

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint Nos.:</b>	10-0361, 10-0491, 10-0492
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER, Seventh District
<b>Allegation 1:</b>	Harassment (Complaint No. 10-0361)
<b>Allegation 2:</b>	Harassment (Complaint No. 10-0491)
<b>Allegation 3:</b>	Harassment (Complaint No. 10-0492)
<b>Complaint Examiner:</b>	Adav Noti
<b>Merits Determination Date:</b>	January 10, 2013

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 brings three complaints against SUBJECT OFFICER of MPD.<sup>1</sup>

Complaint 10-0361 encompasses two allegations of harassment. First, COMPLAINANT alleges that SUBJECT OFFICER harassed him on May 28, 2010, by following a car in which COMPLAINANT was riding and by telling the driver of that car (a friend of COMPLAINANT) that he should “watch the company he keeps.” Second, COMPLAINANT alleges that SUBJECT OFFICER harassed him on May 29, 2010, by standing near him on a sidewalk, saying something about COMPLAINANT loudly into a cell phone, and then following COMPLAINANT into a convenience store.

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<sup>1</sup> In addition to the allegations discussed below, COMPLAINANT also alleged that SUBJECT OFFICER had (1) failed to provide his name and badge number upon request; (2) attempted to retaliate against COMPLAINANT in response to his filing of an OPC complaint; and (3) harassed COMPLAINANT on two occasions in April 2010. (ROI at 1 n.1.) The first two allegations were dismissed on August 31, 2012, by a member of the Police Complaints Board who concurred with the determination of OPC’s Executive Director. (*Id.*) OPC did not address the third allegation because it was filed outside the 45-day statutory deadline. (*Id.*)

In complaint 10-0491, COMPLAINANT alleges that SUBJECT OFFICER harassed him on August 8, 2010, by attempting to have him barred from an apartment complex.

In complaint 10-0492, COMPLAINANT alleges that SUBJECT OFFICER harassed him on August 6, 2010, by attempting to have him barred from the same convenience store that is at issue in complaint 10-0361.

## **II. EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, 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 on a review of OPC's Report of Investigation (including the exhibits thereto); the objections submitted by SUBJECT OFFICER on October 26, 2012; the Supplemental Report of Investigation dated December 13, 2012; and SUBJECT OFFICER'S January 4, 2013, response to the Supplemental Report of Investigation, the Complaint Examiner finds the material facts regarding this complaint to be:

1. From March 26, 2010, until August 25, 2010, COMPLAINANT resided in the 1500 block of Ogden Street, N.W.
2. SUBJECT OFFICER is assigned to the Seventh District, but he owns real estate in the vicinity of the 1500 block of Ogden Street, N.W. and is frequently in that area while off-duty.
3. On May 28, 2010, SUBJECT OFFICER was off-duty but driving a marked MPD vehicle when he saw a van parked near Ogden Street, N.W. and Center Street, N.W. WITNESS #1 was in the driver's seat of the van, and the complainant was in the passenger's seat.
4. When WITNESS #1 began to drive away, SUBJECT OFFICER followed in his MPD vehicle. After several blocks, WITNESS #1 reached his destination and got out of the van. Having noticed the MPD vehicle following him, WITNESS #1 approached SUBJECT OFFICER'S car on foot and asked why he was being followed. SUBJECT OFFICER responded with a statement to the effect that WITNESS #1 should "watch the company [he] keep[s]."
5. On May 29, 2010, COMPLAINANT was standing with WITNESS #2 outside the Ogden Market convenience store on Ogden Street, N.W. SUBJECT OFFICER, who was not in uniform, approached the men on foot. While standing near them, SUBJECT OFFICER

said something into his cell phone indicating that he was “standing with” or “talking to” COMPLAINANT.

