

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	13-0081
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Seventh District
Allegation 1:	Harassment
Complaint Examiner:	Richard S. Ugelow
Merits Determination Date:	April 14, 2015

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints (OPC) 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, the Complainant in this matter, alleged that around 11:30 p.m. on November 10, 2012, he was harassed by MPD SUBJECT OFFICER, Seventh District. On that date, SUBJECT OFFICER stopped COMPLAINANT near 57 Galveston Street, SW for a traffic violation. SUBJECT OFFICER requested that COMPLAINANT provide his driver's license, car registration, and proof of insurance. The core of this dispute is that COMPLAINANT claimed to have handed his license to SUBJECT OFFICER and SUBJECT OFFICER claimed that he did not do so. Believing that COMPLAINANT did not have a driver's license on his person, SUBJECT OFFICER issued a traffic ticket to him for failure to show a valid driver's license. On December 10, 2012, COMPLAINANT filed this complaint with OPC alleging, among other grievances, that SUBJECT OFFICER harassed him.¹

¹ COMPLAINANT also alleged that SUBJECT OFFICER harassed him by unlawfully stopping him, making threats about using his weapon, mishandling his pocket knife, and searching his vehicle. COMPLAINANT further alleged that SUBJECT OFFICER used unnecessary or excessive force against him by drawing his weapon during their interaction. Pursuant to D.C. Code §5-1108(1) on February 12, 2015, a member of the Police Complaints Board dismissed these allegations, concurring with the determination by OPC's Executive Director.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint. Based on a review of OPC's Report of Investigation, the objections submitted on behalf of SUBJECT OFFICER by his authorized representative, the Fraternal Order of Police, on March 24, 2015, 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 on behalf of SUBJECT OFFICER by his authorized representative, the Fraternal Order of Police, on March 24, 2015, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. COMPLAINANT filed a complaint on December 10, 2012 against SUBJECT OFFICER concerning an incident that occurred on November 30, 2012.
2. On November 30, 2012, at approximately 11:30 pm, COMPLAINANT double parked his father's 2005 Chevrolet Trail Blazer near 57 Galveston Street, SW.
3. COMPLAINANT was trying to locate an address on the unit block of Galveston Street, SW.
4. The unit block of Galveston Street, SW is a narrow street, with parking on both sides.
5. At about the same time, SUBJECT OFFICER was in uniform and driving MPD scout car P708 west on the unit block of Galveston Street in route to respond to an accident involving a Metro bus.
6. SUBJECT OFFICER observed that other cars were moving slowly on the unit block of Galveston Street, SW which he attributed to a double parked car that was impeding traffic.
7. In an effort to get the vehicle to move along, SUBJECT OFFICER flashed his lights and, when the vehicle did not move, activated his emergency equipment. COMPLAINANT then moved his vehicle into a vacant parking spot.
8. SUBJECT OFFICER stopped his scout car.
9. COMPLAINANT left his car and approached SUBJECT OFFICER on foot.

10. COMPLAINANT was agitated at the time of the stop, and SUBJECT OFFICER reported to a dispatcher that he stopped an aggressive driver and requested assistance.
11. SUBJECT OFFICER asked COMPLAINANT if he had any weapons and COMPLAINANT gave him a pocket knife.
12. SUBJECT OFFICER patted COMPLAINANT down and asked him to return to his vehicle and to produce his driver's license, car registration and proof of insurance.
13. COMPLAINANT explained that the vehicle belonged to his father and that he would have to look for the registration and insurance information in his vehicle.
14. COMPLAINANT returned to his vehicle.
15. In response to a specific request for his driver's license, COMPLAINANT stated that he had already given it to SUBJECT OFFICER.
16. SUBJECT OFFICER denied that the driver's license had been produced and continued to ask that it be produced.
17. SUBJECT OFFICER verified that the vehicle belonged to COMPLAINANT's father and that COMPLAINANT had a valid Maryland Driver's license.
18. WITNESS OFFICER #1, Seventh District, responded to the incident to assist SUBJECT OFFICER.
19. At some point, WITNESS OFFICER #1 and COMPLAINANT searched COMPLAINANT's vehicle but were unable to find the driver's license.
20. SUBJECT OFFICER issued a ticket to COMPLAINANT for failing to produce his driver's license.
21. On December 1, 2012, COMPLAINANT's license was found on the driver's seat in MPD cruiser P708 by WITNESS OFFICER #2, who had occasion to inspect the scout car.
22. WITNESS OFFICER #2 gave COMPLAINANT's driver's license to a Sergeant who recorded an entry on the Seventh District Property Book.
23. The driver's license was returned to COMPLAINANT sometime after March 27, 2013.
24. COMPLAINANT produced his driver's license as requested by SUBJECT OFFICER.
25. SUBJECT OFFICER mishandled COMPLAINANT's driver's license.

