

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	11-0324
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Fourth District
Allegation 1:	Harassment
Complaint Examiner:	Jennifer A. Fischer, Esq.
Merits Determination Date:	September 6, 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 May 18, 2011, Metropolitan Police Department (“MPD”) Officer SUBJECT OFFICER harassed him when SUBJECT OFFICER issued him a ticket for excessive idling.¹

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this Complaint because, based on a review of OPC’s Report of Investigation, the objections submitted by SUBJECT OFFICER on

¹ COMPLAINANT also alleged that a second officer, WITNESS OFFICER, participated in the issuance of the ticket. WITNESS OFFICER is not listed on the ticket. During the course of its investigation, OPC determined that WITNESS OFFICER did not make the decision to or issue COMPLAINANT a ticket. Accordingly, OPC designated WITNESS OFFICER as a Witness Officer for the harassment – bad ticket allegation at issue in this Merits Determination. COMPLAINANT also alleged that SUBJECT OFFICER harassed him by unlawfully stopping him while he was sitting in his parked car with the engine running and that during the stop, SUBJECT OFFICER used language or engaged in conduct towards him that was insulting, demeaning, or humiliating by “yelling” at him, “using an offensive tone of voice,” and “humiliating him” in front of a group of bystanders. COMPLAINANT also alleged that SUBJECT OFFICER discriminated against him on the basis of his race, African American. Pursuant to D.C. Code § 5-1108 (1), on July 2, 2013, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC’s executive director. Accordingly, only the harassment allegation concerning the unlawful ticket is at issue in this Merits Determination.

July 29, 2013, and OPC's response to the objections, 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, the objections submitted by SUBJECT OFFICER on July 29, 2013, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. COMPLAINANT filed a complaint with OPC on May 19, 2011.
2. On May 18, 2011, at approximately 5:45 p.m., COMPLAINANT was driving a silver 2002 Acura RL when he pulled over and parked in front of a residence at ADDRESS so that he could answer his cell phone. COMPLAINANT left his engine running while he was parked.
3. After a little less than an hour, WITNESS, approached his vehicle and asked COMPLAINANT what he was doing in front of her house. She told him that if he did not move that she was going to call the police. COMPLAINANT informed WITNESS that he had the right to be parked on a public street and continued with his cell phone conversation with his engine running.
4. WITNESS subsequently called the police and reported that there was a suspicious man parked in front of her house.
5. A short time later, a "radio run" was issued for a "suspicious person" sitting inside of a silver Acura that had been "parked for over an hour" in front of the residence at ADDRESS.
6. SUBJECT OFFICER was the first police unit to arrive at approximately 6:45 p.m. and approached the driver of the vehicle. SUBJECT OFFICER requested COMPLAINANT'S driver's license, registration, and proof of insurance, which COMPLAINANT provided. SUBJECT OFFICER then returned to his cruiser.
7. At some point during this initial encounter several other police cars arrived including that of WITNESS OFFICER. WITNESS OFFICER parked in an alley and approached the passenger side of the vehicle as SUBJECT OFFICER was returning to COMPLAINANT'S car with his documents.
8. After returning COMPLAINANT'S documents, COMPLAINANT noted that he was surrounded and asked why the police were there. SUBJECT OFFICER explained that they had been dispatched to the location for a suspicious male. SUBJECT OFFICER asked COMPLAINANT questions regarding his purpose for parking in front of the residence.

9. COMPLAINANT responded that he was conducting business related to real estate. He refused to answer any further questions because he believed that they were irrelevant. He expressed that he was parked on a public street and that information regarding his work had no relevance. COMPLAINANT said something to the effect that if he was not going to be arrested that he wanted to be left alone.
10. SUBJECT OFFICER told COMPLAINANT something to the effect that he should move or that he should shut his engine off because he could receive a ticket for excessive idling. COMPLAINANT refused to move or shut off his engine.
11. SUBJECT OFFICER returned to his vehicle and issued COMPLAINANT a Notice of Infraction (“NOI”) for excessive idling. SUBJECT OFFICER attempted to hand the ticket to COMPLAINANT, who refused, and then placed the ticket on COMPLAINANT’S windshield.
12. The ticket issued did not include any personal identifying information, but stated “parked” on the NOI where the violator’s identifying information was to be filled in. The ticket also did not show the fine for the violation.
13. COMPLAINANT contested the NOI and a District of Columbia Department of Motor Vehicles Adjudication Services hearing took place on July 12, 2011. Adjudication Services dismissed the NOI based on SUBJECT OFFICER’S inability to indicate how long he observed COMPLAINANT idling in the location, the weather conditions, and “that this vehicle was not a commercial (sic) and therefore, he could not establish the infraction.”

IV. DISCUSSION

COMPLAINANT alleges that he was harassed by SUBJECT OFFICER when he was issued a ticket for excessive idling. Complaint Examiner finds that when SUBJECT OFFICER issued the ticket, he violated the law and the internal guidelines of the MPD because COMPLAINANT was not in violation of the excessive idling law. Moreover, Complaint Examiner finds that although SUBJECT OFFICER claims to have believed that COMPLAINANT was in violation of the law, SUBJECT OFFICER should have known that a private passenger vehicle could not violate the excessive idling law and that his motivation for issuance of the ticket resulted from his frustration with COMPLAINANT’S “rude and aggressive” conduct. Thus, as discussed further below, Complaint Examiner determines that SUBJECT OFFICER’S issuance of an NOI for excessive idling to COMPLAINANT constituted harassment in violation of D.C. Code § 5-1107(a), MPD General Order 120.25, Part III, Section B, No. 2, and D.C. Mun. Regs. tit. 6A, § 2199.1.

