

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	14-0291
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2 SUBJECT OFFICER #3
Allegation 1:	Harassment
Allegation 2:	Unnecessary/Excessive Force
Complaint Examiner:	Danielle Davis
Merits Determination Date:	May 11, 2016

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints has the authority to adjudicate citizen complaints against members of the Metropolitan Police Department 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 the Office of Police Complaints (“OPC”) on June 27, 2014 against SUBJECT OFFICER #2, POLICE DISTRICT, SUBJECT OFFICER #1, and SUBJECT OFFICER #3. COMPLAINANT alleges that on June 18, 2014, SUBJECT OFFICER #2 harassed him when SUBJECT OFFICER #2 threatened to force COMPLAINANT’S front door open. COMPLAINANT also alleges that SUBJECT OFFICER #2 and SUBJECT OFFICER #1 harassed him when they unlawfully entered COMPLAINANT’S apartment. COMPLAINANT further alleges that SUBJECT OFFICER #2 used unnecessary force against him after he unlawfully entered his apartment. Finally, COMPLAINANT alleges that SUBJECT OFFICER #3 harassed him when SUBJECT OFFICER #3 intimidated and discouraged COMPLAINANT from filing a police complaint against SUBJECT OFFICER #2.

II. EVIDENTIARY HEARING

An evidentiary hearing was held on April 6, 2016. The Complaint Examiner heard sworn testimony from COMPLAINANT, WITNESS #1¹, WITNESS #2, SUBJECT OFFICER #1, SUBJECT OFFICER #2, and SUBJECT OFFICER #3. The following exhibits were admitted into evidence during hearing:

1. Complainant Exhibit A.
2. Complainant Exhibit B.
3. Complainant Exhibit C.

Per the Complaint Examiner's request, following the hearing, the following exhibit was admitted into evidence:

4. Complainant Exhibit D: Photographs of COMPLAINANT'S stepdaughter WITNESS #3.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation and the exhibits found in the OPC file, the written objections submitted by SUBJECT OFFICER #2 on February 1, 2016, the written objections submitted by SUBJECT OFFICER #1 on February 4, 2016, and the evidentiary hearing conducted on April 6, 2016 and all related exhibits, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On June 18, 2014, WITNESS #2 flagged down SUBJECT OFFICER #1, who was in uniform and operating a marked MPD vehicle, and requested his assistance resolving a child custody dispute between him and WITNESS #1.
2. WITNESS #2 contended that he was entitled to visitation rights with his daughter WITNESS #3 on that day, but that COMPLAINANT refused to allow him to pick up his daughter from her residence. In support of his contention, WITNESS #2 produced a court-issued custody order to SUBJECT OFFICER #1.
3. At approximately the same time, COMPLAINANT exited his apartment unit to buy ice cream. As he exited his apartment building, he observed WITNESS #2 and SUBJECT OFFICER #1 talking outside of the building, but did not stop or speak to WITNESS #2 or SUBJECT OFFICER #1.

¹ At the time of the incident, WITNESS #1'S last name was WITNESS #1'S MAIDEN NAME. As such, the OPC Report of Investigation refers to her as WITNESS #1'S MAIDEN NAME. However, for purposes of this merits determination, she will be referred to as WITNESS #1 or WITNESS #1.

4. After reviewing the custody order, SUBJECT OFFICER #1 proceeded to COMPLAINANT'S third-floor apartment unit, where WITNESS #1 was also a resident, to investigate.
5. WITNESS #2 did not accompany SUBJECT OFFICER #1 to COMPLAINANT'S apartment unit.
6. SUBJECT OFFICER #1 then attempted to investigate the child custody dispute by talking with WITNESS #1.
7. It is not clear from the record how SUBJECT OFFICER #1 got beyond the secure entrance to COMPLAINANT'S apartment building. Nor is it clear from the record who opened COMPLAINANT'S third floor apartment door so that SUBJECT OFFICER #1 could speak to WITNESS #1. However, it is undisputed that SUBJECT OFFICER #1 did talk to WITNESS #1 regarding the custody dispute.
8. About the same time, COMPLAINANT returned to his apartment building to find SUBJECT OFFICER #1 and WITNESS #1 discussing the child custody dispute at COMPLAINANT'S apartment door.
9. In an attempt to calm WITNESS #1, who was noticeably upset, COMPLAINANT hurried to his apartment door, entered the unit, and requested WITNESS #1 retreat to a room within the unit. In accordance with COMPLAINANT'S request, WITNESS #1 retreated to a bedroom. It is not clear from the record whether COMPLAINANT closed the front door while he spoke to WITNESS #1, or if the door remained open during this interaction.
10. It is not clear from the record exactly when SUBJECT OFFICER #2 was dispatched to assist SUBJECT OFFICER #1, when SUBJECT OFFICER #2 arrived at COMPLAINANT'S apartment building, or how SUBJECT OFFICER #2 got beyond the secure entrance to COMPLAINANT'S apartment building and up to COMPLAINANT'S third floor apartment unit. However, it is undisputed that SUBJECT OFFICER #2 was dispatched to assist SUBJECT OFFICER #1 with what SUBJECT OFFICER #1 reported to be a family-related offense or dispute, in accordance with MPD policy, which requires a minimum of two officers to investigate such calls or requests for service.
11. Soon thereafter, SUBJECT OFFICER #1 and SUBJECT OFFICER #2 knocked on COMPLAINANT'S front door. COMPLAINANT opened the door and talked with the subject officers. During this conversation, SUBJECT OFFICER #1 placed his foot in the door opening so that the door could not be closed.
12. The subject officers requested access to COMPLAINANT'S apartment unit, to which COMPLAINANT declined. COMPLAINANT further stated that he knew his "rights," and requested SUBJECT OFFICER #1 move his foot so that COMPLAINANT could close the apartment door.

