

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	11-0316
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Second District
Allegation 1:	Insulting, Demeaning, or Humiliating Language or Conduct
Allegation 2:	Failure to Identify
Complaint Examiner:	Adav Noti
Merits Determination Date:	March 10, 2014

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 SUBJECT OFFICER¹ of MPD used language and engaged in conduct that was insulting, demeaning, or humiliating toward the complainant and other witnesses. Specifically, COMPLAINANT states that on May 10, 2011, she witnessed two men who appeared to be in physical distress in a car parked near the corner of 15th Street, N.W. and Swann Street, N.W. COMPLAINANT states that she called 911 to obtain medical attention for the two men, and SUBJECT OFFICER was one of the officers who responded. COMPLAINANT alleges that SUBJECT OFFICER yelled at and argued with the complainant and other civilian witnesses.

COMPLAINANT also alleges that SUBJECT OFFICER refused to give her name and badge number upon request during the same incident.²

¹ Subsequent to the events described in the complaint, SUBJECT OFFICER changed her last name to LAST NAME, and she was generally referred to by her current name during the evidentiary hearing. This Merits Determination uses the subject officer's prior name to be consistent with the complaint, written witness statements, and report of investigation.

² In her complaint, COMPLAINANT further alleged that SUBJECT OFFICER used insulting, demeaning, or humiliating language by directing profanity toward COMPLAINANT and other witnesses. This allegation was

II. EVIDENTIARY HEARING

An evidentiary hearing was conducted regarding this complaint on February 3, 2014. The Complaint Examiner heard the testimony of COMPLAINANT, witnesses WITNESS #1 and WITNESS #2, and WITNESS DETECTIVE. SUBJECT OFFICER was unable to attend the hearing for medical reasons and waived her right to be present. The Complaint Examiner excused her absence for good cause. *See* D.C. Mun. Regs. tit. 6A, § 2118.6.

The exhibits attached to OPC's Report of Investigation (ROI) were made part of the record of the evidentiary hearing. The following exhibits were specifically introduced into evidence at the hearing:

Hearing Exhibit 1: A 51-second video that was appended to the ROI as Exhibit 10.

Hearing Exhibit 2: A 14-second video that was also appended to the ROI as Exhibit 10.

III. FINDINGS OF FACT

Based on a review of the ROI and its exhibits, the objections submitted by SUBJECT OFFICER on August 7, 2013, OPC's response to the objections, and an evidentiary hearing conducted on February 3, 2014, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On May 10, 2011, at approximately 9:15 p.m., COMPLAINANT was walking north on 15th Street, N.W. to an apartment that she shared with WITNESS #1 in the ADDRESS.
2. COMPLAINANT saw two men seated in the front seats of a car parked at the corner of 15th Street, N.W. and Swann Street, N.W. The man in the driver's seat appeared to be shaking or convulsing.
3. A passer-by whom COMPLAINANT did not know at the time, but who was later identified as WITNESS #3, arrived at the location at approximately the same time as COMPLAINANT and attempted to speak with the men in the car.
4. COMPLAINANT saw the man in the passenger seat stand up and begin to walk away. She then saw him return to the car, retrieve a backpack from it, and walk south on 15th Street, turning into an alley between Swann Street and S Street. The man's gait was stumbling and unsteady.
5. At approximately 9:23 p.m., as the passenger was walking away, COMPLAINANT called 911 and requested an ambulance to assist the man in the driver's seat, who had

stopped convulsing and was now slumped over the steering wheel and largely motionless. COMPLAINANT remained on the phone with the dispatcher for approximately 8 minutes, at which point a fire truck and an ambulance arrived.

