

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	14-0132
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Arthur D. Sidney
Merits Determination Date:	July 17, 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 filed a complaint with OPC on February 20, 2014, alleging that on January 25, 2014, SUBJECT OFFICER harassed him when he issued two bad traffic tickets.¹ COMPLAINANT also alleged that SUBJECT OFFICER used language or engaged in conduct toward him that was insulting, demeaning, or humiliating, when he spoke to him in a “rude and combative” manner.

¹ The front of the complaint form submitted to OPC on February 20, 2014, by COMPLAINANT indicates that the incident occurred on Saturday, January 25, 2014. The statement provided by COMPLAINANT, within the body of the same complaint, indicates that the incident took place on another date, January 15, 2014. Both COMPLAINANT and WITNESS #1 indicate in their statements to OPC that the incident took place on January 15, 2014. Both Notices of Infraction reviewed by OPC are dated January 25, 2014. The Complainant Examiner finds that the incident occurred on January 25, 2014, as this is the same date of the Notices of Infraction, which were drafted the day of the incident. The Complainant Examiner further finds that both COMPLAINANT and WITNESS #1 mistook the date in their statements to OPC.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based upon a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on June 8, 2015, and OPC's response to the objections dated June 12, 2015, 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 upon a review of OPC's Report of Investigation, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On January 25, 2014, COMPLAINANT was driving with his passenger, WITNESS #1, along 14th Street, N.W. when he was pulled over by a MPD cruiser driven by SUBJECT OFFICER. SUBJECT OFFICER approached the driver's side of the car and informed COMPLAINANT that he had been pulled over for driving with expired tags.
2. SUBJECT OFFICER asked COMPLAINANT to provide his driver's license, registration, and proof of insurance. COMPLAINANT provided SUBJECT OFFICER with the requested documents but was unable to produce a hard copy of his current proof of insurance. SUBJECT OFFICER returned to his MPD cruiser.
3. When SUBJECT OFFICER returned to COMPLAINANT'S vehicle, SUBJECT OFFICER changed his demeanor, was irritated, and spoke to COMPLAINANT in a rude and combative tone.
4. COMPLAINANT was able to provide electronic proof of insurance by using his smart phone which was accepted by SUBJECT OFFICER. SUBJECT OFFICER issued COMPLAINANT a ticket for driving with expired tags. No other tickets were provided to COMPLAINANT.
5. COMPLAINANT does not contest that his tags were expired and that this ticket was properly issued. Later, when COMPLAINANT went online to pay for his ticket for the expired tags, he found that there were two additional tickets for 1) failure to show insurance and 2) driving a vehicle while uninsured. While online, COMPLAINANT paid for his ticket for driving with expired tags and contested the other two tickets and requested a hearing. Were COMPLAINANT not able to locate and pay for these other tickets within sixty days, he would have had his driving license suspended and been subject to fines and possible imprisonment.

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

COMPLAINANT alleged that SUBJECT OFFICER harassed him by unlawfully issuing two unwarranted traffic tickets. As discussed further below, Complaint Examiner determines that the issuance of the two additional tickets was in violation of the law and therefore his conduct was harassment in violation of D.C. Code § 5-1107(a) and MPD General Order 120.25, Part III, Section B, No. 2.

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.

COMPLAINANT admits that he was properly issued a ticket for driving with expired tags. COMPLAINANT further admits that he was not able to locate a hard copy of his proof of insurance when requested by SUBJECT OFFICER. However, COMPLAINANT was able to provide proof of insurance by providing an electronic copy using his smart phone and SUBJECT OFFICER accepted it as valid proof of insurance. SUBJECT OFFICER acknowledged in his OPC statement that he would have accepted the electronic version as valid proof of insurance and that he ordinarily would allow someone to provide valid proof of insurance while he was

writing tickets. SUBJECT OFFICER admitted in his statement to OPC that if the person were able to provide proof, he would have destroyed the ticket that he had written.

SUBJECT OFFICER wrote the COMPLAINANT'S three tickets while he was in his MPD cruiser, before he returned to COMPLAINANT, based upon the information that he had at the time that COMPLAINANT was driving with expired tags and that he had no valid insurance. It was only after SUBJECT OFFICER returned to COMPLAINANT'S vehicle did COMPLAINANT provide an alternate proof of insurance by locating his insurance policy using his smart phone. It is clear that SUBJECT OFFICER never destroyed the other two tickets and submitted them to the Bureau of Traffic Adjudication ("BTA").

Because COMPLAINANT did not receive a paper copy of the tickets, for driving without insurance and failure to show insurance, COMPLAINANT was never on notice that these two additional tickets were issued. Had COMPLAINANT not looked online and paid to satisfy the ticket that he did receive (i.e., the ticket for driving with expired tags), he would not have been aware that he had two additional tickets and would not have requested a hearing. If a hearing was not requested in a timely manner, COMPLAINANT would have had suffered a suspended license, faced fines, and possible imprisonment. COMPLAINANT was inconvenienced because he had to request a hearing, take time to prepare for the hearing, and challenge the unlawful tickets. The Complaint Examiner finds credible COMPLAINANT and WITNESS #1'S statement to OPC that COMPLAINANT provided SUBJECT OFFICER with proof of valid insurance by using his smart phone and SUBJECT OFFICER accepted the information. Therefore, there was no lawful basis for SUBJECT OFFICER to issue the two additional tickets for the insurance violation.

SUBJECT OFFICER'S issuance of these two additional tickets was harassment in violation of D.C. Code § 5-1107(a) and MPD General Order 120.25, Part III, Section B, No. 2.

Language or Conduct

COMPLAINANT alleged SUBJECT OFFICER spoke to him in a rude and combative manner and "spoke down to" him, "appeared to be very irritated," "came off as though [he] had caused [SUBJECT OFFICER] too much trouble," and SUBJECT OFFICER was "talking under his breath." As discussed further below, SUBJECT OFFICER'S actions were insulting, demeaning, or humiliating in violation of D.C. Code § 5-1107(a) and MPD General Order 201.26.

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."

COMPLAINANT further stated in his interview with OPC that SUBJECT OFFICER was irritated, rude, combative, and disrespectful. WITNESS #1 stated in her interview with OPC that SUBJECT OFFICER repeated himself and COMPLAINANT stated in his interview that SUBJECT OFFICER was talking under his breath. SUBJECT OFFICER stated in his interview that he spoke in a direct manner and never intended to be rude or disrespectful.

SUBJECT OFFICER'S conduct of "talking down" to the COMPLAINANT, repeating himself, and acting as if he did not want to be bothered, demonstrates that SUBJECT OFFICER engaged in language or conduct that was insulting, demeaning, or humiliating in violation of D.C. Code § 5-1107(a) and MPD General Order 201.26.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Sustained
Allegation 2: Language or Conduct	Sustained

Submitted on July 17, 2015.

ARTHUR D. SIDNEY
Complaint Examiner