

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	17-0655
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Richard S. Ugelow
Merits Determination Date:	December 26, 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

Around 3 a.m. on August 13, 2017, SUBJECT OFFICER was on patrol in the area of A STREET IN NW, WASHINGTON DC. The complainant sought SUBJECT OFFICER's assistance because without provocation he had been punched in the face by an individual who appeared to be intoxicated. COMPLAINANT was also punched by an individual accompanying the assailant in SUBJECT OFFICER's view. COMPLAINANT wanted SUBJECT OFFICER to take action against the individuals, but he did not. Instead, according to COMPLAINANT, SUBJECT OFFICER said that the two individuals should have hit him two more times. He also told COMPLAINANT to "Get the fuck out of here."

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint, Based on a review of OPC's Report of Investigation, the objections submitted on behalf of SUBJECT OFFICER by the DC Police Union on December 11, 2017, and OPC's response to the objections, the Complaint Examiner determined that the Report of Investigation (ROI) presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs. tit. 6A, § 2118.3.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the objections submitted on behalf of SUBJECT OFFICER by the DC Police Union on December 11, 2017, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. At approximately 3:00 a.m. on August 13, 2017, the complainant, COMPLAINANT, was walking on A STREET IN NW, WASHINGTON DC, when he was assaulted by two individuals, one of whom appeared to be intoxicated.
2. The assault was unprovoked and occurred when COMPLAINANT was on a work break.
3. SUBJECT OFFICER was in his police cruiser on this block.
4. COMPLAINANT waived to catch the attention of SUBJECT OFFICER after his was punched the first time.
5. SUBJECT OFFICER exited his cruiser and walked toward COMPLAINANT.
6. A second individual, who was with the assailant punched COMPLAINANT in the presence of SUBJECT OFFICER.
7. SUBJECT OFFICER walked away from COMPLAINANT without taking any action.
8. COMPLAINANT had visible injuries to his face from the altercation.
9. COMPLAINANT approached SUBJECT OFFICER to ask why he did not provide help.
10. SUBJECT OFFICER turned his back on COMPLAINANT and said "Get the fuck out of here. Get the fuck out of here. Get out of here, man."
11. SUBJECT OFFICER further said "He [the assailant] should have stole [hit or punch] you two time. You should've went home, fool."
12. While walking away from COMPLAINANT, SUBJECT OFFICER said "Why y'all in the same fight out here? Exactly, Exactly, Take your ass home."
13. WITNESS OFFICER arrived on the scene in response to SUBJECT OFFICER's request for backup.
14. WITNESS OFFICER activated his body worn camera (BWC) that recorded part of the interaction between SUBJECT OFFICER and COMPLAINANT, including the language quoted above.

15. SUBJECT OFFICER did not activate his BWC, even though he was wearing one.

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, course, 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 complainant sought the assistance of SUBJECT OFFICER after he was hit in the face by an unknown assailant early in the morning of August 13, 2017. While walking toward COMPLAINANT, SUBJECT OFFICER witnessed another punch thrown at COMPLAINANT by a companion of the assailant. Rather than helping COMPLAINANT, SUBJECT OFFICER turned his back and told him to “Get the fuck out of here,” and “you should’ve went home, fool.” He further told COMPLAINANT that the assailant should have hit him two times and told him to “Take your ass home.” All of this was recorded on a BWC worn by WITNESS OFFICER, who responded to the scene in response to SUBJECT OFFICER’s request for assistance. At no time during this incident did SUBJECT OFFICER turn on his BWC.

When interviewed by OPC, SUBJECT OFFICER specifically denied using curse words at COMPLAINANT or raising his voice. On the contrary, he told OPC, that COMPLAINANT asked “Can I fuck this guy up?” SUBJECT OFFICER then told COMPLAINANT “Hey, look man, you need to go home. You can’t do that” and “get out of here.” The Complaint Examiner reviewed the BWC footage which offers no support for SUBJECT OFFICER’s statements to the OPC investigator. On the contrary, the BWC supports COMPLAINANT’s version of the events.

Apparently realizing the lack of corroboration for his statements to OPC, SUBJECT OFFICER now seeks mediation. See Objections filed to the Report of Investigation by the Police Union on behalf of SUBJECT OFFICER. Indeed, the Objections all but confirm that SUBJECT OFFICER's words and actions were in violation of the DC Code and MPD General Orders. The Objections go on to state that SUBJECT OFFICER seeks mediation in order, among other matters, to apologize to COMPLAINANT. While this offer is admirable, COMPLAINANT specifically declined mediation when it was brought up to him as a possibility and the Complaint Examiner is without authority to compel mediation.

The Complaint Examiner finds that the language used by SUBJECT OFFICER in addressing COMPLAINANT was "harsh, violent, coarse, profane, sarcastic, and insolent" in violation of MPD General Order 201.26, Part V, Section C. Likewise, the dismissive way SUBJECT OFFICER treated COMPLAINANT was insulting demeaning, and humiliating in violation of DC Code § 5-1107 and General Order 201.26. The allegation of a violation of General Order 201.26 is therefore sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation: Insulting, Demeaning, or Humiliating Language or Conduct	Sustained
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Submitted on December 26, 2017.

Richard S. Ugelow
Complaint Examiner