

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	16-0188
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER
<b>Allegation:</b>	Harassment
<b>Complaint Examiner:</b>	Richard S. Ugelow
<b>Merits Determination Date:</b>	November 7, 2016

Pursuant to D.C. Official Code § 5-1107(b-1), 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 § 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**

On February 22, 2016, SUBJECT OFFICER authorized the DC Fire and Emergency Medical Services Department (FEMS) to forcibly enter COMPLAINANT's home in response to a 911 call requesting that a welfare check be conducted. On April 6, 2016, COMPLAINANT filed a complaint with OPC alleging that the forcible entry constituted harassment, that the damage to the basement door constituted harassment, and that the entry was retaliation for a previous complaint filed with OPC.<sup>1</sup>

**II. EVIDENTIARY HEARING**

After a review of OPC's Report of Investigation, the objections submitted on behalf of SUBJECT OFFICER by the DC Police Union on September 15, 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.

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<sup>1</sup> On September 7, 2016, OPC's Executive Director, with the concurrence of a member of the Police Complaints Board, dismissed COMPLAINANT's complaints that SUBJECT OFFICER harassed him when she authorized the use of force to enter his home and retaliated against him for filing a complaint with OPC prior to the February 22, 2016 incident.

### **III. FINDINGS OF FACT**

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

1. The complainant filed a timely complaint alleging harassment by MPD SUBJECT OFFICER for an incident at his home that occurred on February 22, 2016.
2. COMPLAINT resides at COMPLAINANT ADDRESS.
3. At approximately 7:11 a.m. on February 22, 2016, WITNESS 1 placed a call to 911 complaining that COMPLAINANT had been playing his television very loudly 24 hours a day for approximately one month and had not been seen.
4. The backyard of WITNESS 1's home at WITNESS ADDRESS is adjacent to COMPLAINANT's residence.
5. In response to WITNESS 1's call, MPD initiated a welfare check at COMPLAINANT's residence.
6. Three MPD Officers were dispatched in response to WITNESS 1's 911 call: WITNESS OFFICER 1, WITNESS OFFICER 2, and SUBJECT OFFICER.
7. Each of the Officers was in full MPD uniform.
8. SUBJECT OFFICER did not make notes during the incident and did not prepare an incident report.
9. WITNESS OFFICERS 1 and 2 were the first to arrive at COMPLAINANT's residence.
10. WITNESS OFFICERS 1 and 2 knocked on the front and rear doors of COMPLAINT ADDRESS for approximately ten (10) minutes, but did not receive a response.
11. WITNESS OFFICER 2 heard the television playing loudly when he walked around the rear of the house.
12. WITNESS OFFICERS 1 and 2 checked with two or three neighbors to see if they had seen the occupant of COMPLAINANT ADDRESS.
13. None of the neighbors had seen COMPLAINANT nor did they have contact information for him.
14. At SUBJECT OFFICER's direction, WITNESS OFFICERS 1 and 2 again checked the windows and doors, but were unable to gain entry.

15. SUBJECT OFFICER incorrectly recalled that the basement door was not fully secured and that WITNESS OFFICERS 1 and 2 could push the door open.
16. FEMS had been called to the scene to provide assistance. See Exhibit 25.
17. SUBJECT OFFICER does not recall the presence of FEMS personnel or authorizing them to pry the basement door open.
18. WITNESS OFFICERS 1 and 2 specifically recall that SUBJECT OFFICER authorized FEMS personnel to use force to enter through the basement door.
19. As the Officer in charge, SUBJECT OFFICER would have made the decision to forcibly enter COMPLAINANT's home.
20. It was determined entering COMPLAINANT's home through the basement door would cause the least damage.
21. FEMS personnel used a pry bar to open the basement door.
22. The basement door dead bolt was damaged by the forcible entry. Exhibit 14.
23. MPD personnel entered the house through the basement door and proceeded to go upstairs.
24. The MPD officers called out "Police" as they entered the house.
25. The MPD officers encounter COMPLAINANT on the first floor as he was coming down from an upper floor.
26. The MPD officers heard the television playing loudly.
27. COMPLAINANT was agitated that the police had entered his house.
28. Initially COMPLAINANT did not identify himself, but ultimately provided his name and the MPD Officers left the premises.
29. The MPD officers did not file contemporaneous notes of the incident, although WITNESS OFFICER 1 filed a report on May 10, 2016, the day before his interview with OPC.
30. MPD General Order 309.03 requires that a Forcible Entries/Property Damage Report, PD Form 240-A be filed and provided to COMPLAINANT, which was not done in this incident.

