

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	13-0166
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2 SUBJECT OFFICER #3 SUBJECT OFFICER #4 SUBJECT OFFICER #5
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Danielle E. Davis
Merits Determination Date:	November 26, 2015

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints has the authority to adjudicate citizen complaints against members of the Metropolitan Police Department 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, filed a complaint with the Office of Police Complaints (“OPC”) on February 13, 2013. COMPLAINANT alleges that on February 1, 2013, five officers, SUBJECT OFFICER #1, SUBJECT OFFICER #2, SUBJECT OFFICER #3, SUBJECT OFFICER #4, SUBJECT OFFICER #5, harassed him by subjecting him to an unlawful body cavity search, during which SUBJECT OFFICER #1 touched COMPLAINANT inappropriately. COMPLAINANT also alleges that SUBJECT OFFICER #1 used language or engaged in conduct toward him that was insulting, demeaning, or humiliating during the detainment when he stated words to the effect of, “Everybody keeps shit in [their] ass.” COMPLAINANT further alleges that SUBJECT OFFICER #1, SUBJECT OFFICER #2, and SUBJECT OFFICER #4 used language or engaged in conduct toward him that was insulting, demeaning, or humiliating during and after the search when they made inappropriate comments and laughed at him.¹

¹ COMPLAINANT also alleged that A SIXTH OFFICER and SUBJECT OFFICER #1 harassed him by unlawfully arresting him. Pursuant to D.C. Code § 5-1108(1), on July 11, 2015, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC’s Executive Director.

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 #2 on September 16, 2015, the objections submitted by SUBJECT OFFICER #4 on September 15, 2015, 2015,² and OPC's response to the objections submitted by SUBJECT OFFICER #2,³ this 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 by SUBJECT OFFICER #2 on September 16, 2015, the objections submitted by SUBJECT OFFICER #4 on September 15, 2015, and OPC's response to the objections submitted by SUBJECT OFFICER #2, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On February 1, 2013, COMPLAINANT was outside on A BLOCK IN NORTHWEST D.C., when he was stopped by WITNESS OFFICER #1.
2. Soon thereafter, SUBJECT OFFICER #1 arrived on the scene, arrested COMPLAINANT on an arrest warrant for distribution of cocaine. Subsequently, COMPLAINANT was transported to AN MPD POLICE STATION.
3. Once at the police station, SUBJECT OFFICER #1 informed COMPLAINANT that he had to be "strip searched."
4. A short time later, COMPLAINANT informed SUBJECT OFFICER #1 that he had to use the bathroom. In response, SUBJECT OFFICER #1 asked COMPLAINANT if he was hiding something. COMPLAINANT replied, "No."
5. Subsequently, SUBJECT OFFICER #1 requested SUBJECT OFFICER #2 assist him in searching COMPLAINANT.⁴
6. Subsequently, SUBJECT OFFICER #1 requested and received authorization from SUBJECT OFFICER #4 to conduct a squat or strip search. SUBJECT OFFICER #4 received such authorization from the Watch Commander, SUBJECT OFFICER #5.

² SUBJECT OFFICER #1 and SUBJECT OFFICER #3 and SUBJECT OFFICER #5 failed to submit objections in this matter.

³ OPC did not submit a response to the objections submitted by SUBJECT OFFICER #4.

⁴ Although COMPLAINANT identified this officer as A METROPOLITAN POLICE DEPARTMENT OFFICER, OPC's investigation revealed that the officer's name was actually SUBJECT OFFICER #2.

7. Once in the squat or strip search area, either SUBJECT OFFICER #1 or SUBJECT OFFICER #2 pulled down COMPLAINANT'S jeans and underwear. SUBJECT OFFICER #1 then put on purple latex gloves while SUBJECT OFFICER #2 held COMPLAINANT'S arm. SUBJECT OFFICER #1 then used his hands to spread COMPLAINANT'S butt cheeks.
8. SUBJECT OFFICER #3 and SUBJECT OFFICER #4 observed, but did not conduct in the search. SUBJECT OFFICER #5 was not present for the search.
9. SUBJECT OFFICER #1 did not uncover any contraband, weapons, evidence, or any other material from COMPLAINANT'S clothing, undergarments, genitals, or anus during the search.

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."

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.