13. SUBJECT OFFICER #2 then issued a warning to COMPLAINANT that, “if you slam this door, I will get someone to bust the door in.”
14. Soon thereafter, SUBJECT OFFICER #2 extended his left arm in the door opening and forced the apartment door open.
15. Within seconds, witnesses within the apartment and elsewhere in the apartment building heard a “loud boom.”
16. The “loud boom” was the sound of COMPLAINANT falling over his couch and onto the floor of the apartment.
17. It is not clear from the record whether SUBJECT OFFICER #1 entered COMPLAINANT’S apartment unit. However, it is undisputed that, after forcing the apartment door open, SUBJECT OFFICER #2 entered COMPLAINANT’S unit.
18. As COMPLAINANT got up from the floor, he said to SUBJECT OFFICER #2, “Oh, you fucked up now.” COMPLAINANT then informed the subject officers that he was going to call his aunt, who was an MPD officer at the time.
19. Soon thereafter, the subject officers vacated COMPLAINANT’S apartment unit and building.
20. It is unclear from the record whether SUBJECT OFFICER #1 and SUBJECT OFFICER #2 had any further discussions with COMPLAINANT or WITNESS #1, or observed WITNESS #3, prior to leaving the apartment unit and building.
21. Following the altercation, SUBJECT OFFICER #1 submitted a PD 251 Form Event/Incident Report in which he noted that “[t]here was no probable cause that a crime ha[d] occurred.”
22. Immediately after he vacated COMPLAINANT’S apartment, SUBJECT OFFICER #2 requested WITNESS #2 provide a witness statement and asked SUBJECT OFFICER #1 to complete PD 119 Form Witness Statement regarding SUBJECT OFFICER #2’S altercation with COMPLAINANT.
23. After learning that WITNESS #2 had limited literacy skills, SUBJECT OFFICER #2 drafted a one-page witness statement for WITNESS #2 to complete and sign, which WITNESS #2 completed that same day.
24. Soon thereafter, COMPLAINANT called 911 Emergency and requested a Lieutenant be dispatched to his residence because “a police sergeant put his hands on [COMPLAINANT] and forced his self in [COMPLAINANT’S] house.”

25. COMPLAINANT made at least one more call to 911 Emergency in which he alleged that he had been “assaulted by a police officer” and requested “a lieutenant to come to the scene.”
26. Despite COMPLAINANT’S multiple requests, a Lieutenant did not come to his residence to investigate.
27. According to the transcript of the POLICE DISTRICT radio communications at that time, SUBJECT OFFICER #2 reported to the dispatcher, “[n]o official needed here. We were conducting police business, you’re not gonna tell MPD to get outta your house while we’re conducting police business.”
28. After calling 911 several times and making several requests that a Lieutenant come to his residence to investigate, to no avail, COMPLAINANT went to the POLICE DISTRICT Station.
29. While at the POLICE DISTRICT Station, COMPLAINANT met with SUBJECT OFFICER #3.
30. It is not clear from the record whether SUBJECT OFFICER #3 discussed SUBJECT OFFICER #2’S altercation with COMPLAINANT with SUBJECT OFFICER #2 via phone *or* in person prior to COMPLAINANT’S arrival at the POLICE DISTRICT Station. However, it is undisputed that SUBJECT OFFICER #3 discussed SUBJECT OFFICER #2’S altercation with COMPLAINANT with SUBJECT OFFICER #2 prior to COMPLAINANT’S meeting with SUBJECT OFFICER #3.
31. COMPLAINANT recorded a portion of his conversation with SUBJECT OFFICER #3 using his cellular phone.
32. When COMPLAINANT attempted to describe the altercation with SUBJECT OFFICER #2 and requested to “press charges,” SUBJECT OFFICER #3 contested COMPLAINANT’S version of events and informed COMPLAINANT that he had talked to “the other side,” and that according to “the other side,” COMPLAINANT was not being “cooperative” with SUBJECT OFFICER #1 and SUBJECT OFFICER #2.
33. SUBJECT OFFICER #3 agreed to provide Complainant with an OPC complaint form but warned COMPLAINANT that “it’s all gonna be investigated very seriously,” and that “if it gets investigated . . . it might turn out to be that you . . . interfered with a police investigation and there might be a warrant drawn up.”
34. COMPLAINANT did not complete the OPC complaint form in SUBJECT OFFICER #3’S presence or at the POLICE DISTRICT Station.

35. After leaving the POLICE DISTRICT Station, COMPLAINANT went to A HOSPITAL in Washington, DC, where he reported “right shoulder/neck/and back pain” and received a prescription for pain medication.
36. COMPLAINANT is a veteran who served in the war in Afghanistan. He suffers from anxiety and Post-Traumatic Stress Disorder as a result, and takes medication.

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.”

