

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

DECISION BY FINAL REVIEW PANEL

Complaint No.:	12-0156
Complainant:	COMPLAINANT
Subject Officer, Badge No., District:	SUBJECT OFFICER
Allegation 1:	Insulting, Demeaning, or Humiliating Language or Conduct
Final Review Panel Members:	Jennifer A. Fischer, Colleen F. Shanahan, Peter W. Tague
Decision Date:	March 4, 2014

Pursuant to D.C. Official Code § 5-1112(g)(2) and D.C. Mun. Regs., Title 6A, § 2121.1, the Chief of Police of the Metropolitan Police Department (MPD) has returned the Merits Determination issued in this matter on November 26, 2013, for review by a final review panel.

This Final Review Panel was convened by the Office of Police Complaints (OPC), formerly the Office of Citizen Complaint Review (OCCR), and issues this decision in accordance with D.C. Official Code § 5-1112(g)(2) and D.C. Mun. Regs., Title 6A, § 2121.3.

I. SUMMARY OF COMPLAINT EXAMINER DECISION

On August 12, 2013, the Complaint Examiner reviewing this complaint, issued Findings of Fact and a Merits Determination and reached the following conclusion regarding the allegation in the complaint:

Allegation 1: Sustained

II. STANDARD OF REVIEW

Under District law, a final review panel is charged with reviewing the record regarding a complaint, and without taking any additional evidence, issuing a written decision, with supporting reasons, regarding the correctness of the merits determination issued for the complaint to the extent that the Police Chief has concluded that it erroneously sustained one or more allegations. D.C. Official Code § 5-1112(g)(2); D.C. Mun. Regs., Title 6A, § 2121.3. The final review panel “shall uphold the merits determination as to any allegation of the complaint that the determination was sustained, unless the panel concludes that the determination regarding the allegation clearly misapprehends the record before the original complaint examiner and is not supported by substantial, reliable, and probative evidence in that record.” D.C. Official Code § 5-1112(g)(2); D.C. Mun. Regs., Title 6A, § 2121.4.

III. ANALYSIS AND DISCUSSION

The final review panel (“Panel”) reviewed the April 24, 2013, OPC Report of Investigation and attached exhibits, the May 9, 2013, Objections to Report of Investigation submitted by UNION REPRESENTATIVE, the May 17, 2013, response to the Objections from the Office of Police Complaints, the transcript of the hearing held by the Complaint Examiner on June 23, 2013, and the exhibits from that hearing, the August 12, 2013, Findings of Fact and Merits Determination of the Complaint Examiner, the November 26, 2013, letter from Chief of Police Cathy L. Lanier, and the January 13, 2014, letter to Chief Lanier from the Office of Police Complaints.

This Panel was convened in response to Chief Lanier’s request. Specifically, Chief Lanier objected to the Findings of Fact and Merits Determination on the grounds that the identification of SUBJECT OFFICER as the officer subject to the complaint in this matter misapprehended the record and was not supported by substantial, reliable, and probative evidence in the record.¹ The Panel has considered Chief Lanier’s objection and the record in this case, and finds that the identification of SUBJECT OFFICER is not in misapprehension of the record and is supported by substantial, reliable, and probative evidence in the record. Thus, the Panel upholds the Complaint Examiner’s determination of “insulting, demeaning or humiliating language or conduct” in violation of General Order 201.26.

The Complaint Examiner determined that on January 4, 2012, at approximately 11:30 a.m., SUBJECT OFFICER used insulting, demeaning or humiliating language or conduct in his interaction with COMPLAINANT during a stop of COMPLAINANT’s taxi. In reaching this conclusion, the Complaint Examiner relied on two exhibits as well as testimony from COMPLAINANT, SUBJECT OFFICER, and WITNESS, the passenger in COMPLAINANT’s taxi at the time of the incident. In particular, in concluding that SUBJECT OFFICER was properly identified and in resolution of his own doubts prior to the hearing regarding SUBJECT OFFICER’s identification, the Complaint Examiner determined that both COMPLAINANT and WITNESS testified credibly, that WITNESS confirmed COMPLAINANT’s testimony, and noted that WITNESS independently identified an officer badge number, which was still recorded in his cell phone at the time of the hearing, without knowing the officer’s name.

This Panel’s independent review of the record finds ample support for the Complaint Examiner’s conclusion. COMPLAINANT testified that he did not know the identity of the subject officer at the time of the incident, but that he looked at SUBJECT OFFICER’s badge number and wrote down the number – NUMBER – after speaking with WITNESS after the incident. (Tr. 10, 17-19). COMPLAINANT further testified that he knew SUBJECT OFFICER’s name as someone with a reputation for stopping taxi drivers, and, after talking to friends following the incident, suspected that the subject officer was SUBJECT OFFICER. (Tr.

