

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	17-0397
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Failure to Identify (May 1, 2017)
Allegation 2:	Failure to Identify (May 21, 2017)
Complaint Examiner:	Rebecca Goldfrank
Merits Determination Date:	December 4, 2017

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

On May 1, 2017, several police officers came to COMPLAINANT's apartment in response to a domestic dispute between him and his girlfriend. After COMPLAINANT's initial interaction with the officers ended, three of the officers, including SUBJECT OFFICER, exited the apartment building and stood on the sidewalk nearby, visible from COMPLAINANT's apartment window. COMPLAINANT leaned out of his apartment window while the officers were on the sidewalk talking and yelled to them requesting SUBJECT OFFICER's name and badge number. SUBJECT OFFICER ignored COMPLAINANT's repeated requests for this information.¹

On May 21, 2017, COMPLAINANT alleges that he was driving past AN INTERSECTION IN N.E. WASHINGTON, DC, when he saw SUBJECT OFFICER walking to her police vehicle. COMPLAINANT asserts that he asked, "Can I get your name and badge number now?" COMPLAINANT asserts that SUBJECT OFFICER responded, "How can I help

¹ COMPLAINANT also alleged that on May 1, 2017, WITNESS OFFICER 1 harassed him by unlawfully entering his apartment. Pursuant to D.C. Code 5-1108 (1), on August 31, 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.

you sir? Why do you need to know my name and badge number?" COMPLAINANT believes that SUBJECT OFFICER recognized him because of her eye contact with him and the "strong" way that she looked at him. SUBJECT OFFICER never provided her name or badge number.

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 October 2, 2017, 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 October 2, 2017, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On May 1, 2017, at about 2 p.m. SUBJECT OFFICER responded to COMPLAINANT's apartment building following a report of a family disturbance. There were other officers on the scene first. COMPLAINANT asserts that the first officers on the scene including SUBJECT OFFICER unjustly obtained a key from the rental office of his apartment building to enter his home without a search warrant.
2. After the incident for which the police were called was resolved, SUBJECT OFFICER, WITNESS OFFICER 2, and a third officer stood outside of COMPLAINANT's apartment building talking.
3. COMPLAINANT recorded the three officers on cell phone video from a window of his apartment. The officers' voices can be heard on the recording although their words are initially not clear. COMPLAINANT can be heard repeatedly asking WITNESS OFFICER 2 and later SUBJECT OFFICER for SUBJECT OFFICER's name and badge number. WITNESS OFFICER 2 briefly stops his conversation with SUBJECT OFFICER and acknowledges COMPLAINANT telling COMPLAINANT to "stand by for a second" and that he will provide the information. WITNESS OFFICER 2's statements are clearly understandable.
4. A few minutes later, SUBJECT OFFICER, WITNESS OFFICER 2 and the third officer turn the corner out of COMPLAINANT's video's view. COMPLAINANT then appears to open the gate of his window and lean out the window and refocus the video on the three officers now standing by the curb. Their voices can be heard though less clearly. COMPLAINANT says to WITNESS OFFICER 2 that he is still waiting and that he needs "her" name and badge number several times referring to SUBJECT OFFICER.

WITNESS OFFICER 2 tells COMPLAINANT to wait a minute. COMPLAINANT continues talking stating that he intends to write the officers up. COMPLAINANT states that it was unjust for SUBJECT OFFICER to go to his rental office and obtain a key to his apartment without a search warrant. SUBJECT OFFICER can be heard responding that she did not go to the rental office.

5. COMPLAINANT then states: "I just need your name and your badge number. I just need your name and your badge number...name and badge number please. I'm asking for name and badge number (sic) no one would give me. I'm asking for name and badge number (sic) no one would give me. I need name and badge number."
6. SUBJECT OFFICER does not respond to COMPLAINANT's requests. She can later be seen walking away from the scene and getting into her vehicle.
7. On May 21, 2017, at about 8:30 a.m. COMPLAINANT was in a car near AN INTERSECTION IN N.E. WASHINGTON, DC, when he saw SUBJECT OFFICER again in uniform walking toward her police vehicle. COMPLAINANT asked, "Can I get your name and badge number now?" SUBJECT OFFICER did not provide her name or badge number. SUBJECT OFFICER responded, "How can I help you sir?" COMPLAINANT took a picture from his car of SUBJECT OFFICER and her vehicle and left.
8. The exchange between SUBJECT OFFICER and COMPLAINANT was witnessed by WITNESS OFFICER 3. Although WITNESS OFFICER 3 did not recall exactly what was said, she believed there may have been an exchange of words between SUBJECT OFFICER and COMPLAINANT. SUBJECT OFFICER told WITNESS OFFICER 3 that she was familiar with the individual.

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 "... (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."

A. FAILURE TO IDENTIFY

MPD General Order 201.26 Section V.C.1.e requires MPD officers to "give their first and last name and badge numbers in a respectful and polite manner" when requested to do so by a member of the public. There are two separate allegations of failure to identify discussed in turn below in this determination.

