

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	14-0216
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2
Allegation 1:	Harassment
Allegation 2:	Language or Conduct
Allegation 3:	Failure to Identify
Complaint Examiner:	Arthur D. Sidney
Merits Determination Date:	March 9, 2016

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 alleged that on April 25, 2014, Subject Officers, SUBJECT OFFICER #1, and SUBJECT OFFICER #2, harassed him when they unlawfully barred him from three residential properties. Complainant further alleged that on April 29, 2014, SUBJECT OFFICER #2 (1) harassed him by threatening him with arrest, (2) used language or engaged in conduct that was insulting, demeaning, or humiliating when he used profanity toward the Complainant, and (3) failed to provide his name and badge number when requested to do so by the Complainant. Finally, the Complainant alleged that on May 6, 2014, SUBJECT OFFICER #2 harassed the COMPLAINANT when he arrested him for unlawfully entering a building a few days prior on April 29, 2014.¹

¹ COMPLAINANT also alleged in his complaint that on April 24, 2014, SUBJECT OFFICER #2 harassed him by attempting to run him over with his police vehicle. COMPLAINANT alleged that SUBJECT OFFICER #2 and WITNESS OFFICER #1 used unnecessary or excessive force against him by pointing guns at his face, and harassed him by unlawfully stopping and frisking him. COMPLAINANT also alleged that SUBJECT OFFICER #2 and WITNESS OFFICER #1, and WITNESS OFFICER #2, WITNESS OFFICER #3, WITNESS OFFICER #4, and WITNESS OFFICER #5 harassed him by invasively searching his pants. Lastly, COMPLAINANT alleged that SUBJECT OFFICER #1 harassed him by stopping him on April 25, 2014. Pursuant to D.C. § 5-1108 (1), on

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 #2 and SUBJECT OFFICER #1 on February 1, 2016, 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 upon a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER #2 and SUBJECT OFFICER #1 on February 1, 2015 and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be as follows:

1. On April 24, 2014, COMPLAINANT was stopped by SUBJECT OFFICER #2 inside A PLACE OF BUSINESS. SUBJECT OFFICER #2 was investigating COMPLAINANT for suspicion of narcotics and eluding police. After COMPLAINANT was frisked and no drugs, weapons, or contraband were found, COMPLAINANT was released.
2. On April 25, 2014, COMPLAINANT was questioned by WITNESS OFFICER #6 about an incident that occurred ON A RESIDENTIAL STREET IN NORTHWEST, D.C. SUBJECT OFFICER #1 heard over the radio that MPD officers had stopped COMPLAINANT. SUBJECT OFFICER #1 went to the location where COMPLAINANT was stopped.
3. SUBJECT OFFICER #1 approached COMPLAINANT and explained that another officer, SUBJECT OFFICER #2, requested that she bar COMPLAINANT because of complaints of unlawful entry and loitering. SUBJECT OFFICER #2 was not at the scene.
4. SUBJECT OFFICER #1 issued a barring notice, precluding COMPLAINANT'S entry onto three residential properties. One of the properties that COMPLAINANT was forbidden from entering was APARTMENT COMPLEX #1, LOCATED IN NORTHWEST, WASHINGTON, D.C. None of the barring notices were signed by the owners, property managers, or agents of the involved properties.

December 10, 2015, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director. Therefore, these allegations are not before the subject of this complaint examination.

5. Although SUBJECT OFFICER #1 issued the barring notices at the direction of SUBJECT OFFICER #2, SUBJECT OFFICER #2 only requested that COMPLAINANT be barred from a single property located at APARTMENT COMPLEX #1, LOCATED IN NORTHWEST, WASHINGTON, D.C. SUBJECT OFFICER #1 added the other two property addresses without being directed to do so by SUBJECT OFFICER #2. The barring notices did not contain the building managers' names.
6. SUBJECT OFFICER #2 at a later date added the building manager's name to the barring notice for APARTMENT COMPLEX #1, LOCATED IN NORTHWEST, WASHINGTON, D.C., and submitted that copy with the arrest package to the United States Attorney's Office.
7. On April 29, 2014, SUBJECT OFFICER #2 and WITNESS OFFICER #1 pulled up to COMPLAINANT in a police cruiser as COMPLAINANT walked down A STREET IN NORTHWEST D.C. CLOSE TO APARTMENT COMPLEX #1. SUBJECT OFFICER #2 was driving and WITNESS OFFICER #1 was in the passenger seat. SUBJECT OFFICER #2 saw COMPLAINANT run outside the backdoor of the property at APARTMENT COMPLEX #1 IN NORTHWEST, WASHINGTON, D.C. SUBJECT OFFICER #2 said something to the effect to COMPLAINANT, "I'm going to put a warrant on your ass and lock you up."
8. In response, COMPLAINANT told SUBJECT OFFICER #2 that he was not in the building and proceeded to ask for Subject Officer's name and badge number. SUBJECT OFFICER #2 did not comply with the request and drove away.
9. On April 30, 2014, SUBJECT OFFICER #2 sought an arrest warrant for COMPLAINANT for unlawful entry on APARTMENT COMPLEX #1 IN NORTHWEST, WASHINGTON, D.C.
10. On April 30, 2014, COMPLAINANT filed a complaint with OPC. Subsequently, on May 6, 2014, SUBJECT OFFICER #2 arrested COMPLAINANT on a warrant for unlawful entry of APARTMENT COMPLEX #1, LOCATED IN NORTHWEST, WASHINGTON, D.C. on April 29, 2014. COMPLAINANT denied entering the building or violating a valid barring notice.