Here, COMPLAINANT alleges that SUBJECT OFFICER #1, SUBJECT OFFICER #2, SUBJECT OFFICER #3, SUBJECT OFFICER #4, and SUBJECT OFFICER #5 harassed him when they subjected him to an unlawful body cavity search, during which SUBJECT OFFICER #1 touched him inappropriately. Specifically, COMPLAINANT alleges that during the search, SUBJECT OFFICER #1 said, “I see it, I see it,” and then “jammed” his index finger inside COMPLAINANT’S anus three times and “wiggled his index finger around in [COMPLAINANT’S] anus as if he was searching for something.”

MPD General Order 502.01, “Transportation of Prisoners,” governs search of prisoners and was the general order in effect at the time of the incident.⁵ The General Order details three kinds of searches that involve the inspection of an arrestee’s genital or anal area: (1) strip searches; (2) squat searches; and (3) body cavity searches.

According to the General Order, a strip search is a search where the prisoner “remove[s] or arrange[s] his/her clothing to allow a visual inspection of the genitals, buttocks, anus, breasts and undergarments.”

A squat search requires that the subject “crouch or squat while their undergarments and other clothing are removed, exposing the genital area and anal area. This type of search permits contraband or other material concealed in the genital area to become visible or dislodged.”

Finally, a body cavity search is defined as “the searching of a prisoner’s genital and/or anal cavities to retrieve contraband, weapons or evidence of a crime that may be concealed within these areas.”

Pursuant to the General Order, “[a] ‘strip’ or ‘squat’ search shall be conducted only when the member has reason to suspect that weapons, contraband, or evidence are concealed on the person or in the clothing in such a manner that employing a field search technique may not discover them.” These searches can be conducted only with the authorization of the Assistant District Commander and in a secure area.”

The General Order further states:

Under no circumstances shall members of this Department perform a “body cavity” search. When probable cause exists that a prisoner has weapons, contraband or evidence secreted in a body cavity, the Assistant District Commander can authorize this search. The search will be conducted at the D.C.

⁵ General Order 502.01 was issued on January 12, 2001. A new General Order was issued on March 28, 2014, approximately one year after the incident leading to COMPLAINANT’S complaint.

General Hospital in a secure and private area, where only a physician can conduct the examination.⁶

Here, COMPLAINANT was arrested based on an outstanding arrest warrant for heroin. Moreover, SUBJECT OFFICER #4 provided credible testimony that COMPLAINANT was part of a gang, whose members frequently hid drugs in their rectal areas. Based on this evidence, SUBJECT OFFICER #1 had a reasonable basis to conduct a strip or squat search.

In his statement, SUBJECT OFFICER #1 acknowledged conducting a “strip search” of COMPLAINANT, but denied placing his finger inside of COMPLAINANT’S anus. According to SUBJECT OFFICER #1, when conducting a strip search, he “ask[s] the individual to spread their butt cheeks on their own.” However, in this case, COMPLAINANT refused to spread his butt cheeks, so SUBJECT OFFICER #1 “had to spread them for him.” Indeed, according to SUBJECT OFFICER #1, he “used his hands and spread COMPLAINANT[’S] butt cheeks.” SUBJECT OFFICER #1 further stated that “[a]t no time did [he] place [his] finger or fingers inside of COMPLAINANT’S anus.” And that he “only spread COMPLAINANT[’S] butt cheeks twice.”

Included in the record is cell block video footage of the incident. However, due to the poor quality of the video footage, it is unclear whether SUBJECT OFFICER #1 inserted his finger inside COMPLAINANT’S anus.

In his statement, SUBJECT OFFICER #1 did not state that he merely required COMPLAINANT to remove his clothing to allow a visual inspection of his buttocks and anus. Nor did SUBJECT OFFICER #1 state that he merely required COMPLAINANT to crouch or squat while his undergarments and other clothing were removed, to permit concealed contraband to become visible or dislodged. Instead, SUBJECT OFFICER #1 stated that he “used his hands and spread COMPLAINANT[’S] butt cheeks” and that he did so “twice.”

General Order 502.01 states, “[u]nder no circumstances shall members of this Department perform a ‘body cavity’ search.” Regardless of whether SUBJECT OFFICER #1 inserted his finger inside COMPLAINANT’S anus, such search clearly lies outside of the definition of a strip or squat search, and thus, was in violation of MPD General Order 502.01.

Harassment, as defined in MPD General Order 120.25 and D.C. Mun. Regs. tit. 6A, § 2199.1, includes “[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 . . . 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.”

