

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	10-0427
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Fifth District
Allegation 1:	Harassment
Complaint Examiner:	Ali Beydoun
Merits Determination Date:	March 18, 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 alleges that on July 13, 2010, Metropolitan Police Department (MPD) SUBJECT OFFICER, Fifth District entered his home without consent, unannounced and without justification and harassed him.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation and the attached exhibits, including the complaint form, and OPC's letters to the citizen and the subject officer dated January 28, 2013, 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 and the attached exhibits, including the complaint form, and the OPC's letters to the citizen and the subject officer dated January 28, 2013, the Complaint Examiner finds the material facts regarding this complaint to be:

1. COMPLAINANT filed a complaint with the Office of Police Complaints (OPC) on July 15, 2010.
2. On July 13, 2010, COMPLAINANT was sitting on a couch in his home with his girlfriend, WITNESS. Suddenly, a uniformed black male officer, later identified as SUBJECT OFFICER, appeared inside of COMPLAINANT'S home. Neither COMPLAINANT nor his guest gave SUBJECT OFFICER consent or permission to enter into the home.
3. In his statement to OPC, SUBJECT OFFICER remarks that he purposefully entered COMPLAINANT'S home without knowing whether he had the permission to enter the home.
4. Without knowing whether he had received consent or permission to enter COMPLAINANT'S home, SUBJECT OFFICER walked inside the home with WITNESS' children. Once inside the home, SUBJECT OFFICER saw and recognized COMPLAINANT from prior interactions with him.
5. COMPLAINANT states that upon seeing him inside the home that SUBJECT OFFICER made an oral statement referencing COMPLAINANT'S arrest one week earlier.
6. COMPLAINANT told SUBJECT OFFICER that he did not have permission to enter the house and that he should leave. SUBJECT OFFICER explained that he was "trying to bring the children inside" but COMPLAINANT continued to request that SUBJECT OFFICER leave the home.
7. SUBJECT OFFICER exited the home and left the scene. Just before leaving, however, SUBJECT OFFICER remarked to other officers arriving that the house belonged to COMPLAINANT.
8. SUBJECT OFFICER did not document this incident with COMPLAINANT.

IV. DISCUSSION

Pursuant to D.C. Official 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 . . ."

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.

According to COMPLAINANT, he was sitting on the couch in his living room with his girlfriend, WITNESS, when a uniformed black male MPD officer, later identified as SUBJECT OFFICER, appeared inside the house, without warning or permission. SUBJECT OFFICER purposefully entered COMPLAINANT’S home and addressed WITNESS regarding her children that he had just brought inside the house. During this exchange SUBJECT OFFICER turned his head and noticed COMPLAINANT inside the house. SUBJECT OFFICER recognized COMPLAINANT from a prior interaction and made an oral comment about COMPLAINANT’S recent arrest. SUBJECT OFFICER does not dispute that he entered COMPLAINANT’S house without knowing whether he had consent or permission to enter. However, SUBJECT OFFICER asserts that regardless of whether he had COMPLAINANT or WITNESS’ consent to enter the home, that he actually had a valid reason to enter the home without first knowing if he had permission. SUBJECT OFFICER suggests that he was justified to enter the home because he was “compelled” to act to make sure there weren’t any “child neglect issue(s).” SUBJECT OFFICER states he was unaware it was COMPLAINANT’S home until after he saw COMPLAINANT in the living room.

The Supreme Court of the United States has held that “the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.” *Payton v. New York*, 445 U.S. 573, 100 S. Ct. 1371, 1373, 63 L. Ed. 2d 639 (1980); *see also Agnello v. United States*, 269 U.S. 20, 46 S.Ct. 4, 70 L.Ed. 145 (1925) (“Freedom from intrusion into the home or dwelling is the archetype of the privacy protection secured by the Fourth Amendment.”). District of Columbia case law elaborates to say that “no matter who the officer is or what his mission, a government official cannot invade a private home, unless (1) a magistrate has authorized him to do so or (2) an immediate major crisis in the performance of duty affords neither time nor opportunity to apply to a magistrate. This right of privacy is not conditioned upon the objective, the prerogative or the stature of the intruding officer. His uniform, badge, rank, and the bureau from which he operates are immaterial. It is immaterial whether he is motivated by the highest public purpose or by the lowest personal spite.” *Dist. of Columbia v. Little*, 178 F.2d 13, 17 (D.C. Cir. 1949) *aff’d*, 339

U.S. 1, 70 S. Ct. 468, 94 L. Ed. 599 (1950); *Dorman v. United States*, 435 F.2d 385, 403 (D.C. Cir. 1970).

In determining whether a warrantless entrance into a private citizen's home is allowed under the exigent circumstances exception, the officer must meet his burden of demonstrating that the "exigencies of the situation" made a warrantless search "imperative," *United States v. Martin*, 562 F.2d 673, 676 (D.C.Cir.1977)(quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 455, 91 S.Ct. 2022, 2032, 29 L.Ed.2d 564 (1971)); *see also United States v. Robinson*, 533 F.2d 578, 581 (D.C.Cir.1976) (en banc) ("we must be guided "by the realities of the situation presented by the record.""). In determining whether exigent circumstances exist, courts may consider the "emergency" exception, which permits an officer's entry when people inside the home are reasonably believed to be in danger. *See Olivier v. U.S.*, 656 A.2d 1159, 1164 (D.C. 1995).

Based on SUBJECT OFFICER'S own statements, at the time he entered the home he knew he did not have a warrant or consent to go into the house. He acknowledged that although he heard a woman's voice responding to his request for someone to open the door, he did not understand what she said or whether she was, in fact, giving him consent to enter the home. As a result, SUBJECT OFFICER did not have any authority to enter the home as he did not have consent or a warrant. Without consent or a warrant he could not have entered the home unless an exception to the warrant requirement existed.

There is no evidence on the record or present to the Complaint Examiner that demonstrates the existence of an immediate crisis that would allow warrantless entry into a home. Even if SUBJECT OFFICER found COMPLAINANT or WITNESS' children playing in the street, SUBJECT OFFICER had resolved that emergency when he brought the children into the house. Additionally, as District of Columbia courts have held in its decisions, the emergency exception permits an officer's warrantless entry only to assist persons inside the home. *See Olivier, supra*. The emergency exception does not allow an officer to make a warrantless entry into a home based on an emergency he perceives occurring outside the dwelling. Furthermore, evidence of the absence of an emergency occurring at the time SUBJECT OFFICER entered COMPLAINANT'S home is demonstrated by the fact that SUBJECT OFFICER did not find it necessary to document this incident.

The Complaint Examiner finds that evidence reviewed in this matter supports the finding that SUBJECT OFFICER harassed COMPLAINANT when he made a warrantless, unauthorized, and nonconsensual entry into COMPLAINANT'S home and purposefully, knowingly or recklessly infringed upon COMPLAINANT'S constitutional rights without a legitimate law enforcement purpose.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER, Fifth District

Allegation 1:	Sustained
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Submitted on March 18, 2013.

Ali Beydoun
Complaint Examiner