

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	23-0164
COMPLAINANT:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2 SUBJECT OFFICER #3
Allegation 1:	Use of Excessive or Unnecessary Force -Push/Pull (SUBJECT OFFICER #1)
Allegation 2:	Use of Excessive or Unnecessary Force – Strike - Punch (SUBJECT OFFICER #1)
Allegation 3:	Insulting, Demeaning, or Humiliating Language or Conduct - Demeanor/Tone (SUBJECT OFFICER #1)
Allegation 4:	Insulting, Demeaning, or Humiliating Language or Conduct – Profanity (SUBJECT OFFICER #1)
Allegation 5:	Insulting, Demeaning, or Humiliating Language or Conduct - failure to provide information and walk away (SUBJECT OFFICER #2)
Allegation 6:	Insulting, Demeaning, or Humiliating Language or Conduct - failure to document or report (SUBJECT OFFICER #2)
Allegation 7:	Insulting, Demeaning, or Humiliating Language or Conduct -failure to document or report (SUBJECT OFFICER #3)
Complaint Examiner:	Arthur D. Sidney
Merits Determination Date:	March 28, 2024

Pursuant to D.C. Official Code § 5-1107(b-1), the Office of Police Complaints (OPC) has the sole 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 § 5-1107(a). 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 the Office of Police Complaints (OPC) on December 14, 2022. COMPLAINANT alleged that on December 7, 2022, Metropolitan Police Department (MPD) SUBJECT OFFICER #1, (a) used unnecessary or excessive force against him when she pushed him and punched him in the face; and (b) engaged in conduct and used language directed at him that was insulting, demeaning, or humiliating when she used profanity and acted in a hostile and unprofessional manner during her interaction with COMPLAINANT.

COMPLAINANT further alleged that SUBJECT OFFICER #2 engaged in conduct that was disrespectful and unprofessional when he consistently ignored him and walked away when COMPLAINANT attempted to report his complaint regarding SUBJECT OFFICER #1 punching him. During the investigation, OPC discovered that both SUBJECT OFFICER #2 and SUBJECT OFFICER #3, also engaged in unprofessional and demeaning conduct when SUBJECT OFFICER #2 and SUBJECT OFFICER #3 failed to document or report COMPLAINANT's complaint regarding the force SUBJECT OFFICER #1 used against him or initiate a complaint investigation. Pursuant to D.C. Code § 5-1107(g-1)(1), OPC added this allegation to the examination.^{1 2}

¹ Complainant also alleged that WITNESS OFFICER #1 used language or engaged in conduct that was insulting, demeaning, or humiliating when he used profanity toward community members. On January 9, 2024, pursuant to D.C. Code § 5-1108(1), a member of the Police Complaints Board dismissed this allegation, concurring with the determination made by OPC's executive director. Note the PCB member mistakenly wrote 2023, rather than 2024 on the signed dismissal report, but confirmed with OPC that the PCB member meant 2024. The Complaint Examiner concurs with the dismissal of this allegation.

² During the investigation, OPC discovered that WITNESS OFFICER #2 used language or engaged in conduct that was insulting, demeaning, or humiliating when he used profanity toward a community member. OPC added this allegation pursuant to D.C. Code § 5-1107(g-1)(1), which allows the Executive Director to initiate a complaint against subject officers when the Executive Director discovers evidence of abuse or misuse of police powers that was not alleged by the complainant in the original complaint. This allegation was referred to MPD so WITNESS OFFICER #2 can receive policy training pursuant to D.C. § 5-1107(g)(6).

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICERS on February 21, 2024, and OPC's response to the 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. tit. 6A, § 2116.3.

III. FINDINGS OF FACT

Based upon a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICERS on February 21, 2024, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On December 7, 2022, at approximately 6:30 pm, COMPLAINANT intervened between MPD officers and hostile community members who gathered outside while MPD officers were searching a premises in northeast D.C.
2. The community members and MPD members grew agitated and the community members were yelling obscenities at the MPD officers.
3. During the interaction, WITNESS OFFICER #1 told the crowd to "back up." The crowd continued to yell and scream obscenities at the MPD officers. To alleviate the situation, COMPLAINANT put his arm between MPD members and the community members and stated, "I got this." SUBJECT OFFICER #1 quickly approached and stated, "Didn't he say back the fuck up?" Immediately thereafter, SUBJECT OFFICER #1 pushed COMPLAINANT twice, before he was able to respond. SUBJECT OFFICER #1 then grabbed COMPLAINANT's arm, pulled him close to her, and punched him at least twice in his face. Afterward, several MPD officers escorted SUBJECT OFFICER #1 away from COMPLAINANT to de-escalate the situation.
4. COMPLAINANT tried to report SUBJECT OFFICER #1's use of force and the injuries he sustained and was directed to do so with SUBJECT OFFICER #2 by other MPD members on the scene.
5. COMPLAINANT approached SUBJECT OFFICER #2 and accused SUBJECT OFFICER #1 of punching him in the face. COMPLAINANT was calm and continued to attempt to hold back other men who were aggressive and tried to approach the officers.