A. 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.

1. Whether SUBJECT OFFICER #2 harassed COMPLAINANT when he threatened to forcibly open COMPLAINANT’S apartment door

Here, COMPLAINANT alleges that SUBJECT OFFICER #2 harassed him when he threatened to forcibly open COMPLAINANT’S apartment door. In his complaint,

COMPLAINANT alleges that when he refused to allow the subject officers into his apartment and asked SUBJECT OFFICER #1 to remove his foot out of the doorway so that COMPLAINANT could close the door, SUBJECT OFFICER #2 “told me, if I close the door he would have someone come and bust it in.” In his statement to OPC, COMPLAINANT alleges that SUBJECT OFFICER #2 warned, “If you slam this door, I will get someone to bust the door in.”

In his statement to the OPC, SUBJECT OFFICER #2 claims that COMPLAINANT threatened to “slam the fucking door on our face” to which SUBJECT OFFICER #2 merely replied that COMPLAINANT “was not going to slam the door.” Notably, SUBJECT OFFICER #2 did not confirm nor deny threatening to call someone to force COMPLAINANT’S door open. During the hearing, SUBJECT OFFICER #2 submitted testimony consistent with his statement to the OPC. Specifically, SUBJECT OFFICER #2 testified that COMPLAINANT threatened to “slam the F-ing door in [the subject officers’] face[s],” and that, in response, he merely “informed COMPLAINANT that no, you’re not going to slam the door in our face.”

In his statement to the OPC, SUBJECT OFFICER #1 stated that COMPLAINANT told SUBJECT OFFICER #1 that he “needed to move [his] foot before he closed the fucking door on [SUBJECT OFFICER #1’S] face.” SUBJECT OFFICER #1 further stated that although COMPLAINANT said that he was going to slam the door, he did not try to slam it or have the opportunity to slam it. During the hearing, SUBJECT OFFICER #1 testified that Complainant threatened to “slam the fucking door on [his] face, or something to that nature,” to which SUBJECT OFFICER #2 replied “you’re not going to slam the door on the officer’s face.”

Included in the OPC Report of Investigation is a statement by WITNESS #4. WITNESS #4 lived in the apartment unit directly below COMPLAINANT’S on the date in question. According to WITNESS #4, he heard COMPLAINANT talking to the subject officers but did not see the officers. WITNESS #4 further stated that one of the officers yelled and cursed at COMPLAINANT, while the other officer threatened to “call someone to kick the mother fucking door in.” However, according to WITNESS #4, COMPLAINANT maintained a calm tone.

Based on the evidence the Complaint Examiner is unable to conclude whether SUBJECT OFFICER #2 did, in fact, threaten to forcibly open COMPLAINANT’S apartment door. While it is uncontested that: (1) COMPLAINANT requested or told SUBJECT OFFICER #1 to move his foot so COMPLAINANT could close the apartment door; and (2) SUBJECT OFFICER #2 refuted COMPLAINANT’S suggestion that he was going to close or slam the door shut, the exact nature or tone of SUBJECT OFFICER #2’S statement is unclear. In sum, the Complaint Examiner concludes there are **INSUFFICIENT FACTS** to determine whether SUBJECT OFFICER #2 threatened to forcibly open COMPLAINANT’S apartment door, and thus, harassed COMPLAINANT.

2. **Whether SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed COMPLAINANT when they forcibly entered COMPLAINANT’S apartment**

COMPLAINANT also alleges that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed him when they forcibly entered his apartment.

The Fourth Amendment to the United States Constitution guards against unreasonable searches and seizures and requires law enforcement officers to have probable cause in order to obtain a judicially sanctioned search warrant. U.S. Const. amend. IV. The United States Supreme Court has set forth rare exceptions to the warrant requirement, one of which is exigent circumstances², where “the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment.” *Kentucky v. King*, 131 S.Ct. at 1854 (quoting *Mincey v. Arizona*, 437 U.S. 385, 394 (1978)) (internal quotation marks omitted). These exigencies also must be supported by probable cause in order for a warrantless, non-consensual search of a home to be lawful. *U.S. v. Dawkins*, 17 F.3d 399, 403 (D.C. Cir. 1994). The Court of Appeals for the District of Columbia Circuit has held that “[t]he test for exigent circumstances is whether the police had ‘an urgent need’ or ‘an immediate, major crisis in the performance of duty afford[ing] neither time nor opportunity to apply to a magistrate.’” *U.S. v. Johnson*, 802 F.2d 1459, 1461 (D.C. Cir. 1986) (quoting *Dorman v. United States*, 435 F.2d 385, 391 (D.C. Cir. 1970)). In determining whether exigent circumstances exist, courts consider a number of factors, including the severity of the crime that the suspect is believed to have committed, whether the suspect is believed to be armed with a weapon, and the likelihood of the suspect’s escape if law enforcement does not act swiftly. *Dorman*, 435 F.2d at 392-94.

Here, it is uncontested that COMPLAINANT did not consent to SUBJECT OFFICER #1 or SUBJECT OFFICER #2 entering his apartment without a warrant. It is also uncontested that SUBJECT OFFICER #2 forcibly opened COMPLAINANT’S apartment door and entered COMPLAINANT’S apartment when COMPLAINANT refused his and SUBJECT OFFICER #1’S request that he allow them access to the apartment.

