

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	15-0047
Complainant:	COMPLAINANT
Subject Officer, Badge No., District:	SUBJECT OFFICER
Allegation 1:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Arthur D. Sidney
Merits Determination Date:	November 9, 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 alleged that on October 19, 2014, she approached SUBJECT OFFICER, and WITNESS OFFICER #1 to report that she just had been sexually assaulted while walking down the street. COMPLAINANT further alleged that SUBJECT OFFICER engaged in conduct toward COMPLAINANT that was insulting, demeaning, or humiliating when he said something to the effect of “You’re being rude. Maybe if you tried to be polite, you could get some help,” and “Well, you’re out here wearing that, and I can tell you’ve been drinking. What did you expect?”¹

¹ COMPLAINANT also alleged that SUBJECT OFFICER harassed her by intimidating her when asking for her work phone number. COMPLAINANT alleged that SUBJECT OFFICER used language or engaged in conduct toward her that was insulting, demeaning, or humiliating when he referred to her as “some female” using a derogatory tone. COMPLAINANT also alleged that SUBJECT OFFICER discriminated against her based upon her sex which is female. Pursuant to D.C. Code § 5-1108(1), on August 5, 2015, a member of the Police Complaints Review Board dismissed these allegations, concurring with the determinations made by OPC’s executive director. COMPLAINANT also alleged that WITNESS OFFICER #1 failed to display his identification or identify himself when requested to do so. OPC was notified by MPD that this officer separated from MPD on May 26, 2015. Because OPC only has jurisdiction over sworn officers, it no longer has jurisdiction over WITNESS OFFICER #1 and the allegation that pertains to him will not be addressed in this determination.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based upon a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on September 18, 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 upon a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on September 18, 2015, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On October 19, 2014, COMPLAINANT approached SUBJECT OFFICER and WITNESS OFFICER #1, to report that she had been sexually assaulted by a passerby who reached up her skirt and touched her inappropriately while walking down the street. COMPLAINANT and her wife, WITNESS #1, tried to follow the man but lost sight of him on the crowded sidewalk.
2. SUBJECT OFFICER and WITNESS OFFICER #1 were standing near where the assault had occurred and they "appeared not to be paying attention to anything." COMPLAINANT acknowledged that she was upset and asked the officers in a loud voice why they were "standing here doing nothing."
3. SUBJECT OFFICER said, "You're being rude. Maybe if you tried to be polite, you could get some help." During COMPLAINANT'S conversation with SUBJECT OFFICER as she explained what had happened, SUBJECT OFFICER said, "You're out here wearing that, and I can tell you've been drinking. What did you expect?"
4. WITNESS OFFICER #2 of the MPD sexual assault unit arrived on the scene and while speaking to SUBJECT OFFICER confirmed that SUBJECT OFFICER said something about COMPLAINANT being rude and was offended by the way COMPLAINANT approached him.
5. WITNESS OFFICER #2 stated that SUBJECT OFFICER acknowledged that he chastised COMPLAINANT for drinking and stated, "maybe you should not have been drinking, this may not have happened to you." WITNESS OFFICER #2 stated that SUBJECT OFFICER'S comments were "insensitive and unprofessional."

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, the use of language or conduct that is insulting, demeaning, or humiliating.

Language or Conduct

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, course, 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 stated that she was sexually assaulted by a passerby who touched her inappropriately and that she tried to follow him but lost sight of him on the crowded sidewalk. COMPLAINANT then saw SUBJECT OFFICER and WITNESS OFFICER #1 standing near where the assault had occurred and they “appeared not to be paying attention to anything.” COMPLAINANT was upset and asked the officers in a loud voice why they were “standing here doing nothing.” COMPLAINANT alleged that SUBJECT OFFICER responded, “You are being rude. Maybe if you tried to be polite, you could get some help.” Although SUBJECT OFFICER denied making the statement, the other witness statements supports COMPLAINANT’S allegation. WITNESS OFFICER #1 confirmed that this or a similar statement was made and WITNESS OFFICER #1 admitted that both he and SUBJECT OFFICER told COMPLAINANT that she was being rude. WITNESS OFFICER #2 also corroborated that SUBJECT OFFICER said something to the effect of, “You are being rude. Maybe if you tried to be polite, you could get some help.”

COMPLAINANT alleged that during the conversation with SUBJECT OFFICER he said, “Well, you’re out here wearing that, and I can tell you’ve been drinking. What did you expect?” SUBJECT OFFICER denied making this statement but instead he claimed that he advised COMPLAINANT that she “shouldn’t be walking around on the street” because she was intoxicated. SUBJECT OFFICER’S account of his statement is not credible. WITNESS OFFICER #2 stated that SUBJECT OFFICER acknowledged that he chastised COMPLAINANT for drinking and said “maybe you should not have been drinking, this may not have happened to you.” WITNESS OFFICER #2 stated that SUBJECT OFFICER’S comments were “insensitive and unprofessional.” Witness Officer #2’s account of this statement is similar to the COMPLAINANT’S and it substantiates that SUBJECT OFFICER made the involved statement.

COMPLAINANT described SUBJECT OFFICER’S comments to her as “sexist and demeaning.” SUBJECT OFFICER denied making the specific statements that COMPLAINANT alleged, but he acknowledged that he spoke to COMPLAINANT about the way she approached him, and he said he commented that she had been drinking. However, SUBJECT OFFICER’S

statements were contradicted by WITNESS #1, WITNESS OFFICER #1, and WITNESS OFFICER #2. Even if COMPLAINANT was loud, SUBJECT OFFICER failed to remain calm and perform his police duties. SUBJECT OFFICER'S statements were disrespectful and offensive, and were insulting and demeaning. Thus, the preponderance of the evidence supports that SUBJECT OFFICER made the statements alleged by COMPLAINANT.

SUBJECT OFFICER'S statements were unlawful and violated D.C. Code § 5-1107(a) and MPD General Order 201.26 when he said, "You are being rude. Maybe if you tried to be polite, you could get some help," and "Well, you're out here wearing that, and I can tell you've been drinking, what did you expect?" in response to the COMPLAINANT'S report to subject officer that she had been sexually assaulted.

SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Language or Conduct	Sustained
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Submitted on November 9, 2015

Arthur D. Sidney
Complaint Examiner