

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	14-0155
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer, Badge No., District:</b>	SUBJECT OFFICER
<b>Allegation 1:</b>	Harassment
<b>Complaint Examiner:</b>	Arthur D. Sidney
<b>Merits Determination Date:</b>	June 26, 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 March 20, 2014, alleging that on March 14, 2014, SUBJECT OFFICER harassed her by unlawfully exceeding the scope of an arrest warrant when he searched through the contact list of a mobile phone found inside her apartment and retrieved a phone number.<sup>1</sup>

**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 May 13, 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.

---

<sup>1</sup> COMPLAINANT also alleged that SUBJECT OFFICER and WITNESS OFFICER #1 harassed her by unlawfully entering her apartment to serve an arrest warrant. On April 9, 2015, a member of the Police Complaints Board dismissed this allegation, concurring with the determination made by OPC's executive director. Thus, this particular allegation of harassment is not the subject of this determination.

### **III. FINDINGS OF FACT**

Based upon a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on May 13, 2015, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On March 14, 2014, COMPLAINANT had an outstanding felony warrant for her arrest. SUBJECT OFFICER and WITNESS OFFICER #1 were assigned to the Fifth District Warrant Squad.
2. At approximately 8:35 a.m., both MPD officers responded to COMPLAINANT's apartment address, knocked on her door, and determined that she was not present in her apartment. Both MPD officers went to COMPLAINANT's apartment complex leasing office in an attempt to locate her.
3. Upon arrival at COMPLAINANT's apartment complex leasing office, the MPD officers showed the apartment's property manager, Witness #1 and its leasing consultant, Mr. Witness #2, a picture of COMPLAINANT, a picture of her vehicle, and a warrant for her arrest. Witness #1 and Witness #2 confirmed that COMPLAINANT lived at the address, that she was not presently in her apartment, and that she would return at approximately 8:45 a.m. to 9:00 a.m. from taking her daughters to school.
4. Witness #2 escorted both MPD officers to the garage where COMPLAINANT parks her vehicle. Witness #2 returned to the leasing office and both MPD officers left the parking garage but remained on the apartment premises and were waiting for COMPLAINANT in their MPD cruiser in an alley next to the parking garage.
5. At approximately 9:00 a.m. to 9:30 a.m., COMPLAINANT drove into her garage. As she entered the garage, she saw both MPD officers. COMPLAINANT parked her vehicle close to a secured access exit door in the garage. Both MPD officers exited the MPD cruiser and attempted to approach the driver's side of COMPLAINANT's vehicle. Upon seeing them, COMPLAINANT fled through the secured access exit door which led to a stairwell. The stairwell provided access to the street or to the apartments on the upper floors.
6. SUBJECT OFFICER followed COMPLAINANT but did not have a security access card and was unable to go through the secured access door. SUBJECT OFFICER looked through a window on the secure access door but was unable to see COMPLAINANT and was unable to determine whether she exited the stairwell through the street exit or whether she proceeded up the stairwell to her apartment.
7. WITNESS OFFICER #1 searched the perimeter of the premises while SUBJECT OFFICER remained in the garage next to COMPLAINANT's vehicle for twenty minutes. Neither MPD officer was able to find COMPLAINANT.

8. During the twenty minutes, WITNESS OFFICER #1 went to the leasing office and notified WITNESS #1 and WITNESS #2. WITNESS #1 and WITNESS #2 escorted both MPD officers to COMPLAINANT's apartment, unlocked the door and allowed the MPD officers to enter and look for COMPLAINANT. WITNESS #1 and WITNESS #2 did not enter the apartment.
9. While in the apartment, SUBJECT OFFICER entered a bedroom where he saw a mobile telephone. SUBJECT OFFICER picked up the mobile telephone, scrolled through the contents of the phone, and retrieved one phone number from the mobile telephone. The contact associated with this telephone number was listed as "Mom" or "Mommy."
10. SUBJECT OFFICER stored this contact in his MPD-issued blackberry mobile telephone. After retrieving the telephone number, SUBJECT OFFICER placed the mobile telephone that he found back in its original location.
11. SUBJECT OFFICER did not exit the apartment with the mobile telephone that he found during the search. Upon exiting the apartment, WITNESS #1 and WITNESS #2 locked the apartment door.
12. SUBJECT OFFICER sent COMPLAINANT two text messages from his MPD-issued blackberry mobile device ordering her to surrender herself to the MPD officers.

#### **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."

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 alleged that SUBJECT OFFICER harassed her by unlawfully exceeding the scope of the arrest warrant when he searched through the contact list of her mobile telephone found in her apartment and retrieved a telephone number.

It is undisputed that SUBJECT OFFICER picked up a mobile telephone in COMPLAINANT’s apartment, scrolled through the contacts list, and found the name “Mom” or “Mommy” in the contact list along with a corresponding telephone number, which he suspected belonged to one of COMPLAINANT’s children. SUBJECT OFFICER stored the telephone number in his MPD-issued mobile telephone and later that day sent two texts to COMPLAINANT ordering her to turn herself in to MPD officials.

SUBJECT OFFICER lawfully entered COMPLAINANT’s residence. Police officers may lawfully enter a residence if they have a reasonable belief that the suspect lives there and is present at the time. *United States v. Taylor*, 497 F.3d 673, 678 (D.C. Cir. 2007) (citing *United States v. Thomas*, 429 F.3d 282, 285-86 (D.C. Cir. 2005)); see also *Payton v. New York*, 445 U.S. 573, 603 (1980). After lawfully entering a residence to execute an arrest warrant, officers may also conduct a protective sweep of the home. A protective sweep is a “quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others.” *Maryland v. Buie*, 494 U.S. 325, 327 (1990). A *Buie* protective sweep is “not a full search of the premises, but may extend only to a cursory inspection of those spaces where a person may be found,” and it may last “no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises.” *Id.* at 335-36. The lawfulness of the entry into COMPLAINANT’s apartment is not in question in this determination. Rather, the issue is whether SUBJECT OFFICER’s conduct constituted harassment when he searched through a mobile telephone’s contact list and retrieved a contact from it while he executed a warrant for the arrest of COMPLAINANT in her apartment.

SUBJECT OFFICER’s search of the mobile telephone and retrieval of a contact within the mobile telephone’s contact list exceeded the scope of the arrest warrant because the search occurred in an area where the object of the search, COMPLAINANT, could not be found. Moreover, there were no exigent circumstances that necessitated the search of the mobile telephone. Although SUBJECT OFFICER was lawfully within COMPLAINANT’s apartment, his search of a mobile telephone found within COMPLAINANT’s apartment and his retrieval of a contact within the mobile telephone’s contact list constituted harassment because his actions

were outside the scope of the Fourth Amendment in violation of D.C. Code § 5-1107(a) and MPD General Order 120.25.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

<b>Allegation 1: Harassment</b>	Sustained
---------------------------------	-----------

Submitted on June 26, 2015.

---

ARTHUR D. SIDNEY  
Complaint Examiner