Regarding SUBJECT OFFICER #1, in his statement to the OPC, COMPLAINANT stated, “I do not know if SUBJECT OFFICER #1 had entered my apartment.” During the hearing on the matter, the COMPLAINANT, the subject officers, and the witnesses submitted conflicting testimony as to whether SUBJECT OFFICER #1 entered COMPLAINANT’S apartment after SUBJECT OFFICER #2 forcibly opened COMPLAINANT’S apartment door. During the hearing, the Complaint Examiner asked SUBJECT OFFICER #1 to describe WITNESS #3’S physical appearance. His description of WITNESS #3 varies greatly from the photographs of WITNESS #3 that were taken within 90 days of June 18, 2014. As such, the Complaint Examiner is not inclined to credit SUBJECT OFFICER #1’S version of events regarding his claim that he did, in fact, enter COMPLAINANT’S apartment after SUBJECT OFFICER #2 forcibly opened COMPLAINANT’S apartment door. Rather, the Complaint Examiner concludes

² *Kentucky v. King*, 131 S.Ct. 1849, 1856 (2011); *see also Michigan v. Fisher*, , 130 S. Ct. 546, 548 (2009) (officers may enter a home to conduct emergency assistance or protect an occupant from imminent injury); and *United States v. Santana*, 427 U.S. 38, 42 (1976) (officers may enter a home when in “hot pursuit” of a fleeing suspect)

that only SUBJECT OFFICER #2 entered the apartment unit. As such, COMPLAINANT'S complaint of harassment against SUBJECT OFFICER #1 is **UNFOUNDED**.

It is also uncontested that there was no probable cause that a crime had occurred when SUBJECT OFFICER #2 forcibly opened COMPLAINANT'S apartment door and entered COMPLAINANT'S apartment. Thus, the only remaining question is whether exigent circumstances existed allowing SUBJECT OFFICER #2 to conduct a warrantless entry and search of COMPLAINANT'S apartment.

In their statements to the OPC and during the hearing, both SUBJECT OFFICER #1 and SUBJECT OFFICER #2 argued that a warrantless search was necessary to determine whether WITNESS #2 and WITNESS #1'S daughter, WITNESS #3, was in need of immediate medical attention. However, the weight of the evidence does not support their contention.

First, it is uncontested that the subject officers were initially called to the scene to investigate a child custody dispute. According to the officers, when WITNESS #1 reported to SUBJECT OFFICER #1 that WITNESS #3 was too sick to go with WITNESS #2, the investigation turned into a "welfare of the child check." However, the subject officers provided little to no evidence to substantiate their claims that there was an urgent need to conduct such a check.

Indeed, during the hearing, SUBJECT OFFICER #1 provided little more than his personal opinion that if a child is too sick to go with his or her parent on visitation day, the child should be taken to the hospital to substantiate his contention that an immediate investigation into WITNESS #3'S welfare was necessary. Indeed, COMPLAINANT provided unrefuted testimony that SUBJECT OFFICER #1 did not ask WITNESS #1 any additional questions about WITNESS #3'S physical condition (e.g. whether she had a fever, whether she was conscious) after WITNESS #1 informed him that WITNESS #3 was too sick to go with WITNESS #2. As such, SUBJECT OFFICER #1'S mere opinion is insufficient to establish probable cause that WITNESS #3 was in immediate danger or need of medical care.

Moreover, according to SUBJECT OFFICER #2'S own testimony, once he entered COMPLAINANT'S apartment, he did not conduct a "welfare of the child" check, as required by MPD policy. During the hearing, SUBJECT OFFICER #2 testified that when MPD officers conduct a "welfare of the child" check, they are required to investigate the child's living conditions, including the amount of food in the residence and whether the child has clean clothes to wear. However, by SUBJECT OFFICER #2'S own admission during the evidentiary hearing, neither officer investigated WITNESS #3'S living conditions after SUBJECT OFFICER #2 forcibly entered COMPLAINANT'S apartment. This evidence supports the conclusion that the purported "welfare of the child" check was mere pretext for SUBJECT OFFICER #2'S warrantless entry into and search of COMPLAINANT'S apartment.

It is well established that law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury. However, the weight of evidence here does not support the claim that probable cause

existed that WITNESS #3 was in imminent danger or in need of urgent medical care. Indeed, the record is void of any evidence that SUBJECT OFFICER #2 did, in fact, conduct a “welfare of the child” check once he entered the apartment or that emergency medical services was called by either subject officer. Accordingly, the Complaint Examiner concludes that exigent circumstances did not exist here.

In sum, the Complaint Examiner concludes that SUBJECT OFFICER #2 unlawfully entered and searched COMPLAINANT’s apartment, in violation of the Fourth Amendment. Under, MPD General Order 120.25, “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” constitute harassment. As such, COMPLAINANT’S complaint of harassment against SUBJECT OFFICER #2 is **SUSTAINED**.

3. Whether SUBJECT OFFICER #3 harassed COMPLAINANT when he discouraged COMPLAINANT from filing a complaint against SUBJECT OFFICER #2

COMPLAINANT also alleges that SUBJECT OFFICER #3 harassed him when SUBJECT OFFICER #3 intimidated and discouraged him from filing a complaint against SUBJECT OFFICER #2, in violation of MPD General Order 120.25 and D.C. Code. § 5-1107(a).

