

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	17-0604
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER 1 SUBJECT OFFICER 2
<b>Allegations 1-3:</b>	Insulting, Demeaning, or Humiliating Language or Conduct (SUBJECT OFFICER 1)
<b>Allegations 4-5:</b>	Insulting, Demeaning, or Humiliating Language or Conduct (SUBJECT OFFICER 2)
<b>Complaint Examiner:</b>	Laurie S. Kohn
<b>Merits Determination Date:</b>	March 22, 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). 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 July 22, 2017, SUBJECT OFFICER 1 used language or engaged in conduct toward him that was insulting, demeaning, or humiliating when she read his t-shirt out loud, inquired about where he worked, and used profanity during a traffic stop. He further alleges that during the same stop, SUBJECT OFFICER 2 used language or engaged in conduct toward him that was insulting, demeaning, or humiliating when he made comments about his financial situation and his upkeep of his car and when he used profanity.<sup>1</sup>

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<sup>1</sup> In addition, the Complainant alleged that WITNESS OFFICER and SUBJECT OFFICER 1 harassed him by touching their holstered weapons during a traffic stop. COMPLAINANT alleged that WITNESS OFFICER used language toward him that was insulting, demeaning, or humiliating when he told him that his driving was horrible and used profanity. The Complainant additionally alleged that SUBJECT OFFICER 1 used language toward him that was insulting, demeaning, or humiliating when she told him to shut up. He further alleged that SUBJECT OFFICER 1 harassed and intimidated him when she warned him that she was losing her patience. Finally, the Complainant alleged that WITNESS OFFICER, SUBJECT OFFICER 1, and SUBJECT OFFICER 2 harassed him by detaining him for an unreasonable period of time for the traffic stop and discriminated against him based on his age and color. On December 18, 2017, pursuant to D.C. Code § 5-1108(1), a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director.

## **II. EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, the body-worn camera footage, the objections submitted by SUBJECT OFFICER 1 and SUBJECT OFFICER 2 on January 9, 2018, 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 body-worn camera footage, the objections submitted by SUBJECT OFFICERS 1 & 2 on January 9, 2018, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On July 22, 2017 at approximately 4:00 p.m., SUBJECT OFFICER 1, SUBJECT OFFICER 2, and WITNESS OFFICER pulled Complainant over in his car in the 6300 block of A STREET IN NW, WASHINGTON, DC.
2. Complainant had crossed the double yellow line into oncoming traffic in order to pass a motorist who had been in front of him going in the same direction. The motorist had been driving slowly and starting and stopping erratically.
3. WITNESS OFFICER and SUBJECT OFFICER 1 approached Complainant and engaged him in conversation, eventually asking for his license and registration. WITNESS OFFICER asked him to step out of the vehicle and stand behind the trunk of his car. Complainant complied.
4. SUBJECT OFFICER 2 ran Complainant's license and reported that Complainant did not have a valid license. The officers discovered that Complainant's car was not registered and that it did not have side mirrors.
5. SUBJECT OFFICER 1 engaged Complainant in conversation behind the car. Complainant had an impatient and hostile attitude with the officers, using extensive profanity. However, Complainant was not excessively agitated or threatening at any point during the stop.
6. SUBJECT OFFICER 1's tone throughout the conversation was calm and patient. She read Complainant's t-shirt out loud: "Bad decisions make great stories." Then she asked him where he worked. Complainant told her it was none of her business to which she replied that she was just asking.

