

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	15-0241
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2
Allegation	Harassment
Complaint Examiner:	Richard S. Ugelow
Merits Determination Date:	March 22, 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 April 6, 2015, at about 8:50 p.m., a staff member at A PUBLIC LIBRARY IN SOUTHEAST, WASHINGTON, D.C., called 911 to report that she was being stalked by a library patron. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 were dispatched to respond to the call. Upon their arrival at the library, SUBJECT OFFICER #1 and SUBJECT OFFICER #2 saw an individual, later identified as COMPLAINANT, leaving the building. The Officers entered the library and held a very brief conversation with the library staff. The Officers ran after COMPLAINANT, who was walking away from the library. Upon catching up with COMPLAINANT, the Officers explained that they wanted to speak with him about an incident at the library. COMPLAINANT did not offer any resistance but did ask why he was being stopped. SUBJECT OFFICER #1 handcuffed COMPLAINANT and the two officers escorted him back to the library where the library staff advised the officers that he was not the alleged perpetrator. COMPLAINANT was released immediately.

On May 13, 2015, COMPLAINANT filed a complaint with OPC alleging that SUBJECT OFFICER #2 and SUBJECT OFFICER #1 harassed him when they stopped him and handcuffed him. In addition, COMPLAINANT alleged that the officers engaged in conduct toward him that was insulting, demeaning, or humiliating and that SUBJECT OFFICER #1 used unnecessary and

excessive force by handcuffing him too tightly and pushing him along as he was escorted back to the library.¹

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint. Based on a review of: (1) OPC's Report of Investigation; (2) the summary transcript and footage of SUBJECT OFFICER #1'S body-worn camera (BWC); (3) the audio and written transcript of the 911 call; (4) video footage at A PUBLIC LIBRARY IN SOUTHEAST, WASHINGTON, D.C.; (5) the transcript and audio of the MPD Radio Communications for the POLICE DISTRICT for April 6, 2015; (6) transcript prepared by OPC of an audio recording made by COMPLAINANT; (7) the statements of COMPLAINANT, WITNESS #1, SUBJECT OFFICER #1 and SUBJECT OFFICER #2; and (8) the response submitted by the DC Police Union on behalf of SUBJECT OFFICER #2², 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: (1) OPC's Report of Investigation; (2) the summary transcript and footage of SUBJECT OFFICER #1'S body-worn camera (BWC); (3) the audio and written transcript of the 911 call; (4) video footage at A PUBLIC LIBRARY IN SOUTHEAST, WASHINGTON, D.C.; (5) the transcript and audio of the MPD Radio Communications for the POLICE DISTRICT for April 6, 2015; (6) transcript prepared by OPC of an audio recording made by COMPLAINANT; (7) the statements of COMPLAINANT, WITNESS #1, SUBJECT OFFICER #1 and SUBJECT OFFICER #2; and (8) the response submitted by the DC Police Union on behalf of SUBJECT OFFICER #2, the Complaint Examiner finds the material facts regarding this complaint to be:

1. COMPLAINANT filed a complaint with the Office of Police Complaints against MPD SUBJECT OFFICER #1 and SUBJECT OFFICER #2 on May 13, 2015.
2. At approximately 8:50 p.m. on April 6, 2015, WITNESS #1, a member of the PUBLIC LIBRARY IN SOUTHEAST, WASHINGTON, D.C. staff placed a 911 call to the MPD requesting assistance with a library patron who had threatened her.
3. WITNESS #1 described the suspect as a light-skinned African-American male, named WITNESS #2, in his 50s, and not that tall. WITNESS #1 was unable to describe what he was wearing.

¹ Pursuant to D.C. Code § 5-1108 on January 5, 2016, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director.

² The Complaint Examiner did not receive a DC Police Union response filed on behalf of SUBJECT OFFICER #1. Nevertheless, the material contained in the response filed on behalf of SUBJECT OFFICER #2 was considered in reaching the Complaint Examiner's determination.

4. The library closed at 9:00 p.m.
5. SUBJECT OFFICER #2 and SUBJECT OFFICER #1 were dispatched to respond to the call.
6. SUBJECT OFFICER #1 was wearing an activated body-worn camera (BWC), which recorded all of the events at A PUBLIC LIBRARY IN SOUTHEAST, WASHINGTON, D.C. and the encounter with COMPLAINANT.
7. Library security cameras also were in place and recorded relevant events that took place within the library.
8. SUBJECT OFFICER #2 and SUBJECT OFFICER #1 arrived at the front door of the library at approximately 8:54 p.m.
9. On the evening of April 6, 2015, COMPLAINANT was a patron at A PUBLIC LIBRARY IN SOUTHEAST, WASHINGTON, D.C.
10. At approximately 8:54 p.m. on April 6, COMPLAINANT exited the library through the front door.
11. As they approached the library entrance, SUBJECT OFFICER #1 and SUBJECT OFFICER #2 passed an individual, later identified as COMPLAINANT, exiting the library.
12. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 observed COMPLAINANT was wearing a black hooded sweatshirt, with the hood up and carrying a backpack. He did not have a cane nor anything that could be mistaken for a cane.
13. Upon their arrival at the library, SUBJECT OFFICER #1 and SUBJECT OFFICER #2 immediately met with members of the library staff, including WITNESS #1.
14. SUBJECT OFFICER #1 asked WITNESS #1 if the suspect was “an older guy, black sweatshirt, hood pulled over his head?”
15. WITNESS #1’S response was “maybe” and further stated that the suspect had a cane.
16. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 immediately left the library to pursue COMPLAINANT.
17. The officers called out to COMPLAINANT who was walking away from the library saying “Hey man, let me talk to you for a minute.”
18. COMPLAINANT turned toward the officers and initially began to walk toward them.
19. Upon reaching COMPLAINANT, SUBJECT OFFICER #1 said they wanted to talk to him about an incident in the library.
20. COMPLAINANT requested information about what was going on.

