

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	11-0093, 11-0094, 11-0095 <sup>1</sup>
<b>Complainants:</b>	COMPLAINANT #1, COMPLAINANT #2, and COMPLAINANT #3
<b>Subject Officer, Badge No., District:</b>	SUBJECT OFFICER, First District
<b>Allegation 1:</b>	Harassment
<b>Allegation 2:</b>	Insulting, Demeaning, or Humiliating Language or Conduct
<b>Complaint Examiner:</b>	Arthur D. Sidney
<b>Merits Determination Date:</b>	December 3, 2012

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**

Three complainants, COMPLAINANT #1 and his parents, COMPLAINANT #2, and COMPLAINANT #3 (together the three are called “Complainants”), filed separate complaints regarding the same incident with OPC on November 23, 2010; these three complaints have been consolidated in this matter. COMPLAINANT #1, alleged that on November 13, 2010, SUBJECT OFFICER, First District harassed him during a traffic stop by searching the car and threatening him. COMPLAINANTS also alleged that SUBJECT OFFICER used language or conduct that was insulting, demeaning, or humiliating during the traffic stop.<sup>2</sup>

---

<sup>1</sup> Three complainants, COMPLAINANT #1, COMPLAINANT #2, and COMPLAINANT #3, filed separate complaints regarding the same incident with the Office of Police Complaints (“OPC”) on November 23, 2010; therefore, these three complaints have been consolidated here.

<sup>2</sup> COMPLAINANT #1 also alleged that SUBJECT OFFICER discriminated against him based upon his race, African American, and personal appearance, one who wears their hair in the dreadlock hairstyle, during the traffic stop. On August 24, 2012, a member of the Police Complaints Board (“PCB”) dismissed these allegations, concurring with the determination made by OPC’s executive director.

## **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 upon a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on October 11, 2012, and the response memorandum submitted by OPC on October 24, 2012, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On November 13, 2010, COMPLAINANT #1 was driving home from a concert with two friends, WITNESS #1 and WITNESS #2, along Benning Road, N.E. at approximately 10:10 p.m. COMPLAINANT #1 was in the far left lane of Benning Road, N.E. and was approaching a traffic light that was about to turn yellow followed by a construction sign warning drivers to merge right. After COMPLAINANT #1 merged, he was pulled over by SUBJECT OFFICER and WITNESS OFFICER, First District, who was with SUBJECT OFFICER. SUBJECT OFFICER was WITNESS OFFICER'S training officer at the time. SUBJECT OFFICER approached the driver's side of the car while WITNESS OFFICER positioned himself at the rear of the passenger side of the car.
2. SUBJECT OFFICER explained to COMPLAINANT #1 that he was stopped because "he saw [him] cut off vehicles and fail to use his turn signal." SUBJECT OFFICER requested COMPLAINANT #1'S license, registration, and insurance card.
3. COMPLAINANT #1 provided SUBJECT OFFICER with his license and registration but informed SUBJECT OFFICER that he did not have his insurance card with him.
4. SUBJECT OFFICER then told COMPLAINANT #1, "Your Dad's going to have to come down here with your insurance card, or else I'm going to have to impound your car." SUBJECT OFFICER mentioned a "lock up." COMPLAINANT #1 called his parents, COMPLAINANT #2 AND COMPLAINANT #3, on his cellular phone to ask them to bring his insurance card. While the phone was still engaged, SUBJECT OFFICER asked COMPLAINANT #1 to step out of the car.
5. COMPLAINANT #1 began to remove his seatbelt and exit the vehicle when SUBJECT OFFICER stated, "You have three seconds or I'm pulling you out." COMPLAINANT #1 exited the car and put his cellular phone on the roof and walked to the rear of the car. COMPLAINANT #1 remained at the rear of the car with WITNESS OFFICER while SUBJECT OFFICER approached the driver's side of the car. As SUBJECT OFFICER

walked by, he said, "I've been doing this for 22 years, before you were even thought of. Your parents were probably screwing other people then."