IV. DISCUSSION

Pursuant to D.C. 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.”

This incident originated when SUBJECT OFFICER noticed that the vehicle COMPLAINANT was driving impeded traffic flow on the unit block of Galveston Street, SW. SUBJECT OFFICER used flashing lights and, after a delay, his siren to gain COMPLAINANT's attention. COMPLAINANT then moved his vehicle into a vacant parking spot. COMPLAINANT then exited his vehicle and approached SUBJECT OFFICER. The statements provided to the Complaint Examiner indicate that COMPLAINANT was agitated and irate about the stop. Indeed, SUBJECT OFFICER asked for assistance because he was dealing with an “aggressive” driver.²

Because COMPLAINANT appeared to be agitated, SUBJECT OFFICER told COMPLAINANT that he was going to pat him down, which he did. COMPLAINANT voluntarily produced a pocket knife that SUBJECT OFFICER placed on the roof of COMPLAINANT's car.³ Thereafter, COMPLAINANT returned to his car and was asked by SUBJECT OFFICER to produce his driver's license, registration and proof of insurance. COMPLAINANT was unable to locate the registration and insurance documents because the vehicle belonged to his father. SUBJECT OFFICER verified that the vehicle did belong to COMPLAINANT's father and that its use had been authorized. SUBJECT OFFICER continued to ask for COMPLAINANT's driver's license, which COMPLAINANT claimed to have already given him. Although SUBJECT OFFICER confirmed that COMPLAINANT possessed a valid Maryland driver's license, he issued a ticket to COMPLAINANT for failing to display a valid driver's license.

The next day, WITNESS OFFICER #2 found COMPLAINANT's driver's license on the driver's seat of the MPD scout car that SUBJECT OFFICER was driving at the time of the stop.

² It is important to note, see note 1 above, that COMPLAINANT made several allegations against SUBJECT OFFICER, including drawing a weapon and placing him in handcuffs that were not substantiated and earlier dismissed by OPC. These unsubstantiated serious allegations call into question COMPLAINANT's credibility.

³ The disposition of the pocket knife is not before the Complaint Examiner.

It is not clear how the driver's license came into SUBJECT OFFICER's possession or for that matter found its way to the driver's seat of scout car P708. COMPLAINANT claims that he handed it to SUBJECT OFFICER. On the other hand, the statement filed on behalf of SUBJECT OFFICER suggests that COMPLAINANT could have thrown it into an open window on the driver's side of the scout car. It is more likely than not that COMPLAINANT handed his license to SUBJECT OFFICER. This is so because COMPLAINANT had limited or no opportunity and, more importantly, no reason to toss the license into the police cruiser. Moreover, he almost certainly would have told SUBJECT OFFICER that he put his license in the scout car. It appears that SUBJECT OFFICER misplaced the driver's license when he returned to the cruiser to check on the registration of COMPLAINANT's vehicle, and simply forgot about it. There is no apparent reason for SUBJECT OFFICER to have recklessly, purposefully, or knowingly mishandled the driver's license. Quite the opposite is true. It would have been in SUBJECT OFFICER's self-interest to have returned the license to COMPLAINANT if he knew where it was. This conclusion is supported by the interactions that SUBJECT OFFICER had with COMPLAINANT, which appear to have been professional and in accordance with normal police procedures.

The sole issue before the Complaint Examiner is whether SUBJECT OFFICER harassed COMPLAINANT when he mishandled his driver's license and issued a ticket for failing to display it.

The relevant MPD orders and regulations provide:

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.

The operative words of the General Order and regulations are: "[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...."

At worst, SUBJECT OFFICER negligently handled COMPLAINANT's driver's license. But did he purposefully, knowingly, or recklessly misplace the driver's license? The evidence in the record does not support such a finding. It is counter intuitive for SUBJECT OFFICER to have purposefully left the driver's license on the seat of the scout car because it is reasonable to assume that, as it was, it would soon be discovered. If he wanted to act in a way that would have brought harm to COMPLAINANT, SUBJECT OFFICER would have destroyed or hidden the driver's license where it would have been difficult to find. But he did not. The logical conclusion is that SUBJECT OFFICER negligently, but not purposefully, knowingly, or recklessly, mishandled COMPLAINANT's license.

Based on the totality of the circumstances, SUBJECT OFFICER's interactions with COMPLAINANT on November 30, 2012 do not amount to harassment under MPD Special Order 120.25, Part III, Section B, No. 2 or D.C. Mun. Regs. tit. 6A, § 2199.1. The Complaint Examiner does not find that SUBJECT OFFICER conducted himself in a way that was purposefully, knowingly, or recklessly in violation of the law or internal guidelines when he mishandled COMPLAINANT's driver's license and issued him a ticket for failing to display the license.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Exonerated
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Submitted on April 14, 2015.

Richard S. Ugelow
Complaint Examiner