6. COMPLAINANT also asked for SUBJECT OFFICER #1's badge number, and SUBJECT OFFICER #2 said he would get it for COMPLAINANT. SUBJECT OFFICER #2 addressed the other men about a dog that was in the apartment where the MPD officers had just executed the warrant. After those men walked away, COMPLAINANT attempted to again speak with SUBJECT OFFICER #2 about his complaint but SUBJECT OFFICER #2 walked away while COMPLAINANT was speaking.
7. About a minute later, COMPLAINANT again approached SUBJECT OFFICER #2 and said, "It's okay, sir. You don't have to do your part. All I want is her badge number." SUBJECT OFFICER #2 did not respond and again walked away from COMPLAINANT. SUBJECT OFFICER #2 came in and out of a nearby apartment building and about seven minutes later, COMPLAINANT again approached SUBJECT OFFICER #2 with a pen and paper and again requested SUBJECT OFFICER #1's badge number.
8. SUBJECT OFFICER #2 stated, "I'm trying to get it for you. You have to give me a couple of minutes. We have a lot going on right here." COMPLAINANT became upset and replied, "Do I have to act like them to get your attention? I want her fucking badge number because she punched me. Does this get your attention now?" SUBJECT OFFICER #2 did not respond but instead walked away and entered the apartment building.
9. COMPLAINANT became visibly upset and yelled at the MPD officers off and on for the next several minutes. About 20 minutes later, COMPLAINANT approached SUBJECT OFFICER #2 again and asked, "Did I or did I not come to you humbly?" SUBJECT OFFICER #2 replied, "You did." He then said that the scene was hectic and asked what COMPLAINANT needed.

COMPLAINANT said he no longer needed anything and expressed his feelings about how he was treated. SUBJECT OFFICER #2 said he could now talk to COMPLAINANT because the scene had calmed down, but then again walked away from COMPLAINANT.
10. About 10 minutes later, SUBJECT OFFICER #2 provided a complaint form to another man, for COMPLAINANT but COMPLAINANT returned the form and again asked for SUBJECT OFFICER #1's badge number, but SUBJECT OFFICER #2 again did not provide the information or otherwise respond to the request.

11. During the investigation, OPC discovered that SUBJECT OFFICER #2 also did not document or initiate a use of force investigation on the force SUBJECT OFFICER #1 used in her interaction with COMPLAINANT.
12. Later that evening, COMPLAINANT called the police station and reported his injuries to SUBJECT OFFICER #3. COMPLAINANT told SUBJECT OFFICER #3 that he wanted to make a complaint against SUBJECT OFFICER #1 for pushing him and punching him in the face.
13. SUBJECT OFFICER #3 provided SUBJECT OFFICER #1's name and badge number to COMPLAINANT. SUBJECT OFFICER #3 also had the MPD officials on duty log their BWCs. SUBJECT OFFICER #3 reviewed the BWC footage from several MPD officers on duty that night and viewed the interactions from different angles but he did not see SUBJECT OFFICER #1 punch COMPLAINANT.
14. At the end of his shift, SUBJECT OFFICER #3 did not document COMPLAINANT's excessive force complaint against SUBJECT OFFICER #1. Additionally, SUBJECT OFFICER #3 did not draw complaint numbers for the use of force and did not initiate a use of force investigation on SUBJECT OFFICER #1.
15. A few days following the incident, COMPLAINANT continued to experience pain from the punch that he sustained from SUBJECT OFFICER #1. COMPLAINANT visited the hospital a few days after he was punched by SUBJECT OFFICER #1, and COMPLAINANT learned that he sustained a fracture to his upper cheek, lower eye bone.

