations. While officers record vehicle mileage when they fuel their vehicles, apparently there is no procedure in place to monitor or examine this mileage information. A review of Department records shows three cases of officers being disciplined for violating the Department policy regarding the use of take home vehicles. In all three cases, the incident was brought to the attention of the Department because of a review caused by collisions (2) and citizen complaint (1). None of the violations were discovered by the Department because of internal audit or supervisor review.

Recommendation:

It is recommended that the Department institute procedures to actively monitor use of Department take home vehicles.



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CONCLUSION

The problems with which BPD was confronted in 2011 were not policy, procedure, or training failings. They were human failings. Human beings made poor decisions which resulted in their doing things which were already prohibited. Other human beings failed to become aware and take action on these problems before they escalated. As long as BPD must hire from the human race, human failings are always going to be possible.

When BPD became aware of the problems action was taken to address them. Some of these actions were personnel actions and some moved to strengthen policies and procedures. The Office of the Community Ombudsman has suggested other areas for policy and procedure review. But the greatest danger to the Department is that the lessons learned as a result of these series of incidents will be forgotten over time. As years go by with no further problems, the danger becomes that the additional checks, audits, and reviews put in place are reduced or ignored. And we repeat the problems of the past.

A handwritten signature in black ink, which appears to read "Dennis Dunne".

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BPD's response follows.



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Chief Michael Masterson provided the following response to the Ombudsman's Report:



Date: January 16, 2015
To: Dennis Dunne, Interim Ombudsman
From: Michael F. Masterson, Chief of Police
RE: BANDIT Audit

MEMORANDUM

All Boise Police employees are expected to perform their duties with the highest amount of professionalism and integrity. These expectations are reinforced by policy and training designed to keep department operations within recognized best practices and the highest of professional standards.

Members of the Boise Police Narcotics Unit perform some of the most essential yet complex and dangerous work done in law enforcement. Several years ago, the department identified potential misconduct within that unit that led to numerous internal and external investigations. Although the allegations involved a very small number of people, the resulting investigations have put the unit through years of scrutiny, including the department own internal investigation which the Ombudsman found "fair, complete, objective and thorough". Many members of the department have been interviewed numerous times and have cooperated fully while continuing to perform their daily duties at a very high level. Members of the BANDIT unit have continued to provide high quality investigations and remain vigilant in efforts to disrupt and dismantle narcotics organizations in the Treasure Valley. I thank all those involved for their conscientious efforts to improve department processes and accountability, with the end result being a more effective, efficient police department.

Review of department processes for purposes of identifying improvement is always ongoing. I appreciate the opportunity to comment on the review and recommendations made by the Community Ombudsman.

Assignment of personnel

To increase the depth of training and expertise for personnel throughout the agency, the Boise Police Department caps the length of time an individual member can spend in a specialty unit assignment. This applies to all specialty units and has been in place for approximately five years. The practice has resulted in more well-rounded employees throughout the department better prepared for leadership and advancement. As noted in the Ombudsman's report, these limits

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in place prior to the investigations concerning the narcotics unit. For flexibility in department management, these limits are not written into policy but are written into the procedures for selection processes. As all members of the department are expected to perform their duties at levels of professionalism, additional tests or checks for internal selections into any one unit are planned at this time.

Handling of seized items

The Ombudsman recognizes the strict procedures currently in place between the police department and the Ada County Prosecutor's office for tracking of potential forfeiture pieces of property as efficient and adding accountability. As suggested, the department will continue to closely monitor the civil asset forfeiture program. The department has and will continue to provide training for employees done by members of the Ada County Prosecutors office to ensure proper compliance.

Evidence Handling

The BPD concurs with the Ombudsman's recommendation to continue to closely monitor and audit the evidence handling process. This is being done and emphasized with new supervisors. The Office of Internal Affairs conduct audits yearly on evidence handled by BANDIT, which will continue.

Handling of Cash

After review of best practices for handling cash evidence, the department last year adopted a practice of placing all seized monies into a sealed evidence bag which is taken to a local bank for counting. Two bank employees count the cash in the presence of BPD employees. The money is then deposited directly into a dedicated bank account. The department will continue to work with prosecutors on the issue of using cash as evidence. As noted, a system of audits for funds used in investigations is also in place and has been expanded to include an audit by Police/Fire Finance staff.

Use of Department Vehicles

Take home vehicles provide a business need for the department in response and productivity of employees in several units and assignments. New fleet management software allows the department to run mileage reports indicating vehicle use. Mileage audits are a helpful tool but based on the variety of assignments, difference in the nature of calls and other factors, number of miles driven is not an indicator of misuse. A certain amount of trust must exist that employees are aware of take home vehicle policies and comply with department training and expectations. Any allegation of a violation of those policies is actively investigated, as noted in the Ombudsman's review. Supervisory review, training and other monitoring will remain in place.