

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	18-0331
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Richard S. Ugelow
Merits Determination Date:	July 25, 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 § 5-110. 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 March 2, 2018, the Complainant was sitting in his parked car near A CROSSSTREET IN NE, WASHINGTON, DC, when he was approached on the driver's side by SUBJECT OFFICER for having temporary license plates issued by Pennsylvania. COMPLAINANT alleged that SUBJECT OFFICER harassed him by threatening him with arrest. COMPLAINANT further alleged that SUBJECT OFFICER used language or engaged in conduct toward him that was insulting, demeaning, or humiliating when SUBJECT OFFICER addressed him in an unnecessary, nasty and condescending manner.

II. EVIDENTIARY HEARING

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. This determination was based on a review of OPC's Report of Investigation, the objections submitted by the FOP on behalf of SUBJECT OFFICER dated July 6, 2018,¹ OPC's

¹ The FOP asks that the Complaint Examiner refer this complaint for mediation. However, only the OPC Executive Director has that authority.

response to the objections, and the Complaint Examiner's review of the Body Worn Camera (BWC) footage.²

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the objections submitted by the FOP on behalf of SUBJECT OFFICER on July 6, 2018, OPC's response to the objections and a review of the BWC footage, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On March 2, 2018, the complainant was driving home from work when he was stopped near the intersection of A CROSSSTREET IN NE, WASHINGTON, DC, by SUBJECT OFFICER.
2. COMPLAINANT had recently purchased his car in Pennsylvania and it had temporary Pennsylvania license plates with an expiration date of REDACTED DATE. The car had tinted windows.
3. SUBJECT OFFICER was driving an unmarked MPD police cruiser. Two other MPD officers were in the cruiser. Each officer was in uniform.
4. SUBJECT OFFICER told COMPLAINANT that he was stopped for driving with in-transit license plates.
5. COMPLAINANT provided SUBJECT OFFICER with his driver's license and car registration.
6. SUBJECT OFFICER told COMPLAINANT that it was unlawful to use in-transit tags to "joy ride" and such use was an arrestable offense for which COMPLAINANT could go to jail.
7. SUBJECT OFFICER asked COMPLAINANT where he worked, to which COMPLAINANT replied in a conversational tone: "I am not trying to be funny, but does that really make a difference?"
8. SUBJECT OFFICER replied: "I'm trying to make conversation with you. If you want to be smart about it. I just told you that I can take you to jail and now you're trying to be smart, so obviously you don't care if you get placed in handcuffs and to jail, right?"

² The FOP requests an evidentiary hearing. Under OPC procedures, The Complaint Examiner has sole authority to determine whether a hearing will be held or not. The decision not to hold a hearing in this case is not a close one. The BWC by three different officers, including SUBJECT OFFICER, unambiguously provide the relevant and uncontradicted information.

9. COMPLAINANT said that he was not being difficult, to which SUBJECT OFFICER replied “Okay, you’re going to make it difficult if you’re going to have an attitude.”
10. SUBJECT OFFICER went on to explain the law of tinted windows and that COMPLAINANT’s car could be impounded. He further told COMPLAINANT that he could be taken to jail because of the tags.
11. SUBJECT OFFICER told COMPLAINANT: “I suggest you...next time don’t get smart...I’m trying to make conversation. If you don’t want to talk then that’s fine, but it might behoove you to have a conversation when I’m trying to be cordial when I already have enough to take your freedom away. Does that make sense?” COMPLAINANT replied: “I understand what you are saying.”
12. SUBJECT OFFICER then told COMPLAINANT: “I know you are trying to bite your tongue and suck in your pride because you don’t like the way I’m talking to you, but it is what it is. I mean you’re born in 1963. COMPLAINANT replied, “That’s correct.”
13. SUBJECT OFFICER continued: You’re older than me. I understand all of that, but you’re in a position that you’re vulnerable and I’m in a position to take all of that away, so if I just want to ask you where your...you know if you say DC Fire...if you had something to do with DC I’d like to do courtesy, cut breaks.....Do we understand each other?” To which, COMPLAINANT replied: “I understand what you are saying.”
14. Then SUBJECT OFFICER asks COMPLAINANT: “I’m sure you don’t want tickets or you don’t want your car impounded. And you don’t want to go jail, right?” COMPLAINANT told SUBJECT OFFICER that he did not want his car impounded and did not want to go to jail.
15. COMPLAINANT was not issued a citation by SUBJECT OFFICER.

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.”

1. Harassment

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.

SUBJECT OFFICER stopped COMPLAINANT because of the in-transit license plates on his car.³ SUBJECT OFFICER incorrectly told COMPLAINANT that he could not drive around DC with in-transit license plates and that his car would have to be parked until properly registered and that it was an arrestable offense for which COMPLAINANT could go to jail. SUBJECT OFFICER misrepresented the law. As the ROI correctly points out, there is no support in DC or Pennsylvania law for SUBJECT OFFICER’s assertion.

SUBJECT OFFICER asked COMPLAINANT the extraneous, irrelevant, and somewhat personal question “where do you work?” When COMPLAINANT responded, “I’m not trying to be smart, but does that really make a difference?” SUBJECT OFFICER replied: “I’m trying to make conversation with you. If you want to be smart about it. I just told you that I can take you to jail and now you’re trying to be smart, so obviously you don’t care if you get placed in handcuffs and go to jail, right?”

Indeed, SUBJECT OFFICER consistently reminded COMPLAINANT that he could be arrested, jailed, and have his car impounded. Stated differently, SUBJECT OFFICER threatened COMPLAINANT without cause. The BWC footage shows COMPLAINANT was polite and responsive to SUBJECT OFFICER. On the other hand, SUBJECT OFFICER became aggressive and nasty. The totality of the circumstances confirm that SUBJECT OFFICER harassed

³ The FOP objections claim that the stop was for illegal window tinting and not the in-transit license plates. SUBJECT OFFICER told COMPLAINANT that he was stopped for the in-transit tags and that was the focus of the dialogue between the parties.

COMPLAINANT within the meaning of MPD General Order 120.25 by threatening to arrest and jail him and to impound the car when he was not lawfully permitted to do so.

2. Language or Conduct

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.”

SUBJECT OFFICER accused COMPLAINANT of having an attitude and getting smart after COMPLAINANT asked why SUBJECT OFFICER needed to know where he worked. While COMPLAINANT was polite and restrained, SUBJECT OFFICER seemed to intentionally go after him. SUBJECT OFFICER said that COMPLAINANT should “know better,” “you are vulnerable,” “suck in your pride.” The BWC video shows SUBJECT OFFICER being disrespectful, nasty, sarcastic, and not treating COMPLAINANT with dignity. SUBJECT OFFICER engaged in conduct and used language toward the complainant that was insulting, demeaning, or humiliating, in violation of D.C. Code § 5-1107 and MPD General Order 201.26.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Sustained
Allegation 2: Language or Conduct	Sustained

Submitted on July 25, 2018.

Richard S. Ugelow
Complaint Examiner