

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	15-0197
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Richard S. Ugelow
Merits Determination Date:	June 13 , 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

On March 31, 2015, COMPLAINANT was witness to a DC MPD and EMT response to a 911 call at AN ADDRESS IN SOUTHEAST D.C., the home of her sister, WITNESS #1. WITNESS #1 had called 911 because her 15-year-old daughter, WITNESS #2, was “acting crazy” and threatening to kill herself. SUBJECT OFFICER, a trained Crisis Intervention Officer (CIO), was one of the MPD and EMT personnel who responded WITNESS #1’s home.

On April 6, 2015, COMPLAINANT filed a complaint that she heard SUBJECT OFFICER say words to the effect of “That’s what this family gets, they deserve this, they need to go through this to learn a lesson,” which was language she believed to be inappropriate and offensive.¹

¹ COMPLAINANT also alleged in her complaint that SUBJECT OFFICER harassed her when he refused to leave WITNESS #1’S home and he failed to provide his name when requested to do so. Pursuant to D.C. Code § 5-1108(1), on April 26, 2016, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC’s executive director.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because the Complaint Examiner determined that OPC's Report of Investigation (ROI) presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs. tit. 6-A, § 2116.3.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the Complaint Examiner finds the material facts regarding this complaint to be:

1. At approximately 6:30 pm on March 31, 2015, WITNESS #1 called 911 because her 15 year-old daughter, WITNESS #2, was "acting crazy" and threatening to harm herself.
2. WITNESS #1's description of her daughter's condition indicated that it involved a mental health situation to which a Crisis Intervention Officer (CIO) responds in addition to other MPD officers and EMTs.
3. SUBJECT OFFICER, a trained CIO, was one of the five MPD officers who responded to the call.
4. Two EMT paramedics responded to the call, including WITNESS EMT.
5. COMPLAINANT, WITNESS #1's sister, was present when the MPD and EMT personnel arrived at WITNESS #1's home, AN ADDRESS IN SOUTHEAST D.C.
6. WITNESS #1 was in her bedroom when the MPD and EMT personnel arrived, while COMPLAINANT interacted with them in the living room.
7. The officers and paramedics advised COMPLAINANT that in the absence of an emergency situation, a parent or guardian is required to accompany a minor to a hospital.
8. The EMT paramedics determined that WITNESS #2's medical condition did not require immediate transportation to a hospital.
9. For medical reasons, WITNESS #1 was unavailable to accompany WITNESS #2 to the hospital.
10. COMPLAINANT advised the paramedics that she was WITNESS #2's guardian. However, she was unable to provide documentation to support her assertion.
11. COMPLAINANT became agitated and vocal when asked for documentation to show that she was WITNESS #2's legal guardian.

12. At some point, COMPLAINANT heard an officer say words to the effect of: "That's what this family gets, they deserve this, they need to go through this to learn a lesson."
13. COMPLAINANT found this language to be inappropriate and offensive.
14. COMPLAINANT identified SUBJECT OFFICER as the individual who made the offensive statements.
15. SUBJECT OFFICER's statement was not directed to WITNESS #1 or COMPLAINANT, but was made in the course of conversation with the other responders.
16. When COMPLAINANT confronted SUBJECT OFFICER, she identified him as the officer against whom she had earlier filed a complaint with the Office of Police Complaints.
17. WITNESS EMT stated that she heard SUBJECT OFFICER say "they need to go through this to learn a lesson," but did not hear him say "that's what the family gets, they deserve this."
18. Because of SUBJECT OFFICER's language, which COMPLAINANT believed to be offensive, and because of the earlier complaint against him, COMPLAINANT asked SUBJECT OFFICER to leave the premises.
19. COMPLAINANT was advised that if SUBJECT OFFICER left, all of the MPD Officers and EMT paramedics would leave in accordance with the applicable protocol.
20. Because COMPLAINANT insisted that SUBJECT OFFICER leave, all of the police and paramedics left.
21. After the responders left, COMPLAINANT called 911 to request an ambulance. In part, she advised the 911 operator that one of the responders made offensive comments like: "oh this is what the family gets," and "this is what they need."
22. WITNESS #1 then called 911 asking for a "white shirt," i.e., a supervisor, because of the outstanding complaint against SUBJECT OFFICER.
23. In her call, WITNESS #1 said that SUBJECT OFFICER had made some "smart comments," particularly identifying the words "oh, this is what your family gets."
24. In response to this 911 call, WITNESS OFFICER responded to WITNESS #1's home.
25. WITNESS OFFICER did not recall receiving complaints about SUBJECT OFFICER when he arrived at WITNESS #1's apartment, nor did he recall either WITNESS #1 or COMPLAINANT alleging that SUBJECT OFFICER said: "that's what this family gets,

they deserve this, they need to go through this to learn a lesson,” or other words to that effect.

26. SUBJECT OFFICER denies using offensive or improper language and specifically denies making the statements alleged by COMPLAINANT.

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.”

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, 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.”

The ROI found that SUBJECT OFFICER stated during the March 31, 2015 encounter: “Oh, this is what the family gets,” and “this is what they need.” The ROI then concludes that the words used by SUBJECT OFFICER “infer[] that the family deserves to go through a psychiatric crisis and the repercussion of a psychiatric hospitalization and therefore is a statement that passes judgment and is insulting individuals experiencing mental illness and family members who care for them.” Citing General Order 201.26 and MPD Special Order SO-10-07.