In his complaint and statement to the OPC, COMPLAINANT alleges that soon after he arrived at the POLICE DISTRICT Station to file a complaint against SUBJECT OFFICER #2, SUBJECT OFFICER #3 met him in the Station lobby and escorted him to a second floor room. There, COMPLAINANT described the altercation with SUBJECT OFFICER #2 to SUBJECT OFFICER #3. According to COMPLAINANT, SUBJECT OFFICER #3 proceeded to contest COMPLAINANT’S version of events, contending that “wasn’t what he was told.”

COMPLAINANT also alleges that SUBJECT OFFICER #3 denied COMPLAINANT’S request to “press charges” against SUBJECT OFFICER #2. Instead, SUBJECT OFFICER #3 agreed to provide COMPLAINANT with an OPC complaint form, but warned COMPLAINANT about perjuring himself. According to COMPLAINANT, SUBJECT OFFICER #3 also cautioned him that his allegations would be investigated, and if it turned out COMPLAINANT interfered with a police investigation, a warrant may be issued for COMPLAINANT’S arrest. COMPLAINANT alleges that SUBJECT OFFICER #3 insinuated that COMPLAINANT was a liar and intimidated and discouraged COMPLAINANT from filing a complaint.

During the hearing, COMPLAINANT provided sworn testimony consistent with both his complaint and statement to the OPC. According to COMPLAINANT, rather than listen to COMPLAINANT’S side of the story and explain the complaint process to COMPLAINANT, SUBJECT OFFICER #3 interrupted and talked over COMPLAINANT, insinuated that he was lying, and attempted to discourage him from filing a complaint against SUBJECT OFFICER #2.

In his statement to the OPC and during the hearing on the matter, SUBJECT OFFICER #3 testified that he received a call from SUBJECT OFFICER #2 prior to COMPLAINANT'S arrival at the POLICE DISTRICT Station. During that call, SUBJECT OFFICER #2 described the altercation with COMPLAINANT and advised SUBJECT OFFICER #3 that COMPLAINANT would likely file a complaint.

According to SUBJECT OFFICER #3, SUBJECT OFFICER #2'S version of the events varied greatly from the version SUBJECT OFFICER #3 would later receive from COMPLAINANT. SUBJECT OFFICER #3 denied attempting to intimidate COMPLAINANT or discourage him from filing a complaint against SUBJECT OFFICER #2. SUBJECT OFFICER #3 admitted to cautioning COMPLAINANT to be truthful on the complaint form, but insisted that he reminds all citizens who request a complaint form of the importance of being truthful. SUBJECT OFFICER #3 also admitted to warning COMPLAINANT that a warrant could be issued for his arrest if it turned out he interfered with a police investigation.

The record in this matter includes a video recording of COMPLAINANT'S conversation with SUBJECT OFFICER #3. It is undisputed that the video recording includes only a portion of the conversation between COMPLAINANT and SUBJECT OFFICER #3. It is also undisputed that the video recording includes visual and audio footage of SUBJECT OFFICER #3, but only audio footage of COMPLAINANT.

In the video recording, SUBJECT OFFICER #3 is captured saying, "[e]verything you write on this form, okay, you're going to be swearing to, okay? Cause it's all gonna be investigated very seriously." When COMPLAINANT asked if he could go to jail, SUBJECT OFFICER #3 responded, "[w]ell, you could, you could, you possibly, if you, you know it, that's not what the other side of the story is saying." According to SUBJECT OFFICER #3, "the other side" contended that COMPLAINANT said, "motherfucker, I'm gonna slam this door," and was uncooperative with the subject officers. Later in the conversation, SUBJECT OFFICER #3 said, "I'll take your complaint if you wanna make a complaint. But I'm telling you everything that you write on that paper you, when you, it says right on the bottom of it . . . [. . .] by perjury. . . . if it gets investigated . . . it might turn out to be that you interfered in a police investigation and there might be a warrant drawn up. There might be, there's a chance for that" SUBJECT OFFICER #3 went on to insist that the apartment door must have pushed COMPLAINANT and not SUBJECT OFFICER #2. COMPLAINANT disputed SUBJECT OFFICER #3'S contention and insistence that SUBJECT OFFICER #2 pushed him with his hands.

MPD General Order 120.25 states, "[t]he policy of the Metropolitan Police Department is to accept all citizen complaints, to include anonymous complaints, regardless of the manner in which the complaint is made (i.e., orally or in writing), to ensure that every citizen complaint is investigated in an effective, efficient, and impartial manner, and to ensure that there is no automatic preference given to a member's statement over a citizen's statement, or a citizen's statement over a member's statement." Under the General Order, when a citizen inquires about the process for filing a citizen complaint, MPD members are required to "[e]xplain the complaint process and, whenever practicable, provide the citizen with the Citizen Complaint Brochure . . . PD Form 99, and OPC-1." Under the General Order, MPD members are also prohibited from

“require[ing] the citizen to speak with a supervisor prior to providing the information” or from “discourage[ing] any person from making a complaint against a sworn or civilian MPD member.”