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." Such allegations may include, among other things, harassment, the use of language or conduct that is insulting, demeaning, or humiliating, and failure to identify.

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.

A. Subject Officers’ Issuance of the Barring Notice Amounted to Harassment

SUBJECT OFFICER #1 acknowledged that she issued a barring notice to COMPLAINANT at the request of SUBJECT OFFICER #2. According to SUBJECT OFFICER #2, he had been trying to locate COMPLAINANT because the building manager wanted him barred from the involved properties. SUBJECT OFFICER #1 did not write the building manager’s name on the barring notice, because SUBJECT OFFICER #2 did not provide it. SUBJECT OFFICER #2 also did not know why SUBJECT OFFICER #1 added two additional addresses to the barring notice: APARTMENT COMPLEX #2 LOCATED IN NORTHWEST, D.C. and A PRIVATE RESIDENCE LOCATED IN NORTHWEST, D.C. SUBJECT OFFICER #2 mentioned those properties but did not request that COMPLAINANT be barred from those properties. According to SUBJECT OFFICER #2, he believed that SUBJECT OFFICER #1 had the authority to issue a barring notice based upon permission he had received from the building manager. SUBJECT OFFICER #1 filled out the barring notice but did not include the name of the building manager. At a later date, SUBJECT OFFICER #2 added the building manager’s name to the barring notice for APARTMENT COMPLEX #1 IN NORTHWEST, WASHINGTON, D.C. and submitted that copy with the arrest package to the United States Attorney’s Office.

According to SUBJECT OFFICER #2, prior to April 25, 2014, he was approached by the building manager and the building manager requested that barring notices be issued to COMPLAINANT but no barring notice was given to the COMPLAINANT on that day or a previous occasion when SUBJECT OFFICER #2 was in the presence of COMPLAINANT. On April 25, 2014, SUBJECT OFFICER #2 heard over the police radio that MPD officers had

stopped COMPLAINANT. SUBJECT OFFICER #2 went to the location where COMPLAINANT was stopped and issued a barring notice. According to the three property managers of the involved locations listed in the barring notices, none of them requested that COMPLAINANT be barred from the locations and none of them signed a barring notice.

MPD Circular 13-16 provides, “when business/private property owners request MPD assistance in the service of barring notices upon individuals, business/private property owners should have a completed barring notice that includes the insignia and/or letterhead for the business or property.” The circular also indicates that “MPD members shall not create, draft, or serve barring notices” unless the notice is barring an individual from an MPD facility or District of Columbia Housing Authority (DCHA) or the MPD officer is serving the notice pursuant to a recommendation from various specified government agencies. None of these circumstances apply here.

SUBJECT OFFICER #1 and SUBJECT OFFICER #2 did not have the authority to independently bar COMPLAINANT from APARTMENT COMPLEX #1 IN NORTHWEST, WASHINGTON, D.C., APARTMENT COMPLEX #2 LOCATED IN NORTHWEST, D.C. and A PRIVATE RESIDENCE LOCATED IN NORTHWEST, D.C., which are all private properties. Because none of these properties are MPD or DCHA facilities and the MPD officer serving the notice was not recommended to do so by a government agency, SUBJECT OFFICER #1 and SUBJECT OFFICER #2 did not have the authority to bar COMPLAINANT. Moreover, the building manager of APARTMENT COMPLEX #1 IN NORTHWEST, WASHINGTON, D.C., or an authorized agent, did not request SUBJECT OFFICER #2 bar COMPLAINANT. SUBJECT OFFICER #1 by her own admission created, drafted, and served COMPLAINANT with a barring notice based upon information she obtained from SUBJECT OFFICER #2. Additionally, SUBJECT OFFICER #1 carelessly included two addresses, APARTMENT COMPLEX #2 and A PRIVATE RESIDENCE IN NORTHWEST, D.C. when she was not requested to do so by SUBJECT OFFICER #2. The involved property managers’ statements that they did not request for COMPLAINANT to be barred is credible, because the property managers do not have a stake in this venture and have no reason to be untruthful. Thus, the barring notice issued to COMPLAINANT on April 25, 2014 was invalid because SUBJECT OFFICER #1 and SUBJECT OFFICER #2 did not have the authority to bar COMPLAINANT from the involved property. Therefore, SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed COMPLAINANT in violation of D.C. Code § 5-1107(a), MPD General Order 120.25, and MPD Circular 13-16 when SUBJECT OFFICER #1 issued a barring notice for the three properties when he was told to do so by SUBJECT OFFICER #2 where neither Subject Officer had the authority to issue the notice.

