

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	15-0039
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER
<b>Allegation 1:</b>	Harassment
<b>Allegation 2:</b>	Insulting, Demeaning, or Humiliating Language or Conduct
<b>Complaint Examiner:</b>	Ricardy Damille
<b>Merits Determination Date:</b>	February 8, 2016

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints (OPC) 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 the Office of Police Complaints (OPC) on October 24, 2014. COMPLAINANT alleged that on October 23, 2014, SUBJECT OFFICER harassed him by threatening to “knock him out,” and used language or engaged in conduct toward him that was insulting, demeaning or humiliating by using profanity.<sup>1</sup>

**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 OFFICER on December 23, 2015, 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.

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<sup>1</sup> COMPLAINANT also alleged that SUBJECT OFFICER harassed him by telling him and other individuals to move along. Pursuant to D.C. Code § 5-1108(1), on November 19, 2015, a member of the Police Complaints Board dismissed this allegation, concurring with the determination made by OPC’s executive director (Exhibit 2).

### **III. FINDINGS OF FACT**

Based on a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on December 23, 2015, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On October 23, 2014, COMPLAINANT and several hundred individuals gathered at A LOCATION IN NORTHWEST, WASHINGTON, D.C. for a vigil.
2. SUBJECT OFFICER arrived at the scene of the vigil following a radio call for assistance with crowd control.
3. During the course of the vigil, the scene became chaotic as there was confrontation between the attendees and police.
4. SUBJECT OFFICER attempted to disperse crowd at which point there was a verbal exchange with COMPLAINANT. According to the undisputed accounts of COMPLAINANT and witnesses, SUBJECT OFFICER threatened "to knock out" COMPLAINANT, SUBJECT OFFICER told COMPLAINANT to "back the fuck up" and SUBJECT OFFICER called COMPLAINANT a "bitch ass."
5. SUBJECT OFFICER and COMPLAINANT acknowledge having had altercations prior to the incident of October 23, 2014.

### **IV. DISCUSSION**

Pursuant to D.C. 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; (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."

#### ***Harassment***

Harassment is defined in MPD General Order 120.25, Part III, Section B, No. 2 as "words, 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: (a) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or

other infringement of personal or property rights; or (b) deny or impede the person in the exercise or enjoyment of any right, privilege, power, or immunity.”

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. tit. 6A, § 2199.1.

The evidence of record supports a finding that SUBJECT OFFICER harassed COMPLAINANT when he threatened to “knock him out”. COMPLAINANT states that he was in the process of breaking up an altercation at the vigil when he was aggressively approached by SUBJECT OFFICER who stated, “Move the fuck back or I’m going to knock your bitch ass out!”(Exhibit 1). The undersigned notes that SUBJECT OFFICER does not deny COMPLAINANT’S allegations. In SUBJECT OFFICER’S statement to OPC, he states that he does not recall threatening to knock out COMPLAINANT; rather he alleges that COMPLAINANT did not heed orders to back up and leave the area. SUBJECT OFFICER states that COMPLAINANT responded with obscenities, made threats, took an aggressive posture and appeared ready to fight (Exhibit 8). WITNESS OFFICER #1 reported that he completed an arrest warrant for COMPLAINANT based on SUBJECT OFFICER’S statements after the incident. WITNESS OFFICER #1 admits that he did not see, hear or observe any incident involving SUBJECT OFFICER and COMPLAINANT (Exhibit 9). Even assuming that SUBJECT OFFICER’S allegations are true, he does not present a legal defense to COMPLAINANT’S allegations. SUBJECT OFFICER, in his objections noted COMPLAINANT’S criminal history as evidence of the complainant being a violent person and having total disregard for the laws in the District of Columbia. Again, whether or not COMPLAINANT threatened SUBJECT OFFICER or has a propensity towards violence does not render SUBJECT OFFICER’S actions defensible. Moreover, COMPLAINANT’S criminal history does not negate his credibility as his allegations are supported by witness accounts.

WITNESS #1 corroborates COMPLAINANT’S harassment allegations in her prepared statement dated January 29, 2015. WITNESS #1 indicates that she was present at the vigil and that she observed an officer aggressively approach COMPLAINANT while he was attempting to stop an altercation. WITNESS #1 states that the officer threatened to “knock out” the complainant. WITNESS #1 also states that the officer used profanity though she did not recall the specific language (Exhibit 5). While WITNESS #1 does not identify SUBJECT OFFICER by name, her version of events is generally consistent with COMPLAINANT’S account, thus enhancing the credibility of her statements with regard to the harassment allegation. SUBJECT

OFFICER argues that WITNESS #1 is not credible because she is not an impartial witness, she manipulated the events to fit what COMPLAINANT reported, her statement contradicts her own words and she could not recall the specific profane language used by the officer. The undersigned disagrees with all of SUBJECT OFFICER'S credibility averments. First, while the evidence shows that WITNESS #1 is familiar with COMPLAINANT, this fact is not sufficient to question the truthfulness of WITNESS #1'S statements. Second, there is no evidence that WITNESS #1 manipulated her statements to fit COMPLAINANT'S reports. In fact, while COMPLAINANT reports specific profane language used by SUBJECT OFFICER, WITNESS #1 admits that she could not recall the language with specificity. Finally, the undersigned finds no contradictions in WITNESS #1'S statements as a whole.

***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, course, 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."

The evidence of record also supports a finding that SUBJECT OFFICER used profane language in his interaction with COMPLAINANT, thus violating D.C. Code § 5-1107(a) and MPD General Order 120.26. COMPLAINANT alleges that SUBJECT OFFICER told him to "back the fuck up" and called him a "bitch ass" (Exhibit 1). Similar to the harassment allegation noted above, SUBJECT OFFICER states that he does not recall using the profane language reported by COMPLAINANT (Exhibit 8). Thus, this allegation is not denied by SUBJECT OFFICER. On January 21, 2015, WITNESS #2 provided a statement and reported that she witnessed SUBJECT OFFICER aggressively approach COMPLAINANT, called him a "bitch ass" and used other profanity (Exhibit 4). The undersigned credits WITNESS #2'S statements as she was present during the exchange between SUBJECT OFFICER and COMPLAINANT and her statement is consistent with COMPLAINANT'S allegations.

**V. SUMMARY OF MERITS DETERMINATION**

**SUBJECT OFFICER**

<b>Allegation 1: Harassment</b>	Sustained
<b>Allegation 2: Insulting, Demeaning, or Humiliating Language or Conduct</b>	Sustained

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Submitted on February 8, 2016.

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Complaint Examiner