Based on the Complaint Examiner’s analysis of the video recording and the testimonial evidence presented during the hearing, it is clear SUBJECT OFFICER #3 did not comply with MPD General Order 120.25. First, SUBJECT OFFICER #3 violated MPD General Order 120.25 when he gave automatic preference to SUBJECT OFFICER #2’S statement over COMPLAINANT’S statement. Indeed, during the video recording, SUBJECT OFFICER #3 can be heard contesting COMPLAINANT’S version of the events and referring to the “the other side” and “the story I’ve gotten” several times. In his statement to the OPC, SUBJECT OFFICER #3 said that he felt COMPLAINANT was “not being completely honest about what happened because he did not provide a complete story.” Under the General Order, it is not the job of MPD to determine the veracity of citizen’s complaints or contest the citizen’s version of events. Rather, the General Order requires MPD members “to accept all citizen complaints.”

The Complaint Examiner is not inclined to credit SUBJECT OFFICER #3’S testimony that he gave COMPLAINANT a Citizen Complaint Brochure, PD Form 99, and OPC-1 form, as required by MPD General Order 120.25. During the hearing, COMPLAINANT’S consistent testimony was that SUBJECT OFFICER #3 only gave him the OPC-1 form. Indeed, COMPLAINANT’S testimony was that he was “scared” or “forced” to file an OPC-1 form only. During the hearing, SUBJECT OFFICER #3 was unable to state whether he provided all three documents to COMPLAINANT. Instead, SUBJECT OFFICER #3 testified, “I usually provide the forms. And I usually provide both forms and like a brochure or something. I’m probably pretty sure I gave him that, too.” Given the weight of the evidence, including SUBJECT OFFICER #3’S reaction to COMPLAINANT’S version of the events and his repeated refusal to file an “assault form” against SUBJECT OFFICER #2 when requested by COMPLAINANT, it is reasonable to conclude that SUBJECT OFFICER #3 did not provide COMPLAINANT a Citizen Complaint Brochure, PD Form 99, and OPC-1 form, as required by MPD General Order 120.25.

More disturbing is SUBJECT OFFICER #3’S attempt to discourage COMPLAINANT from making a complaint against SUBJECT OFFICER #2. During the video footage of COMPLAINANT’S conversation with SUBJECT OFFICER #3, SUBJECT OFFICER #3 can be heard emphasizing that COMPLAINANT must swear to his statement, stressing that complaints are made under penalty of “perjury,” warning COMPLAINANT that his altercation with SUBJECT OFFICER #2 is going to be “investigated very seriously,” and cautioning COMPLAINANT that a warrant for COMPLAINANT’S arrest “might be” issued and that COMPLAINANT “could” go to jail. When asked by the Complaint Examiner whether his warnings were an attempt to caution COMPLAINANT against perjuring himself on the OPC-1 form or to warn COMPLAINANT that a warrant may be issued for his role in the altercation with SUBJECT OFFICER #2, SUBJECT OFFICER #3 testified that it was “both.” Such warnings were outside of the scope of SUBJECT OFFICER #3’S obligations under MPD General Order 120.25, and caused COMPLAINANT to feel – as he put it during the hearing – “intimidated” and “scared.” Even more disturbing was SUBJECT OFFICER #3’S testimony

during the hearing that on the date in question he “did a lot of the things that [he] usually do[es]” when talking with citizens who want to file a complaint against an MPD member.

In sum, the Complaint Examiner finds that SUBJECT OFFICER #3 violated MPD General Order 120.25 when he: (1) gave automatic preference to SUBJECT OFFICER #2’S statement over COMPLAINANT’S statement; (2) failed to provide COMPLAINANT with the Citizen Complaint Brochure, PD Form 99, and OPC-1 form; and (3) discouraged COMPLAINANT from making a complaint against SUBJECT OFFICER #2. Such conduct was, at a minimum, recklessly contrary to MPD General Order 120.25. Under, MPD General Order 120.25, “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” constitute harassment. As such, COMPLAINANT’S complaint of harassment against SUBJECT OFFICER #3 is **SUSTAINED**.

B. Unnecessary or Excessive Force

MPD General Order 901.07, Part II states, “The policy of the Metropolitan Police Department is to preserve human life when using lawful authority to use force. Therefore, officers of the Metropolitan Police Department shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others.”

MPD General Order 901.07, Part III defines “use of force” as “any physical contact used to effect, influence or persuade an individual to comply with an order from an officer.”

Title 6-A, Chapter 21 of the D.C. Municipal Regulations define excessive or unnecessary force as “[u]nreasonable use of power, violence, or pressure under the particular circumstances. Factors to be considered when determining the “reasonableness” of a use of force include the following: 1) the severity of the crime at issue; 2) whether the suspect posed an immediate threat to the safety of officer or others; 3) whether the subject was actively resisting arrest or attempting to evade arrest by flight; 4) the fact that officers are often required to make split second decisions regarding the use of force in a particular circumstance; 5) whether the officer adhered to the general orders, policies, procedures, practices and training of the MPD or the covered law enforcement agency; and 6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective.” D.C. Mun. Regs. tit. 6A, § 2199.1.

Here, COMPLAINANT alleges that SUBJECT OFFICER #2 used unnecessary or excessive force when he forcibly opened COMPLAINANT’S apartment door and pushed COMPLAINANT.

In his complaint and his statement to the OPC, COMPLAINANT alleged that, in response to COMPLAINANT’S refusal to let SUBJECT OFFICER #1 and SUBJECT OFFICER #2 into his apartment, SUBJECT OFFICER #2 told SUBJECT OFFICER #1, “man, watch out,” and then forced COMPLAINANT’S door open, entered COMPLAINANT’S apartment, and pushed COMPLAINANT in his chest with both hands.