7. WITNESS OFFICER approached Complainant and asked for proof of insurance. Complainant informed the officers that proof was somewhere in his car. WITNESS OFFICER told Complainant to take a few minutes to look for it.
8. The Complainant entered the car and started looking through documents. SUBJECT OFFICER 1 and SUBJECT OFFICER 2 moved to the driver's side door where they were able to watch Complainant search through a handful of papers.
9. Complainant informed the officers: "I ain't doing nothing but looking at some paperwork." SUBJECT OFFICER 1 replied patiently: "Alright. Go ahead. I didn't even say nothing. Go ahead and do your thing man. Find what you need to find."
10. Not finding proof of insurance, Complainant exited the vehicle and started pacing. After several requests from SUBJECT OFFICER 1 to stand behind the car, Complainant complied.
11. Complainant, visibly irritated then commented: "This is some extra shit. Would y'all do that shit to a white motherfucker? Would you do that shit to a cracker?" SUBJECT OFFICER 1 calmly responded: "Call it what you want." SUBJECT OFFICER 2, in a calm tone of voice explained: "You did it to yourself. You have no fucking mirrors on this car and you riding around thinking it's ok. How the hell can you see when you need to get over?"
12. SUBJECT OFFICER 2 went on: "This is your shit. It ain't got nothing to do with us. We doing our job. Mother fuckers always wants to play this race card bullshit."
13. SUBJECT OFFICER 1 chimed in: "Yeah, that shit gets old."
14. SUBJECT OFFICER 2 then continued: "This ain't the fucking sixties."
15. Complainant at this point responded: "Man, you don't know my financial situation." To which SUBJECT OFFICER 2 retorted: "It don't matter. It don't matter about financial situation. It don't matter about that. You know you supposed to have mirrors on the side. You know your car is supposed to be registered. So if you don't have the money to do it, you shouldn't be driving. That's common sense. Y'all make it hard on y'all self. We don't do no extra shit."
16. SUBJECT OFFICER 1 joined the conversation, saying: "You not even being humble about it. You being an asshole."
17. Complainant noted that he didn't appreciate the advice about his car. SUBJECT OFFICER 1 responded: "You can go get these same mirrors for fucking 15 dollars." And later he added: "I don't want to hear nothing about no damn money."

18. The officers gave Complainant time to call his insurance company to obtain proof of insurance. Complainant was on the phone for a significant period of time. During that time, none of the officers spoke to Complainant or express impatience.
19. A second police cruiser arrived on the scene to bring a ticket writer since WITNESS OFFICER did not have it with him. The officers issued Complainant six tickets and concluded the stop.
20. SUBJECT OFFICER 1 turned on her body-worn camera (BWC) at some point after the stop commenced and turned it off prior to the end of the stop. SUBJECT OFFICER 2 activated his BWC after SUBJECT OFFICER 1 had activated hers and similarly turned it off prior to the conclusion of the stop. WITNESS OFFICER was not using his BWC that day since his screen was cracked and he had received permission to patrol without a BWC.

#### 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.”

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.”

Further, Section C continues by mandating that members “[a]void engaging in idle conversation on racial, religious, political, or other controversial subjects.” In addition, it states: “In an effort to strengthen the citizen-officer relationship, the personal conduct and attitude of the police officer is of paramount importance. Members must understand that the basis of a professional attitude is a desire and a willingness to serve the public. However, members must distinguish between service and servility and between courtesy and softness.”

Finally, Section C specifies that “[i]n the performance of their duty, members should develop a disposition that is pleasant and personable in nonrestrictive situations...[and should ] familiarize themselves with the members of the community, businesses, and neighborhoods in which they patrol. Members should develop relationships and foster open communication with community members.” An officer must balance these directives while interacting with citizens during a stop. The stop SUBJECT OFFICER 1 and SUBJECT OFFICER 2 conducted when they pulled Complainant over on July 22, 2017 was one that had the potential to test the patience and courtesy of all of those involved. For reasons attributable to both the officers and Complainant, the stop lasted an extended period of time necessitating extensive interaction.

### **SUBJECT OFFICER 1**

First, Complainant’s allegations against SUBJECT OFFICER 1 will be addressed. Complainant alleges that on July 22, 2017, SUBJECT OFFICER 1’s conduct violated MPD General Order 201.26, Part V, Section C, when she used language toward him that was insulting, demeaning, or humiliating when she read his t-shirt out loud, inquired about where he worked, used profanity. Thanks to body-worn camera (BWC) footage, the facts about what was said during Complainant’s traffic stop are not in dispute. Not surprisingly, Complainant’s recollection differs from SUBJECT OFFICER 1’s. Both accounts differ from what was captured on the BWC footage, which is, in the end, the crucial evidence related to these allegations.

