

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	14-0093 and 14-0094
<b>Complainant:</b>	COMPLAINANT #1 and COMPLAINANT #2
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER
<b>Allegation 1:</b>	Harassment
<b>Allegation 2:</b>	Insulting, Demeaning, or Humiliating Language or Conduct
<b>Complaint Examiner:</b>	Meaghan H. Davant
<b>Merits Determination Date:</b>	November 9, 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**

The complainants, COMPLAINANT #2 and COMPLAINANT #1, filed separate but related complaints with the OPC on January 14, 2014. COMPLAINANT #2 and COMPLAINANT #1, who are brothers, both alleged that on December 20, 2013, SUBJECT OFFICER, harassed them by ordering them to “move along” and unlawfully issuing 61D citations for “blocking passage.” The complainants further alleged that SUBJECT OFFICER used language or engaged in conduct regarding COMPLAINANT #2 that was insulting, demeaning, or humiliating.

**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 June 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 by SUBJECT OFFICER on June 24, 2015, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On December 20, 2013 at approximately 11:00 p.m., while traveling in his marked MPD vehicle, SUBJECT OFFICER observed COMPLAINANT #2 and COMPLAINANT #1 on the sidewalk of a STREET IN N.E. D.C.
2. Complainants, who are brothers, both reside at a street address in N.E. D.C. COMPLAINANT #2 was sitting on a bicycle, holding on to the fence that surrounded his home. COMPLAINANT #1 was leaning against his car, which was parked in the street adjacent to the sidewalk.
3. SUBJECT OFFICER stopped his police vehicle and, using his loud speaker, told COMPLAINANT #2 and COMPLAINANT #1 to "roll," meaning to leave the premises. COMPLAINANT #2 and COMPLAINANT #1 separately responded to the effect that they "live here, this is my residence."
4. SUBJECT OFFICER exited his police vehicle and told complainants that they could not stand there, to move along, and that they were blocking passage. When complainants refused to comply, SUBJECT OFFICER asked complainants for identification, which they provided.
5. WITNESS OFFICER #1, traveling in a separate marked MPD vehicle, observed SUBJECT OFFICER speaking with COMPLAINANT #2 and COMPLAINANT #1 on the sidewalk in front of their residence, pulled over, and got out of his vehicle.
6. WITNESS OFFICER #1 was standing approximately 10 feet away from SUBJECT OFFICER and the complainants when he heard one of the complainants state that he lived on the block.
7. SUBJECT OFFICER again told complainants to go onto their private property and complainants refused.
8. SUBJECT OFFICER issued separate 61D citations to COMPLAINANT #2 and COMPLAINANT #1 for "blocking passage," on a public sidewalk, subjecting each to a \$50 fine.
9. The complainants denied blocking passage and COMPLAINANT #2 asked SUBJECT OFFICER why they were receiving citations for standing in front of their home. To which SUBJECT OFFICER responded, "I can do what I want and write what I want on the ticket."

10. In his formal complaint, COMPLAINANT #1 recalls SUBJECT OFFICER stating that COMPLAINANT #2 was “hard headed and don’t know how to listen” and that his “parents must didn’t teach COMPLAINANT #2 home training.”
11. In his Complaint Form, COMPLAINANT #2 recalls SUBJECT OFFICER stating that he “didn’t listen,” and that his parents “didn’t teach him no home training.” COMPLAINANT #2 asked SUBJECT OFFICER “at that minute for him to call his sergeant to come because [SUBJECT OFFICER] was getting really rude.”
12. SUBJECT OFFICER does not specifically recall, nor does he deny, making the above statements regarding COMPLAINANT #2.
13. WITNESS OFFICER #1 does not specifically recall, nor does he deny, SUBJECT OFFICER making the above statements regarding COMPLAINANT #2.

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

##### **Harassment**

The complainants, COMPLAINANT #2 and COMPLAINANT #1, alleged that SUBJECT OFFICER harassed them by ordering them to “move along” and by unlawfully issuing 61D citations for “blocking passage.”

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.

MPD General Order § 308.02 states that a Police Officer may issue a 61D citation to a citizen on grounds of public “nuisance.” MPD Standard Operating Procedures for Form 61D citations list “blocking passage,” as one such nuisance, as defined by D.C. Code §22-1307(a)(1)(A) and (a)(2):

It is unlawful for a person, alone or in concert with others to crowd, obstruct or incommode the use of any street, avenue, alley, road, highway or sidewalk ...[or] to continue or resume the crowding, obstructing, or incommoding after being instructed by a law enforcement officer to cease.

There is no evidence that complainants were blocking or obstructing the sidewalk outside of their home at the time of the incident. To the contrary, the fact that COMPLAINANT #2 was sitting on a bike, holding on the fence in front of his home, and that COMPLAINANT #1 was leaning against a car parked in the road, suggests that there was a wide berth between the two men, more than sufficient for passage, especially at a late hour (11 p.m.) when sidewalk traffic in a residential neighborhood presumably would not be voluminous. Nor is there any evidence in the record that complainants blocked the passage of any specific person or otherwise engaged in disorderly conduct. *See Adams v. United States*, 256 A.2d 563, 564-565 (D.C. 1969) (mere assembly on a public street does not constitute blocking passage under §22-1307, as to do so might punish “sightseers, tourists, or school children” who innocently obstruct use of street).

A “move along” order and 61D citation constitute harassment. Based on the statements by complainants and SUBJECT OFFICER, SUBJECT OFFICER issued the 61D citation without cause, thereby subjecting COMPLAINANT #2 and COMPLAINANT #1 to arrest,<sup>1</sup> liens in the amount of \$50.00 each, and the infringement of personal rights and privileges including, but not limited to, their freedom to assemble peaceably. *Tetaz v. District of Columbia*, 976 A.2d 907 (D.C. 2009).

Complainants’ allegations of harassment are sustained.

### **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, course, profane, sarcastic, or insolent language. Members shall not

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<sup>1</sup> According to D.C. Superior Court records, the complainants have a recorded arrest for blocking passage, but there are no pending or closed cases in the court system.

use terms or resort to name calling which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person.”

The official statements of both COMPLAINANT #2 and COMPLAINANT #1 are generally consistent with respect to the derogatory and insulting language used by SUBJECT OFFICER, including that COMPLAINANT #2 “didn’t listen,” and that his parents, “didn’t teach him home training.” COMPLAINANT #2 stated that he was insulted by SUBJECT OFFICER’S language and that he felt that SUBJECT OFFICER was “getting really rude.” Both complainants’ statements are credible.

While SUBJECT OFFICER is able to recall the incident with complainants in sufficient detail, he does not specifically recall the derogatory statements, nor does he deny them. Similarly, WITNESS OFFICER #1, who was standing 10 feet from complainants during the incident, does not specifically recall, nor does he deny, hearing SUBJECT OFFICER speak to complainants.

Complainants’ allegations of insulting, demeaning or humiliating language or conduct are sustained.

#### V. SUMMARY OF MERITS DETERMINATION

##### SUBJECT OFFICER

<b>Allegation 1: Harassment</b>	Sustained
<b>Allegation 2: Insulting, Demeaning, or Humiliating Language or Conduct</b>	Sustained

Submitted on November 9, 2015.

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Meaghan H. Davant  
Complaint Examiner