



December 31, 2011

Final Investigative Report Concerning Ombudsman Complaint 2010-0023

COMPLAINT

A citizen filed a complaint that she was assaulted by an APD officer on or about July 18, 2009, after which the officer issued a ticket (Traffic Offense No. A3411640), which was, in part, a subject of this investigation. Although the complainant contacted this office on several occasions asking the Ombudsman not to continue the investigation, because these issues have been pending for over two years, it seemed prudent to conclude this investigation with a written report.

INVESTIGATION

The investigation of the complaint included the following:

- Reviewed the materials that complainant provided. (However, our office did not review the binder of documents the complainant prepared regarding other court cases involving the APD officer involved in this incident because those are not relevant to this complaint.)
- Reviewed an Alaska Court System CD in the trial, MOA v. _____, 3AN-09-17745 MO, held on October 16, 2009, before the Traffic Magistrate.
- Reviewed the APD Internal Affairs (IA) report regarding the complaint that was filed with IA in or about August-September 2009 regarding the July 18 incident.
- Discussed this complaint with the complainant on the following dates: 3/1/11 (3.0 hours); 3/25/11 (Patty Smith); 3/28/11 (1.1 hours); 3/29/11 (Patty Smith); 10/11/11 (1.0 hours), in addition to several other conversations during 2011.

The Ombudsman's Office asked to meet with complainant and her husband because her husband was present at a meeting with APD IA officer, which is an issue mentioned below, as well as asked to review the complainant's prepared statement that she intended to read at the trial on October 16, 2009. However, the complainant and/or her husband declined to meet and the complainant declined to provide her prepared statement.

FINDINGS

(1) The complaint alleging that the complainant was assaulted by a police officer is indeterminate; that is, there is not sufficient evidence to determine whether the allegation is valid or not valid. (2) The allegation that the officer lied at the trial is not jurisdictional to the Ombudsman because the complainant brought the matter to the attention of the courts when she disputed the traffic offense and she could have resolved this issue on appeal. (3) The allegation that the complainant was "gender profiled" by the traffic offense is also not jurisdictional because the complainant could have filed a timely complaint with one of the compliance agencies regarding gender discrimination. As to the other issues, (4) the issue regarding the APD IA investigation is not justified or not

supported; (5) the issue claiming the officer made inappropriate use of the complainant's social security number after issuing her the ticket is not justified or not supported; (6) the issue that the complainant believed the information she received was a threat from the officer or the municipal attorneys is not justified or not supported; and (7) the issue that no one at the Municipality has listened to or heard her concerns is not justified or not supported.

ANALYSIS AND CONCLUSION

Complainant alleges she was assaulted by a police officer. The complainant claimed that she was assaulted by an APD officer, prior to him issuing her a ticket (Traffic Offense No. A3411640). The complainant contested the ticket at trial on October 16, 2011; she described the alleged assault and provided the court with photographs of her alleged injuries. A recording of the trial was reviewed by this office. At the end of the trial, the traffic magistrate found the complainant guilty of the traffic offense and returned the photos to her. The complainant's allegation – that the officer assaulted her using excessive force prior to issuing her the ticket – cannot be resolved by the Ombudsman. **Because there were no objective witnesses, the investigation did not provide sufficient evidence for the Ombudsman to determine conclusively whether the allegation is valid or not valid. A.M.C.R. 2.60.003.G.4. The Ombudsman's finding, regarding the allegation that that complainant was assaulted by a police officer prior to his issuing her the ticket, is indeterminate.**¹

Complainant alleges the officer lied at the trial. The complainant alleges that the APD officer lied in the trial on October 16, 2011, regarding the circumstances surrounding issuing the ticket (Traffic Offense No. A3411640). However, the complainant did not appeal the traffic magistrate's verdict of "guilty." The complainant contested the traffic ticket; she should have appealed the guilty verdict if she wanted to dispute the officer testimony at trial. Although the complainant states she didn't know she had a right to appeal, a widely accepted legal theory is that ignorance is no defense of the law. The complainant's allegation – that the officer lied at the trial – was an issue that should have been resolved by the court. **The Ombudsman declines to address this issue where the complainant brought the matter to the attention of the courts for resolution (See, A.M.C. 2.60.120.A.) and the issue could have been more appropriately resolved by hearing or appeal for which the complainant could have made timely application. (See, A.M.C.R. 2.60.002.A.1.)**

The Complainant disagrees with the IA Investigation. The complainant filed a complaint with APD Internal Affairs regarding the incident that occurred on July 18, 2009 and disagreed with the IA investigation. The Ombudsman's office reviewed the IA report. The Ombudsman's understood that IA advised the complainant at the conclusion of its investigation that her complaint was "not

The Ombudsman advised the complainant that she has a right to file a law suit regarding her allegation of assault or excessive force; she was referred to a private attorney to pursue any potential claims that she may have; she was advised to consult with a private attorney regarding any deadlines that she may have to file such a claim. The Ombudsman understood that the complainant had a personal friend who is an attorney or judge and she indicated she had consulted with this person regarding these issues. In addition, since the complainant stated she was injured by the police officer, she was referred to the Municipality's Risk Management Office at 343-2529 regarding any potential injuries that she may have incurred.