Indeed, SUBJECT OFFICER 1 did read Complainant’s t-shirt out loud as he alleged and she admitted. Complainant’s t-shirt read “bad decisions make great stories.” The key question is, therefore, was that action demeaning or humiliating. In his interview with OPC, Complainant reported that SUBJECT OFFICER 1 kept reading his t-shirt and “talking smart” to him. He did not speak about how it made him feel when she read his shirt. Further, he did not even report that she read his shirt out loud in the complaint he filed with OPC on July 25, 17, just three days after the incident. BWC footage reveals the context of her decision to read his t-shirt. At the time SUBJECT OFFICER 1 read out Complainant’s t-shirt, Complainant had been standing behind his car for several minutes as the officers spoke with him about his lack of valid registration, driver’s license, and side mirrors on his car. The officers were waiting for a ticket-writing machine to be delivered. Complainant was fairly irritated at the time and SUBJECT OFFICER 1 patiently suggested he calm down. She said: “You gotta have some patience man. Where are you in a rush to?” He responded: “Home.” She said, “I got you. But you wanna get there, right?” She then told him to chill out. As the other officers wandered around the site preparing to write the tickets, SUBJECT OFFICER 1 stood facing Complainant. After a moment, she read the t-shirt. She did so without a comment and without any judgment in her tone.

Given this context and Complainant’s failure to articulate any basis, let alone a reasonable one, to interpret this action as humiliating or demeaning, SUBJECT OFFICER 1’s reading of the t-shirt does not violate MPD General Order 201.26, Part V, Section C.

Complainant further alleged that SUBJECT OFFICER 1’s question about where he worked was insulting, demeaning, or humiliating. Specifically, Complainant alleged that her

question about where he worked embarrassed him in that it suggested to him she guessed he had a “crappy job because of how” he looked. In his interview with OPC, he reported he believed she asked about where he worked so she could harass him with more tickets at work. SUBJECT OFFICER 1 posed this question about where he worked directly on the heels of having read Complainant’s t-shirt. She was still standing opposite him waiting for the tickets to be written. Complainant had not responded to her after she read his t-shirt out loud. There was a pause before she asked: “Where you work at?” Again, the tone of her voice was calm and was non-confrontational. At the time, there had been no prior conversation about Complainant’s ability to pay to keep his car in shape. Instead, SUBJECT OFFICER 1’s question merely appears to be another attempt to make conversation with Complainant to diffuse an aggravating situation. In fact, her question appears squarely in compliance with the directive in MPD General Order 201.26, Part V, Section C, dictating that officers should maintain a “disposition that is pleasant and personable in nonrestrictive situations...[and should] familiarize themselves with the members of the community, businesses, and neighborhoods in which they patrol. Members should develop relationships and foster open communication with community members.” As such, her conduct does not amount to conduct toward Complainant that was insulting, demeaning, or humiliating.

Finally, Complainant alleged that SUBJECT OFFICER 1 used language that was insulting, demeaning, or humiliating when she used profanity in violation of MPD General Order 201.26, Part V, Section C. Although SUBJECT OFFICER 1 did not recall if she used profanity during her OPC interview, the BWC footage clearly reveals that she said: “Yeah, that shit gets old,” when referring to Complainant’s assertions that he was being treated differently because of his race. The footage also reveals that SUBJECT OFFICER 1 told Complainant that he was “being an asshole.” The MPD General Order dictates that officers not use profanity regardless of provocation. SUBJECT OFFICER 1 exercised exemplary patience during most of this stop in spite of Complainant’s hostility. She would have been well advised to maintain her professionalism in regard to her language as well. Therefore, although Complainant was also liberally using profanity, SUBJECT OFFICER 1’s use of profane words during this traffic stop was inappropriate and amounted to words that were that insulting, demeaning, or humiliating.

### **SUBJECT OFFICER 2**

This determination now turns to the allegations against SUBJECT OFFICER 2. Complainant alleged that SUBJECT OFFICER 2 used language toward him that was insulting, demeaning, or humiliating when he made comments about his financial situation and the upkeep of his car and when he used profanity. Specifically, Complainant asserted that SUBJECT OFFICER 2 said “if you can’t get your car fixed you don’t deserve to even drive.” In the complaint, he commented that he felt insulted. In his OPC interview, Complainant asserted that it wasn’t right for the officers to make comments about his car because of the way it looked at the time.

