

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.	13-0022
Complainant:	COMPLAINANT'S MOTHER, on behalf of her minor son, COMPLAINANT
Subject Officers, Badge No., District:	SUBJECT OFFICER
Allegation	Discrimination
Complaint Examiner:	Sara Kropf
Merits Determination Date:	August 4, 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 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 October 17, 2012, COMPLAINANT'S MOTHER (on behalf of her son COMPLAINANT), alleged that on September 16, 2012, SUBJECT OFFICER, discriminated against her son COMPLAINANT by "snatching" COMPLAINANT'S kufi and failed to replace it. COMPLAINANT'S MOTHER alleges that COMPLAINANT wears the kufi for religious reasons.

II. EVIDENTIARY HEARING

There was no evidentiary hearing held on this complaint. The Complaint Examiner reviewed (1) OPC's Report of investigation and the attached exhibits, (2) OPC's letters to the citizen and the subject officer dated June 11, 2015, and (3) the subject officer's objections dated June 25, 2015. Based on a review of these documents, 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., title 6A, § 2116.3.

III. FINDINGS OF FACT

Based on a review of OPC's ROI and the exhibits found in the OPC file, the Complaint Examiner finds the material facts regarding the complaint to be:

1. On September 16, 2012, SUBJECT OFFICER responded to a radio dispatch to A LOCATION IN N.E., D.C., for a burglary in progress.

2. As SUBJECT OFFICER approached the location, he stopped COMPLAINANT and WITNESS #1 to investigate their possible involvement in the burglary.
3. At the time of his stop, COMPLAINANT was wearing a kufi on his head.
4. As SUBJECT OFFICER detained COMPLAINANT and WITNESS #1, several other officers showed up at the scene.
5. COMPLAINANT and WITNESS #1 were eventually placed under arrest for the burglary. COMPLAINANT was put into handcuffs and then seated on the sidewalk at the scene.
6. While COMPLAINANT was sitting on the sidewalk in handcuffs and waiting for the officers to handcuff WITNESS #1, SUBJECT OFFICER took COMPLAINANT'S kufi from his head.
7. SUBJECT OFFICER did not search the kufi but instead kept the kufi in his hands.
8. SUBJECT OFFICER admitted that he knew the head covering was a kufi.
9. After SUBJECT OFFICER removed the kufi from COMPLAINANT'S head, COMPLAINANT became upset about its removal.
10. COMPLAINANT claims that he told SUBJECT OFFICER that the kufi was worn for religious reasons. SUBJECT OFFICER denies that COMPLAINANT told him that the kufi was worn for religious reasons.
11. SUBJECT OFFICER did not ask COMPLAINANT if the kufi was worn for religious reasons.
12. The kufi was not returned to COMPLAINANT by SUBJECT OFFICER. COMPLAINANT received the kufi back when he was released 27 days later from detention in the Youth Service Center.
13. WITNESS #1 was not interviewed.
14. The other officers at the scene denied that COMPLAINANT told SUBJECT OFFICER that the kufi was worn for religious reasons.
15. SUBJECT OFFICER did not identify any safety or security reason for his removal of COMPLAINANT'S kufi, and the record does not reveal any safety or security reason for doing so.
16. COMPLAINANT alleges in his complaint to the Office of Police Complaints that he was wearing the kufi for religious reasons on September 16, 2012.

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." MPD General Order 201.26 (effective April 5, 2011), Park IV, states: In accordance with D.C. Official Code § 2-1401, et seq. (District of Columbia Human Rights Act), members shall not discriminate, either in the enforcement of the law, or in the provision of police service, on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity and expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intra-family offense, and place of residence or business."

There is no dispute that while COMPLAINANT was handcuffed and sitting on the ground, SUBJECT OFFICER removed his kufi from his head and that COMPLAINANT became upset about the removal of the head covering. COMPLAINANT and SUBJECT OFFICER disagree as to whether COMPLAINANT informed SUBJECT OFFICER that COMPLAINANT wore the kufi for religious reasons.

MPD Special Order 12-03 (effective January 27, 2012) sets forth MPD's policy to "make reasonable accommodations for the religious beliefs with whom its members interact in their official capacities." It also states that "[i]n general, persons wearing religious head coverings or other articles of faith shall be permitted to continue wearing them except when removal or confiscation is reasonably required for reasons of safety or security."

MPD Special Order 12-03, section II.2.b., identifies a kufi as a "[r]eligious head covering worn by Christians, African Jews, and Muslims in West Africa and African Diaspora." When conducting a stop and frisk, an officer may pat down a religious head covering but, absent "articulable safety concerns or to retrieve evidence," officers "shall not remove a religious head covering when conducting a frisk." *Id.*, section III.A.3. If the officer determines that it is necessary to remove a religious head covering, "and the person objects or appears reluctant or upset, members shall inquire whether the person requires special accommodations for religious reasons."

The Complaint Examiner finds that Special Order 12-03 applies to this matter.

Even though it is disputed whether COMPLAINANT told SUBJECT OFFICER that the kufi was worn for religious reasons, the Complaint Examiner need not reach a conclusion as to that fact. MPD Special Order 12-03 sets an *objective* standard that a kufi is a religious head covering in all circumstances and is subject to the Special Order's requirements. The Special Order does not set a subjective standard that the officer has actual knowledge that the head covering is worn for religious purposes.

Special Order 12-03 provides that a religious head covering may not be removed

during a stop and frisk absent some specific safety concern or to retrieve evidence. The Complaint Examiner finds that there was no safety concern with respect COMPLAINTANT'S wearing of the kufi, in particular because he was handcuffed and not resisting arrest at the time it was removed by SUBJECT OFFICER. In addition, the Complaint Examiner finds that SUBJECT OFFICER did not remove the kufi in an effort to retrieve evidence. He did not provide any statement or evidence that he searched the kufi or that he reasonably believed it could contain evidence of the alleged burglary.

Because SUBJECT OFFICER should not have removed COMPLAINTANT'S kufi in this situation, the Complaint Examiner finds that the allegation of discrimination is sustained.

In addition, there is no dispute that COMPLAINTANT became upset when SUBJECT OFFICER removed the kufi from his head. In this situation, Special Order 12-03 requires that SUBJECT OFFICER inquire of COMPLAINTANT whether the head covering is worn for religious reasons. Because SUBJECT OFFICER did not make such an inquiry after COMPLAINTANT became upset upon the removal of the kufi, this allegation is sustained.

SUBJECT OFFICER noted in his response that he had not been trained to identify kufis and the Complaint Examiner has no reason to doubt this statement. However, given the plain language of Special Order 12-03, the Complaint Examiner would urge MPD to train officers to identify these types of head coverings, so as to avoid this situation in the future.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER: SUBJECT OFFICER

Allegation 1: Discrimination	Sustained
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Submitted on August 4, 2015.

Sara Kropf
Complaint Examiner