

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	15-0280
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Allegation 3:	Discriminatory Treatment
Complaint Examiner:	Meaghan H. Davant
Merits Determination Date:	February 4, 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 filed a complaint with the Office of Police Complaints (OPC) on June 22, 2015. COMPLAINANT alleged that on June 13, 2015, SUBJECT OFFICER harassed her by trying to prevent her from nursing her child at a public restaurant. COMPLAINANT also alleged that SUBJECT OFFICER used language or engaged in conduct towards her that was insulting, demeaning, or humiliating toward her during the incident. Finally, COMPLAINANT alleged that SUBJECT OFFICER discriminated against her based on her sex, female.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on December 31, 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 on a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on December 31, 2015, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On June 13, 2015, SUBJECT OFFICER was sitting inside a RESTAURANT IN NORTHEAST, WASHINGTON, D.C. at a table near the entrance.
2. COMPLAINANT then entered the restaurant, took a seat facing the entrance, and began breastfeeding her one-year-old daughter.
3. WITNESS #1, manager of the restaurant, said that he saw COMPLAINANT enter the restaurant and sit near the entrance and that COMPLAINANT appeared to be waiting for a bus. WITNESS #1 did not see COMPLAINANT breastfeeding her child. WITNESS#1 did not ask COMPLAINANT to leave the restaurant, nor did he ask SUBJECT OFFICER to have COMPLAINANT removed from the premises.
4. SUBJECT OFFICER observed COMPLAINANT breastfeeding and approached her. He gestured toward the bathroom and said something to the effect of, "Ewww," and "Can you not take that in the corner or the bathroom or put a cover over it?" to COMPLAINANT.
5. COMPLAINANT was offended by SUBJECT OFFICER'S comments and actions and, in response, said something to the effect of "Are you serious? Do you eat in the restroom?" to which SUBJECT OFFICER responded loudly, "I am! You can't just walk in here and [unintelligible]."
6. SUBJECT OFFICER and COMPLAINANT continued to argue, each loudly stating that the other needed to "get knowledge."
7. During the incident, COMPLAINANT'S baby stopped nursing and unlatched from her mother's nipple, preventing COMPLAINANT from continuing to breastfeed.
8. SUBJECT OFFICER then told COMPLAINANT not to call the police if someone photographed her breastfeeding her child and her photo was subsequently posted on social media.
9. The interaction between COMPLAINANT and SUBJECT OFFICER inside of the restaurant was recorded by the RESTAURANT'S security camera and is an exhibit to the OPC's Report of Investigation.
10. COMPLAINANT then followed SUBJECT OFFICER out of the restaurant and asked for SUBJECT OFFICER'S name and badge number, which SUBJECT OFFICER provided.

11. COMPLAINANT told SUBJECT OFFICER that she had a legal right to breastfeed in public to which SUBJECT OFFICER responded, “You’re just ignorant. No woman is going to expose herself like that in the middle of a store without a cover.”
12. As SUBJECT OFFICER walked away from COMPLAINANT, he waved his arms at her in an upward sweeping stroke as though to dismiss her and repeatedly yelled, “You’re ignorant!”
13. The interaction between COMPLAINANT and SUBJECT OFFICER outside the restaurant was recorded by outside security cameras located at A LOCATION across the street from the RESTAURANT and is an exhibit to the OPC’s Report of Investigation.
14. COMPLAINANT alleged that SUBJECT OFFICER “violated [her] right to breastfeed in public.”
15. COMPLAINANT also stated that the incident “was very traumatic” for her and that she felt “shame[d] and belittle[d]” by the officer.

IV. DISCUSSION

Pursuant to D.C. Code § 5-1107(a), in pertinent part, “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; ... (3) use of language or conduct that is insulting, demeaning, or humiliating; and (4) discriminatory treatment based upon a person's race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, [or] family responsibilities... [.]”

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.

COMPLAINANT alleged that SUBJECT OFFICER harassed her by approaching her in the restaurant while she was breastfeeding her child and, stating “Ewww,” gesturing toward the bathroom, and stating “you’re not going to go in the bathroom?” While the security footage does not show SUBJECT OFFICER’S expression at the time, it does show him gesturing toward the bathroom. In his statement to the OPC SUBJECT OFFICER admitted that, in response to the sight of COMPLAINANT breastfeeding in a public space, he stated “Ewww. Can you not take that in the corner or the bathroom or put a cover over it?”

According to the District of Columbia Human Rights Act:

(c)(1) A woman shall have the right to breastfeed her child in any location, public or private, where she has the right to be with her child, without respect to whether the mother’s breast or any part of it is uncovered during or incidental to the breastfeeding of her child.

(c)(2) Notwithstanding any other provision of District of Columbia law governing indecent exposure or the definition of the private or intimate parts of a female person, including that portion of the breast that is below the top of the areola, a woman shall have the right to breastfeed in accordance with this section.

D.C. Code § 2-1402.82 (2015).