21. COMPLAINANT was calm and did not act in a threatening manner.
22. COMPLAINANT is 65 years old and is 6'1" tall.
23. COMPLAINANT'S physical description did not match the description that WITNESS #1 gave to 911; neither did he have a cane nor any object resembling a cane.
24. After a very brief discussion, SUBJECT OFFICER #1 asked COMPLAINANT to put his hands behind his back and proceeded to handcuff him and said something to the effect "I don't like the idea that you are trying to walk away from me."
25. The officers escorted COMPLAINANT back to the library.
26. Upon returning to the library, it was quickly discovered that COMPLAINANT was not the suspect and he was immediately released.
27. The suspect, WITNESS #2, was in the library at the time SUBJECT OFFICER #1 and SUBJECT OFFICER #2 returned with 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."

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.

On April 6, 2015, SUBJECT OFFICER #1 and SUBJECT OFFICER #2, responded to a 911 call placed by WITNESS #1, adult services librarian at A PUBLIC LIBRARY IN SOUTHEAST, WASHINGTON, D.C. WITNESS #1 called 911, at approximately 8:50 p.m. because a patron had made threatening statements to her and she believed that she was being stalked. As they approached the library at 8:54 p.m., the officers observed an African-American male patron exiting the building. This individual was later identified as the complainant, COMPLAINANT.

Upon entering the library, the officers immediately spoke with WITNESS #1 and asked if the suspect was an older black guy, wearing a hooded sweatshirt. This description fit the person they saw exiting the library. WITNESS #1 provided an equivocal response of “maybe,” but added that the individual had a cane. Based upon their brief discussion with WITNESS #1 and the other library staff, the officers erroneously assumed that COMPLAINANT was the suspect.

The officers immediately left the library to find COMPLAINANT. SUBJECT OFFICER #1 called out to him saying “I want to talk to you.” In response, COMPLAINANT turned to the officers and began walking toward them. When the officers caught up with him, COMPLAINANT questioned the basis of the stop. The BWC video does not show COMPLAINANT acting in a threatening or improper manner. Indeed, he appeared to be calm and restrained at all times. However, the BWC video shows SUBJECT OFFICER #1 almost immediately asking COMPLAINANT to place his hands behind his back so he could be placed in handcuffs. COMPLAINANT complied and was escorted back to the library, where it was immediately determined that he was not the suspect and he was released.

The events surrounding COMPLAINANT’S encounter with SUBJECT OFFICER #1 and SUBJECT OFFICER #2 are documented by the BWC video, the library security camera, and the transcript of the 911 call. Here, the evidence demonstrates that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 engaged in activity prohibited by MPD General Order 120.25 when COMPLAINANT was handcuffed. There are several reasons for this conclusion.

Upon arriving at the library, the officers immediately concluded that the individual they saw leaving the library was the suspect. The officers failed to ask the library staff for a physical description of the suspect when they arrived. In fact, the officers provided a description of an “an older guy, black sweatshirt, hood pulled over his head” to WITNESS #1 and the library staff. Her response was “maybe.” The officers were told, however, that the suspect had a cane.

Further, the officers did not ask if anyone knew the current location of the suspect. If they had, the incident with COMPLAINANT never would have happened as the alleged perpetrator, WITNESS #2, was in the library at 8:54 p.m.

Importantly, COMPLAINANT’S interactions with the officers were at all times calm and non-threatening. At no time did COMPLAINANT raise his voice or indicate that he would flee. At no time did he say that he would not cooperate. In fact, the officers did not ask for COMPLAINANT’S cooperation. While SUBJECT OFFICER #1 told COMPLAINANT he was

handcuffed because he “did not like the idea that you are trying to walk away from me,” there is no evidence that COMPLAINANT resisted or was walking away. The footage clearly shows COMPLAINANT calmly walking toward the officers when they called out to him. COMPLAINANT’S verbal interaction with the officers was not hostile in any form. Rather, quite naturally he wanted more information about the stop. It was at this point that SUBJECT OFFICER #1 handcuffed COMPLAINANT, with SUBJECT OFFICER #2’S assistance. The handcuffing was entirely unprovoked by any threatening acts or language on the part of COMPLAINANT. This Complaint Examiner finds that there was no legal or factual basis to detain or to handcuff COMPLAINANT.

Thus, SUBJECT OFFICER #1 and SUBJECT OFFICER #2’S conduct was contrary to MPD General Order 120.25. SUBJECT OFFICER #1 and SUBJECT OFFICER #2’S actions purposefully, knowingly, or recklessly harassed COMPLAINANT by detaining and handcuffing him without a lawful basis. COMPLAINANT’S complaint is sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1
SUBJECT OFFICER #2

Allegation: Harassment	Sustained
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Submitted on March 22, 2016

Richard S. Ugelow
Complaint Examiner