IV. DISCUSSION

Pursuant to D.C. Code § 5-1107(a), (b-1), OPC has the sole authority 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; (2) use of unnecessary or excessive force; (3) use of language or conduct that is insulting, demeaning, or humiliating; (4) discriminatory treatment based upon a person's race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, or place of residence or business; (5) retaliation against a person for filing a complaint pursuant to [the Act]; or (6) failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public.”

Unnecessary and Excessive Force

MPD General Order 901.07, Part II, states, “the policy of the Metropolitan Police Department is to preserve human life when using lawful authority to use force. Therefore, officers of the Metropolitan Police Department shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others.”

OPC regulations define excessive or unnecessary force as “[u]nreasonable use of power, violence, or pressure under the particular circumstances. Factors to be considered when determining the ‘reasonableness’ of a use of force include the following: (1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of the officer or others; (3) whether the subject was actively resisting arrest or attempting to evade arrest by flight; (4) the fact that officers are often required to make split second decisions regarding the use of force in a particular circumstance; (5) whether the officer adhered to the general orders, policies, procedures, practices and training of the MPD ... and (6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective.” D.C. Mun. Regs. tit. 6A, § 2199.1.

COMPLAINANT stated that on December 7, 2022, at 6:30 pm, he observed several MPD officers outside of their vehicles interacting with a crowd. The community members were cursing and yelling at the MPD officers. COMPLAINANT approached the scene to try to diffuse the situation and to prevent the community members that had gathered from doing something they regretted or the officers from overreacting. During the MPD official’s interaction with the crowd, WITNESS OFFICER #1 told them to “back up” but the crowd continued to grow agitated. To alleviate the situation, COMPLAINANT put his arm between the MPD Officers and the community members, and said “I got this.” Upon hearing this, SUBJECT OFFICER #1 said, “Didn’t he say back the fuck up?” Immediately, after saying this, SUBJECT OFFICER #1 pushed COMPLAINANT twice, grabbed his arm, pulled him close to her, and punched him in the face at least two times. MPD Officers escorted SUBJECT OFFICER #1 away from COMPLAINANT. COMPLAINANT stated that he did not fight or otherwise do anything to warrant SUBJECT OFFICER #1 striking him, and did not retaliate against SUBJECT OFFICER #1’s use of force. Because COMPLAINANT was experiencing pain in his head a few days after the incident with SUBJECT OFFICER #1, COMPLAINANT went to the hospital to get checked. After going to the hospital, he was diagnosed with a fracture to the bone under his eye.

SUBJECT OFFICER #1 admitted that there was a crowd of community members and she pushed COMPLAINANT twice to make distance between him and MPD members.

SUBJECT OFFICER #1 stated that she pushed COMPLAINANT because he continued to advance toward her and the other MPD officers. SUBJECT OFFICER #1 also admitted that she pushed COMPLAINANT after telling him to “back the fuck up” but denied striking COMPLAINANT in the head or inadvertently having any other physical contact with COMPLAINANT. SUBJECT OFFICER #1 did not know how COMPLAINANT sustained his facial injuries. SUBJECT OFFICER #1 also stated that she provided COMPLAINANT with enough time, in between the two pushes, for COMPLAINANT to comply with her orders.

The witness MPD officers did not recall SUBJECT OFFICER #1 pushing or punching COMPLAINANT. WITNESS OFFICER #1 stated that COMPLAINANT tried to be the “peacekeeper.” Other MPD officers tried to calm down SUBJECT OFFICER #1 and escorted her from the area to de-escalate the situation.

The BWC footage demonstrated that COMPLAINANT was calmly on the scene and substantiated that COMPLAINANT was acting calmly. The BWC footage also demonstrated that SUBJECT OFFICER #1 yelled “Back the fuck up, Back the fuck up!,” and then shows SUBJECT OFFICER #1 extending both arms out and pushing COMPLAINANT twice forcefully in the chest. The BWC footage also showed SUBJECT OFFICER #1 grab COMPLAINANT by the arm, turn him, and draw him close to her while she raised her arm and closed her fist as it moved near COMPLAINANT’s face. The BWC footage did not clearly show that COMPLAINANT’s face was struck by SUBJECT OFFICER #1 and it showed SUBJECT OFFICER #1’s hand close to COMPLAINANT’s face. However, immediately afterward COMPLAINANT stated he was struck and continued to state that he was struck throughout the interactions with SUBJECT OFFICER #1, SUBJECT OFFICER #2, and SUBJECT OFFICER #3. Additionally, the medical records from HOSPITAL support COMPLAINANT’s allegation that he was punched. Therefore, Complaint Examiner determines that SUBJECT OFFICER #1 forcefully pushed COMPLAINANT. Additionally, Complaint Examiner further determines that SUBJECT OFFICER #1 punched COMPLAINANT in the face, consistent with the near capture of the punch on the BWC, COMPLAINANT’s statements and reactions after his interaction with SUBJECT OFFICER #1, and the HOSPITAL medical records showing that he was struck.