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; (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.

In this case, therefore, to establish harassment, there must have been 1) conduct directed at COMPLAINANT by SUBJECT OFFICER; 2) that was purposeful, knowing, or reckless; 3) in violation of the law or internal guidelines of the MPD; 4) so as to subject COMPLAINANT to an infringement of his personal or property rights or to deny or impede COMPLAINANT in the exercise or enjoyment of personal or property rights.

Here, there is no dispute as to elements one, four, and three. As to element one, SUBJECT OFFICER issued an NOI to COMPLAINANT for excessive idling and thus SUBJECT OFFICER directed conduct at COMPLAINANT. As to element four, the issuance of the NOI resulted in COMPLAINANT having to take time to contest the NOI or pay a fine of \$500, an infringement of COMPLAINANT’S personal and property rights. Regarding element three, the NOI was issued in violation of the law as the prohibition against excessive idling does not apply to private passenger vehicles such as the Acura driven by COMPLAINANT for his personal use. Title 18, Section 2418.3 of the District of Columbia Municipal Regulations states,

No person owning, operating, or having control over the engine of a gasoline or diesel powered motor vehicle on public or private space, including the engine of a public vehicles for hire, buses with a seating capacity of twelve (12) or more

persons, and school buses or any vehicle transporting students, shall allow the engine to idle for more than three (3) minutes while the motor vehicle is parked, stopped, or standing, including for the purposes of operating air conditioning equipment in those vehicles, except as follows: (a) to operate private passenger vehicles.

The conclusion that the NOI was issued in violation of the law is buttressed by the Department of Motor Vehicles Adjudication Services' dismissal of the violation.

Thus, the question in dispute relates to element two: whether SUBJECT OFFICER issued the unlawful NOI "purposefully, knowingly, or recklessly" so as to subject COMPLAINANT to an infringement of his personal or property rights. Here, SUBJECT OFFICER testified that the NOI was issued due to COMPLAINANT'S "refusal to turn his vehicle off while parked, which is a violation of DC law" indicating his incorrect belief that COMPLAINANT had violated the law. Regardless of SUBJECT OFFICER'S actual knowledge of the law, at a minimum, SUBJECT OFFICER'S conduct toward COMPLAINANT appears to have been reckless because he should have known that the excessive idling prohibition did not apply to private passenger vehicles. General Order 201.26 effective April 5, 2011 (Duties, Responsibilities, and General Conduct of Members of Department) V.B.1 states Sworn Members shall "[f]amiliarize themselves with the laws and regulations they are required to enforce." The Police Department has even issued a circular reminding officers of the law relating to excessive idling and which identifies the exclusion of private passenger vehicles. Circular 04-06 effective May 28, 2004 (Excessive Idling of Vehicles). Thus, it is particularly surprising that SUBJECT OFFICER believed that COMPLAINANT was in violation of the excessive idling law. Notably, WITNESS OFFICER stated that she would not have issued the NOI for excessive idling. She explained that she issues such tickets to buses or large trucks that have their engines running for a long time in residential areas, indicating her correct understanding of the law.

Moreover, the testimony supports that, regardless of his belief about the lawfulness of the NOI, SUBJECT OFFICER issued the NOI in frustration at COMPLAINANT'S language and conduct indicating that his issuance of the unlawful NOI was purposeful. The purpose for SUBJECT OFFICER approaching COMPLAINANT was to investigate a suspicious person, but COMPLAINANT refused to provide anything beyond a basic explanation that he was conducting business related to real estate. SUBJECT OFFICER testified that he asked COMPLAINANT if he lived in the area, to which COMPLAINANT responded "no, but I don't need to live in the area to park here." Rather than complete his investigation of a suspicious person, SUBJECT OFFICER'S stated response was to agree, but then advise COMPLAINANT that it is against the law to idle excessively. Both SUBJECT OFFICER and WITNESS OFFICER testified that they felt COMPLAINANT'S language and behavior during this interaction was rude and aggressive. When COMPLAINANT refused to turn off his vehicle or move, SUBJECT OFFICER issued the NOI. The fact that the NOI contained none of COMPLAINANT'S personal information previously provided to SUBJECT OFFICER indicates that SUBJECT OFFICER'S concern regarding the excessive idling arose only after COMPLAINANT refused to answer SUBJECT OFFICER'S questions and allegedly acted

rudely. Although there is no substantiation for COMPLAINANT’S claim that SUBJECT OFFICER was “using an offensive tone of voice,” WITNESS OFFICER described his demeanor as “out there, strong, animated.” Thus, even if SUBJECT OFFICER may have believed that the NOI he was issuing was legal, he should have known better and appears to have issued it as much in frustration as because of a belief that COMPLAINANT was violating the law. While this Complaint Examiner can certainly sympathize with the desire to want to issue citations to people for being disrespectful, police officers are held to a higher standard. In particular, General Order 201.26 effective April 5, 2011 (Duties, Responsibilities, and General Conduct of Members of Department), V.C.1.a. states that “[a]ll members shall . . . [b]e courteous and orderly in their dealings with the public. (a) Members shall perform their duties quietly, remaining calm regardless of provocation to do otherwise.” Because SUBJECT OFFICER’S issuance of the unlawful NOI in this case rose at least to the level of reckless, the allegation of harassment is sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Sustained
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Submitted on September 6, 2013.

Jennifer A. Fischer, Esq.
Complaint Examiner