⁶ According to the OPC investigation, although the 2001 General Order states that an Assistant District Commander must authorize strip, squat, and body cavity searches, by 2013, the pattern and practice was for Watch Commanders to take on this responsibility. Watch Commanders are designated for a particular shift, and are usually supervisory officials such as lieutenants.

Because SUBJECT OFFICER #1'S conduct was, at a minimum, recklessly contrary to MPD General Order 502.01, COMPLAINANT was subject to harassment by SUBJECT OFFICER #1. As such, COMPLAINANT'S complaint of harassment against SUBJECT OFFICER #1 is sustained.

As it relates to SUBJECT OFFICER #2, it is unrefuted that SUBJECT OFFICER #2 participated in the body cavity search. Indeed, according to SUBJECT OFFICER #2'S statement, "[w]hile [he] was holding onto COMPLAINANT by his arm and standing beside him," SUBJECT OFFICER #1 conducted the search.

Because SUBJECT OFFICER #2'S conduct was, at a minimum, recklessly contrary to MPD General Order 502.01, COMPLAINANT was subject to harassment by SUBJECT OFFICER #2. As such, COMPLAINANT'S complaint of harassment against SUBJECT OFFICER #2 is sustained.

As it relates to SUBJECT OFFICER #4, it is uncontested that SUBJECT OFFICER #4 requested and received authorization for a squat or strip search only. According to SUBJECT OFFICER #4'S statement, he stood 8 to 10 feet away from COMPLAINANT, SUBJECT OFFICER #1, and SUBJECT OFFICER #2 during the search.

Despite his proximity to the search, SUBJECT OFFICER #4 stated, "I do not think SUBJECT OFFICER #1 actually touched COMPLAINANT." This statement is not credible for several reasons.

First, as noted above, SUBJECT OFFICER #1 conceded in his statement that he "used his hands and spread COMPLAINANT[S] butt cheeks" and that he did so "twice." Thus, according to SUBJECT OFFICER #1'S own statement, he did, in fact, touch COMPLAINANT.

Moreover, more than one officer testified that SUBJECT OFFICER #4 was present during and observed the search. According to SUBJECT OFFICER #2, "SUBJECT OFFICER #4 was present at the time of the squat search." According to SUBJECT OFFICER #3, "[SUBJECT OFFICER #1, SUBJECT OFFICER #2, and SUBJECT OFFICER #4] conducted a squat search . . ." According to SUBJECT OFFICER #1, ". . . SUBJECT OFFICER #4 [was] present but not involved in the strip search."

As such, it goes against logic to conclude that SUBJECT OFFICER #4 observed a search a mere 8 to 10 feet away from him, but did not observe SUBJECT OFFICER #1 engage in the very conduct that SUBJECT OFFICER #1 concedes he engaged in. For these reasons, this Complaint Examiner does not find SUBJECT OFFICER #4'S statement credible. Rather, the evidence supports the conclusion that SUBJECT OFFICER #4 observed SUBJECT OFFICER #1 conduct a body cavity search, and did nothing to stop it.

Because SUBJECT OFFICER #4'S conduct was, at a minimum, recklessly contrary to MPD General Order 502.01, COMPLAINANT was subject to harassment by SUBJECT

OFFICER #4. As such, COMPLAINANT'S complaint of harassment against SUBJECT OFFICER #4 is sustained.

As it relates to SUBJECT OFFICER #3 and SUBJECT OFFICER #5, nothing in the record supports the conclusion that they authorized, conducted, or participated in the unlawful body cavity search. Rather, the evidence supports the conclusion that SUBJECT OFFICER #5 authorized SUBJECT OFFICER #1 to conduct a squat or strip search only. As such, COMPLAINANT'S complaint of harassment against SUBJECT OFFICER #3 and SUBJECT OFFICER #5 are unfounded.

B. Insulting, Demeaning, or Humiliating Language or Conduct

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 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."

