

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint Nos.:</b>	17-0102 and 17-0104
<b>Complainants:</b>	COMPLAINANT 1 COMPLAINANT 2
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER
<b>Allegation 1:</b>	Harassment
<b>Allegation 2:</b>	Language and Conduct
<b>Complaint Examiner:</b>	Rebecca Goldfrank
<b>Merits Determination Date:</b>	April 9, 2018

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). These complaints were timely filed in the proper form as required by § 5-1107, and the complaints have been referred to this Complaint Examiner to determine the merits of the complaints as provided by § 5-1111(e).

**I. SUMMARY OF COMPLAINT ALLEGATIONS**

COMPLAINANT 1 and COMPLAINANT 2 filed separate complaints with the Office of Police Complaints on December 14, 2016 and January 6, 2017. COMPLAINANT 1 alleges that SUBJECT OFFICER harassed her on December 7, 2016 by confiscating her property, specifically a ticket enabling her to apply for housing, when he did not have authority to do so. COMPLAINANT 1 and COMPLAINANT 2 further alleged that SUBJECT OFFICER used language or engaged in conduct that was insulting, demeaning or humiliating when speaking to COMPLAINANT 1 in a nasty and aggressive tone, and staring at her.<sup>1</sup>

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<sup>1</sup> COMPLAINANT 1 and COMPLAINANT 2 also alleged that on December 7, 2016, SUBJECT OFFICER used unnecessary or excessive force against COMPLAINANT 1 by grabbing her arm, and COMPLAINANT 2 alleged the officer tried to yank COMPLAINANT 1 over a wall. They additionally alleged that WITNESS OFFICER harassed COMPLAINANT 1 by unlawfully arresting her for assault on a police officer. The complainants alleged that SUBJECT OFFICER discriminated against COMPLAINANT 1 based on her physical appearance because she is a woman who dresses like a man. COMPLAINANT 2 also alleged that SUBJECT OFFICER used language or conduct that was insulting, demeaning or humiliating when COMPLAINANT 1 was detained and he yelled for people to move back. Pursuant to D.C. Code 5-1108 (1), on December 20, 2017, a member of the Police Complaints Board dismissed this allegation, concurring with the determination made by OPC's executive director. Report of Investigation at 1.

Specifically, COMPLAINANT 1 and her friends WITNESS 1 and WITNESS 2, spent the night outside waiting in line to apply for housing at AN APARTMENT COMPLEX IN SE, WASHINGTON, DC. The following morning, December 7, 2016, SUBJECT OFFICER who was working off-duty for property management took COMPLAINANT 1 and WITNESS 2's tickets, thereby depriving them of their ability to apply for housing at AN APARTMENT COMPLEX IN SE, WASHINGTON, DC. COMPLAINANT 1 alleges that SUBJECT OFFICER was angry, aggressive, nasty and stared at her during their interactions. COMPLAINANT 1 and COMPLAINANT 2 further allege that SUBJECT OFFICER was unprofessional and rude when he told WITNESS 1 to remove her facemask, and when he stared at COMPLAINANT 1.

## II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation,<sup>2</sup> 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 Complaint Examiner finds the material facts regarding this complaint to be<sup>3</sup>:

1. COMPLAINANT 1 and her friends WITNESS 1 and WITNESS 2 spent the evening of December 6, 2016 through the morning of December 7, 2016 outside waiting in line to apply for housing at AN APARTMENT COMPLEX IN SE, WASHINGTON, DC. APARTMENT EMPLOYEE 1, an employee of THE APARTMENT COMPLEX IN SE, WASHINGTON, DC leasing office, observed COMPLAINANT 1 in the line on the evening of December 6, 2016. When APARTMENT EMPLOYEE 1 returned to the office on the morning of December 7, 2016, she again observed COMPLAINANT 1 on line.
2. Property management for the APARTMENT COMPLEX IN SE, WASHINGTON, DC, anticipated that many people would seek to apply for housing so they hired two off-duty Metropolitan Police Department officers to maintain order: SUBJECT OFFICER and WITNESS OFFICER 2. SUBJECT OFFICER was in full uniform but was not wearing a body-worn camera because he had not been assigned one.

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<sup>2</sup> SUBJECT OFFICER did not submit objections to the Report of Investigation.

<sup>3</sup> There were lengthy interviews with multiple witnesses recounting various segments of the morning in question, their views on the officers and some additional issues. This merits determination does not endeavor to make formal findings about each exchange, incident or perspective. To the extent that a disputed item is not mentioned herein, the absence of findings meant that the proponent of this information was not convincing or that the matter was too minor to make a difference in the ultimate decision or not relevant to the narrow scope of this determination.