MPD General Order 901.07 also states, “Members shall attempt to defuse use of force situations with de-escalation techniques whenever feasible... through advice, warning, verbal persuasion, tactical communication, or other de-escalation techniques.” “When using force, members must be able to articulate the facts and circumstances surrounding their tactics, decision making, and the extent of force used in any given situation. Members shall only use the amount of force that is proportionate to the circumstances. If de-escalation tactics are not effective or feasible, the member may use an increasing level of force to overcome the level of

resistance, as long as the force response remains proportionate to the perceived threat.” In assessing proportionate force tactics, the general order lists officer strikes as a “defensive tactic” that should only be used on “threatening assailants,” where the “subject has gone beyond the level of simple non-cooperativeness, and is actively and aggressively assaulting the member or others...” The general order also states, “Members shall complete a [force incident report] FIR following all events involving use of force except control holds where there is no injury or complaint of injury.”

As discussed below, Complaint Examiner determines that the use of force was unnecessary and excessive. SUBJECT OFFICER #1 twice forcefully pushed COMPLAINANT when he did not pose a threat to SUBJECT OFFICER #1 or other MPD members. SUBJECT OFFICER #1 also did not first “attempt to defuse use of force situations with de-escalation techniques” such as a warning or verbal persuasion. COMPLAINANT was not aggressive, did not resist SUBJECT OFFICER #1, attempt to assault SUBJECT OFFICER #1, or put anyone else in danger. Therefore, Complaint Examiner determines that SUBJECT OFFICER #1’s pushes were unnecessary and excessive force.

Additionally, the BWC footage demonstrates that SUBJECT OFFICER #1 grabbed COMPLAINANT, turned him around, and drew him close to her. The BWC also shows SUBJECT OFFICER #1 stretching her hands near COMPLAINANT’s face in a striking motion but it did not show the actual punch. The BWC footage shows COMPLAINANT gesturing toward his head. A review of the BWC footage also shows that COMPLAINANT stated that SUBJECT OFFICER #1 punched him and also showed him telling SUBJECT OFFICER #1, SUBJECT OFFICER #2, and SUBJECT OFFICER #3 that he was punched in the face. Additionally, the report from HOSPITAL supports that COMPLAINANT was punched in the face. Thus, Complaint Examiner determines that SUBJECT OFFICER #1 did punch COMPLAINANT in his face. Under the MPD General Order there was no justification for the pushes or the punches. Therefore, Complaint Examiner determines that SUBJECT OFFICER #1 used unnecessary and excessive force when she pushed and she punched COMPLAINANT in violation of D.C. Code § 5-1107 and MPD General Order 901.07.

Language or Conduct

According to MPD General Order 201.26, Part V, Section C, “All members of the department shall be courteous and orderly in their dealings with the public. They shall perform their duties quietly, remaining calm regardless of provocation to do otherwise. . . . Members shall refrain from harsh, violent, coarse, profane, sarcastic, or insolent language. Members shall not use terms or resort to name calling which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person.”

SUBJECT OFFICER #1

COMPLAINANT alleged that SUBJECT OFFICER #1 engaged in conduct and used language toward him that was insulting, demeaning, or humiliating when she behaved in a hostile and aggressive manner toward COMPLAINANT and yelled at him to “back the fuck up!”

SUBJECT OFFICER #1 admitted to using the word “fuck” to COMPLAINANT because she felt threatened and because it was the kind of language that “people in [that] area” would understand.

The BWC footage demonstrates that SUBJECT OFFICER #1 yelled “Back the fuck up, back the fuck up!” to COMPLAINANT. Another MPD officer grabbed SUBJECT OFFICER #1 and pulled her away from the conflict but SUBJECT OFFICER #1 brushed his hands away and yelled at other members in the community to “back the fuck up.”