Given the context in which SUBJECT OFFICER 2 spoke of Complainant’s financial status, SUBJECT OFFICER 2’s words cannot be reasonably interpreted as insulting, demeaning,

or humiliating. The BWC footage captured the actual words that were spoken and the tone in which they were delivered. Complainant himself first raised the topic of finances with the officers. Because driving without side mirrors is not legal, SUBJECT OFFICER 2 appropriately raised the issue with Complainant, pointing out he had no side mirrors and asking how he can change lanes without them. Complainant defended the condition of his car by responding: "You don't know what my financial situation is." In response, SUBJECT OFFICER 2 pointed out that his financial situation was irrelevant to the upkeep of his car and that he could get side mirrors for \$15.00. Complainant took particular offense at SUBJECT OFFICER 2's subsequent assertion: "if you don't have the money to [fix the side mirrors], you shouldn't be driving. That's common sense."

While the plain language of MPD General Order 201.26, Part V, Section C, does not require a particular intent to humiliate on the part of the officer, it also does not set forth a standard for assessing the reasonableness of a complainant's reaction. However, the MPD directive could not reasonably rest entirely on the subjective reaction of citizens to statements made by officers. Such a standard would render officers subject to discipline any time citizens might assert that they felt humiliated regardless of the reasonableness of that reaction. To prevail in a complaint against an officer for words or conduct that is insulting, demeaning, or humiliating, a complainant must be able to allege that he or she reasonably felt insulted, demeaned or humiliated given the totality of the circumstances. Here, while Complainant may have heard this statement as demeaning, such an interpretation would not be reasonable given the circumstances. Complainant defended the state of his car by pointing out that the officers didn't know his financial situation. In context of this conversation, SUBJECT OFFICER 2's statement was quite clearly a rational response to Complainant's statement regarding finances.

Finally, Complainant alleged that SUBJECT OFFICER 2 used language that was insulting, demeaning, or humiliating when he used profanity in violation of MPD General Order 201.26, Part V, Section C. SUBJECT OFFICER 2 did not recall specifically what words he used during the stop, but admitted that he used profanity. The BWC footage clearly reveals that he repeatedly used the word "fucking" and that he also stated: "This is your shit. It ain't got nothing to do with us. We doing our job. Mother fuckers always wants to play this race card bullshit." Again, the MPD General Order dictates that officers not use profanity regardless of provocation. Therefore, although Complainant also liberally used profanity, SUBJECT OFFICER 2's utterance of profane words during this traffic stop was inappropriate and amounted to words that were that insulting, demeaning, or humiliating.

Neither officer could cite to a specific directive against using profanity in the presence of a citizen.<sup>2</sup> These officers are urged to refamiliarize themselves with relevant MPD General Orders, specifically General Order 201.26, Part V, Section C. Further, they are encouraged to use their common sense and good judgment when interacting with the public. Although both officers

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<sup>2</sup> SUBJECT OFFICER 2 did, however, note that "officers are supposed to be professional and I used profanity." He is to be commended for his honesty and his understanding of his general responsibilities.

exercised impressive patience during the stop at issue, their use of profanity undercut their professionalism, antagonized Complainant, and generally undermined the respect that should be accorded to uniformed members of the Metropolitan Police Department. The officers should be advised to exercise more restraint and care in choosing their words while interacting with citizens.

**V. SUMMARY OF MERITS DETERMINATION**

| SUBJECT OFFICER 1

<b>Allegation 1- Language: Profanity</b>	Sustained
<b>Allegation 2- Language or Conduct: Reading T-shirt</b>	Unfounded
<b>Allegation 3-Language or Conduct: Inquiring about Employment</b>	Unfounded

SUBJECT OFFICER 2

<b>Allegation 4-Language: Profanity</b>	Sustained
<b>Allegation 5- Language or Conduct: Discussing Finances</b>	Unfounded

Submitted on March 22, 2018.

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Laurie S. Kohn  
Complaint Examiner