

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.</b>	12-0156
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer, Badge No., District:</b>	SUBJECT OFFICER
<b>Allegation 1:</b>	Language or Conduct
<b>Complaint Examiner:</b>	C. Allen Foster
<b>Merits Determination Date:</b>	August 12, 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 in 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**

In a complaint timely filed with OPC on January 10, 2012, COMPLAINANT alleged that on January 4, 2012, SUBJECT OFFICER used language or engaged in conduct that was insulting, demeaning or humiliating by yelling at COMPLAINANT, subjecting him to unnecessary questioning and throwing his documents into his car during a traffic stop.

**II. EVIDENTIARY HEARING**

An evidentiary hearing was conducted regarding this complaint on July 23, 2013. The Complaint Examiner heard the testimony of COMPLAINANT, WITNESS<sup>1</sup> and SUBJECT OFFICER. The following exhibits were introduced at the hearing, without objection:

Book of Exhibits provided by OPC, including Complaint, Report of Investigation, Witness Statement of COMPLAINANT, MPD Form 775 (Daily Vehicle Inspection and Activity Report), Memorandum of Investigative Activity (Attempts to Interview WITNESS), Witness statement of COMPLAINANT, Witness Statement of SUBJECT OFFICER, Memorandum of Interview of SUBJECT OFFICER, General Order PER 201.25, Letters from Office of Police Complaints to COMPLAINANT and SUBJECT OFFICER, and Objections to Report of

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<sup>1</sup> COMPLAINANT proffered WITNESS as an eyewitness to the incident. During the OPC investigation, the Investigator had attempted to contact WITNESS and take a statement from him. WITNESS did not talk with the Investigator but, instead, left a somewhat cryptic voice mail or phone mail upon which the Investigator relied. Because the SUBJECT OFFICER denied the COMPLAINANT'S allegations and because WITNESS was the only witness, the Complaint Examiner was unwilling to reach a decision without hearing from WITNESS in person. Because WITNESS had, in the interim, moved to New York, his testimony was obtained via a Skype video conference, a procedure to which all parties consented.

Investigation. In addition, the Complaint Examiner admitted, over objection, a Screen Shot of WITNESS'S notes in his cell phone.

### **III. FINDINGS OF FACT**

Based on a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on March 1, 2012, an evidentiary hearing conducted on July 23, 2013, and the testimony and exhibits introduced at that hearing, the Complaint Examiner finds the material facts regarding the complaint to be:<sup>2</sup>

1. On January 4, 2012, at approximately 11:30 a.m., COMPLAINANT was operating his taxicab in Washington, D.C., having picked up a male passenger, WITNESS, at Reagan National Airport, en route to the passenger's destination at 18<sup>th</sup> Street and Columbia Road, N.W.

2. COMPLAINANT was near the intersection of 15<sup>th</sup> and O Streets, N.W., when he saw several cabs that had been pulled over by a uniformed MPD officer.

3. The officer "yelled" at COMPLAINANT and "pointed for the complainant to pull over to the right side of the road."

4. When COMPLAINANT complied with the officer's instruction, the officer demanded, in an "impolite" tone, COMPLAINANT'S face card, manifest and driver's license.

5. When COMPLAINANT gave the officer the documents, the officer said, "What is this DCA? That's a violation! I got you on this violation!" COMPLAINANT and the officer then engaged in a dialogue over whether Reagan National Airport had a street address and whether the abbreviation "DCA" was sufficient for the regulatory purposes of the manifest. The officer was "agitated" and "impolite."

6. Thereafter, the officer began to "quiz" COMPLAINANT, asking how many "Columbia Roads" were in the District. When COMPLAINANT said that there was only one Columbia Road, the officer then responded, "You don't know. You don't know. I know. There is another Columbia Road."

7. Thereafter, the officer returned COMPLAINANT'S documents by "throwing" them on the passenger seat.

8. WITNESS told COMPLAINANT that the officer's actions constituted "harassment" and told him he "should file a complaint." WITNESS offered to be a witness. WITNESS recorded the officer's badge number – NUMBER – in his cell phone.

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<sup>2</sup> The material facts are those found by the Complaint Examiner after a careful consideration of all of the evidence and the demeanor of the witnesses, and include the Complaint Examiner's resolution of disputed facts.

9. After the incident, WITNESS told COMPLAINANT that he had recorded the officer's badge number in the "notes" application of his cell phone and gave COMPLAINANT his contact information. Later, COMPLAINANT emailed WITNESS to ask about the badge number (COMPLAINANT had not recorded it) and WITNESS gave it to him.

10. Subsequently, it was determined that the badge number pertained to the SUBJECT OFFICER.

11. COMPLAINANT alleged that SUBJECT OFFICER was well known by name in the taxicab community for harassing taxi drivers. COMPLAINANT thought the officer was probably the SUBJECT OFFICER but did not know for sure until he gave the officer's badge number to OPC and they confirmed the name of SUBJECT OFFICER. There was no evidence that SUBJECT OFFICER was known in the taxicab community by his badge number.

