

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	16-0020
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation:	Harassment
Complaint Examiner:	Richard S. Ugelow
Merits Determination Date:	September 6, 2016

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

The complainant, COMPLAINANT, filed a complaint on October 21, 2015 with OPC alleging that MPD SUBJECT OFFICER harassed him on October 3, 2015. COMPLAINANT stated that he was in his off-duty taxi, with children's booster seats in the rear, when he was stopped by SUBJECT OFFICER and issued four separate tickets. SUBJECT OFFICER issued COMPLAINANT citations for failing to have his taxi dome light illuminated, failing to comply with a lawful order (to produce certain credentials), being stopped in a no standing zone, and failure to provide a manifest.¹

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, the objections submitted by the DC Police Union on behalf of SUBJECT OFFICER, and OPC's response to the objections, the Complaint Examiner

¹ COMPLAINANT also alleged that SUBJECT OFFICER harassed him when SUBJECT OFFICER unlawfully stopped his vehicle and issued him two unwarranted traffic citations for "No Standing Anytime" and "Failure to Provide Manifest." Additionally, COMPLAINANT alleged that SUBJECT OFFICER used language or engaged in conduct toward him that was insulting, demeaning, or humiliating when SUBJECT OFFICER became upset, raised his voice, "ignored" the complainant's defense, and refused to explain the reason for the stop and the issuance of citations. Pursuant to D.C. Code § 5-1108(1), on July 15, 2016, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director.

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.

II. FACTS

Based on a review of OPC's Report of Investigation, the objections submitted by the DC Police Union on behalf of SUBJECT OFFICER on August 16, 2016 and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On October 3, 2015 at approximately 4:00 p.m., MPD SUBJECT OFFICER, was assigned to enforce no standing or parking violations in the vicinity of 1800 Edwin Street, NE.
2. SUBJECT OFFICER was in full uniform and in a marked MPD cruiser.
3. The complainant, COMPLAINANT, left his DC taxi cab at or near 1810 Edwin Street, NE around 4:30 p.m. October 3, 2015 for approximately ten minutes, while he spoke with a car mechanic.
4. SUBJECT OFFICER observed COMPLAINANT's taxi being stopped and unattended.
5. COMPLAINANT's taxi was stopped directly in front of a "no parking or no standing" sign.
6. After approximately ten minutes, COMPLAINANT departed in this taxi but did not have his dome light illuminated.
7. SUBJECT OFFICER followed COMPLAINANT and conducted a traffic stop of his vehicle in the 1700 block of Montana Avenue, NE at approximately 4:45 p.m.
8. SUBJECT OFFICER requested COMPLAINANT produce his driver's license, hack license, registration, manifest, and proof of insurance.
9. SUBJECT OFFICER also asked COMPLAINANT to open the trunk of the taxi cab.
10. COMPLAINANT initially produced three expired insurance cards, but produced a current insurance card on the fourth attempt.
11. SUBJECT OFFICER asked COMPLAINANT to produce a valid insurance card at least four times.
12. It took COMPLAINANT two-three minutes to locate a current insurance card.
13. SUBJECT OFFICER inspected the taxi while COMPLAINANT was locating the requested information.

14. COMPLAINANT produced all of the requested information, except for a manifest which he did not have.
15. SUBJECT OFFICER did not provide COMPLAINANT with a deadline to produce the requested information, which is required by section 702.3 of DCMR Title 31.
16. SUBJECT OFFICER issued COMPLAINANT a ticket for “Failing to Comply with a Lawful Order” because he did not have a current insurance card readily available.
17. The dome light on COMPLAINANT’s taxi was turned off, which indicated that he was either off duty or that the vehicle was being utilized for personal use. Section 605.1 of DCMR Title 31.
18. COMPLAINANT explained to SUBJECT OFFICER that he was off duty and using the taxi for personal use, since his personal vehicle was being repaired.
19. COMPLAINANT showed SUBJECT OFFICER two children’s booster seats in the back seat.
20. SUBJECT OFFICER told COMPLAINANT that the regulations required that his manifest must indicate that he is off duty.
21. COMPLAINANT was unable to produce a manifest.
22. SUBJECT OFFICER issued the “Failure to Comply with a Lawful Order” citation because COMPLAINANT was unable to readily produce a valid insurance card, not because he failed to produce a manifest.
23. COMPLAINANT filed a complaint with the Office of Police Complaints on October 21, 2015, alleging SUBJECT OFFICER’s actions on October 3, 2015 constituted harassment.

