

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	14-0176
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Allegation 3:	Failure to Identify
Complaint Examiner:	Richard S. Ugelow
Merits Determination Date:	November 2, 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

On March 31, 2014, COMPLAINANT was talking to her two children on the sidewalk near A METRO STATION IN SOUTHEAST D.C. She alleges that she was harassed by SUBJECT OFFICER who yelled at her at least twice to move and to get off of the sidewalk. SUBJECT OFFICER continued to harass her by following her after she moved into the street and off of the sidewalk. In addition, COMPLAINANT alleged that SUBJECT OFFICER was not wearing a name tag or badge at the time of the incident.

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 on behalf of SUBJECT OFFICER on October 1, 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 on October 1, 2015, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On March 31, 2014, COMPLAINANT exited A METRO STATION IN SOUTHEAST D.C. at approximately 5:15 p.m.
2. The METRO STATION is located near the intersection of TWO STREETS IN SOUTHEAST D.C.
3. Upon exiting the station, COMPLAINANT saw her children WITNESS #1 and WITNESS #2 and began talking to them on the sidewalk on TWO STREETS IN SOUTHEAST D.C.
4. COMPLAINANT and her children were standing and talking on the sidewalk, were not blocking passage of other pedestrians, and were not acting in a threatening or disturbing manner.
5. On the date of the incident, SUBJECT OFFICER was partnered with WITNESS OFFICER #1. Exhibit 5.
6. At about 5:15 pm, SUBJECT OFFICER and WITNESS OFFICER #1 were on preventive robbery patrol in the area of A METRO STATION IN SOUTHEAST D.C. Exhibit 5.
7. SUBJECT OFFICER and WITNESS OFFICER #1 were patrolling in a marked police car, but were wearing plainclothes and tactical vests. Exhibit 5.
8. SUBJECT OFFICER was in the passenger seat of the patrol car. Exhibit 5.
9. SUBJECT OFFICER used the patrol car's loud speaker to instruct COMPLAINANT and her children to "leave" the sidewalk or be subject to arrest. Exhibit 5.
10. When individuals are ordered to move along, SUBJECT OFFICER and WITNESS OFFICER #1 typically return in 5-10 minutes to see if their instructions were followed. Exhibit 5.
11. SUBJECT OFFICER and WITNESS OFFICER #1 returned to where they had encountered COMPLAINANT and her children shortly thereafter and saw that they had not moved. Exhibit 5.
12. SUBJECT OFFICER and WITNESS OFFICER #1 exited their patrol car and SUBJECT OFFICER yelled at COMPLAINANT and her children "I said to get off of the sidewalk" and followed them down the street "fussing" and "yelling" at them. Exhibit 2.

13. COMPLAINANT asked SUBJECT OFFICER for his name and badge number, which he gave but which she was unable to remember or record.
14. SUBJECT OFFICER did not have a badge or name plate visible on his clothing. Exhibit 10.
15. COMPLAINANT filed a complaint against SUBJECT OFFICER with OPC on April 2, 2014. Exhibit 1.

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.

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.”

MPD General Order 201.26 requires MPD officers to “give their first and last name and badge numbers in a respectful and polite manner” when requested to do so by a member of the public. MPD officers are also required to identify themselves by displaying their badge or identification folder before taking police action, “except when impractical, unfeasible, or where their identity is obvious.”

At approximately 5:15 on March 31, 2014, COMPLAINANT exited A METRO STATION IN SOUTHEAST D.C., near the intersection of TWO STREETS IN SOUTHEAST D.C., when she saw her children, WITNESS #1 and WITNESS #2, and stopped to talk to them. At about this time, SUBJECT OFFICER and WITNESS OFFICER #1 were on a robbery prevention patrol in a marked MPD Scout Car. The officers were in civilian clothing but were wearing tactical vests. SUBJECT OFFICER did not have a name tag and badge visible.