MPD General Order 201.26 instructs officers to be courteous and orderly and to “refrain from harsh, violent, coarse, profane, sarcastic or insolent language.” Based upon COMPLAINANT’s account, SUBJECT OFFICER #1’s acknowledgment, and the BWC footage, SUBJECT OFFICER #1 acted in a manner that was discourteous, unprofessional, and profane. Therefore, Complaint Examiner determines that SUBJECT OFFICER #1 engaged in conduct and used language toward COMPLAINANT that was insulting, demeaning, or humiliating in violation of D.C. Code § 5-1107 and MPD General Order 201.26.

SUBJECT OFFICER #2

As indicated above, MPD General Order 201.26, Part V, Section C, “All members of the department shall be courteous and orderly in their dealings with the public. They shall perform their duties quietly, remaining calm regardless of provocation to do otherwise. . . . Members shall refrain from harsh, violent, coarse, profane, sarcastic, or insolent language. Members shall not use terms or resort to name calling which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person.”

Additionally, MPD General Order 901.07 specifies the responsibility of supervisors regarding uses of force, and states for “Notifications and On-Scene Response: Members shall immediately notify an official following all events involving force, allegations of excessive force (even when the member has not used force on the subject)... Upon notification, supervisors shall immediately respond to the scene and notify a watch commander.” The general order also states, “[the] supervisor shall obtain incident summary (IS) tracking numbers before the end of the supervisor’s shift.” For “Use of Force Reporting Requirements,” the general order clarifies, “The following actions require completion of a FIR immediately

following the event according to the procedures set forth in this order. These actions [also] require a full use of force investigation pursuant to the investigative procedures set forth in this order: strike..." Regarding the completed FIR, the general order states that both the supervisor and the watch commander shall ensure the reports are completed properly and approved prior to their shift ending. Finally, the general order outlines investigative requirements for chain of command force investigations and includes that the investigations must be thoroughly investigated and documented, that the final use of force report must be complete and submitted by the assigned deadline, and that IAD shall conduct a quality control review of all use of force incidents investigated by the chain of command.

Language or Conduct - failure to provide information and walk away

COMPLAINANT alleged that after he was punched in the face by SUBJECT OFFICER #1, he approached SUBJECT OFFICER #2 at the scene and requested SUBJECT OFFICER #1's name and badge number but SUBJECT OFFICER #2 ignored him and walked off. COMPLAINANT approached SUBJECT OFFICER #2 at least two more times and requested the name and badge number of SUBJECT OFFICER #1. Each time COMPLAINANT asked for the information, SUBJECT OFFICER #2 did not provide it. COMPLAINANT admitted that he was initially calm but grew agitated and angry as he was continually dismissed by SUBJECT OFFICER #2.

SUBJECT OFFICER #2 stated to OPC that he was the on-scene official. SUBJECT OFFICER #2 admitted that COMPLAINANT at some point did approach him and COMPLAINANT calmly requested SUBJECT OFFICER #2's name and badge number because he stated that SUBJECT OFFICER #1 punched COMPLAINANT in the face. However, SUBJECT OFFICER #2 admitted that he did not provide the requested information because he did not believe that SUBJECT OFFICER #1 did those things to COMPLAINANT. SUBJECT OFFICER #2 also admitted that he had several encounters that night with COMPLAINANT, and that during each of those interactions, he did not provide SUBJECT OFFICER #1's name and badge number. According to SUBJECT OFFICER #2, he initially did not know SUBJECT OFFICER #1's badge number. In his interview with OPC, SUBJECT OFFICER #2 admitted that he could have retrieved the information but he did not do so because COMPLAINANT became more aggressive and was yelling at MPD officers. According to SUBJECT OFFICER #2, even though he repeatedly walked away from COMPLAINANT and did not provide the information requested, he did not mean for his actions to be disrespectful. SUBJECT OFFICER #2 admitted, however, that he understood why COMPLAINANT felt disrespected. During his interview with OPC, SUBJECT OFFICER #2 claimed that he ignored COMPLAINANT because of the large crowd, and then later in the interview, claimed it was because of COMPLAINANT acting aggressively and yelling at MPD officers.