B. SUBJECT OFFICER #2 Harassed COMPLAINANT When He Threatened COMPLAINANT With Arrest For Violating an Unauthorized Barring Notice

COMPLAINANT alleged that SUBJECT OFFICER #2 threatened him with arrest as he was walking down A STREET IN NORTHWEST, D.C. SUBJECT OFFICER #2 and his

partner, WITNESS OFFICER #1, indicated in their statements to OPC that they did not remember interacting with COMPLAINANT after WITNESS OFFICER #1 observed COMPLAINANT at APARTMENT COMPLEX #1 IN NORTHWEST, WASHINGTON, D.C. on April 25, 2014. Although SUBJECT OFFICER #2 claimed not to remember an interaction with COMPLAINANT, he specifically denied threatening COMPLAINANT with arrest. SUBJECT OFFICER #2 indicated, in his statement to OPC, that after WITNESS OFFICER #1 saw COMPLAINANT at the involved location, WITNESS OFFICER #7 called SUBJECT OFFICER #2 to tell him that COMPLAINANT complained about WITNESS OFFICER #1 and SUBJECT OFFICER #2 and that COMPLAINANT “mention[ed] something about [them] issuing a warrant for him.”

Complainant’s version is credible because SUBJECT OFFICER #2 recalled the telephone call from WITNESS OFFICER #7 alerting the officers that COMPLAINANT was upset about SUBJECT OFFICER #2 threatening to issue an arrest warrant. Moreover, in COMPLAINANT’s statement to OPC, which COMPLAINANT wrote within five days of the interaction with the MPD officers on April 25, 2014, he indicated that SUBJECT OFFICER #2 said that he was going to issue an arrest warrant for COMPLAINANT. Both facts corroborate COMPLAINANT’s statement that SUBJECT OFFICER #2 threatened to arrest him. Thus, the evidence supports that SUBJECT OFFICER #2 interacted with COMPLAINANT and threatened him with arrest. Because SUBJECT OFFICER #1 and SUBJECT OFFICER #2 did not have the authority to issue a lawful barring notice to COMPLAINANT for the involved properties, SUBJECT OFFICER #2 did not have a basis to threaten COMPLAINANT with arrest or a warrant if he saw him in any of the involved properties. Therefore, SUBJECT OFFICER #2 harassed COMPLAINANT in violation of D.C. Code § 5-1107(a), MPD General Order 120.25, and MPD Circular 13-16, when he threatened to arrest COMPLAINANT for violating an unlawful barring notice.

C. SUBJECT OFFICER #2 Unlawfully Arrested COMPLAINANT For Unlawful Entry Into APARTMENT COMPLEX #1 IN NORTHWEST, WASHINGTON, D.C. Based Upon An Invalid Barring Notice

COMPLAINANT alleged that SUBJECT OFFICER #2 unlawfully arrested him on May 6, 2014, for unlawful entry into APARTMENT COMPLEX #1 IN NORTHWEST, WASHINGTON, D.C. based upon SUBJECT OFFICER #2 seeing him at the location on a previous occasion on April 29, 2014. On April 29, 2014, SUBJECT OFFICER #2 and his partner, WITNESS OFFICER #1, drove by APARTMENT COMPLEX #1 IN NORTHWEST, WASHINGTON, D.C. Because SUBJECT OFFICER #2 was driving, WITNESS OFFICER #1 was able to see COMPLAINANT in the building at the involved location. When the MPD officers got out of their vehicles and went to the building, COMPLAINANT was gone. Based upon, WITNESS OFFICER #1’S observation, SUBJECT OFFICER #2 sought an arrest warrant for unlawful entry the following day on April 30, 2014, because COMPLAINANT had been barred from APARTMENT COMPLEX #1 IN NORTHWEST, WASHINGTON, D.C., on April 25, 2014. A few days later, on May 6, 2014, SUBJECT OFFICER #2 saw COMPLAINANT at

APARTMENT COMPLEX #1 IN NORTHWEST, WASHINGTON, D.C. and arrested him for the previous unlawful entry from April 29, 2014.