6. SUBJECT OFFICER told the two passengers in the car to step out, and then began to search COMPLAINANT #1'S car. Before conducting the search, SUBJECT OFFICER asked COMPLAINANT #1 whether there was anything that SUBJECT OFFICER needed to know about. COMPLAINANT #1 responded that that he did not "do that kind of stuff." SUBJECT OFFICER did not expressly ask consent to search the car before he searched the car. After the search, which turned up nothing, SUBJECT OFFICER issued COMPLAINANT #1 four tickets in total: three for traffic violations and one for failure to have and display proof of insurance. After issuing the COMPLAINANT #1 the tickets, SUBJECT OFFICER informed him that he was free to leave.
7. Complainant's parents, COMPLAINANT #2 and COMPLAINANT #3, remained on the cellular phone during the interaction between SUBJECT OFFICER and COMPLAINANT #1. Complainant's parents heard the statements SUBJECT OFFICER made to their son.
8. On three separate occasions, when asked to submit to an interview by OPC, SUBJECT OFFICER was present for each interview but declined to participate on March 2, 2011, March 30, 2011, and July 14, 2011.
9. WITNESS OFFICER participated in the interview with OPC; but, he did not recall the involved incident.

#### **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; (2) use of unnecessary or excessive force; (3) use of language or conduct that is insulting, demeaning, or humiliating..."

##### **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 (2002).

COMPLAINANT #1 alone alleged that SUBJECT OFFICER subjected him to harassment by unlawfully searching his car without his consent. COMPLAINANT #1 alleged that prior to SUBJECT OFFICER searching the car, he asked whether there was anything that SUBJECT OFFICER needed to know about. COMPLAINANT #1 alleged that he responded that he did not “do that kind of stuff” and that SUBJECT OFFICER never requested consent to search the car. COMPLAINANT #1 also alleged that before he exited the car, SUBJECT OFFICER stated, “You have three seconds or I’m pulling you out.”

SUBJECT OFFICER failed to provide evidence to OPC despite many attempts to interview SUBJECT OFFICER and WITNESS OFFICER was unable to recall the incident. SUBJECT OFFICER failed to provide evidence to OPC because he was unhappy with the manner that OPC interpreted the D.C. Code which gave the executive director discretion to refer the involved case to the United States Attorney’s Office for the District of Columbia for criminal prosecution.

D.C. Code § 5-1109(a) provides: “When in the determination of the executive director [of OPC], there is reason to believe that the misconduct alleged in a complaint... may be criminal in nature, the Executive Director shall refer the matter to the United States Attorney’s Office (USAO) for the District of Columbia for possible criminal prosecution.” SUBJECT OFFICER was misguided in his interpretation of the Code because it gives discretion to the executive director to determine if a case should be referred to USAO, SUBJECT OFFICER cannot insist that the involved matter be referred in an effort to shield himself from participating in OPC’s proceedings. SUBJECT OFFICER made the decision not to participate in OPC’s administrative proceedings. Indeed, if SUBJECT OFFICER interpretation of the statute was correct, he would only participate if a hearing was determined necessary, and even then, there is no indication that he would participate given his pattern on non-cooperation in this case.

While only COMPLAINANT #1 has alleged his car was searched, COMPLAINANT #1’S father stated that he heard SUBJECT OFFICER ask COMPLAINANT #1 whether there was anything in the car that SUBJECT OFFICER should know about. Complaint Examiner finds this statement credible and sufficient to corroborate COMPLAINANT #1’S account that the car was searched. Complaint Examiner finds that COMPLAINANT #1’S father was truthful because he noted that he could not hear his son’s responses during certain phases of the interaction between his son, COMPLAINANT #1, and SUBJECT OFFICER. Complaint Examiner further finds this statement truthful as COMPLAINANT #2 and COMPLAINANT #3

were listening to the events that transpired through COMPLAINANT #1'S cellular phone. Thus, Complaint Examiner determines that SUBJECT OFFICER asked whether there was anything that he needed to know about before searching COMPLAINANT #1'S car and that he threatened to pull COMPLAINANT #1 out of the car if he did not exit the car posthaste.

Based upon the facts, it can only be concluded that the actions of SUBJECT OFFICER were to harass COMPLAINANT #1. There are no facts offered to suggest that there was probable cause, reasonable suspicion, or consent to search COMPLAINANT #1'S car. *See, e.g., Michigan v. Long*, 463 U.S. 1032 (1983); *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); *Carroll v. U.S.*, 267 U.S. 132 (1925) (discussing exceptions to search warrant requirement). This was a simple traffic stop where COMPLAINANT #1 was involved in a minor traffic violation. COMPLAINANT #1 had the legal right to refuse a search of his car but was denied that right by SUBJECT OFFICER. *See OPC Case No. 09-0227* 2012 D.C. LEXIS 2 (D.C. Office of Police Complaints, Feb. 9, 2012) (determining that SUBJECT OFFICER'S decision to search the COMPLAINANT #1'S vehicle after COMPLAINANT #1 expressly did not provide consent constituted harassment).