Here, COMPLAINANT alleges that after he was transported to the Third District police station, he informed SUBJECT OFFICER #1 that he had to use the bathroom. In response, SUBJECT OFFICER #1 asked COMPLAINANT if he was hiding something, to which COMPLAINANT replied "No." According to COMPLAINANT, SUBJECT OFFICER #1 then said words to the effect of, "Everybody keeps shit in [their] ass."⁷

COMPLAINANT further alleges that during the subsequent body cavity search, SUBJECT OFFICER #2 stated, "Oh God, it's nasty," while observing COMPLAINANT'S hemorrhoids, to which SUBJECT OFFICER #1 and SUBJECT OFFICER #3 and SUBJECT OFFICER #4 laughed. According to COMPLAINANT, following the body cavity search, COMPLAINANT shouted at SUBJECT OFFICER #1, "I will never say anything to you again SUBJECT OFFICER #1," to which SUBJECT OFFICER #1, SUBJECT OFFICER #2, and SUBJECT OFFICER #3, and SUBJECT OFFICER #4 laughed.

COMPLAINANT stated that he "was humiliated by being strip searched and because of the officer[s] actions and conduct." He also believ[ed] the officer[s] conduct was completely unprofessional, humiliating and demeaning."

In his statement, SUBJECT OFFICER #1 failed to deny saying words to the effect of, "Everybody keeps shit in [their] ass." Rather, he acknowledged that he "may have commented to COMPLAINANT that the area is known for individuals keeping drugs in their butt cheeks." This Complaint Examiner finds COMPLAINANT'S statement to be credible. Moreover, the weight of the evidence supports the conclusion that SUBJECT OFFICER #1 used words towards

⁷ In his OPC statement, COMPLAINANT clarified and stated that SUBJECT OFFICER #1 told him, "Everybody from your area hides belongings in their ass."

COMPLAINANT that were not only harsh, but profane, sarcastic, and insolent. As such, COMPLAINANT’S complaint against SUBJECT OFFICER #1 based on his insulting, demeaning, or humiliating language or conduct is sustained.

The weight of the evidence also supports the conclusion that SUBJECT OFFICER #2 used language that was “harsh, violent, course, profane, sarcastic, or insolent.” This Complaint Examiner finds COMPLAINANT’S statement to be credible. Moreover, according to SUBJECT OFFICER #4’S statement, SUBJECT OFFICER #2 stated something to the effect of “Oh God, its nasty” when he observed COMPLAINANT’S buttocks and hemorrhoid condition. Any reasonable person would find such comment to be derogatory, disrespectful, or offensive. Indeed, in his statement, SUBJECT OFFICER #1 acknowledged that squat or strip searches are “no laughing matter” and acknowledged that they are embarrassing for the person being searched. As such, COMPLAINANT’S complaint against SUBJECT OFFICER #2 based on his insulting, demeaning, or humiliating language or conduct is sustained.

On the other hand, beyond COMPLAINANT’S statement, noting in the record supports the conclusion that SUBJECT OFFICER #3 and SUBJECT OFFICER #4 used language or engaged in conduct that was “derogatory, disrespectful, or offensive.” Indeed, each of the five subject officers refuted COMPLAINANT’S allegation that SUBJECT OFFICER #3 and SUBJECT OFFICER #4 laughed at COMPLAINANT.

Moreover, due to the poor quality of the cell block video footage, it is unclear whether any of the five subject officers laughed, smiled, or joked during the body cavity search. Without more, COMPLAINANT’S allegation that SUBJECT OFFICER #3 and SUBJECT OFFICER #4 laughed at him is insufficient. Accordingly, COMPLAINANT’S complaints against SUBJECT OFFICER #3 and SUBJECT OFFICER #4 based on their language or conduct are unfounded.

V. SUMMARY OF MERITS DETERMINATION

1. SUBJECT OFFICER #1

Allegation 1: Harassment	Sustained
Allegation 2: Insulting, Demeaning, or Humiliating Language or Conduct	Sustained

2. SUBJECT OFFICER #2

Allegation 1: Harassment	Sustained
Allegation 2: Insulting, Demeaning, or Humiliating Language or Conduct	Sustained

3. SUBJECT OFFICER #3

Allegation 1: Harassment	Unfounded
Allegation 2: Insulting, Demeaning, or Humiliating Language or Conduct	Unfounded

4. SUBJECT OFFICER #4

Allegation 1: Harassment	Sustained
Allegation 2: Insulting, Demeaning, or Humiliating Language or Conduct	Unfounded

5. SUBJECT OFFICER #5

Allegation 1: Harassment	Unfounded
Allegation 2: Insulting, Demeaning, or Humiliating Language or Conduct	Unfounded

Submitted on November 26, 2015.

Danielle E. Davis
Complaint Examiner