

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF POLICE COMPLAINTS**

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	08-0591
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Seventh District
Allegation 1:	Harassment
Complaint Examiner:	Arthur D. Sidney
Merits Determination Date:	February 9, 2012

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints (OPC), formerly the Office of Citizen Complaint Review (OCCR), has the authority to adjudicate citizen complaints against members of the Metropolitan Police Department (MPD) that allege abuse or misuse of police powers by such members, as provided by that section. This complaint was timely filed in the proper form as required by § 5-1107, and the complaint has been referred to this Complaint Examiner to determine the merits of the complaint as provided by § 5-1111(e).

I. SUMMARY OF COMPLAINT ALLEGATIONS

COMPLAINANT filed a complaint with OPC on September 26, 2008. COMPLAINANT alleged that on September 22, 2008, SUBJECT OFFICER harassed him by searching his vehicle without consent following a traffic stop.

The complaint was submitted in a timely manner and in the proper form.

EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based upon a review of OPC's Report of Investigation, the Objections to the Report of Investigation from the Office of Police Complaints (Objections), filed by SUBJECT OFFICER on January 19, 2011, and OPC's response to those objections, the Complaint Examiner determined that the Report of Investigation presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs., title 6A, § 2116.3.

II. FINDINGS OF FACT

Based upon a review of OPC's Report of Investigation, Complaint Examiner finds the material facts regarding this complaint to be:

1. COMPLAINANT was driving his passenger, WITNESS, at approximately 11:00pm to a McDonald's restaurant in southeast Washington when he was pulled over by SUBJECT OFFICER and MPD OFFICER for failing to stop at a stop sign.
2. SUBJECT OFFICER stopped COMPLAINANT after he turned right onto Mississippi Avenue, SE from Atlantic Avenue, SE. SUBJECT OFFICER used a loud speaker and instructed COMPLAINANT to turn off his car and roll down the windows.
3. SUBJECT OFFICER approached the driver's car and asked the Complainant to provide his driver's license, registration, and proof of insurance while MPD Officer stood near the passenger side of the car. SUBJECT OFFICER noticed an open container which was later determined to contain alcohol.
4. SUBJECT OFFICER instructed COMPLAINANT to exit his car. The Complainant asked why and SUBJECT OFFICER again repeated his instruction for COMPLAINANT to exit the car. After COMPLAINANT complied, SUBJECT OFFICER put COMPLAINANT in handcuffs and was told that he was not under arrest. WITNESS was also asked to leave the car.
5. SUBJECT OFFICER searched the passenger compartment of the car once both occupants were outside of it. Following the search, SUBJECT OFFICER put COMPLAINANT inside of his patrol car. SUBJECT OFFICER retrieved a beverage bottle filled with liquid, later determined to be alcohol, from the car. Both COMPLAINANT and WITNESS were arrested for possession of an open container of alcohol.
6. After the arrest, SUBJECT OFFICER searched the trunk of COMPLAINANT'S car.
7. SUBJECT OFFICER moved COMPLAINANT'S car to a legal parking space on the street after COMPLAINANT and WITNESS were arrested. COMPLAINANT'S car remained on the street.

III. DISCUSSION

COMPLAINANT claims that he was harassed when SUBJECT OFFICER searched the interior of his vehicle and the trunk of his car following his arrest. As discussed below, Complaint Examiner finds that SUBJECT OFFICER'S search of the inside of COMPLAINANT'S car was lawful; but, the search of the trunk of COMPLAINANT'S car was not supported by a legitimate law enforcement purpose because SUBJECT OFFICER'S scope of authority under the circumstances and, therefore, constituted harassment. *See* D.C. Code § 5-

1107(a), D.C. Mun. Regs. tit. 6A, § 2199.1, MPD Special Order 01-01, MPD General Order 120.21 and General Order 602.1.

Pursuant to D.C. Official Code § 5-1107(a), “The Office [of Police Complaints] shall have the authority to receive and to ... adjudicate a citizen complaint against a member or members of the MPD ... that alleges abuse or misuse of police powers by such member or members, including: (1) harassment.”

Harassment, as defined by MPD Special Order 01-01, Part III, Section G, includes “acts that are intended to bother, annoy, or otherwise interfere with a citizen’s ability to go about lawful business normally, in the absence of a specific law enforcement purpose.”

The regulations governing OPC define harassment as “[w]ords, conduct, gestures or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law or internal guidelines of the MPD ... so as to (1) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (2) deny or impede the person in the exercise or enjoyment of any right, privilege, power or immunity. In determining whether conduct constitutes harassment, [OPC] will look to the totality of the circumstances surrounding the alleged incident, including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices, and training of the MPD ... the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating.” D.C. Mun. Regs., title 6A, § 2199.1.