6. Shortly after medical personnel arrived and the first 911 call ended, WITNESS OFFICER of MPD also arrived on the scene. COMPLAINANT and WITNESS #3 discussed the situation with her and urged her to locate the man who had been in the passenger seat of the car, arguing that he was probably in possession either of information that would assist in the medical treatment of the driver, or of illegal drugs, or both. WITNESS OFFICER declined to contact the passenger, which frustrated COMPLAINANT.
7. As COMPLAINANT and WITNESS #3 were talking to WITNESS OFFICER, SUBJECT OFFICER arrived on the scene by car. WITNESS #1 also arrived, having walked from his apartment on ADDRESS in response to a call from COMPLAINANT.
8. COMPLAINANT described the situation to WITNESS #1, who then looked into the alley where the car's passenger had walked. WITNESS #1 saw a disheveled, sweating man in the alley. WITNESS #1 walked back to the vicinity of the car, and the man in the alley emerged onto 15th Street behind him. COMPLAINANT and WITNESS #3 recognized the man as the one who had been in the passenger seat.
9. COMPLAINANT, WITNESS #3, and WITNESS #2 urged SUBJECT OFFICER to contact the passenger, who was standing nearby on 15th Street. SUBJECT OFFICER declined to do so. She and the civilians then began to argue loudly about whether a search of the passenger would be lawful or appropriate.
10. While COMPLAINANT, WITNESS #3, and WITNESS #1 were talking to SUBJECT OFFICER, WITNESS #2 (who owns the building in which COMPLAINANT and WITNESS #1 lived) came upon the scene. WITNESS #2 used his phone to record two videos.
11. The first video (Hearing Exhibit 1) shows events as follows:
 - a. As the video begins, SUBJECT OFFICER points at WITNESS #1 and says loudly, "You yelling!" then points at WITNESS #3 and says, "You yelling!" and then says to COMPLAINANT or WITNESS #2, "You telling me to be quiet." COMPLAINANT says, "Stop yelling! Stop yelling! There are people sleeping — stop yelling!" SUBJECT OFFICER says, "Really? Really? 1-2-3 yelling at me now."
 - b. WITNESS #1 then talks to SUBJECT OFFICER about the man who had been in the passenger seat of the car. WITNESS #1, who is animated and speaking loudly, describes the passenger as having walked away "with a bag, probably with

drugs in it.” SUBJECT OFFICER responds, “You know what? You know what? You know what? We can’t check him for drugs. You didn’t know that, did you?”

- c. WITNESS #3, who up to this point on the video appears to have been talking to WITNESS OFFICER, then tries to intervene in the conversation between WITNESS #1 and SUBJECT OFFICER. SUBJECT OFFICER says to WITNESS #3, in a loud and aggressive tone, “I’m not even talking to you! So we not having this conversation.” WITNESS #3 says that SUBJECT OFFICER is talking “so much” that WITNESS #3 cannot give his information to WITNESS OFFICER. SUBJECT OFFICER exclaims, “So what! Then you talk to her. Talk to her. Don’t tell me what to do. Talk to her.” WITNESS #3 returns to his conversation with WITNESS OFFICER.
12. In the second video (Hearing Exhibit 2), WITNESS #1 says politely, “Ma’am, I would like your name and your badge number, please.” It is not clear to which officer he is talking, and no response can be seen or heard on the video. Approximately one second later, WITNESS #1 can be heard saying “Thank you.”
13. At 9:44 p.m., COMPLAINANT called 911 again. In the recording of this call, COMPLAINANT tells the dispatcher that she had seen “two gentlemen sitting in a car, both completely erratic and convulsing.” She mentions that police officers are on the scene, and the dispatcher indicates that COMPLAINANT should talk to those officers. COMPLAINANT says, “You don’t understand. There are two police women here that are fighting with the other two witnesses.” The dispatcher promises to send “an official,” and COMPLAINANT responds, “I hope it’s a professional, ’cause these two women are clearly not.”
14. At some point after the exchange depicted in Hearing Exhibit 1, WITNESS #1 asked SUBJECT OFFICER for her badge number. SUBJECT OFFICER did not provide her badge number on this first request, instead questioning why WITNESS #1 needed it. WITNESSES #1, #3, and #2 then insisted that SUBJECT OFFICER was required to identify herself, while SUBJECT OFFICER continued to question why the witnesses were seeking such information. WITNESS #1 eventually obtained SUBJECT OFFICER’S name and badge number by reading them from the nameplate on her badge, and he entered them into a note on his phone.
15. WITNESS DETECTIVE lives in the area and could hear from inside his residence the loud dispute between COMPLAINANT, the witnesses, and WITNESS OFFICER and SUBJECT OFFICER. WITNESS DETECTIVE came out of his home, approached the scene, and identified himself as an MPD officer. He spoke separately with the civilians and the officers to try to calm the situation. At some point during these conversations, WITNESS DETECTIVE heard some “shouting back and forth” between the witnesses and the officers about “a badge number or name or whatever.”