3. COMPLAINANT 1 and WITNESS 1 were toward the very front of the line – within the first ten people waiting. There were several hundred people waiting in line to apply for housing.
4. SUBJECT OFFICER 1 arrived to work at THE APARTMENT COMPLEX IN SE, WASHINGTON, DC, early in the morning, while still dark out, on December 7, 2016. SUBJECT OFFICER instructed the people on line to move the line back. He also told people in the front of the line that “if you are holding a place for someone in line, call them now because it’s not fair to the people spending the night out here...that other people are in apartments, cars ...sleeping in warm and these people are out here [and] cold.”
5. The property management staff arrived soon thereafter and informed SUBJECT OFFICER that if anyone was not in line at that time, they could not get in line.
6. The property management staff handed out tickets to the people who were waiting on line on the morning of December 7, 2017. Specifically, staff member APARTMENT EMPLOYEE 2 gave COMPLAINANT 1 a ticket.
7. Shortly thereafter, employees APARTMENT EMPLOYEE 2 and APARTMENT EMPLOYEE 3 were told by SUBJECT OFFICER that COMPLAINANT 1 and her friend were not supposed to be in line. SUBJECT OFFICER told them to get out of the line. SUBJECT OFFICER and COMPLAINANT 1 then had a verbal disagreement. SUBJECT OFFICER then used his authority to insist that COMPLAINANT and WITNESS 1 turn the tickets over to him. He gave the tickets back to APARTMENT EMPLOYEE 3. COMPLAINANT became angry.
8. At approximately 8:30 a.m., APARTMENT EMPLOYEE 4, Property Manager for THE APARTMENT COMPLEX IN SE, WASHINGTON, DC, began collecting the tickets, calling the numbers out one by one. COMPLAINANT 1 was number five or six in line but when she presented to APARTMENT EMPLOYEE 4 she did not have a ticket. Property management would not allow individuals to apply for housing unless they had a ticket. COMPLAINANT 1 could not apply for housing and she became angrier. SUBJECT OFFICER blocked COMPLAINANT 1’ entry into the property management office. COMPLAINANT 1 yelled, cursed, and resisted SUBJECT OFFICER’s directions to calm down. COMPLAINANT 1 and SUBJECT OFFICER had a physical exchange and ultimately COMPLAINANT 1 was arrested.<sup>4</sup>
9. Only APARTMENT COMPLEX IN SE, WASHINGTON, DC property management staff members have the authority to determine who can receive a ticket and who can apply for housing. SUBJECT OFFICER was not instructed to take people’s tickets.

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<sup>4</sup> COMPLAINANT 1 was arrested for assaulting a police officer; this charge was not prosecuted by the U.S. Attorney’s Office.

#### 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 and the use of language or conduct that is insulting, demeaning or humiliating.”

##### A. HARASSMENT

MPD General Order 120.25 (effective Oct. 27, 2017), Part III, Section 8 defines harassment as “ words, conduct, gestures, or other actions directed at the 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 (6A DCMR 2199). OPC’s Administrative Rules further instruct: “[i]n 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 (December 15, 2017).

COMPLAINANT 1 secured a ticket to apply for housing at the APARTMENT COMPLEX IN SE, WASHINGTON, DC; this ticket was confiscated by SUBJECT OFFICER. SUBJECT OFFICER’s actions dispossessed COMPLAINANT 1 of her property in the form of the ticket and denied her the ability and opportunity to apply for housing. She and her friends were handed tickets by APARTMENT EMPLOYEE 2. APARTMENT EMPLOYEE 2 observed that SUBJECT OFFICER demanded those tickets back and gave them to APARTMENT EMPLOYEE 3.<sup>5</sup> APARTMENT EMPLOYEE 3 corroborated APARTMENT EMPLOYEE 2’s recollection and indicated that she later gave the tickets out to other people waiting on line.

COMPLAINANT 1, APARTMENT EMPLOYEE 2 and APARTMENT EMPLOYEE 3 assert that COMPLAINANT 1 had a ticket and that SUBJECT OFFICER took the ticket from her through use of his authority as a police officer. Although SUBJECT OFFICER denied taking the ticket from COMPLAINANT 1 and her friends, there is sufficient evidence, including evidence from witnesses without allegiance to COMPLAINANT 1, to believe that he did indeed confiscate the ticket from her and WITNESS 2. When SUBJECT OFFICER did this he exceeded

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<sup>5</sup> The evidence suggests that COMPLAINANT 1 and SUBJECT OFFICER had an exchange around whether COMPLAINANT 1 entered or re-entered the line after the officer, at the request of property management, indicated people could no longer enter the line. The evidence suggests that this was the basis for SUBJECT OFFICER confiscating COMPLAINANT 1’s ticket. This determination does not endeavor to conclude whether COMPLAINANT 1 was or was not in line at the cut off time.

the scope of his authority as he was not empowered by the property management company to take tickets away from individuals. SUBJECT OFFICER's actions infringed upon COMPLAINANT 1's rights and denied her the valuable opportunity of applying for housing. These actions by SUBJECT OFFICER constitute harassment.

## **B. LANGUAGE OR CONDUCT**

MPD General Order 201.26 (effective April 5, 2011), Part V, Section C, Nos. 1(a) and 3 state, "All members shall: (1) Be courteous and orderly in their dealings with the public, (a) members shall perform their duties quietly, remaining calm regardless of provocation to do otherwise; (3) 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."