During the hearing, COMPLAINANT provided sworn testimony consistent with his complaint and statement to the OPC. Specifically, COMPLAINANT testified that after he refused to allow SUBJECT OFFICER #1 and SUBJECT OFFICER #2 access to his apartment, SUBJECT OFFICER #2 forced the apartment door open, and once inside, pushed COMPLAINANT over his couch and onto the floor.

In his statement to the OPC, SUBJECT OFFICER #2 alleged that COMPLAINANT refused to allow him and SUBJECT OFFICER #1 into the apartment and warned them that he was about to slam the “fucking door.” According to SUBJECT OFFICER #2, COMPLAINANT was straddling the door and had one hand on the door. SUBJECT OFFICER #2 also alleges that he told COMPLAINANT that he was not, in fact, going to slam the door and that, in response, COMPLAINANT grabbed the door with both hands as if he was going to slam the door closed. According to SUBJECT OFFICER #2, he immediately extended his arm out so the door could not be closed. As a result, the door swung open to the left, and COMPLAINANT “fopped” to the right and landed on a couch. SUBJECT OFFICER #2’S sworn statement further states, “I am one hundred percent certain that I did not touch COMPLAINANT, and that the door did not strike him when it swung to the left. I believe that COMPLAINANT [] fell backwards on the couch on his own.”

During the hearing, SUBJECT OFFICER #2 provided sworn testimony consistent with his statement to the OPC. Specifically, SUBJECT OFFICER #2 testified that in an attempt to prevent COMPLAINANT from closing the apartment door, he extended his left arm out and pushed the door open. SUBJECT OFFICER #2 denied pushing COMPLAINANT. Instead, he testified that COMPLAINANT “flailed and flopped on the couch.”

Notably, in his statement to the OPC, SUBJECT OFFICER #2 stated that prior to SUBJECT OFFICER #2 vacating COMPLAINANT’S apartment unit, COMPLAINANT “said that this was police brutality and he made it clear that he was going to file a complaint.” As such, SUBJECT OFFICER #2 requested WITNESS #2 provide a witness statement and asked SUBJECT OFFICER #1 to complete PD 119 form regarding the incident. SUBJECT OFFICER #2 even went so far as to draft a witness statement for WITNESS #2 to complete and sign, after he learned that WITNESS #2 had limited literacy skills.

Indeed, during the hearing SUBJECT OFFICER #2 provided sworn testimony consistent with his statement to the OPC in which he testified that he “knew based on my contact with COMPLAINANT that a potential complaint would come. So, I felt that I would be the subject of the complaint based on the fact that he said that I pushed him.” SUBJECT OFFICER #2 further testified, “[a]fter he told me that, I wrote some questions on a PD Form 119 for the child’s dad.”³

³ However, for the reasons stated above, the Complaint Examiner also does not find WITNESS #2’S witness statement to be credible. WITNESS #2 has limited literacy skills which may or may not have allowed him to understand the questions drafted by SUBJECT OFFICER #2.

SUBJECT OFFICER #1 provided a slightly different account of the incident. In his statement to the OPC, SUBJECT OFFICER #1 stated that both he and SUBJECT OFFICER #2 pushed the door open. He further stated that the apartment door hinges were on the right, so that when they pushed the door, it opened to the right. According to SUBJECT OFFICER #1, COMPLAINANT “flopped” onto the couch behind the door “on his own.” SUBJECT OFFICER #1 also stated that he did not see the door strike COMPLAINANT, but believed it may have struck COMPLAINANT because COMPLAINANT was behind the door. SUBJECT OFFICER #1 insisted that neither he nor SUBJECT OFFICER #2 pushed COMPLAINANT.

During the hearing, SUBJECT OFFICER #1 provided sworn testimony consistent with his statement to the OPC but somewhat inconsistent from SUBJECT OFFICER #2’S testimony. Specifically, SUBJECT OFFICER #1 testified that both he and SUBJECT OFFICER #2 “pushed the door open” and COMPLAINANT “flopped to the couch.”

WITNESS #1 also submitted a sworn statement to the OPC in which she alleged she heard COMPLAINANT request SUBJECT OFFICER #1 move his foot so that COMPLAINANT could close the door. According to WITNESS #1, she did not hear the subject officers respond. Rather, the next thing she heard was a loud noise. She immediately got up from her bed because she thought someone had fallen to the floor. Upon reaching the front room of the apartment, she saw COMPLAINANT get up from the couch. According to WITNESS #1, she did not see SUBJECT OFFICER #2 or SUBJECT OFFICER #1 push COMPLAINANT.

During the hearing, WITNESS #1 provided sworn testimony consistent with her statement to the OPC. Specifically, WITNESS #1 testified after COMPLAINANT requested she go back to her bedroom he proceeded to stand at the front door of the apartment and talk to SUBJECT OFFICER #1 and SUBJECT OFFICER #2. She further testified that that while in her bedroom she heard a “loud boom.” She immediately walked to the front room of the apartment where she observed COMPLAINANT getting up from the couch.

