

## PUBLIC EXECUTIVE SUMMARY - Ombudsman Investigation

### Division of Parks and Outdoor Recreation, Department of Natural Resources

### Complaint A20180352

The Alaska State Ombudsman investigated a complaint made on March 21, 2018, that the Division of Parks and Outdoor Recreation did not follow agency policy in the investigation of a report of an assault allegedly committed on August 2, 2017. The Ombudsman discussed the course of this investigation and the findings and recommendations with Division Director Ethan Tyler on August 28, 2018, as required by 21 AAC 25.200(a). The Ombudsman provided a preliminary report pursuant to AS 24.55.180 to the agency on August 30, 2018. Director Tyler provided the agency's response by email on October 19, 2018. This public executive summary of the investigation, findings, and recommendation is provided pursuant to AS 24.55.200 and 21 AAC 25.430.

## Introduction

A fisherman reported an alleged assault to the Division on August 4, 2017. A Park Ranger interviewed the fisherman about the alleged assault on four occasions (August 4, August 6, August 8, and August 15, 2017). The fisherman reported that he and a friend were fishing on a gravel bar near Dow Island on the Kenai River, within the Kenai River Special Management Area, on August 2, 2017. He reported that a boat belonging to the Complainant approached him and, when the boat was 8-10 feet away, it turned abruptly and came directly toward him at 10-15 miles per hour. The fisherman stated that he thought the boat was going to hit him, and that he was afraid he would be pinned underwater and would drown. He reported being forced to move out of the way immediately. He reported that the boat stopped one foot away from him. He stated that he asked the Complainant if he intended to hit him with the boat, to which the Complainant answered he did not.

The Park Ranger inspected the place where the alleged assault occurred and confirmed that the Complainant owned a boat matching the fisherman's description. The Park Ranger interviewed the Complainant, the fisherman, and his friend who witnessed the event. After establishing the facts based on these statements, the Park Ranger consulted with three law enforcement officers

from the Department of Public Safety (DPS). Based on these consultations, the Park Ranger conducted additional interviews and added additional information to the investigative report.

The Ombudsman interviewed two of the law enforcement officers that the Park Ranger consulted in the course of the assault investigation (the third was retired from state service). Both officers confirmed that they had spoken with the Park Ranger about the investigation. One officer described the law enforcement environment in the Kenai River region. He explained that the five (5) state, federal, and local law enforcement entities — including the Division of Parks — communicated regularly and coordinated efforts to maximize each agency’s limited resources to provide public safety in the area. Reductions in Alaska State Trooper resources have resulted in a greater reliance on park rangers to investigate reports of crime on state park lands.

The Park Ranger followed division policy by securing a photographic line-up from DPS. The Park Ranger had no influence over the photo line-up beyond naming the suspect to be included. A second Park Ranger conducted the line-up with the fisherman and his friend who witnessed the alleged assault. The fisherman positively identified the Complainant from the line-up. His friend did not.

Based on the investigation and identification by the fisherman, the Park Ranger prepared charging documents. The Complainant was charged with Assault in the Third Degree (AS 11.41.220(a)(1)(A)): recklessly placing another person in fear of imminent serious physical injury by means of a dangerous instrument (his boat). The charging document included a probable cause statement that outlined the incident as described above. The charging document included a statement that “Alaska State Park Rangers and Alaska Wildlife Troopers have received numerous harassment complaints about [the Complainant] and the unsafe manner in which he operates his boat near fishermen legally fishing near his property.”<sup>1</sup>

The Park Ranger requested an arrest warrant and provided it to the Alaska State Troopers in Soldotna to serve. The Complainant, through his attorney, arranged to turn himself in to the Kenai Police Department.

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<sup>1</sup> August 15, 2017, Criminal Complaint.

The assault charges were subsequently referred to the Grand Jury. The Grand Jury returned an indictment of Assault in the Third Degree (a class C felony). The District Attorney reported that his office collected additional evidence, expecting to find support for the allegation of a pattern of unsafe operation of his boat and harassment of fishermen by the Complainant. When that evidence did not surface, the charges were dismissed by the District Attorney on December 4, 2017.

## Allegation

Based on the facts alleged in the complaint, the Ombudsman investigated one allegation:

*Unreasonable:* The Division of Parks and Outdoor Recreation did not follow Policy 70060 Law Enforcement Authority and Structure, specifically policy 70061(A) regarding investigation of felony crimes, by failing to report the alleged felony to a law enforcement agency of concurrent jurisdiction and by pursuing an independent investigation of a felony absent any request by such law enforcement agency.

## Relevant Statutory, Regulatory, and Policy Authority

At issue in this complaint is Division policy distinguishing the procedure for investigation of felony crimes and misdemeanor crimes reported on state park lands:

### **70061 Powers and authority within the boundaries of DPOR managed units.**

It is the intent of the DPOR to provide law enforcement uniformly within state park units throughout Alaska. It is the responsibility of Rangers to detect, deter and enforce violations and criminal offenses of Alaska Statutes within state park units.