sustained,” which this office understands to mean there is no evidence to prove the allegation one way or the other. Although the complainant objected to IA’s finding, there is nothing in the finding that would allow the Ombudsman to take any action because the finding was not contrary to law or unreasonable - the complainant merely disagrees with it. **Thus, the issue regarding the APD IA investigation is not justified or not supported – that is, the complainant’s allegation is not valid.**

The Complainant alleges she had problems after giving the officer her SSN. The complainant stated that after giving her social security number to the APD officer, she started getting junk mail and hang up phone calls and stated she believes that the officer did something with her social security number. As part of this investigation, APD reported to the Ombudsman’s Office that it uses social security numbers in a “closed law enforcement system” meaning it enters confidential information of a person based on his or her social security number, but the information is not available to anyone outside of law enforcement agencies. **Thus, the issue that the APD officer made inappropriate use of her social security number is not justified or not supported – that is, the complainant’s allegation is not valid.²**

Complainant alleged that she considered information that was provided to her by the Ombudsman’s Office as a threat. The complainant stated that she received a one-page document from the Municipal Ombudsman’s Office in 2009 or 2010, which she considered a “threat” from the “municipal attorneys or whoever represents” the APD officer that ticketed her. The Ombudsman’s investigation determined that the one page document was a copy of a page from the hard copy of the Anchorage Municipal Code, Sec. 8.20.010, “Resisting or interfering with a peace officer.” This document was provided to the complainant from the Municipal Ombudsman’s office in 2009 or 2010; it was not from the “municipal attorneys” or anyone who represents the APD officer who gave her the ticket. **Thus, the issue regarding the allegation that the complainant considered the information she received a threat by the officer or the municipal attorneys is not justified or not supported – that is, the complainant’s allegation is not valid.**

Complainant alleged that she believed she was “gender profiled.” The complainant stated that at a meeting at her home regarding the APD IA investigation of this incident, the IA officer allegedly stated, “This is the ticket we give to hookers on Spenard.” The complainant stated that by giving her this ticket, she was “gender profiled.” The Ombudsman did not investigate this allegation. The issue of whether or not the IA officer made this statement and that the complainant believed she was “gender profiled” are not relevant to the complainant’s allegations that an APD officer assaulted her. The complainant was advised to contact one of the compliance agencies, such as the Anchorage Equal Rights Commission or the Alaska State Commission for Human Rights, regarding any claims of gender discrimination, and to the Ombudsman’s knowledge, she declined to do so. **The Ombudsman declines to address this issue that the complainant believes she was**

² The complainant is advised that if she receives unsolicited junk mail and phone calls, she may wish to look at the Federal Trade Commission (FTC) Consumer Alert website to address any problems regarding unsolicited mail and phone calls, at <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt063.shtm>. This webpage includes information about the www.donotcall.gov and www.dmachoice.org as well as other options for stopping unsolicited mail and phone calls.

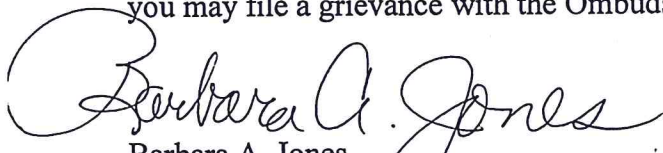
“gender profiled” because the issue could have been more appropriately resolved by filing a complaint with one of the compliance agencies for which the complainant could have made timely application. (See, A.M.C.R. 2.60.002.A.1.)

Complainant alleges that no one has listened to her. Complainant claimed that no one in the Municipality has listened to or heard her concerns. The Ombudsman’s investigation of this complaint alone included at least five lengthy conversations with the complainant and the Ombudsman’s staff during 2011. In addition, this office had several contacts with complainant in 2009 and 2010, and referred her to APD Internal Affairs. The Ombudsman’s investigation revealed that the complainant spoke to APD’s IA officer, as well as to the Municipal Attorney. The complainant spoke to an Anchorage Assembly member who referred her to the Ombudsman’s Office in 2011. The complainant reported that she spoke to a state legislator, the Anchorage Police Department Employees’ Association (APDEA) President, as well as a number of other people about this matter. The Ombudsman’s conclusion is that many people from the Municipality have both listened to and heard the complainant’s concerns; APD IA reported the results of their investigation to the complainant; the Ombudsman reported the status of this investigation with the complainant. However, complainant’s expectations of what should happen (such as the officer being removed from APD) are unrealistic. **Thus, the issue that no one at the Municipality has listened to or heard her concerns is not justified or not supported – that is, the complainant’s allegation is not valid.**

For all of the above reasons, this complaint with the Municipal Ombudsman’s Office is closed.

A preliminary report regarding this matter was provided to the Anchorage Police Department.

If you object to the Ombudsman’s decision to decline or discontinue this investigation or review, you may file a grievance with the Ombudsman as specified in A.M.C.R. 2.60.006.


Barbara A. Jones
Municipal Ombudsman