The OPC also received a sworn statement from WITNESS #4, a resident in COMPLAINANT’S apartment building. WITNESS #4 lived directly below COMPLAINANT’S apartment, and was in his apartment unit at the time of the incident. According to WITNESS #4, he heard an unidentified officer instruct COMPLAINANT to “move out of the way so he could come in” and “back away from the door.” He then heard a “loud boom” from COMPLAINANT’S apartment.

The Report of Investigation also includes a transcript from a phone interview, conducted by the OPC Investigator, of WITNESS #5. WITNESS #5 is COMPLAINANT’S twelve-year-old daughter, who was in the apartment unit at the time of the incident. WITNESS #5 witnessed COMPLAINANT “get pushed” and saw him “fall down” “near the couch,” but was unable to say what caused him to fall.

Based on the weight of the evidence, the Complaint Examiner finds that SUBJECT OFFICER #1’S contention that both he and SUBJECT OFFICER #2 forced COMPLAINANT’S apartment door open is not credible. In his statement to the OPC and during the hearing,

SUBJECT OFFICER #1 testified that both he and SUBJECT OFFICER #2 forced COMPLAINANT'S apartment door open. However, he is the only party or witness who testified as such.

Moreover, in his statement and testimony during the hearing, SUBJECT OFFICER #2 testified that he extended his left arm into the door opening and forced the door open. At no point did he indicate or suggest that both he and SUBJECT OFFICER #1 forced COMPLAINANT'S apartment door open. For these reasons, SUBJECT OFFICER #1'S contention that both he and SUBJECT OFFICER #2 forced COMPLAINANT'S apartment door open is not credible.

Based on the weight of the evidence, the Complaint Examiner also finds that SUBJECT OFFICER #1'S contention that COMPLAINANT'S apartment door opened to the right is not credible. Indeed, photographs of COMPLAINANT'S apartment door, front entryway, and front room establish that the door is hinged on the left side, and thus, opens to the left inside of the apartment.

However, the weight of the evidence does support the conclusion that the apartment door struck COMPLAINANT when it was forced open by SUBJECT OFFICER #2. In his statement to the OPC, SUBJECT OFFICER #1 stated that the apartment door "may have" struck COMPLAINANT when the door was forced open. Moreover, in his statement to the OPC, SUBJECT OFFICER #2 stated that COMPLAINANT was "straddling the door" and "behind the door" when he forced the door open. Given both subject officers' statements, and based on the Complaint Examiner's examination of the photographs of COMPLAINANT'S apartment door, front entryway, and front room, it is reasonable to conclude that when SUBJECT OFFICER #2 forced the door open, it struck COMPLAINANT.

COMPLAINANT also provided credible testimony that SUBJECT OFFICER #2 pushed him in his chest, causing him to fall over his couch and onto the floor. Such allegations are corroborated by: (1) the transcripts from COMPLAINANT'S calls to 911 Emergency in which he consistently alleged that a SUBJECT OFFICER #2 forced his way into COMPLAINANT'S apartment and pushed him; (2) the medical records from A HOSPITAL, dated June 18, 2014, documenting COMPLAINANT'S reports of "right shoulder/neck/and back pain" and a prescription for pain medication; and (3) SUBJECT OFFICER #2's own attempts to immediately collect witness statements regarding the incident between he and COMPLAINANT for fear of COMPLAINANT filing a complaint against him.

Regardless of whether SUBJECT OFFICER #2 struck COMPLAINANT with the apartment door or pushed him in the chest, it is undisputed that COMPLAINANT fell, causing a "loud boom" that multiple witnesses heard. MPD General Order 901.07, Part III defines "use of force" as "any physical contact used to effect, influence or persuade an individual to comply with an order from an officer." Under this definition, either action by SUBJECT OFFICER #2 is considered physical contact used to effectuate compliance by COMPLAINANT to the subject officer's orders that he open the door and allow them access to the apartment unit.

When considering the factors outlined in D.C. Mun. Regs. tit. 6A, § 2199.1, the Complaint Examiner also concludes that such force was unreasonable. Indeed, nothing in the record suggests that a crime had been committed, that COMPLAINANT posed an immediate threat to the safety of the subject officers or others, or that COMPLAINANT was actively resisting arrest or attempting to evade arrest by flight. Additionally, for the reasons stated above, no exigent circumstances existed requiring immediate entry into COMPLAINANT'S apartment by SUBJECT OFFICER #1 and SUBJECT OFFICER #2. In light of these circumstances, no level of force was justified.

In sum, the Complaint Examiner finds that SUBJECT OFFICER #2 violated MPD General Order 901.07 when he used unnecessary and excessive force against COMPLAINANT. As such, COMPLAINANT'S complaint of Unnecessary/Excessive Force against SUBJECT OFFICER #2 is **SUSTAINED**.

V. SUMMARY OF MERITS DETERMINATION

1. SUBJECT OFFICER #1

Allegation 1: Harassment/Unlawful Entry	Unfounded
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2. SUBJECT OFFICER #2

Allegation 1: Harassment/Threat	Insufficient Facts
Allegation 2: Harassment/Unlawful Entry	Sustained
Allegation 3: Unnecessary/Excessive Force	Sustained

3. SUBJECT OFFICER #3

Allegation 1: Harassment/Attempt to Discourage or Intimidate	Sustained
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Submitted on May 11, 2016.

Danielle Davis
Complaint Examiner