A. Rangers have the authority to make initial responses to felony offenses of Alaska Statutes committed within units of the state park system. It is the Ranger's responsibility to report such felony crimes as soon as practical to the law enforcement agency of concurrent jurisdiction that has trained personal to investigate the felony offense. In most cases, this agency will be the AST Criminal Investigations Bureau or the major crimes unit of a municipal police department. When the Ranger contacts another law enforcement agency, the Ranger may respond as requested by that agency, and may work cooperatively with that agency to solve felony crimes, with concurrence from their supervisor.

B. Rangers have authority to respond to and investigate misdemeanor offenses committed within units of the state park system and may work on misdemeanors independently or cooperatively with other agencies when appropriate.

In evaluating this policy, and the manner in which the Park Ranger conducted the investigation of the alleged assault, the Ombudsman also considered Division Policies 70020, 70030, 70040, 70050, and 70063.

The Ombudsman also reviewed AS 41.21.955 Enforcement authority:

(a) For offenses committed within parks and recreational facilities subject to the department's supervision, the following persons are peace officers of the state and they shall enforce the provisions of this chapter and the regulations adopted under this chapter:

- (1) an employee of the department authorized by the commissioner;
- (2) a police officer in the state;
- (3) any other person authorized by the commissioner.

(b) Each person designated in (a) of this section may, when enforcing the provisions of this chapter or a regulation adopted under this chapter,

- (1) execute a warrant or other process issued by an officer or court of competent jurisdiction;
- (2) administer or take an oath, affirmation, or affidavit; and
- (3) arrest or issue a citation to a person who violates a provision of this chapter or a regulation adopted under this chapter.

A peace officer is defined by AS 11.81.900(b)(45): “peace officer means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders.”

## Analysis

The Park Ranger is a “peace officer” pursuant to AS 41.21.955 and AS 11.81.900(b)(45). The Division asserted that all park rangers have completed the Alaska Public Safety Training Academy. This is an intensive 16-week program through which Alaska state law enforcement officers and many local police officers receive training in criminal investigation, police procedure, laws, and law enforcement specific skills (firearms, driving, etc.). Thus, park rangers have the same level of training and instruction as patrol officers with the Alaska State Troopers and local police forces.

Alaska law specifically provides law enforcement authority to certain Department of Natural Resources employees, to enforce state laws and regulations within state parks (AS 41.21.955). Park rangers are specifically identified as “peace officers” by the Commissioner of Natural Resources in Division Policy 70040. AS 41.21.955 does not limit the law enforcement powers of Department employees based on whether the crime reported is a misdemeanor or felony offense.

Division policy creates the distinction between the investigation of felonies versus misdemeanors. Policy 70061(A) requires that a park ranger make “initial responses to felony offenses” reported on park lands — but then requires the ranger “to report such felony crimes as soon as practical to the law enforcement agency of concurrent jurisdiction.”<sup>2</sup> After making the “report,” the ranger “may respond as requested by” the agency and “may work cooperatively” with the agency, if their supervisor allows.<sup>3</sup> Division Policy 70061(B) expressly affords park rangers “authority to respond to and investigate” misdemeanors “independently or cooperatively with other agencies.” Policy 70061 as written can be reasonably construed to require that:

- park rangers receiving allegations of felony crimes, or investigating offenses that appear to be misdemeanors but are revealed to be felonies, make a formal “report” to the Alaska State Troopers rather than pursuing an investigation; and
- park rangers refrain from investigating felony offenses unless the Alaska State Troopers “request” that they do so.

Whether a crime is a misdemeanor or felony often turns on statutory criteria, with the result that investigations of some felonies and misdemeanors would be conducted in exactly the same way by a trained and experienced investigator. This sort of distinction between a felony and misdemeanor arose in this case. The initial report by the fisherman was that the Complainant charged him with his boat, causing him to fear that he might be hit, pinned, or drowned. On its face, this crime could be reckless endangerment, a class A misdemeanor. It could be assault in the fourth degree, also a class A misdemeanor. Or, if the boat was a “dangerous instrument,” it could be considered assault in the third degree, a class C felony. It is not reasonable to expect that the Park Ranger would decide the crime to be charged **before** investigating, and then decide whether to investigate or make a felony report to the Alaska State Troopers. Instead, the Park Ranger

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<sup>2</sup> Division of Parks and Outdoor Recreation Policy 70061(A).

<sup>3</sup> *Id.*

conducted an investigation that was well within the scope of the ranger’s training and experience. The Park Ranger consulted with other law enforcement officers as the investigation proceeded, followed the advice given, and then based the eventual charge on the evidence acquired.