At the time of the interaction, COMPLAINANT was in a public restaurant, where she had the right to be with her child. WITNESS #1, manager of the restaurant, stated that he saw COMPLAINANT enter the restaurant and sit down and that he neither asked COMPLAINANT to leave the restaurant, nor did he ask SUBJECT OFFICER to have COMPLAINANT removed from the premises. Thereby, COMPLAINANT had at least implied consent to be at the restaurant. COMPLAINANT was also fully within her legal rights to breastfeed her child, whether or not any or all of her breast was exposed. *See* § 2-1402.82.

Whether or not SUBJECT OFFICER had actual knowledge of *See* § 2-1402.82, giving COMPLAINANT the right to breastfeed in public, is irrelevant. Pursuant to D.C. Mun. Regs. tit. 6A, §200.13:

Members of the [police] force shall familiarize themselves with the statutes, laws, and regulations in force in the District of Columbia, and failure to do so, or to take action respecting violations of those statutes, laws, and regulations coming to their attention or about which they have knowledge shall be deemed neglect of duty.

MPD General Order 304.10 stipulates that MPD officers may contact people for any “legitimate, police-related purpose,” but specifically states that “contacts shall not be conducted in a hostile or aggressive manner.” In his statement to the OPC, SUBJECT OFFICER was unable to articulate a legitimate law enforcement purpose for approaching COMPLAINANT.

Based on the video footage and his own admissions, SUBJECT OFFICER’S conduct of pointing to the bathroom, and his language of “Ewww” and telling COMPLAINANT to “take that in the corner or the bathroom,” were both aggressive and hostile. Moreover, COMPLAINANT stated that SUBJECT OFFICER’S actions and words prevented her from continuing to breastfeed and that the incident “was very traumatic” for her and that she felt “shame[d] and belittle[d]” by the officer.

For these reasons, there is no disputed issue of material fact that SUBJECT OFFICER harassed COMPLAINANT with his conduct and language, and the complaint against him for harassment is sustained.

B. Discrimination

The District of Columbia Human Rights Act states:

[I]t shall be an unlawful discriminatory practice for a District government agency or office to limit or refuse to provide any facility, service, program, or benefit to any individual on the basis of an individual’s actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, or place of residence or business.

D.C. Code §2-1402.73 (2015).

The Act further specifies that “[i]t shall be an unlawful discriminatory practice to deny a woman [...] the right to breastfeed her child in any location, public or private, where she has the right to be with her child, without respect to whether the mother’s breast or any part of it is uncovered during or incidental to the breastfeeding of her child.” § 2-1402.82. “Discrimination on the basis of sex includes “discrimination on the basis of... breastfeeding.” § 2-1401.05.

MPD General Order 201.26 provides that, “[i]n accordance with D. C. Official Code § 2-1401, et. seq. (District of Columbia Human Rights Act), members shall not discriminate, either in the enforcement of the law, or in the provision of police service, on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity and expression, familial status, family responsibilities, matriculation, political affiliation,

genetic information, disability, source of income, status as a victim of an intra-family offense and place of residence or business.

The regulations governing OPC define discriminatory treatment as “[c]onduct by a member of the MPD . . . that results in the disparate treatment of persons because of their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, place of residence or business or any other ground of discrimination prohibited under the statutory and the common law of the District of Columbia.” D.C. Mun. Regs. tit. 6A, § 2199.1.

See also

MPD General Order 120.25.

COMPLAINANT alleged that SUBJECT OFFICER “violated [her] right to breastfeed in public,” which constitutes an unlawful discriminatory practice under D.C. Code §§ 2- 1401.05 and 1402.82. SUBJECT OFFICER does not contest this allegation.

SUBJECT OFFICER’S demeaning conduct and language, including: “Ewww” at the sight of COMPLAINANT breastfeeding; directing her to the bathroom to breastfeed her child; that COMPLAINANT should not call the police if someone photographed her breastfeeding her child and her photo was subsequently posted on social media; and that “No woman is going to expose herself like that in the middle of a store without a cover,” clearly demonstrates that he subjected COMPLAINANT to disparate treatment based solely on her status as a woman and/or her familial status or family responsibilities as a breastfeeding mother.

There is, therefore, no issue of material fact that SUBJECT OFFICER discriminated against COMPLAINANT based on her sex and her status as a breastfeeding mother, in violation of D.C. Code § 5- 1107(a) and MPD General Order 201.26, and her complaint for discrimination is sustained.

C. 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.”

D.C. Code §2-1402.73 (2015).

SUBJECT OFFICER comments to COMPLAINANT, including “Ewww” and telling COMPLAINANT to “take that in the corner or the bathroom,” and his repeated name-calling, referring to COMPLAINANT as “ignorant,” as well as his physical conduct in waving his arms

dismissively at COMPLAINANT, were derogatory, disrespectful and offensive to COMPLAINANT’S dignity. COMPLAINANT stated that the interaction with SUBJECT OFFICER “was very traumatic” for her and that she felt “shame[d] and belittle[d]” by the officer.

There is, therefore, no issue of material fact that SUBJECT OFFICER used language or conduct which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person, and was not calm and professional in the performance of his duties, in violation of D.C. Code §2-1402.73 (2015) and the complaint is sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Sustained
Allegation 2: Insulting, Demeaning, or Humiliating Language or Conduct	Sustained
Allegation 3: Discriminatory Treatment	Sustained

Submitted on February 4, 2016.

Meaghan H. Davant
Complaint Examiner