1. Search of the Car

Complaint Examiner finds that SUBJECT OFFICER did not harass COMPLAINANT when searched the interior compartment of his vehicle. According to D.C. Code § 25-1001, “no person in the District shall drink an alcoholic beverage or possess in an open container an alcoholic beverage in... a vehicle in or upon any street, alley, park, or parking area.” *See* ROI at 6; Exhibit 13. Because it is a violation of District law to have an open container of alcohol inside of a vehicle, SUBJECT OFFICER acted lawfully in entering COMPLAINANT’S car and seizing the bottle. Since the container was in plain view inside of COMPLAINANT’S car, SUBJECT OFFICER had probable cause to believe that a crime had occurred. According to General Order 602.1, Automobile Searches and Inventories, an officer is permitted to search the areas within the immediate control of a driver who is lawfully arrested if that officer has probable cause to believe that the vehicle contains “fruits, instrumentalities, contraband, or evidence of the crime” for which the driver was arrested. *See* ROI at 7; Exhibit 14. SUBJECT OFFICER therefore did not need a search warrant or the Complainant’s consent to enter the passenger compartment and retrieve the bottle, the evidence of the crime. Thus, Complaint Examiner finds that when the Subject Officer conducted the search of the interior of the Complainant’s car, his actions did not constitute harassment in violation of D.C. Code § 5-1107(a), D.C. Mun. Regs. tit. 6A, § 2199.1, MPD Special Order 01-01, MPD General Order 120.21 and General Order 602.1.

2. Search of the Trunk

Complaint Examiner finds that SUBJECT OFFICER did harass COMPLAINANT when he searched the trunk of COMPLAINANT'S car because the search was not conducted pursuant to a legitimate law enforcement purpose. SUBJECT OFFICER claimed that the purpose of his search was to locate items of value to be "placed on the books" for safekeeping at the Seventh District police station. *See* Exhibit 5; ROI at 7. Therefore, SUBJECT OFFICER performed an inventory search. According to General Order 602.1, "an inventory is an administrative process by which items of property are listed and secured." The general order goes on to state that "if a vehicle classified as prisoner's property is disposed of so that it is *not* taken to a police facility, it shall *not* be inventoried in any way." *Id.* (emphasis added). Because COMPLAINANT'S car was not seized by MPD as evidence, it would have been considered "prisoner's property." SUBJECT OFFICER had no legitimate law enforcement purpose to search the trunk of COMPLAINANT'S car. There was no probable cause to believe that a search of the trunk would provide evidence of criminal activity. Moreover, SUBJECT OFFICER should have known his responsibilities and duties as they related to conducting an inventory search. SUBJECT OFFICER should have also known his responsibilities and duties as they related to conducting a search incident to arrest and should have known that the search of the car's trunk was beyond the scope of his legal authority. Under the circumstances, COMPLAINANT had a reasonable expectation of privacy that the trunk of his car would not be searched. SUBJECT OFFICER'S search of COMPLAINANT'S car violated COMPLAINANT'S reasonable expectation. Contrary to SUBJECT OFFICER'S claims in his Objections, the fact that SUBJECT OFFICER has "no past examples of this alleged misconduct," that he "unknowingly made a mistake," or that he was "unaware" of the requirements related to a search is no defense. *See* Objections at 2. Thus, Complaint Examiner finds that SUBJECT OFFICER purposefully, knowingly, or recklessly infringed upon COMPLAINANT'S rights in violation of D.C. Code § 5-1107(a), D.C. Mun. Regs. tit. 6A, § 2199.1, MPD Special Order 01-01, MPD General Order 120.21 and General Order 602.1 when SUBJECT OFFICER searched the trunk of COMPLAINANT'S car without a legitimate law enforcement purpose.

Accordingly, Complaint Examiner finds that SUBJECT OFFICER'S search of the inside of COMPLAINANT'S car was lawful and did not constitute harassment. Complaint Examiner further finds the search of the trunk of COMPLAINANT'S car was not supported by a legitimate law enforcement purpose and, therefore, constituted harassment. *See* D.C. Code § 5-1107(a), D.C. Mun. Regs. tit. 6A, § 2199.1, MPD Special Order 01-01, MPD General Order 120.21 and General Order 602.1.

IV. SUMMARY OF MERITS DETERMINATION

[SUBJECT OFFICER'S NAME]

Allegation 1: Harassment	Sustained
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Submitted on February 9, 2012.

ARTHUR D. SIDNEY
Complaint Examiner