6. WITNESS #2 and COMPLAINANT then walked into Ogden Market. SUBJECT OFFICER followed them into the store, waited in the doorway while they made a purchase, and walked out of the store when they left.
7. WITNESS #3 lives in the same neighborhood as COMPLAINANT and is active in a neighborhood anti-crime group. In approximately April 2010, members of that group complained to a probation officer about COMPLAINANT being allowed to live in the community despite having been convicted of felony drug distribution. COMPLAINANT learned of these complaints and posted a statement expressing his displeasure with them on WITNESS #3'S Facebook page. On or about August 2, 2010, WITNESS #3 obtained a restraining order against COMPLAINANT as a result of that post.
8. On August 6, 2010, SUBJECT OFFICER asked the owner of Ogden Market, WITNESS #4, to execute a barring notice prohibiting COMPLAINANT from entering the store. SUBJECT OFFICER based this request, at least in part, on the restraining order WITNESS #3 had obtained against COMPLAINANT.
9. SUBJECT OFFICER presented WITNESS #4 with a barring notice that had an MPD insignia at the top and included COMPLAINANT'S arrest photograph (i.e., mugshot) and PDID number.
10. WITNESS #4 declined to execute the barring notice. He did, however, subsequently tell COMPLAINANT about SUBJECT OFFICER'S request. WITNESS #4 also asked COMPLAINANT to stay away from the store to avoid causing any further trouble with MPD.
11. On August 8, 2010, SUBJECT OFFICER informed a special police officer at the Cromwell Apartments, ADDRESS, about the restraining order WITNESS #3 had obtained against COMPLAINANT. SUBJECT OFFICER noted that WITNESS #3 lived across the street from the Cromwell Apartments, and he asked the SPO to bar COMPLAINANT from Cromwell Apartments in light of the restraining order. The SPO declined to bar COMPLAINANT.

#### **IV. DISCUSSION**

Pursuant to D.C. Official Code § 5-1107(a), “[t]he 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 . . . harassment.” MPD’s General Orders define harassment 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.

MPD General Order 120.25, Part III, Section B, No. 2 (emphasis added). The regulations governing OPC similarly define harassment 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 (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 (emphasis added).

These statutory and regulatory definitions each provide that an officer's conduct does not constitute harassment unless it is illegal or "in violation of . . . internal guidelines of the MPD." Thus, the question is whether the subject officer violated any District of Columbia regulations or internal MPD guidelines.

None of the regulations and guidelines to which the Complaint Examiner has been directed prohibit SUBJECT OFFICER'S actions. The first such guideline invoked here is MPD General Order 303.01, Part I.A.2.a (cited in ROI at 15). But that order governs only "*traffic enforcement action[s]*." *See also id.* at 1 (listing subject of order as "Traffic Enforcement"). Because no traffic enforcement actions are at issue in this case, General Order 303.01 is not relevant.

Second, there is an allegation that the subject officer violated D.C. Mun Regs., tit. 6A, § 202.15 (cited in Supplemental ROI at 2), which prohibits an officer from "directly or indirectly, us[ing] his or her office for the purpose of influencing the lawful business, profession, or occupation of any person or persons." The record establishes, however, that COMPLAINANT was not engaged in any "lawful business, profession, or occupation" during the relevant time period. At most, SUBJECT OFFICER interfered with COMPLAINANT'S

ability to spend time with WITNESS #1 and purchase goods at Ogden Market, neither of which is a “profession.”