The BWC footage shows COMPLAINANT asking several times for SUBJECT OFFICER #1's name and badge number, and SUBJECT OFFICER #2 walking away. The BWC footage also shows COMPLAINANT getting angrier over being ignored by SUBJECT OFFICER #2. At one point, COMPLAINANT stated "Do I have to act like them to get your attention? I want her fucking badge number because she punched me." COMPLAINANT was upset and yelled at MPD officers. The BWC footage also shows that COMPLAINANT came to SUBJECT OFFICER #2 calmly. The BWC footage also shows SUBJECT OFFICER #2 acknowledging that COMPLAINANT started off calmly while making his initial requests to SUBJECT OFFICER #2. During their interaction, SUBJECT OFFICER #2 said the scene was hectic and asked what COMPLAINANT needed but then SUBJECT OFFICER #2 walked away again. The BWC footage shows SUBJECT OFFICER #2 providing a complaint form to another community member for COMPLAINANT but SUBJECT OFFICER #2 did not provide the name and badge number for SUBJECT OFFICER #1.

General Order 201.26 provides that it's the OFFICIAL's responsibility to fulfill requests for information and to provide assistance, not to evade the performance of duties, and to be attentive to complaints by community members. The general order clarifies that MPD is not to engage in behavior that could be interpreted as disrespectful or offensive. As the on-scene official, SUBJECT OFFICER #2 should have been able to deal with the chaos, even with COMPLAINANT being agitated, and still complied with COMPLAINANT's request for information. The evidence shows that by SUBJECT OFFICER #2, walking away repeatedly when COMPLAINANT requested SUBJECT OFFICER #1's name and badge number, SUBJECT OFFICER #2's actions were disrespectful and demeaning to COMPLAINANT. Therefore, Complaint Examiner determines that SUBJECT OFFICER #2 engaged in conduct toward COMPLAINANT that was insulting, demeaning, or humiliating when SUBJECT OFFICER #2 failed to provide to COMPLAINANT the name and badge number of SUBJECT OFFICER #1, and multiple requests, and walked away from COMPLAINANT after each request in violation of D.C. Code § 5-1107 and MPD General Order 201.26.

Language or Conduct -failure to document or report

Regarding COMPLAINANT's registering a use of force complaint against SUBJECT OFFICER #1, SUBJECT OFFICER #2 acknowledged in his interview with OPC that it was his responsibility to process the complaint as the senior official on the scene. Further in the interview, SUBJECT OFFICER #2 stated that when he tried to interview COMPLAINANT on the scene, COMPLAINANT refused and was uncooperative. Additionally, SUBJECT OFFICER #2 stated that when he was on the scene and asked SUBJECT OFFICER #1 if she punched COMPLAINANT, she denied doing so. Nevertheless, when SUBJECT OFFICER #2 arrived at the MPD station later on the evening of December 7th, he did not let the watch commander (i.e.,

SUBJECT OFFICER #3) know that COMPLAINANT made a use of force complaint on the scene earlier on that date. According to SUBJECT OFFICER #2, he did not document COMPLAINANT's use of force complaint, review the BWC footage, and did not obtain incident summary numbers. However, SUBJECT OFFICER #2 stated if COMPLAINANT had behaved better, SUBJECT OFFICER #2 would have gathered COMPLAINANT's information and let him fill out a statement or complaint form.

There was no FIR completed by SUBJECT OFFICER #2 and no force investigation was initiated or completed by MPD for this incident.

General Orders 201.26 and 901.07 are clear. General Orders 201.26 requires members of the MPD to fulfill requests for information to assist, and not to evade the performance of duties. It was SUBJECT OFFICER #2's responsibility as the on-scene officer to take and process COMPLAINANT's use of force complaint. Additionally, General Order 901.07 outlines specific steps that must be taken when a use of force allegation is made by a member of the public, even when the MPD official has not used force on the subject. As acknowledged by SUBJECT OFFICER #2, he did not document the complaint or allegations of excessive force and did not initiate a use of force investigation as required by the General Orders. Thus, Complaint Examiner determines SUBJECT OFFICER #2 engaged in conduct toward COMPLAINANT that was insulting, demanding, or humiliating when he failed to process, document, or make notification regarding COMPLAINANT's excessive force allegation in violation of § 5-1107 and MPD General Order 201.26 and 901.07.

SUBJECT OFFICER #3

As discussed above, MPD General Order 201.26 states, "Members shall be attentive to, and take suitable action on, reports and complaints by a citizen..." MPD General Order 120.25 provides further and more specific guidance regarding handling complaints from community members, "MPD shall accept all complaints... regardless of the manner in which the complaint is made (e.g., orally or in writing)." The general order goes on to state, "Upon notification of a complaint, the watch commander or official shall: (a) Obtain incident summary (IS) numbers for each allegation that may be related to the incident by the end of the shift and **include** the IS numbers on the OPC-1 and any other supporting documentation; and (b) Email the complaint, any supporting documentation, and the method the complaint was received... to IAD and the MPD OPC liaison by the end of the shift... (c) Ensure that the complaint is included on the PD Form 150 (Watch Commander Report)." General Order 901.07 specifies the responsibility of supervisors, and particularly watch commanders, regarding use of force complaints and investigations.