Accordingly, Complaint Examiner finds credible COMPLAINANT #1'S allegation that SUBJECT OFFICER searched his car without consent and threatened to pull him out of the car and subjected him to "words [or] conduct" directed at COMPLAINANT #1 so as to subject him to "mistreatment." MPD General Order 120.25, Part III, Section B, No. 2. There was no basis for SUBJECT OFFICER to threaten COMPLAINANT #1, remove him from the car, or search his car without consent. Thus, Complaint Examiner determines that by searching COMPLAINANT #1'S car without consent, removing COMPLAINANT #1 from car, and threatening him, SUBJECT OFFICER purposefully, knowingly, and recklessly infringed upon COMPLAINANT #1'S rights and harassed him in violation of D.C. Code § 5-1107(a) and MPD General Order 120.25.

### **Language or Conduct**

Language or conduct that is insulting, humiliating, or demeaning, as defined by MPD Special Order 01-01, Part III, Section H, "includes, but is not limited to acts, words, phrases, slang, slurs, epithets, 'street' talk or other language which would be likely to demean the person to whom it is directed or to offend a citizen overhearing the language; demeaning language includes language of such kind that its use by a member tends to create disrespect for law enforcement whether or not it is directed at a specific individual."

According to MPD General Order 201.26, Part I, 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."

COMPLAINANT #1 alleges that SUBJECT OFFICER used language or engaged in conduct toward him that was insulting, demeaning, or humiliating during the traffic stop. All three COMPLAINANTS alleged that SUBJECT OFFICER used inappropriate language when he stated, “Your parents were probably still screwing other people” to reference his years of police experience vis-à-vis COMPLAINANT #1’S age. COMPLAINANT #2 stated that SUBJECT OFFICER sounded frustrated and behaved unprofessionally toward his son; while, COMPLAINANT #3 stated that SUBJECT OFFICER yelled at her son and used words to provoke him. Complaint Examiner finds COMPLAINANT #1’S accounts to be credible given that COMPLAINANT #2 and COMPLAINANT #3 were able to hear the exchange by SUBJECT OFFICER and it is likely that SUBJECT OFFICER was frustrated, unprofessional, and loud – sufficiently loud to be heard from a cellular phone on the hood of the car a distance away from SUBJECT OFFICER and COMPLAINANT #1. Moreover, Complaint Examiner finds instructive what Complaint Examiner deems to be an objective assessment by COMPLAINANT #1’S mother that “the stop could have been a learning experience but the [Subject Officer] turned the situation into something negative.”

WITNESS OFFICER did not recall the specific incident and therefore could not provide specific information on the interaction between COMPLAINANT #1 and SUBJECT OFFICER.

Complaint Examiner finds COMPLAINANT #1’S statements to be credible. SUBJECT OFFICER refused to cooperate with OPC and submit to an interview to address the specific language and conduct allegations, and WITNESS OFFICER did not provide evidence of the language or conduct engaged in by SUBJECT OFFICER in this instance. Complaint Examiner finds that the sole purpose for SUBJECT OFFICER using unprofessional and discourteous language was to demean, humiliate or insult COMPLAINANT #1. *See, e.g., OPC Case No. 11-0097 2012 D.C. Police LEXIS 13 (D.C. Office of Police Complaints, September 25, 2012)* (sustaining language or conduct complaint where subject officer asked a sarcastic question to complainant that went “beyond the objective boundary of propriety”). Thus, Complaint Examiner determines the statements credited to SUBJECT OFFICER are insulting, demeaning, and humiliating and that these statements constitute insulting, demeaning or humiliating language towards COMPLAINANT #1 and violates D.C. Code § 5-1107(a) and MPD General Order 201.26.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER, First District

<b>Allegation 1: Harassment</b>	Sustained
<b>Allegation 2: Language or Conduct</b>	Sustained

Complaint Nos. 11-0093, 11-0094, 11-0095  
Page 7 of 7

Submitted on December 3, 2012.

---

ARTHUR D. SIDNEY  
Complaint Examiner