1. May 1, 2017 Incident

COMPLAINANT's video recording of his repeated demands to SUBJECT OFFICER for her name and badge number and SUBJECT OFFICER's failure to respond to these requests substantiates this allegation. WITNESS OFFICER 2 who was in a conversation with SUBJECT OFFICER is heard responding to COMPLAINANT's request shortly after the video begins. Later in the recording, SUBJECT OFFICER can be heard denying COMPLAINANT's accusation (which he yelled from the same location as his multiple requests for her name and badge number) that she improperly obtained the master key to his apartment. Because SUBJECT OFFICER was able to hear and respond to this accusation, she could hear and could have also responded to COMPLAINANT's numerous requests for her name and badge number.

In her June 29, 2017 interview with an OPC Investigator, SUBJECT OFFICER stated that after she left COMPLAINANT's apartment building she was aware that COMPLAINANT was yelling from his window and holding a camera in his hand. In her interview she stated that she was unable to hear exactly what COMPLAINANT was yelling about and she was unaware whom he was talking to. SUBJECT OFFICER's statements and her response to the ROI are belied entirely by the video provided by COMPLAINANT which recorded both WITNESS OFFICER 2² and SUBJECT OFFICER providing responsive replies to two of COMPLAINANT's statements. Further, throughout the recording, the officers' voices can be heard although somewhat fragmented; it is therefore more likely than not that the officers could also hear COMPLAINANT. It is incredible to believe that after WITNESS OFFICER 2 paused his conversation with SUBJECT OFFICER, maintained his same position next to SUBJECT OFFICER to address COMPLAINANT in the window, and informed COMPLAINANT to wait a moment for that information, that SUBJECT OFFICER was unaware that COMPLAINANT requested her name and badge number. It is further unbelievable that SUBJECT OFFICER was unaware that COMPLAINANT remained in the window making repeated demands for her name and badge number. Even if SUBJECT OFFICER did not hear some of the later statements by COMPLAINANT that preceded her response to him about the key, it is incredible that she was not aware that he had asked for her name and badge number several minutes earlier at the beginning of the recording or following her one reply to him.

2. May 21, 2017 Incident

SUBJECT OFFICER gave inconsistent statements regarding the encounter she had with COMPLAINANT on May 21, 2017. During her June 29, 2017 interview with OPC, she stated that she initially did not know who was in the car; she later stated that she told WITNESS OFFICER 3 that she thought she knew the man from another call. WITNESS OFFICER 3's recounting of the events that morning in her interview with OPC supports the statement that

² Although WITNESS OFFICER 3's conduct is not at issue in this determination, it is unclear to this examiner why he did not simply instruct SUBJECT OFFICER to provide her name to COMPLAINANT or provide that information himself when he responded to COMPLAINANT's request for this information rather than to tell him to wait and ultimately ignore COMPLAINANT's numerous requests. In his senior position he too has important responsibilities of civility and respect to the public and should ensure that subordinate officers maintain those standards.

SUBJECT OFFICER did recognize COMPLAINANT. This is consistent with COMPLAINANT's statement that he had eye contact with SUBJECT OFFICER and that she gave him a "strong" look – like she knew him.

SUBJECT OFFICER stated that COMPLAINANT was "nowhere near" where she was and later said that COMPLAINANT was three or four car lengths away from her. WITNESS OFFICER 3 estimated that she thought COMPLAINANT was across the street. COMPLAINANT did not provide an estimate of how far he was from SUBJECT OFFICER although he was able to take a photo that clearly identifies her and he observed that she was holding a bottle in her hand.

The photo of SUBJECT OFFICER approaching her police vehicle is a clear and undistorted photo. It appears to be taken from inside a vehicle. The photo is not pixilated; the quality and definition are clear. The right side view mirror of COMPLAINANT's vehicle is in focus at the foreground of the photo, indicating that the camera was not zoomed in. COMPLAINANT's car is on the same side of the street as SUBJECT OFFICER and appears to be about one car length away from her.

Both SUBJECT OFFICER and COMPLAINANT state that SUBJECT OFFICER said "How can I help you sir?" WITNESS OFFICER 3 stated that an exchange may have occurred between COMPLAINANT and SUBJECT OFFICER. Given the totality of the circumstances, including the inconsistencies provided by SUBJECT OFFICER regarding this and the May 1, 2017 incident, and her prior failure to provide her name or badge number despite repeated requests, there is sufficient evidence to believe that COMPLAINANT did indeed ask SUBJECT OFFICER for her name and badge number on May 21, 2017, that she heard this request, and that SUBJECT OFFICER did not provide this information.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Failure to identify (May 1, 2017)	Sustained
Allegation 2: Failure to identify (May 21, 2017)	Sustained

Submitted on December 4, 2017

Rebecca Goldfrank
Complaint Examiner