III. 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.”

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.

At issue is whether SUBJECT OFFICER harassed COMPLAINANT when he issued traffic citations for (1) failing to have an illuminated dome light on this taxi and (2) for failing to comply with a lawful order. As explained below, the Complaint Examiner finds that SUBJECT OFFICER harassed COMPLAINANT by issuing these citations, neither of which was warranted.

On October 3, 2015, COMPLAINANT was off duty and using his taxi for personal use, which he explained to SUBJECT OFFICER. As evidence that he was off duty and using the taxi for his personal use, COMPLAINANT directed SUBJECT OFFICER to the two children’s booster seats in the back seat of the taxi. It should have been obvious to SUBJECT OFFICER that the taxi could not be used for commercial purposes when the backseat was unavailable. SUBJECT OFFICER took the position that the dome light should have been illuminated because COMPLAINANT was unable to produce a manifest with the words off duty and therefore he (COMPLAINANT) was technically not off duty. While COMPLAINANT may have remained technically on duty as alleged by SUBJECT OFFICER because he failed to produce a manifest containing the words off duty, the overwhelming evidence supports a conclusion that he in fact was off duty. Beyond the failure to produce a manifest, SUBJECT OFFICER did not challenge COMPLAINANT’s claim that he was off duty and using the vehicle for his personal use. Accordingly, COMPLAINANT was in full compliance with section 605.1 of DCMR Title 31, which allows a taxi driver to turn off the dome light when the “vehicle is either off-duty or is being utilized for personal use.”

SUBJECT OFFICER issued the failure to comply citation because, as SUBJECT OFFICER said “I asked [COMPLAINANT] five times for his license, registration, insurance, and manifest and hack license and the respondent gave me three wrong insurance cards before he gave me the correct one on the fourth time.” Exhibit 5, p. 3. SUBJECT OFFICER explained that the main problem was production of the insurance card and not a failure to produce a manifest.

Id. Production of a valid driver's license, registration and hack license are not at issue in this complaint.

There is no dispute that COMPLAINANT produced three expired insurance cards before finally locating a valid insurance card. This entire episode transpired over a period of two to three minutes, according to SUBJECT OFFICER. At no time, however, did SUBJECT OFFICER give COMPLAINANT a deadline for compliance as required by the applicable regulations. See Section 702.3, DCMR title 31. In any event, COMPLAINANT acted in a manner that suggested he was trying to comply with SUBJECT OFFICER's requests, but in the heat of the moment was unable immediately to locate his current insurance card.

On behalf of SUBJECT OFFICER, the Police Union argues that SUBJECT OFFICER issued identical citations in another incident, the lawfulness of which were sustained by the Office of Administrative Hearings. Police Union Exhibit 1 (District of Columbia Taxicab Commission v. Syed Jawiaid Iqbal Rizvi).

The OAH decision is inapposite. First, the Administrative Law Judge found that the respondent did not misuse the dome light by not having it on. Police Union Exhibit 1, p.1. While the ALJ does not explain the basis for the decision, the bottom line is that the holding does not support SUBJECT OFFICER's contention.

With regard to the claim that the failure to comply citation should be dismissed, the ALJ made clear that the Respondent was stonewalling the officer's request to produce credentials. The Respondent, according to the ALJ, took no action to comply until the officer's *seventh* request. Here, however, COMPLAINANT immediately sought to comply with SUBJECT OFFICER's lawful requests for credentials. While it took him four tries to locate a valid insurance card, he was able to produce all requested documents (except the manifest) within two or three minutes. As the ALJ noted, the objective standard to determine compliance with regulation (31 DCMR 817.4) is "provide your credentials when asked," which is exactly what COMPLAINANT did here. It is an unfounded leap to conclude that two or three minutes of active searching constitutes a failure to obey a lawful order.

For these reasons, the Complaint Examiner concludes that SUBJECT OFFICER harassed COMPLAINANT in violation MPD General Order 120.25 Part III, Section B, No. 2 by issuing traffic citations for failing to have a dome light illuminated and failing to comply with a lawful order. The issuance of the two citations was not justified by the totality of the circumstances and constituted harassment of COMPLAINANT.

IV. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation: Harassment	Sustained
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Submitted on September 6, 2016.

Richard S. Ugelow
Complaint Examiner