12. WITNESS confirmed COMPLAINANT'S testimony and testified further that SUBJECT OFFICER was "badgering" COMPLAINANT, that he questioned him "over and over" about the address of Reagan National Airport, that SUBJECT OFFICER'S voice "was raised from the beginning, that the situation "seemed like harassment."

13. WITNESS testified that he was "personally offended" by the conduct and that the repetition of the questions and the tone throughout made him think it was harassment. He said that the officer had become more confrontational as he asked the question over and over.

14. WITNESS described the officer as an African-American male, in his late 30's to 40's, approximately six feet tall with a stocky body type. His description fit that of SUBJECT OFFICER.

15. SUBJECT OFFICER offered in evidence his P.D. 775 for the date in question. It shows that he was working in the Third District on January 4, 2012, whereas 15<sup>th</sup> and O Streets, N.W. is in the Fifth District (18<sup>th</sup> and Q Streets, N.W. is the dividing line); that, from 8:19 a.m. until 9:19 a.m., SUBJECT OFFICER was engaged in administrative paperwork at 1700 17<sup>th</sup> Street, N.W., and from 12:54 until 1:24 p.m., he was at 1919 Connecticut Avenue, N.W. SUBJECT OFFICER testified that, in the interim between those recorded locations, he was doing law enforcement patrol in the Third District. SUBJECT OFFICER testified that it would take about five minutes to drive from 1700 17<sup>th</sup> Street N.W. to the intersection of 15<sup>th</sup> and O Streets, N.W. Thus, at the time alleged by COMPLAINANT, the P.D. 775 is not determinative of SUBJECT OFFICER'S location.

#### **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; (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 or residence of business; or (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.”

SUBJECT OFFICER testified that he did not stop any taxicabs at the intersection of 15<sup>th</sup> and O Streets, N.W. on January 4, 2012, that he was not in the vicinity of 15<sup>th</sup> and O Streets, N.W. on January 4, 2012, and that, even if he had been, he would not have acted in the way described by COMPLAINANT. SUBJECT OFFICER testified that he frequently conducts taxicab inspections, as provided by D.C. law and that no suspicion of a violation is required to stop a taxicab for an inspection. He testified that the lack of a street address on the manifest was a violation and that he might or might not write a citation “depending upon what he was doing.” SUBJECT OFFICER had no record of a citation being issued to COMPLAINANT concerning the stop and inspection in question.

### **Language or Conduct**

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.”

### **Analysis**

COMPLAINANT alleges that SUBJECT OFFICER used language and engaged in conduct which was insulting, demeaning and humiliating by yelling at him, subjecting him to unnecessary questioning and throwing his documents into his taxicab, rather than returning them to him by hand.

Based upon only the file, the Complaint Examiner was concerned that SUBJECT OFFICER’S reputation in the taxicab community might have led COMPLAINANT to misidentify him as the officer with whom he had interacted on January 4, 2012. In light of SUBJECT OFFICER’S denial of the incident and the absence of a reliable statement from the alleged eyewitness, the Complaint Examiner was not willing to determine that the complaint was well-founded.

At the hearing, however, COMPLAINANT testified credibly and WITNESS, the eyewitness, credibly confirmed COMPLAINANT’S testimony and identified an officer badge number (which was still recorded in his cell phone) without knowing SUBJECT OFFICER’S name. Under those circumstances, the Complaint Examiner finds that COMPLAINANT has

proved by a preponderance of the evidence that (a) SUBJECT OFFICER<sup>3</sup> made the stop and inspection in question on January 4, 2012, and that (b) SUBJECT OFFICER engaged in conduct in violation of General Order 201.26 by being discourteous, loud, agitated, impatient and indiscreet and by using language which might be interpreted as derogatory and disrespectful, all as described in the testimony of COMPLAINANT and WITNESS.

### **Conclusion**

COMPLAINANT has established by a preponderance of the evidence that SUBJECT OFFICER engaged in conduct in violation of General Order 201.26, as described above, and, therefore, the complaint must be sustained.

### **V. SUMMARY OF MERITS DETERMINATION**

#### **SUBJECT OFFICER**

<b>Allegation 1: Insulting, Demeeaning or Humiliating Language or Conduct</b>	<b>Sustained</b>
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Submitted on August 12, 2013

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C. Allen Foster  
Complaint Examiner

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<sup>3</sup> At the hearing, SUBJECT OFFICER testified in a calm and dispassionate manner; however, experienced police officers, such as SUBJECT OFFICER, testify very frequently and their demeanor at a hearing, while instructive, is not determinative of their demeanor in the course of their duties.