Third, MPD General Order 120.21 (cited in Supplemental ROI at 2, 3) prohibits an officer from engaging in “conduct unbecoming an officer” or “prejudicial to the reputation and good order of the police force.” MPD General Order 120.21, attach. A ¶¶ 12, 25; *see also* D.C. Mun Regs., tit. 6B, § 1803.1(a) (cited in Supplemental ROI at 2) (prohibiting conduct that “adversely affects the confidence of the public in the integrity of [District] government”). The evidence does not demonstrate that any of SUBJECT OFFICER’S actions were “unbecoming” or affected the “reputation” of MPD. Although COMPLAINANT alleges that he was personally troubled by those actions and has lost “confidence in the police force” (Supplemental ROI at 3), COMPLAINANT has ample reason — unrelated to any of SUBJECT OFFICER’S actions — to feel animus towards the department. His assertions regarding its reputation are therefore entitled to little weight. In any event, a complainant cannot sustain an allegation of harassment merely by claiming that the officer’s actions have affected MPD’s “reputation” in the complainant’s own eyes. Permitting such bootstrapping would require any allegation of harassment to be sustained based on nothing more than the subjective views of the complainant. Thus, because the Complaint Examiner declines to credit COMPLAINANT’S statements regarding his confidence in MPD, and because such statements would be insufficient to establish harassment even if the Complaint Examiner did credit them, the Complaint Examiner finds that the preponderance of the evidence does not demonstrate that SUBJECT OFFICER violated General Order 120.21.

Fourth, D.C. Mun. Regs. tit. 6B, § 1806.1 (cited in Supplemental ROI at 3) prohibits the use of government property “for other than officially approved purposes.” The only use of government property at issue in this case is SUBJECT OFFICER’S creation of a barring notice on the MPD computer system. The creation of barring notices is, in general, an “approved purpose” of that system, as demonstrated by the fact that MPD maintains a barring-notice template that officers complete by inserting the barred person’s picture and identifying information and selecting one of three pre-written reasons for barring. (*See* ROI Ex. 25.) And the evidence does not demonstrate any impropriety in SUBJECT OFFICER’S creation of the specific notice that would have barred COMPLAINANT from Ogden Market. In light of the restraining order that WITNESS #3 had obtained against COMPLAINANT (which barred him from coming within 100 feet of her, *see* Supplemental ROI attach. A) and the fact that she lives on the same block as the store, the Complaint Examiner agrees with SUBJECT OFFICER that he “had a legitimate law enforcement purpose for his actions” (Resp. to Supplemental ROI at 3), *i.e.*, helping to keep WITNESS #3 safe from COMPLAINANT.

Finally, MPD General Order 201.36 (cited in Supplemental ROI at 3) prohibits an officer from using “official powers . . . for personal profit or gain,” and MPD General Order 201.26 (cited in Supplemental ROI at 3) similarly prohibits officers from using “the power of their office for their own advantage.” The allegation that SUBJECT OFFICER violated these orders essentially suggests that SUBJECT OFFICER was trying to increase the value of his real estate

by keeping COMPLAINANT away from it. The evidence, however, demonstrates that a number of community members (particularly WITNESS #3) were troubled by COMPLAINANT'S presence, and that they conveyed these concerns to SUBJECT OFFICER. *Supra* Part III ¶ 7; *see also* Resp. to Supplemental ROI at 2 (citing citizen complaints). The factual record therefore supports SUBJECT OFFICER'S assertion that — as a police officer and a stakeholder in the community — he was acting in response to the neighborhood's concerns about COMPLAINANT. While it is *possible* that SUBJECT OFFICER was also motivated by the effect on his property values of having a convicted felon frequent the area, such speculation is outweighed by the evidence supporting the reasonable inference that he was trying to help WITNESS #3 and her neighbors. Thus, the preponderance of the evidence does not establish that SUBJECT OFFICER sought to gain "personal profit" or "advantage" from his dealings with COMPLAINANT.

In sum, none of the MPD orders, guidelines, or policies invoked here prohibit SUBJECT OFFICER'S actions or establish that he harassed COMPLAINANT within the meaning of D.C. Mun. Regs., tit. 6A, § 2199.1. SUBJECT OFFICER is accordingly exonerated.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER:

<b>Allegation 1:</b>	Exonerated
<b>Allegation 2:</b>	Exonerated
<b>Allegation 3:</b>	Exonerated

Submitted on January 10, 2013.

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Complaint Examiner