## Finding

The Ombudsman finds the complaint allegation *justified* based on a preponderance of evidence that the Division did not follow the express language of Policy 70061(A). Specifically, the Division did not make a formal “report” of the alleged felony assault to the Alaska State Troopers, but instead conducted a complete investigation resulting in charges of a felony assault without being first “requested” by the Alaska State Troopers to do so. However, the Ombudsman also explicitly finds that the Park Ranger reasonably and competently investigated the fisherman’s report of assault according to the training, experience, and direction from the Division — and in alignment with the intent of the policy.

The Division provided no comment on the Ombudsman’s finding: “DPOR neither agrees nor disagrees with the recommendations in the report, and we have no comments.”<sup>4</sup>

## Recommendation

***Recommendation:*** The Division of Parks and Outdoor Recreation should revise Policy 70060 to reflect the current level of training and capacity of park rangers to investigate crimes reported on state park lands.

An administrative agency’s policies and procedures define the agency’s mission and guide its day-to-day operations. They not only direct and support agency employees in the performance of their duties, but also inform citizens as to what they can expect from the agency and how the agency will interact with the public. Thus, it is important that the agency’s adopted and published policies and procedures reflect the current expectations for agency operations.

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<sup>4</sup> Email from Director Ethan Tyler to the Ombudsman, October 19, 2018.

Policy 70061 as written does not reflect the initial intent of the policy when drafted in 2010 — nor does it reflect how the Division trains and directs park rangers in the performance of law enforcement duties. The intent of the Division’s revisions of the law enforcement policies in 2010 was that park rangers would investigate crimes according to their training. When the crime reported falls outside that training, or an investigation reveals possible criminal activity outside that training, then the park ranger is expected to report it to the Alaska State Troopers or other law enforcement with the appropriate resources to investigate. Thus, just like a patrolman would report a homicide or drug trafficking to specialized units of the Alaska State Troopers, so would park rangers who received reports of or discovered such crimes.

More importantly, the current policy does not reflect the day-to-day policing demands and resources of the Kenai Peninsula (and presumably other parts of Alaska). According to interviews with both Division of Parks and Alaska State Trooper officers with knowledge of that region, law enforcement in the Kenai-Soldotna area is highly cooperative and collaborative. There are multiple federal, state, and local law enforcement agencies with overlapping geographic and subject-matter jurisdiction. None of these agencies have resources sufficient to provide public safety services in the region alone. Officers of each agency share information and allocate resources in both formal and informal ways to maximize capacity and reach.

The Ombudsman recommends that the Division amend Policy 70061, removing the distinction between investigation of felonies and misdemeanors and focusing on the competencies and capacity of park rangers as law enforcement officers. For example:

Rangers have the authority to respond to offenses of Alaska law and regulation committed within units of the state park system. If the Ranger does not have the proper training or resources themselves to conduct the investigation, it is the Ranger’s responsibility to report such crimes as soon as practical to the law enforcement agency of concurrent jurisdiction that has trained personnel to investigate the offense. In most cases, this will be AST Criminal Investigations Bureau or the major crimes unit of a municipal police department, depending upon which agency also has jurisdiction within that unit of the State Park system.

If the Ranger contacts another law enforcement agency, the Ranger shall document the report appropriately. The Ranger shall respond as directed by that agency, if direction is given, and shall work cooperatively with that agency to solve crimes. If the law enforcement agency declines to investigate the offense, the Ranger shall

consult with their supervisor to determine whether to continue to investigate the offence.<sup>5</sup>

The Division neither accepted nor declined the Ombudsman’s recommendation: “The recommendation to update the law enforcement policy will be considered as part of DPOR’s ongoing implementation and assessment of its law enforcement program.”<sup>6</sup>

## Conclusion

The Complainant alleged that the Division’s investigation of the fisherman’s report of assault on August 2, 2017, did not comply with Division Policy. The Ombudsman conducted an objective investigation of how the incident was investigated, and how the Division is implementing the relevant policies. While the evidence does show that the Park Ranger did not formally report the assault to the Alaska State Troopers when it appeared to rise to a felony offense, and that the Alaska State Troopers did not formally request the Division to continue the investigation, there is also evidence that the Park Ranger acted according to the direction received from the Division: that park rangers perform all law enforcement duties appropriate to their training and experience. Thus, the crux of the complaint is that the agency’s policies and procedures no longer reflect the realities of the Division’s law enforcement operations.

The Ombudsman appreciates the candor and assistance of Director Ethan Tyler and officers from the Division of Parks and Outdoor Recreation and the Alaska State Troopers in this investigation.

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<sup>5</sup> The sample language provided includes suggestions made by Division experts during the ombudsman investigation.

<sup>6</sup> *Supra* n. 6.