¹ Although Chief Lanier raised other issues in her November 26, 2013 letter, only the objection relating to the identification of the subject officer is appropriate for review by a final review panel.

63-66). According to COMPLAINANT, because he did not know for certain that it was SUBJECT OFFICER, however, he did not put SUBJECT OFFICER's name on the complaint, but only the badge number. (Tr. 66). COMPLAINANT testified that he did not know the identity of the subject officer for certain until his interview with the OPC investigator, when the investigator told him that the badge number belonged to SUBJECT OFFICER. (Tr. 67-68).

WITNESS testified that he recorded the subject officer's badge number – NUMBER – in his cell phone. (Tr. 29). WITNESS testified that he subsequently provided this number to COMPLAINANT. (Tr. 33). At the hearing, WITNESS produced a screen shot of his cell phone, showing a note dated January 4, 2012, 11:26 reading "NUMBER officer, Harassment, City Council." (Compl. Exh. 1). Counsel for SUBJECT OFFICER made no argument as to the authenticity or unreliability of this exhibit, though it was admitted over objection.² Further, there has been no argument and is no evidence in the record that WITNESS is in any way biased or unreliable.

SUBJECT OFFICER's testimony did not specifically contradict the consistent testimony of COMPLAINANT and WITNESS as to the incident. SUBJECT OFFICER confirmed that his badge number is NUMBER. (Tr. 87). SUBJECT OFFICER testified that he did not know if he made notes about stopping taxis on January 4, 2012, that he did not know if he issued a Notice of Infraction to COMPLAINANT on that date, that he did not recall the stop described by COMPLAINANT, that he does not keep written records of taxi inspections, and that he does not always record on his PD 775 activity log that he has conducted taxi inspections. (Tr. 74, 93, 94). SUBJECT OFFICER testified that he was not working a taxi checkpoint at 15th and O Streets, N.W. on the date in question, but did not recall if he was working as part of a taxi checkpoint that day. (Tr. 101). SUBJECT OFFICER further testified that, if he can, he does taxi inspections every day he works. (Tr. 92). SUBJECT OFFICER submitted an exhibit showing no entries in his PD 775 activity log from 09:19 to 12:54 on January 4, 2012, and testified that he was doing "law enforcement patrol" during that time, but did not specify the nature of that work. (FOP Exh. 1, Tr. 90). Finally, when asked if he thought he had been misidentified as the officer who conducted the stop, SUBJECT OFFICER answered only that he did not recall the stop. (Tr. 85).

Chief Lanier's letter of November 26, 2013, suggests that WITNESS's physical description of SUBJECT OFFICER raises doubt as to the identification of the subject officer because "at the time of this incident, SUBJECT OFFICER was in his 50's, and is only 5'8" tall." As a preliminary matter, Chief Lanier's description is not part of the record in this matter and thus not properly considered. Regardless, the record relied upon by the Complaint Examiner is consistent with the identification of SUBJECT OFFICER as the subject officer based on the physical descriptions of COMPLAINANT and WITNESS. In his statement to the Office of Police Complaints, COMPLAINANT describes the subject officer as a light-skinned African-American male in his late 40's, 5'7"-5'8" tall and 200 lbs. In his testimony, WITNESS

² The objection was "not having adequate time to prepare [a] proper defense." (Tr. 50).

described the subject officer as an African-American male in his late 30's to 40's, "a stockier sort of body type," and "[f]rom my [] perspective of sitting in the cab, he seemed to be pretty tall, like around six feet." (Tr. 36). The Complaint Examiner, presumably based on his own physical observation of SUBJECT OFFICER at the hearing, concluded, "[WITNESS's] description fit that of subject officer." This conclusion does not misapprehend the record and is based on substantial, reliable, and probative evidence.

Thus, the Complaint Examiner's decision was based on the consistent testimony of COMPLAINANT and WITNESS and on the contemporaneous note produced by WITNESS, and was not contradicted in any specific way (and generally corroborated) by the testimony and exhibits of SUBJECT OFFICER. The Complaint Examiner's conclusion that the subject officer is SUBJECT OFFICER is supported by substantial, reliable, and probative evidence and we cannot say that the Complaint Examiner clearly misapprehended the record. Therefore, we uphold the determination that SUBJECT OFFICER used insulting, demeaning, or humiliating language or conduct.

IV. SUMMARY OF FINAL REVIEW PANEL DECISION

SUBJECT OFFICER

Merits Determination issued on March 4, 2014.

Merits Determination Conclusion Regarding Allegation 1: Insulting, demeaning, or humiliating language or conduct	Upheld
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Submitted on March 4, 2014.

Jennifer A. Fischer
Complaint Examiner

Colleen F. Shanahan
Complaint Examiner

Complaint No. 12-0156
Page 5 of 5

Peter W. Tague
Complaint Examiner