

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	12-0146
Complainant:	COMPLAINANT
Subject Officer, Badge No., District:	SUBJECT OFFICER, Seventh District
Allegation 1:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	C. Allen Foster
Merits Determination Date:	March 14, 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 contended that SUBJECT OFFICER, Seventh District, used insulting, demeaning or humiliating language toward her, to wit, he said: “[You’re] not talking now [,] are you[?] Oh, [you’re] crying now and I don’t hear mouth.” And, “Oh you’re a bitch now?” SUBJECT OFFICER denied making these statements but admitted that he had said, “Get out of the fucking car.”¹

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, 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.

¹ COMPLAINANT also alleged that SUBJECT OFFICER harassed her when he unlawfully arrested her for misdemeanor assault – domestic violence. COMPLAINANT further alleged that SUBJECT OFFICER used unnecessary or excessive force when he “pulled” her out of the transport cruiser by the front of her shirt, “threw” her to the ground, and dragged her approximately five feet. On December 31, 2013, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by the executive director of the Office of Police Complaints.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation and the attached exhibits, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On November 28, 2011, at approximately 11:30 p.m., COMPLAINANT was involved in a verbal and physical altercation with her husband. COMPLAINANT's daughter, approximately seven years old at the time, witnessed the incident and called 911.
2. SUBJECT OFFICER and WITNESS OFFICER arrived, separated the parties to the dispute and their friends, and investigated the incident. Among other things, witnesses stated that COMPLAINANT had pushed her husband and had poured bleach on his belongings. COMPLAINANT contended that her husband had "grabbed her by the neck with both hands," but there were no visible injuries and she did not complain of pain. Based upon the investigation, the officers determined that COMPLAINANT should be charged with simple assault. As a result, COMPLAINANT was arrested.
3. SUBJECT OFFICER asked COMPLAINANT if she needed to go to the hospital and she replied, "Yes." As a result, COMPLAINANT was transported to United Medical Center in a police vehicle where she refused to get out of the car.
4. When SUBJECT OFFICER insisted that COMPLAINANT get out of the car, she taunted SUBJECT OFFICER with statements such as, "Hit me. Come on, hit me," and questioned whether he was going to "beat her" with his nightstick, "shoot" her, or "sting [her] with his sting gun." COMPLAINANT told SUBJECT OFFICER that he was a "white mother fucker" and a "KKK Grand Wizard."
5. COMPLAINANT is substantially larger than SUBJECT OFFICER, standing 5'6" to 5'7" and weighing 250 – 300 pounds. The complainant was leaning her body weight back into the vehicle while using her legs to press against the transport divider. In order to get COMPLAINANT out of the transport cruiser, and because of her resistance, SUBJECT OFFICER had to use both hands to pull her out by her right arm. When COMPLAINANT was out of the vehicle, she allowed her legs to give way and became a dead weight, falling to the ground. It required both officers to lift COMPLAINANT and escort her into the emergency room because she refused to stand or walk on her own. As they escorted her, COMPLAINANT continued to curse and direct angry remarks toward SUBJECT OFFICER.
6. During the officers' efforts to get COMPLAINANT into the emergency room, COMPLAINANT told SUBJECT OFFICER, "I'm going to have your badge."
7. SUBJECT OFFICER admitted that, during the process of attempting to remove COMPLAINANT from the vehicle, he said, "Get out of the fucking car." Contrary to COMPLAINANT's contention (in her statement but not in her complaint), SUBJECT OFFICER did not say, "Oh, you're a bitch now."

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”

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, course, 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.”

In this case, COMPLAINANT clearly taunted SUBJECT OFFICER in an obvious attempt to provoke him into taking some action or saying something that would enable her to file a complaint so that she could “have his badge” in retaliation for the fact that he had arrested her. SUBJECT OFFICER and his work partner repeatedly instructed COMPLAINANT to get out of the vehicle and enter the hospital. She not only refused, she actively resisted and, when removed, practiced passive resistance, forcing the officers to carry her. Unfortunately, COMPLAINANT’s lack of cooperation, verbal abuse of SUBJECT OFFICER and obvious and repeated actions to tempt him into an inappropriate response finally overcame SUBJECT OFFICER and he responded, “Get out of the fucking car.” To a reasonable person, this statement would be insulting or demeaning.

In addition, General Order 201.26, Part I, Section C, deals directly with profane language, stating that officers will “refrain” from profanity “regardless of provocation to do otherwise.” Thus, provocation is specifically excluded as a ground for using profanity. SUBJECT OFFICER admits that he used profanity toward COMPLAINANT.

As a result, the Complaint Examiner has no choice but to find that SUBJECT OFFICER violated the General Order, and the allegation in this complaint is sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Sustained
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Submitted on March 14, 2014.

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C. Allen Foster
Complaint Examiner