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: . . . (3) use of language or conduct that is insulting, demeaning, or humiliating; . . . or (6) failure to . . . identify oneself by name and badge number when requested to do so by a member of the public.”

A. 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, 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.”

WITNESS #1 testified credibly that SUBJECT OFFICER addressed him in a “combative . . . and very argumentative” manner when he urged her to contact the passenger from the car, that she was “upset” and “lost her cool,” and that she was yelling “louder and louder” as the encounter continued. WITNESS #2 similarly testified credibly that SUBJECT OFFICER was “very loud . . . louder than anyone else[],” and that her demeanor was “unprofessional, “very aggressive, “belligerent,” “aggressive,” and “rude.”

The witnesses’ testimony is amply confirmed by Hearing Exhibit 1, which makes clear that SUBJECT OFFICER “insult[ed] and demean[ed]” WITNESS #1 and WITNESS #3. SUBJECT OFFICER’S first recorded action on the video is pointing at WITNESS #1 and exclaiming “You yelling!” and then pointing at the face of WITNESS #3, who appears to be standing within arm’s reach of her, and repeating the exclamation. Pointing a finger inches from a civilian’s face and exclaiming “You yelling!” is neither “courteous” nor “performing . . . duties quietly [and] remaining calm,” as the general order requires. Next, SUBJECT OFFICER can be seen mocking WITNESS #1’s statement that the passenger “probably [had] drugs” in his backpack, telling him, “We can’t check him for drugs. You didn’t know that, did you?” While there was nothing inherently inappropriate about informing WITNESS #1 that police officers have limited authority to conduct searches, SUBJECT OFFICER’s rhetorical rejoinder, “You didn’t know that, did you?” served no purpose except to imply that WITNESS #1 was ignorant, thereby insulting and demeaning him. Finally, SUBJECT OFFICER screams at WITNESS #3, “I’m not even talking to you!” and she responds to his request that she let him talk to WITNESS

OFFICER with a loud, aggressive, “So what!”³ Once again, this conduct is not quiet and calm as General Order 201.26 requires, but instead inflammatory and manifestly discourteous.

SUBJECT OFFICER asserts that Hearing Exhibit 1 “does not show [her] yelling at the citizens.” (SUBJECT OFFICER’s Objections at 4.) As the discussion above makes clear, that assertion is false. SUBJECT OFFICER also argues that “she was forced to raise her voice in response to the citizens screaming at her” (SUBJECT OFFICER’s Objections at 3), and that the complainant and the witnesses were unreasonably demanding that she treat the situation like a crime scene without any meaningful indication that a crime had occurred. SUBJECT OFFICER might have needed to speak loudly to be heard, and her characterizations of the witnesses’ demands are consistent with the record, but SUBJECT OFFICER did more than merely “raise her voice” and explain the legal situation. The preponderance of the evidence indicates that SUBJECT OFFICER lost her calm, spoke in an angry and agitated tone, and used insulting and demeaning language toward WITNESS #1 and WITNESS #3. Allegation 1 of the complaint is accordingly sustained as to those witnesses.

The record presents insufficient facts for the Complaint Examiner to decide whether SUBJECT OFFICER directed impermissible language and conduct toward the complainant. *See* D.C. Mun. Regs. tit. 6A, § 2120.2(c). COMPLAINANT’s testimony, if credited, would tend to indicate that such a violation occurred, and some portions of her testimony were corroborated by other evidence. But COMPLAINANT’s credibility was meaningfully impeached in several respects. Most importantly, COMPLAINANT admitted on cross-examination that her written complaint — a document signed and submitted under penalty of perjury — contained inaccurate “hyperbole” regarding SUBJECT OFFICER’s conduct. Such hyperbole also manifested itself in COMPLAINANT’s dismissed allegations that SUBJECT OFFICER used profanity, as well as in some of COMPLAINANT’s testimony at the evidentiary hearing. For example, COMPLAINANT testified with apparent certainty that she waited “a full 19 minutes” or “at least 20 minutes” for an ambulance, but the recording of her first 911 call shows that the wait was less than 8 minutes. Such exaggerations cast serious doubt on COMPLAINANT’s credibility, and the Complaint Examiner therefore accords relatively little weight to her testimony. Because the other witnesses did not testify specifically as to SUBJECT OFFICER’s interactions with COMPLAINANT, the Complaint Examiner finds that a preponderance of the evidence does not prove sufficient facts to sustain the allegation that SUBJECT OFFICER engaged in misconduct directed toward the complainant. Similarly, although the complaint appears to allege that SUBJECT OFFICER also committed misconduct toward WITNESS #2, no witness was asked about or offered specific testimony regarding that allegation during the evidentiary hearing, and so there are insufficient facts on which to sustain it. Nonetheless, because the evidence amply