31. General Order 309.03 applies to instances, where, as here, the forcible entry occurs because of misinformation, misinterpretation of information, or erroneous judgment.
32. MPD Special Order, SO 10-02, Check on Welfare Calls for Service requires that a PD Form 251 be filed, which was not done in this incident.
33. The PD Form 251 was to be completed and submitted to the Watch Commander prior to the conclusion of the officer's tour of duty, which was not done in this incident.
34. SUBJECT OFFICER was responsible for ensuring that the appropriate incident reports were completed and submitted to the appropriate individuals and authorities.
35. The failure to file the appropriate reports denied COMPLAINANT of his rights to be made whole for the damage to his door.

#### **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 “(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 February 22, 2016, SUBJECT OFFICER and two MPD Officers WITNESS OFFICER 2 and WITNESS OFFICER 1 responded to a welfare call at the home of COMPLAINANT, the complainant, at COMPLAINANT ADDRESS. The 911 caller, whose house backed on to his, had not seen him for a month and a television had been playing loudly around the clock. WITNESS OFFICERS 1 and 2 found the house locked and their knocks on the door went unanswered. COMPLAINANT’s neighbors were unable to assist; they were either not home or had not seen him.

SUBJECT OFFICER did not recall the presence of FEMS personnel, but there is no doubt that they were present. WITNESS OFFICERS 1 and 2 recall them being there, and COMPLAINANT saw the FEMS truck, too. Moreover, Exhibit 25 is a DC Fire & EMS Report confirming their presence at COMPLAINANT ADDRESS on February 22, 2016 at 7:36-50 a.m.

SUBJECT OFFICER does not recall authorizing a forcible entry in COMPLAINANT’s home. When she was interviewed by OPC she did not have a way of verifying her recollection because she did not record notes of the incident and had not filed an incident report. SUBJECT OFFICER’s failure personally to file an incident report or cause one to be filed by the responding officers adversely affected COMPLAINANT.

WITNESS OFFICERS 1 and 2 both confirmed that SUBJECT OFFICER authorized FEMS personnel to use force to enter through the locked basement door. FEMS used a pry bar to open the door that allowed the MPD Officers to enter the residence. The natural and uncontroverted fact is that the use of force to open a door will result in some level of damage, even if the damage is minimal. Here, the damage was to the deadbolt on the basement door. Further, other marks on the door indicate that it had been struck with a tool.

MPD General Order 309.03 covers Forcible Entries/Property Damage Caused by MPD Police Action. The General Order states: The Department will provide an explanation to the owner/occupant, and will repair the damage as soon as possible. The General Order further provides that the MPD is to provide the citizen, here COMPLAINANT, with a copy of the PD Form 240-A (Notice of Forcible Entry). Because she authorized the forcible entry, General Order 309.03 makes SUBJECT OFFICER responsible for completing the PD Form 240-A and giving a copy to COMPLAINANT. SUBJECT OFFICER did not complete a Form 240-A or advise COMPLAINANT on how to repair his damaged door.

MPD Special Order, SO 10-02, Check on Welfare Calls for Service, requires Officers to complete a PD Form 251 in response to every call for service for “Check on Welfare.” Para. IV. A. Since SUBJECT OFFICER did not complete a PD Form 251, there was no record of the welfare check, which adversely affected COMPLAINANT ability to obtain documentation of the events that took place at his home on February 22, 2016. It is noted that WITNESS OFFICER 1 filed an incident report of the February 22 welfare check on May 10, 2016. However, this report

was filed the day before his OPC interview and can hardly be considered contemporaneous. More to the point, the lateness of the report was of no assistance to COMPLAINANT in pursuing a claim for damage to his door. SUBJECT OFFICER's failure to comply with General Order 309.3 and Special Order 10-02, hindered COMPLAINANT in pursuing a rightful claim for damage to his basement door.

The DC Police Union's objections filed on behalf of SUBJECT OFFICER do not contest that COMPLAINANT's personal rights were infringed upon by the failure to file the requisite reports. Likewise, the objections do not challenge the finding that the lack of reports, in the case of COMPLAINANT, is harassment as defined by the applicable statute and regulations.

Thus, the Complaint Examiner finds that COMPLAINANT was harassed within the meaning of MPD General Order 120.25, Part III, Section B, No. 2 and OPC's regulations because his personal and property rights were infringed upon.

SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

<b>Allegation Harassment</b>	Sustained
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Submitted on November 7, 2016.

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Richard S. Ugelow  
Complaint Examiner