

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	16-0160
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Complaint Examiner:	Adav Noti
Merits Determination Date:	November 14, 2016

Pursuant to D.C. Official Code § 5-1107(b-1), the Office of Police Complaints (OPC) has the sole 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 § 5-1107(a). 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

The COMPLAINANT alleges that on January 30, 2016, SUBJECT OFFICER harassed her by displaying a firearm after the Complainant and the Subject Officer, who was off-duty and not in uniform, were nearly involved in a traffic accident in the 1100 block of D Street NE.¹

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 September 19, 2016, 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.

¹ The Complainant also alleged that a different officer failed to display his nametag on his uniform. On August 30, 2016, a member of the Police Complaints Board dismissed this allegation, concurring with the determination made by OPC's Executive Director. D.C. Code § 5-1108(1).

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on September 19, 2016, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On January 30, 2016, at approximately 2:15 p.m., COMPLAINANT and her fiancé were driving in the 1100 block of D Street NE.
2. At the same time, SUBJECT OFFICER left his home to drive to work in his personal vehicle. The Subject Officer was not in uniform; he was wearing slacks and a tight long-sleeve undershirt, and his service weapon was holstered in the waistband of his pants.
3. The Subject Officer began to pull his car out of the driveway of his building and into the 1100 block of D Street NE. His car almost collided with the Complainant's car as she drove by the driveway. Both the Complainant and the Subject Officer stopped their cars immediately.
4. The Subject Officer got out of his car with his service weapon still holstered in the waistband of his pants. The portion of the weapon extending above the waistband was visible to the Complainant.
5. The Subject Officer approached the Complainant's car, exchanged words with the Complainant and her passenger for several seconds, and then returned to his car.
6. The Complainant, having noticed the Subject Officer's weapon and not immediately realizing that he was a police officer, became distraught and called 911. The Subject Officer, noticing that the Complainant had become distraught, also called 911.
7. Other officers arrived on the scene in response to the 911 calls. Both parties eventually drove away with no further incident.

IV. DISCUSSION

Pursuant to D.C. Code § 5-1107(a), (b-1), OPC has the sole authority 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 . . . 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.

The undisputed record in this case demonstrates that the Subject Officer displayed his firearm to the Complainant while out of uniform and in a potentially volatile situation. Specifically, it is undisputed that, after their cars nearly collided, the Subject Officer got out of his car with his gun visible above his waistband, walked up to the Complainant’s car, and exchanged words with her. It is also undisputed that the Complainant saw the gun, did not initially realize that the Subject Officer was a police officer, and feared that he might use the weapon out of anger resulting from the near accident. The Complainant’s 911 call and the undisputed testimony of both parties confirm that the Complainant was distraught over this confrontation with a visibly armed man.

MPD regulations provide that an officer who is “off duty and not in full uniform . . . shall wear his or her service revolver in such a manner as to conceal it from view.” D.C. Mun. Regs. tit. 6A § 206.2. This regulation serves to prevent the exact scenario that occurred here: A person in plain clothes, whom no one can know is a police officer, displaying a firearm and thereby causing others to fear physical harm. Indeed, compliance with this regulation is particularly important in situations where tensions are running high, given the dire consequences that might result from the display of a handgun during a heated encounter.

The Subject Officer admits that he displayed his weapon to the Complainant by wearing it such that it was visible above his waistline.² The only argument the Subject Officer offers as to why this does not constitute misconduct is that the encounter between him and the Complainant

² The Subject Officer denies two material aspects of the complaint and the ROI. First, the Subject Officer denies the ROI’s assertion that he falsely told the 911 operator that the Complainant and her passenger had “assaulted an officer.” The Subject Officer is correct: Review of the audio recording of the 911 call demonstrates that he did not say that the Complainant and her passenger “assaulted an officer,” but rather that they “saw I was an officer.” (ROI Ex. 18.) The Complaint Examiner therefore finds that the portions of the ROI concluding that the Subject Officer falsely accused the Complainant of assault are erroneous. Second, the Subject Officer disputes the ROI’s conclusion that he engaged in misconduct by telling the Complainant to stop blocking the road with her car, a direction that the ROI asserts constituted improper law enforcement action by an off-duty officer. Again, the Subject Officer’s objection is meritorious: There is no evidence in the record supporting OPC’s conclusion that, when the Subject Officer told the Complainant to stop blocking the road, he was acting as a police officer rather than as an individual who needed the Complainant to move her car so that he could get to work.

was relatively brief. But the brevity of the encounter is not material: It does not take long (and did not take long here) for the display of a firearm to cause a tremendous amount of alarm on the part of the person to whom the weapon is displayed. Several seconds of being encountered by an armed man who has gotten out of his car after a near collision is more than enough to cause substantial fear. The fact that the Complainant reasonably perceived the Subject Officer's display of his firearm as a threat during their encounter demonstrates precisely why MPD regulations prohibit such displays.

For the foregoing reasons, the Complaint Examiner finds that the Subject Officer recklessly violated MPD regulations by displaying his service weapon to the Complainant while off duty and out of uniform, thereby subjecting her to a physical threat in violation of D.C. Mun. Regs. tit. 6A § 2199.1.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1 (Harassment):	Sustained
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Submitted on November 14, 2016.

Adav Noti
Complaint Examiner