Because SUBJECT OFFICER #1 and SUBJECT OFFICER #2 did not have the authority to bar COMPLAINANT, and because neither the building managers nor their agents sought to have COMPLAINANT barred from the involved properties, there was no basis for SUBJECT OFFICER #2 to arrest COMPLAINANT. Moreover, COMPLAINANT's criminal court case for unlawful entry was dismissed for want of prosecution. Therefore, SUBJECT OFFICER #2 harassed COMPLAINANT in violation of D.C. Code § 5-1107(a) and MPD General Order 120.25 when he arrested COMPLAINANT for violating an invalid and illegal barring notice.

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."

COMPLAINANT alleged that on the afternoon of April 29, 2014, when he was walking down A STREET IN NORTHWEST, D.C., SUBJECT OFFICER #2 threatened him with arrest and also used profanity when he said something to the effect of, "I'm going to put a warrant on your ass and lock you up." SUBJECT OFFICER #2 and WITNESS OFFICER #1 did not recall interacting with Complainant after WITNESS OFFICER #1 observed him in APARTMENT COMPLEX #1 IN NORTHWEST, WASHINGTON, D.C. SUBJECT OFFICER #2 did recall WITNESS OFFICER #7 notifying him that COMPLAINANT had complained that SUBJECT OFFICER #2 threatened to issue an arrest warrant for COMPLAINANT. Moreover, in the complaint filed with OPC on April 30, 2014, COMPLAINANT indicated that SUBJECT OFFICER #2 made the statement, "I am going to put a warrant on your ass and lock you up." Because the complaint was the most contemporaneous to the incident, the COMPLAINANT's version is credible and reliable, while the SUBJECT OFFICER #2 did not recall the event, it is more likely than not that the Subject Officer made the profane statement. SUBJECT OFFICER #2 was operating upon the mistaken belief that he had issued a valid barring notice to COMPLAINANT and thus, it is likely that SUBJECT OFFICER #2 made the statement because he believed he had the authority to arrest COMPLAINANT. However, as demonstrated above, there was no valid barring notice. Thus, SUBJECT OFFICER #2 engaged in conduct or language toward COMPLAINANT that was insulting, demeaning or humiliating, in violation of D.C. Code § 5-1107(a) and MPD General Order 120.26 when he used profanity in his statement that SUBJECT OFFICER #2 was going to put an arrest warrant on COMPLAINANT's "ass and lock [him] up."

FAILURE TO IDENTIFY

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.”

COMPLAINANT alleged that after SUBJECT OFFICER #2 said “I’m going to put a warrant on your ass and lock you up,” COMPLAINANT asked for SUBJECT OFFICER #2’s name and badge number. According to COMPLAINANT, rather than provide the requested information, SUBJECT OFFICER #2 drove away in his police cruiser. COMPLAINANT described the officers to a POLICE DISTRICT official and learned of SUBJECT OFFICER #2 and WITNESS OFFICER #1’S names. SUBJECT OFFICER #2 did not have any memory of the interaction with COMPLAINANT. SUBJECT OFFICER #2 stated in his interview with OPC that because WITNESS OFFICER #6 notified him that COMPLAINANT complained about SUBJECT OFFICER #2, that alone proved that COMPLAINANT knew SUBJECT OFFICER #2’S name. SUBJECT OFFICER #2 could not remember the interaction with COMPLAINANT. Nevertheless, SUBJECT OFFICER #2 reasoned that COMPLAINANT knew his name already without SUBJECT OFFICER #2 complying with COMPLAINANT’s request for his name and badge number because COMPLAINANT complained about SUBJECT OFFICER #2 threatening to issue a warrant for COMPLAINANT’s arrest. The Complaint Examiner finds COMPLAINANT’s statements to be credible. COMPLAINANT was able to file his complaint with OPC after describing the officers to POLICE DISTRICT MPD personnel. The evidence demonstrates that Subject Officer did not comply with COMPLAINANT’s request to provide COMPLAINANT with his name and badge because Subject Officer believed that COMPLAINANT already knew who he was. SUBJECT OFFICER #2’s statements to OPC rationalize his failure to identify himself, and therefore, Complaint Examiner finds credible COMPLAINANT’s statement that Subject Officer did not respond to COMPLAINANT’S request to identify himself. Thus, SUBJECT OFFICER #2 failed to provide his name and badge number to COMPLAINANT when requested to do so by COMPLAINANT, in violation of D.C. Code § 5-1107(a) and MPD General Order 120.26.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1

Allegation 1: Harassment	Sustained
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SUBJECT OFFICER #2

Allegation 1: Harassment	Sustained
Allegation 2: Language or Conduct	Sustained
Allegation 3: Failure to Identify	Sustained

Submitted on March 9, 2016.

Arthur D. Sidney
Complaint Examiner