The cell phone video recording of SUBJECT OFFICER interacting with and then arresting COMPLAINANT 1 suggests that his manner was calm in the midst of a confrontation and an animated and upset crowd. It is therefore probable that his demeanor was calm several minutes earlier before the circumstances had escalated and COMPLAINANT 1 was denied entry into the property management office, although this was not captured on video. The Office of Police Complaints has already concluded that SUBJECT OFFICER's conduct during the physical interaction and arrest did not amount to misconduct. SUBJECT OFFICER described his tone and demeanor throughout his interaction with COMPLAINANT 1 as firm and direct and denies inappropriate language or conduct.

The property management staff who corroborated COMPLAINANT 1's account of SUBJECT OFFICER confiscating her and her friend's tickets do not relate any specific instances of harsh language or that the officer was aggressive or upset in his dealings with her. APARTMENT EMPLOYEE 3 recounted that COMPLAINANT 1, another individual and SUBJECT OFFICER had an argument but APARTMENT EMPLOYEE 3 did not recount specific language used. APARTMENT EMPLOYEE 4 recounted that prior to their physical interaction SUBJECT OFFICER informed COMPLAINANT 1 she could not enter the rental office in a few different ways. APARTMENT EMPLOYEE 4 did not note anything about his tone or language.

The only witness' testimony that asserts SUBJECT OFFICER cursed at COMPLAINANT 1 is that of WITNESS 3 and is not credible. Further WITNESS 3 was not present for the entire morning. WITNESS 3 also asserted that SUBJECT OFFICER knew COMPLAINANT 1 from around the neighborhood and that "he likes to nit-pick with her" alleging that he might be this way with her because he is homophobic. In fact, COMPLAINANT 1 stated that December 7, 2016 was the first time she interacted with SUBJECT OFFICER.

COMPLAINANT 1 asserted that SUBJECT OFFICER was uptight and angry. She said that he kept telling the people to "move the line back" and that she thought he wanted her to say

“yes”. Despite several attempts to elicit what COMPLAINANT 1 believed the officer wanted her to say “yes” to, COMPLAINANT 1 did not provide a specific question or example. COMPLAINANT 1 and WITNESS 1 assert that SUBJECT OFFICER inappropriately stared at them for an extended period of time. Based on the limited facts available, the Complaint Examiner does not find this behavior, if it did occur, rises to the level of misconduct. SUBJECT OFFICER along with one other officer was responsible for maintaining order over a group of several hundred people; it is improbable that he would spend up to fifteen minutes staring at COMPLAINANT 1 and her friends. On the other hand, it seems reasonable that if an officer had concerns that an individual was not complying with expectations on the line, that the officer might monitor the situation by carefully watching the individual.

Although COMPLAINANT 1 called COMPLAINANT 2 multiple times while she was on line and reported tension with an officer, COMPLAINANT 2 did not overhear their conversations and was not present for any of their communications until after SUBJECT OFFICER and COMPLAINANT 1 had a physical interaction. COMPLAINANT 2 believes she heard SUBJECT OFFICE say something to COMPLAINANT 1 but could not remember SUBJECT OFFICER threatening her<sup>6</sup> but did find him intimidating. She recalled him saying “move back” when COMPLAINANT 1 was being arrested but this language has been deemed appropriate by the Office of Police Complaints. While COMPLAINANT 2’s statement is credible it does not establish inappropriate language or conduct by SUBJECT OFFICER.

The Report of Investigation finds SUBJECT OFFICER incredible in part because he did not recall the exchange that COMPLAINANT 1 and WITNESS 1 had with him regarding WITNESS 1’s face mask. The Complaint Examiner gives limited weight to this omission for the following reasons: in light of the surrounding circumstances including a crowd of several hundred people, the incident and arrest that followed, and that the interview with SUBJECT OFFICER occurred approximately ten months after the incident. Moreover, when an officer is assessing a crowd and interacting with individuals, requesting that an individual remove her facemask may be a reasonable request in some instances. This demand is not dispositive of inappropriate language or conduct.

The examiner is empathetic that the circumstances were highly charged and that COMPLAINANT 1 ultimately was deprived of a significant opportunity to apply for housing and that the ensuing incident impacted her work and livelihood. Despite this, and in consideration of the totality of the circumstances, there is insufficient evidence to conclude that SUBJECT OFFICER used inappropriate language or conduct with COMPLAINANT 1 on December 7, 2016.

## **V. DETERMINATION**

### **SUBJECT OFFICER**

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<sup>6</sup> COMPLAINANT 1 also denies that SUBJECT OFFICER threatened her.

<b>Allegation 1: Harassment</b>	Sustained
<b>Allegation 2: Language or Conduct</b>	Insufficient Facts

Submitted on April 9, 2018

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Rebecca Goldfrank  
Complaint Examiner