COMPLAINANT told OPC that he was instructed to make his complaint at the scene and that MPD officials at the Fifth District station provided him with SUBJECT OFFICER #1's name and badge number. COMPLAINANT also claimed that an MPD official he spoke with, who watched the BWC footage, told him that SUBJECT OFFICER #1's actions were unacceptable. OPC later learned that the MPD official was SUBJECT OFFICER #3 and he was also the watch commander. SUBJECT OFFICER #2 did not complete a use of force report and no force investigation was initiated or completed by MPD. Additionally, SUBJECT OFFICER #3 did not draw incident summary (IS) numbers for this incident and did not report the complaint in his watch commander report.

SUBJECT OFFICER #3 told OPC that he was the watch commander on duty and that he believed that SUBJECT OFFICER #2 notified him of COMPLAINANT's allegation of force. As a result, SUBJECT OFFICER #3 had the MPD officers dock their BWCs when they returned to the station so that SUBJECT OFFICER #3 could review the BWC and determine if he needed to draw IS numbers or initiate a use of force investigation. SUBJECT OFFICER #3 also asked SUBJECT OFFICER #1 about the allegation, where she admitted to pushing COMPLAINANT but denied punching him. SUBJECT OFFICER #3 reviewed the BWC of several of the MPD officers and from different angles but SUBJECT OFFICER #3 did not see any uses of force. When COMPLAINANT called the station, SUBJECT OFFICER #3 told COMPLAINANT that his review of the BWC did not show any use of force. SUBJECT OFFICER #3 offered COMPLAINANT an OPC complaint form, which COMPLAINANT refused. Afterward, SUBJECT OFFICER #3 told COMPLAINANT he would email the OPC form to him.

When questioned by OPC, SUBJECT OFFICER #3 admitted that he saw SUBJECT OFFICER #1 push COMPLAINANT but SUBJECT OFFICER #2 did not think the pushes amounted to uses of force; therefore, SUBJECT OFFICER #3 did not draw IS numbers or initiate a use of force investigation. During his interview with OPC, SUBJECT OFFICER #3 stated that he declined to initiate an investigation into the use of force because there was no evidence supporting those allegations, and the pushes he saw were justified. SUBJECT OFFICER #3 stated that he would have drawn IS numbers and initiated an investigation, if COMPLAINANT had alleged that he was hurt.

The BWC shows that COMPLAINANT made his use of force claim to SUBJECT OFFICER #3. However, SUBJECT OFFICER #3 did not draw IS numbers or initiate a use of force investigation, did not document COMPLAINANT's complaint in the watch commander's report, and did not require that a FIR be completed.

The record is clear that SUBJECT OFFICER #3's actions failed to comply with the requirements of General Order 201.26 and 120.25, i.e., he failed to draw the IS numbers, did not complete a FIR in the watch commander's report, and did not initiate a use of force

investigation. SUBJECT OFFICER #3 also failed to conduct a thorough investigation of the allegations as required by General Order 901.07. Thus, Complaint Examiner determines that SUBJECT OFFICER #3 engaged in demeaning and unprofessional conduct in violation of D.C. Code § 5-1107 and MPD General Orders 201.26, 120.25, and 901.97 when he failed to document, process, fully investigate, and report COMPLAINANT’s excessive force allegation.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1

Allegation 1: Unnecessary/Excessive Force – Push/Pull	Sustained
Allegation 2: Unnecessary/Excessive Force – Strike - Punch	Sustained
Allegation 3: Language or Conduct – Demeanor/Tone	Sustained
Allegation 4: Language or Conduct - Profanity	Sustained

SUBJECT OFFICER #2

Allegation 1: Language or Conduct - failure to provide information and walk away	Sustained
Allegation 2: Language or Conduct -failure to document or report	Sustained

SUBJECT OFFICER #3

Allegation 1: Language or Conduct - failure to document or report	Sustained
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Submitted on March 28, 2024.

ARTHUR D. SIDNEY
Complaint Examiner