

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	12-0473
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER, Second District
<b>Allegation 1:</b>	Harassment
<b>Allegation 2:</b>	Insulting, Demeaning, or Humiliating Language or Conduct
<b>Complaint Examiner:</b>	Colleen F. Shanahan
<b>Merits Determination Date:</b>	March 9, 2015

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**

The COMPLAINANT filed a complaint with OPC on July 30, 2012. COMPLAINANT alleged that on July 27, 2012,<sup>1</sup> SUBJECT OFFICER, Second District, harassed WITNESS 1 by unlawfully searching his vehicle. The complaint further alleges that SUBJECT OFFICER used language or conduct that was insulting, demeaning or humiliating towards COMPLAINANT, WITNESS 2, and WITNESS 3.

**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

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<sup>1</sup> COMPLAINANT listed "Friday, July 28, 2012" as the date of the incident. OPC's investigation determined that the incident occurred on Friday, July 27, 2012 and that date will be used in this determination.

February 3, 2015, and OPC's response to the objections, there are no genuine issues of material fact in dispute that require a hearing. *See* D.C. Mun. Regs. tit. 6A, § 2116.3.<sup>2</sup>

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

Based on a review of OPC's Report of Investigation (including statements from the complainant, subject officer and five witnesses<sup>3</sup>), the objections submitted by SUBJECT OFFICER on February 3, 2015, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On February 27, 2012, SUBJECT OFFICER responded to a scene at 23<sup>rd</sup> and H Streets NW, in front of the Foggy Bottom Metro stop and George Washington University Hospital.
2. When SUBJECT OFFICER arrived at the scene, two MPD officers (WITNESS OFFICER 1 and WITNESS OFFICER 2), COMPLAINANT, WITNESS 2, and WITNESS 3 were also at the scene.
3. COMPLAINANT, WITNESS OFFICERS 1 and 2, and WITNESSES 2 and 3 had been called to the scene to respond to a report of a dog locked in a vehicle. The dog and vehicle belonged to WITNESS 1.
4. When SUBJECT OFFICER arrived at the scene, he yelled at and was hostile towards WITNESS OFFICERS. SUBJECT OFFICER also used a hostile tone with WITNESS 2. SUBJECT OFFICER's language and conduct in a public setting made WITNESS OFFICER 1 upset and embarrassed such that she returned to the police cruiser.
5. SUBJECT OFFICER also interacted with WITNESS 3 at the scene. SUBJECT OFFICER interrupted WITNESS 3 and was short with his words, dismissive, and rude.
6. When SUBJECT OFFICER arrived at the scene, WITNESS 1's vehicle had already been unlocked and WITNESS 1's dog had been removed from the vehicle.
7. After arriving at the scene, SUBJECT OFFICER searched WITNESS 1's vehicle. SUBJECT OFFICER did not have a search warrant, there was no suspicion that

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<sup>2</sup> SUBJECT OFFICER's objection stating that D.C. Personnel Regulations and MPD General Orders require an evidentiary hearing is mistaken. The relevant law is the cited provision governing the Office of Police Complaints.

<sup>3</sup> SUBJECT OFFICER's objection regarding the investigative process of the Office of Police Complaints is also mistaken. The cited provision of the D.C. Code is not relevant and, further, OPC witness statements are sworn statements.

contraband was present or any other probable cause existed for a search of the vehicle, and there was no immediate crisis present.

8. SUBJECT OFFICER's search included looking inside the glove box and the center console. SUBJECT OFFICER attempted to search the trunk and asked WITNESS OFFICER 1 where the trunk release was, but did not ultimately search the trunk. SUBJECT OFFICER's search of the vehicle resulted in locating \$140 in cash and WITNESS 1's business card in the vehicle.

#### **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...(3) use of language or conduct that is insulting, demeaning, or humiliating."

##### **A. 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.

A search warrant is required to search persons or property, except in certain circumstances. One of those exceptions allows for a warrantless search of an automobile when there is probable cause "that an automobile or other vehicle contains that which by law is subject to seizure and destruction." *Carroll v. United States*, 267 U.S. 132, 149 (1925). "If probable

cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle.” *United States v. Ross*, 456 U.S. 798, 825 (1982).<sup>4</sup>

The undisputed evidence, including statements by the complainant and each witness, as well as SUBJECT OFFICER’s own statement, is that SUBJECT OFFICER conducted a search of WITNESS 1’s automobile. In addition, the undisputed evidence is that SUBJECT OFFICER did not obtain a search warrant for the automobile, there was no probable cause for searching the automobile, and there was no immediate crisis necessitating such a search. As a matter of law, a warrantless search not subject to relevant exceptions is a violation of law. Because such a search constitutes harassment, there is no disputed issue of material fact and the complaint against SUBJECT OFFICER for harassment is sustained.

### **B. Language or Conduct**

D.C. Official Code § 5-1107(a) provides that it is an abuse or misuse of police powers when an officer engages in the “use of language or conduct that is insulting, demeaning, or humiliating.” 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 be courteous, civil and respectful to their superiors, associates, and others whether on or off-duty. They shall be quiet, orderly and attentive and shall exercise patience and discretion in the performance of their duties. 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.”

There is no genuine issue of material fact regarding SUBJECT OFFICER’s language and conduct at the scene. All of the witnesses (COMPLAINANT, WITNESS 2, WITNESS 3, and WITNESS OFFICERS) who observed SUBJECT OFFICER interact with the MPD officers reported some version of observing that SUBJECT OFFICER used a raised tone of voice and was tense and hostile towards WITNESS OFFICERS in front of members of the public. Witnesses (COMPLAINANT, WITNESS 2, and WITNESS OFFICERS) also reported some version of observing that SUBJECT OFFICER used a harsh tone when speaking with WITNESS 2 at the scene. Finally, all of the witnesses (COMPLAINANT, WITNESS 2, and WITNESS 3) who observed SUBJECT OFFICER interact with WITNESS 3 reported some version of observing that SUBJECT OFFICER was rude and dismissive to WITNESS 3.

SUBJECT OFFICER’s own statement does not specifically refute the multiple witness reports, but rather states that his “demeanor was ‘usual’ while I was on the scene, meaning that I

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<sup>4</sup> SUBJECT OFFICER’s suggestion that MPD Order 309.03 governs this allegation is mistaken. MPD Order 309.03 concerns forcible entries pursuant to a search or seizure. There is no allegation that SUBJECT OFFICER forcibly entered WITNESS 1’s automobile. Rather, the issue here is whether SUBJECT OFFICER’s search of WITNESS 1’s automobile was in violation of the law. Further, the means by which other officers obtained entry to WITNESS 1’s automobile is not relevant to this determination.

do not stress over things when they happen. I was not upset.” Thus, there is no disputed issue of material fact that SUBJECT OFFICER was not calm or quiet and was disrespectful in the performance of his duties in violation of MPD General Order 201 and the complaint is sustained.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER, Metropolitan Police Department

<b>Allegation 1:</b>	Sustained
<b>Allegation 2:</b>	Sustained

Submitted on March 9, 2015.

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Colleen F. Shanahan  
Complaint Examiner