According to SUBJECT OFFICER and WITNESS OFFICER #1, citizens often congregate, block passage, sell drugs, and drink in the area where this incident took place. SUBJECT OFFICER has often instructed individuals blocking passage to move along, and indeed has arrested people for blocking passage. According to WITNESS OFFICER #1, WITNESS #2 had been arrested for blocking passage a few days earlier.

There is no allegation by the involved police officers that at the time of the incident COMPLAINANT or her children were doing anything but talking. That is, they were not blocking passage, drinking, or, indeed, acting inappropriately in any way.

Nevertheless, SUBJECT OFFICER used the scout car loudspeaker to instruct COMPLAINANT and her children to move off of the sidewalk or be subject to arrest. In response, COMPLAINANT and/or her children argued with SUBJECT OFFICER because they felt they were being unfairly hassled.

When SUBJECT OFFICER and WITNESS OFFICER #1 returned a few minutes later, COMPLAINANT and her children had not left the area. The officers exited the scout car and SUBJECT OFFICER yelled at them to get off of the sidewalk. COMPLAINANT and her children then moved so that they were standing between two parked cars. SUBJECT OFFICER again yelled at them to move. They finally moved when SUBJECT OFFICER walked toward them yelling and “fussing” at them. COMPLAINANT did not observe a name plate or badge on SUBJECT OFFICER. She asked for his name and badge number, which he did provide. A picture of SUBJECT OFFICER taken by WITNESS #2 at the time of the encounter confirms that SUBJECT OFFICER did not display a badge or name tag on this clothing. Exhibit 10.

The Complaint Examiner finds that SUBJECT OFFICER harassed COMPLAINANT and her children when he yelled at them to get off of the sidewalk, “fussed” and threatened to arrest

them for standing on the sidewalk talking. The police have a legitimate and lawful interest in ensuring that sidewalks are not improperly blocked, see D.C. Code § 22-1307 (2015). Here, however, the undisputed facts show that neither COMPLAINANT nor her children were blocking the sidewalk. Rather, they were simply talking to each other. Thus, they were not engaged in any activity that warranted intervention by SUBJECT OFFICER. MPD General Order 304.10 provides that MPD officers may contact people for any “legitimate, police-related purpose,” but states that “contacts **shall not** be conducted in a hostile or aggressive manner, or as a means of harassing any citizen or attempting to coerce a citizen to leave an area merely because a person is “hanging around,” loitering,” or “standing on the corner.”” (Emphasis in the original). SUBJECT OFFICER’s action constitutes harassment in violation of D.C. Code § 5-1007(a), MPD General Orders 120.25 and 304.10.

Further, the Complaint Examiner finds that the language used by SUBJECT OFFICER in his interactions with COMPLAINANT and her children violated MPD General Order 201.26, Part V, Section C. The Complaint Examiner finds that there was no justification for treating COMPLAINANT disrespectfully by ordering them to move and yelling and fussing at them. Even if COMPLAINANT and/or her children may have responded with provocative language, the General Order provides that officers “shall perform their duties quietly, remaining calm regardless of provocation.” Here, SUBJECT OFFICER continually yelled at COMPLAINANT to “get off the sidewalk,” fussed at her, and followed her until she and her family moved. SUBJECT OFFICER’s language and actions in this instance were unprofessional.

The Complaint Examiner finds that SUBJECT OFFICER violated MPD General Orders 201.26, Part V, Section D, 2(a), 110.11, Part V, Section B, No. 3 (d) and Part V, Section A. No. 13, that collectively require that police officers display their badge or identification and name tag (except in circumstances not present here). Exhibit 10 clearly shows SUBJECT OFFICER wearing tactical clothing, without his name plate or badge. To his credit SUBJECT OFFICER did provide his name and badge number to COMPLAINANT, but she was unable to remember or record the information.

V. SUMMARY OF MERITS DETERMINATION

Officer, SUBJECT OFFICER

Allegation 1: Harassment	Sustained
Allegation 2: Insulting, Demeaning, or Humiliating Language or Conduct	Sustained
Allegation 3: Failure to Identify	Sustained

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Submitted on November 2, 2015.

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Complaint Examiner