There are two parts to the Complaint Examiner’s analysis of this complaint: (1) what language did SUBJECT OFFICER use? and (2) did the language violate the D.C. Code and orders?

1. What did SUBJECT OFFICER say?

The ROI is unclear about the precise language on which it based its decision. At page 5, the ROI found that SUBJECT OFFICER violated D.C. Code § 5-1107(a) and MPD General Order 201.26 when he said words to the effect: “That’s what this family gets, they deserve this, they need to go through this to learn a lesson.” However, earlier in the decision, page 4, the ROI stated that the result would have been the same even if SUBJECT OFFICER had only said: “they

need to go through this to learn a lesson.” But what was said and the context of when it was said is critical to determining whether SUBJECT OFFICER violated MPD Orders.

The ROI conclusion of what SUBJECT OFFICER said relies on COMPLAINANT’s statements in her 911 phone call, her April 6, 2015 OPC complaint, WITNESS #1’s call to 911, and a February 29, 2016 interview with the minor, WITNESS #2.

In her 911 call, COMPLAINANT told the operator that SUBJECT OFFICER (not identified by name in the call) made comments like: “oh this is what the family gets,” and “this is what they need,” which in her opinion were offensive.

In her 911 call, WITNESS #1 substantially confirmed COMPLAINANT’s version of what SUBJECT OFFICER said. The 911 transcript of WITNESS #1’s call states that SUBJECT OFFICER said, “Oh, this is what your family gets” and “this is what you’re going through.” However, it is highly unlikely that WITNESS #1 was able to hear SUBJECT OFFICER utter these words. WITNESS #1 was on the phone in a different room that put her out of hearing distance.

COMPLAINANT’s May 13, 2015 statement to OPC is that WITNESS #1 was on the phone in her bedroom, which was a hallway away from the area where COMPLAINANT and the responding DC personnel were gathered. And, as the ROI acknowledges, there was commotion (background chatter) in the apartment that likely affected the ability to hear clearly everything that was said. Moreover, COMPLAINANT spoke to WITNESS #1 in the bedroom to advise her that SUBJECT OFFICER was in the apartment, which occurred after SUBJECT OFFICER made the offensive statements.

It is also likely that WITNESS #2’s recollection of the events on March 31, 2015 was faulty or at the very least unreliable. WITNESS #2 is a minor whose OPC interview took place on February 29, 2016, eleven months after the event. On March 31, 2015, she was in a heated argument with her mother about school attendance and actions that her mother perceived as potentially injurious. It is highly unlikely that she was paying attention to the interplay between her mother, COMPLAINANT, and SUBJECT OFFICER. Finally, at the time of her interview, WITNESS #2 did not recall SUBJECT OFFICER’s comments, but, when prompted, agreed that he said “something like that.”

It is important to note that SUBJECT OFFICER’s comments were not made directly to COMPLAINANT, WITNESS #1, or to WITNESS #2. Rather, they appear to have been made when SUBJECT OFFICER was conversing with the other responders. And, except for WITNESS EMT, the other responders do not recall the statements at issue.

For these reasons, the Complaint Examiner discounts the statements of WITNESS #1 and WITNESS #2 as corroborating COMPLAINANT’s version of what SUBJECT OFFICER said.

COMPLAINANT and SUBJECT OFFICER each have credibility issues. Their prior interactions – primarily concerning COMPLAINANT’s earlier complaint against SUBJECT OFFICER – easily could taint their recollection of the events in a way that would be self-serving.

The only possibly offensive language at issue that can be confirmed with any degree of certainty is what was recalled by WITNESS EMT. WITNESS EMT recalls SUBJECT OFFICER saying “they need to go through this to learn a lesson.” She did not recall hearing SUBJECT OFFICER say “that’s what this family gets, they deserve this,” or words to that effect.

Based on the record, the Complaint Examiner finds that SUBJECT OFFICER said that “they need to go through this to learn a lesson” but did not utter the words “that’s what this family gets, they deserve this” or similar language.

2. Did the language used by SUBJECT OFFICER violate the D.C. Code and applicable orders?

The ROI concluded based on the weight of the evidence that SUBJECT OFFICER’s comment “infers the family deserves to go through a psychiatric crisis and repercussions of a psychiatric hospitalization. That statement passes judgment and is insulting to individuals experiencing mental illness and family members who care for them.” But there is no evidence that the statement was directed to a psychiatric episode. WITNESS EMT offered another, equally reasonable, explanation that is not judgmental or insulting. WITNESS EMT thought that SUBJECT OFFICER was referring to the difficulty and consequences of involuntarily committing a minor to a hospital. Such a commitment could, in part, potentially involve an investigation by the Child and Family Services Agency. According to WITNESS EMT, COMPLAINANT was uninterested in hearing the consequences of an involuntary commitment. In this context, the Complaint Examiners finds that a statement along the lines of “they need to go through this to learn a lesson” is not inherently insulting, demeaning, or humiliating.

The statement however has a sarcastic and disrespectful tone to it in that it implies that the family doesn’t know what it’s doing. For that reason the Complaint Examiner finds that SUBJECT OFFICER violated MPD General Order 201.26, Part V, Section C. That order provides, “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.”

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation: Insulting, Demeaning, or Humiliating Language or Conduct	Sustained
--	-----------

Submitted on June 13, 2016.

Richard S. Ugelow
Complaint Examiner