³ WITNESS #1 and WITNESS #2 each independently recalled this last exchange, with WITNESS #1 testifying that SUBJECT OFFICER “was yelling at [WITNESS #3] . . . while he was trying to give a statement to WITNESS OFFICER,” and WITNESS #2 noting that WITNESS #3 had to ask SUBJECT OFFICER to “keep [her] voice down” so he could talk to WITNESS OFFICER.

demonstrates that SUBJECT OFFICER engaged in misconduct towards WITNESS #1 and WITNESS #3, the Complaint Examiner sustains allegation 1 of the complaint.

B. Failure to Identify

MPD General Order 201.26 requires MPD officers to “give their first and last name and badge numbers in a respectful and polite manner” when requested to do so by a member of the public.

WITNESS #1 and WITNESS #2 each testified that SUBJECT OFFICER refused to give her name and badge number several times in response to repeated requests from WITNESS #1 or WITNESS #3. This testimony alone would be sufficient to sustain the failure-to-identify allegation, as the Complaint Examiner found the witnesses’ descriptions of the events to be credible in all material respects. The Complaint Examiner found particularly credible WITNESS #1’s and WITNESS #2’s consistent statements that SUBJECT OFFICER did not merely decline to provide her name and badge number but rather actively questioned why the witnesses wanted it. This detail, to which each witness testified with a forceful and convincing demeanor, not only supports the allegations of the complaint, it also eliminates the possibility that SUBJECT OFFICER simply misunderstood (or failed to hear) the requests for her information.

Furthermore, WITNESS #1’s and WITNESS #2’s testimony was indirectly corroborated by WITNESS DETECTIVE. WITNESS DETECTIVE testified that he observed “shouting back and forth” between the witnesses and the officers about “a badge number or name or whatever.” If SUBJECT OFFICER had provided her name and badge number immediately upon request, it seems unlikely that the witnesses and the officers would have been “shouting back and forth” about that issue. Thus, all of the testimony provided at the evidentiary hearing supports the complainant’s allegation that SUBJECT OFFICER did not properly identify herself.

SUBJECT OFFICER argues that Hearing Exhibit 2 is exculpatory as to this allegation. In that exhibit, WITNESS #1 can be heard saying politely to one of the officers, “Ma’am, I would like your name and your badge number, please,” and, approximately one second later, “thank you.” SUBJECT OFFICER asks the Complaint Examiner to infer that WITNESS #1 was saying “thank you” in response to SUBJECT OFFICER providing her identifying information. This argument fails for several reasons. First, the time period between WITNESS #1’s request and his “thank you” is so short that it seems unlikely that SUBJECT OFFICER could have orally provided her “first and last name and badge number[] in a respectful and polite manner,” as required. Second, the video does not make clear whether WITNESS #1 is talking to SUBJECT OFFICER or WITNESS OFFICER. Because there is no dispute that WITNESS OFFICER provided her name and badge number on request, if one of the officers did respond to WITNESS #1’s recorded statement, it is at least as likely to have been WITNESS OFFICER as SUBJECT OFFICER. Finally, WITNESS #1 and WITNESS #2 each testified that WITNESS #1 asked SUBJECT OFFICER for her identifying information multiple times, so even if Hearing Exhibit 2 were interpreted as she requests, the video would shed no light on whether SUBJECT OFFICER had refused to identify herself earlier in the encounter. Thus, the witnesses’ testimony that

SUBJECT OFFICER failed to identify herself upon request far outweighs the speculative inference SUBJECT OFFICER seeks to draw from Hearing Exhibit 2, and SUBJECT OFFICER presents no other evidence to refute the witnesses' persuasive testimony.

Because the preponderance of the evidence indicates that SUBJECT OFFICER failed to identify herself as required by MPD General Order 201.26, allegation 2 of the complaint is sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER.

Allegation 1:	Sustained (as to WITNESSES #1 and #3)
Allegation 2:	Sustained

Submitted on March 10, 2014.

ADAV NOTI
Complaint Examiner