

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	18 - 0391
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2
Allegation 1 (SUBJECT OFFICER #1 and SUBJECT OFFICER #2):	Harassment
Allegation 2 (SUBJECT OFFICER #2):	Language or Conduct
Complaint Examiner:	Rebecca Goldfrank
Merits Determination Date:	November 26, 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

Complainant filed a complaint with the Office of Police Complaints on April 3, 2018. COMPLAINANT alleged that on March 29, 2018 MPD SUBJECT OFFICER #2 engaged in conduct toward her that was insulting, demeaning or humiliating when he spoke to her in a condescending manner and belittled her while using an aggressive tone of voice. COMPLAINANT also alleges that SUBJECT OFFICER #2 and SUBJECT OFFICER #1 harassed her when they went to her place of work, spoke with her mother and aunt, and insinuated that she was homeless, a stripper or a prostitute.¹

¹ COMPLAINANT also alleged that SUBJECT OFFICER #1 harassed her by unlawfully searching her car and that SUBJECT OFFICER #1 used language toward her that was insulting, demeaning or humiliating when he asked if the other individual involved in the stop was paying for her services. Pursuant to D.C. Code 5-1108 (1), on August 7, 2018, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director. Report of Investigation at 1.

Specifically, COMPLAINANT stated that on March 29, 2018, at approximately 1:00 p.m., at A LOCATION IN NW, WASHINGTON, DC, she was smoking marijuana in her car with her friend, WITNESS #1. At that time SUBJECT OFFICER #2 and SUBJECT OFFICER #1 approached them and initiated a stop. During the stop, SUBJECT OFFICER #2's demeanor was rude and disrespectful and his tone of voice was aggressive. Although she did not recall specifically what SUBJECT OFFICER #2 said, COMPLAINANT felt that he was belittling her and talking down to her. Through their investigation, the officers learned that COMPLAINANT worked at a nearby business. Once the stop was completed, the officers went to her place of work and spoke with her mother and aunt. During this conversation, they insinuated that COMPLAINANT might be homeless, a stripper or a prostitute. COMPLAINANT, who is twenty-three (23) years-old, believed the officers' actions of disclosing her personal business and insinuating false information at her workplace and to her family members constituted harassment.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, the available body-worn camera footage, the objections submitted by the officers on September 17, 2018, and OPC's response to those 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 Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant and her friend, WITNESS #1, were stopped by SUBJECT OFFICER #2 and SUBJECT OFFICER #1 on March 29, 2018 near the corner of AN INTERSECTION IN NW, WASHINGTON, DC, at approximately 1:00 p.m.
2. At the time of their encounter with the police, COMPLAINANT and WITNESS #1 were in COMPLAINANT's car. Smoke and the smell of marijuana emanated from the car attracting the attention of SUBJECT OFFICER #2.
3. SUBJECT OFFICER #2 and SUBJECT OFFICER #1 interrogated COMPLAINANT and WITNESS #1 as they sat on the curb near the car. COMPLAINANT initially denied smoking marijuana and said that WITNESS #1 provided the marijuana. Through the interrogation and investigation, the officers learned, among other things, that COMPLAINANT's car was registered to COMPLAINANT's parents.
4. At the time of the stop, COMPLAINANT was twenty-three years-old. She told the officers that she was a student at A UNIVERSITY and worked at A BUSINESS IN WASHINGTON, DC.

5. SUBJECT OFFICER #1 took WITNESS #1 aside and asked him what COMPLAINANT did for a living noting that “it looks like she has some kind of nighttime employment.” SUBJECT OFFICER #1 also asked WITNESS #1 whether he was paying for COMPLAINANT’s services. WITNESS #1 said that COMPLAINANT worked at her family’s business and that they were friends through mutual friends.
6. SUBJECT OFFICER #1 searched COMPLAINANT’s car after she gave him permission to do so. While searching the car and trunk, SUBJECT OFFICER #1 observed multiple bags of clothing and inquired about the clothing. SUBJECT OFFICER #1 did not find additional marijuana or illegal substances.
7. SUBJECT OFFICER #2 and SUBJECT OFFICER #1 did not arrest COMPLAINANT or WITNESS #1. Nor did they give COMPLAINANT or WITNESS #1 a citation for the offense of smoking marijuana in public or driving under the influence. The officers did not require COMPLAINANT to leave her car at the scene because she was unable to drive.
8. After leaving the encounter with COMPLAINANT, SUBJECT OFFICER #2 and SUBJECT OFFICER #1 drove about two blocks to COMPLAINANT’s place of employment, her family’s business, on A STREET IN NW, WASHINGTON, DC.
9. The officers addressed WITNESS #2, COMPLAINANT’s aunt, who is co-owner of the store, when they arrived. There were other people in the store. The officers spoke openly about their encounter with COMPLAINANT to WITNESS #2. WITNESS #2 asked if the officers wanted to speak with COMPLAINANT’s mother and SUBJECT OFFICER #2 responded affirmatively. WITNESS #2 then called COMPLAINANT’s mother, WITNESS #3, on speaker phone and she spoke with the officers.
10. Both of the above encounters were recorded as body-worn camera footage of the several officers on the scene, including SUBJECT OFFICER #2 and SUBJECT OFFICER #1. SUBJECT OFFICER #2 and SUBJECT OFFICER #1’s body-worn camera recordings were cut off before the exchanges were over.

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. LANGUAGE OR CONDUCT

MPD General Order 201.26 (effective April 5, 2011), Part V, Section C, Nos. 1 and 3 state, “All members shall: (1) Be courteous and orderly in their dealings with the public...(3) Refrain from harsh, violent, coarse, profane, sarcastic, or insolent language.”

Considering the totality of the circumstances, SUBJECT OFFICER #2’s questioning of COMPLAINANT was done in a manner unbecoming of an MPD officer and constituted conduct

that was not courteous and language that was harsh and coarse. SUBJECT OFFICER #2's tone was patronizing and condescending – often talking to COMPLAINANT as though he were disciplining a child. For example, at one point while discussing her family's business and whether her mother was there at the time, SUBJECT OFFICER #2 leaned down toward COMPLAINANT who was sitting on the curb and threatened to call or have someone call her mother. Another example of condescending conduct is: after having already established her age through questioning and while discussing the technicalities of marijuana possession in the district, SUBJECT OFFICER #2 stated, "What part of this you don't [understand]...how old are you again?" Seconds later when COMPLAINANT was told that she could leave she responded that she would never do this again and SUBJECT OFFICER #2 retorted, "Yeah, you will" to which she said "I promise. No, I won't." SUBJECT OFFICER #2 then said "You lucky today....I'ma tell you. I'ma tell you, next time we see..." and deactivated his camera. [23:50]. The repetitive nature of his questions and statements over the at least twenty-four minute stop and even as his body-worn camera is being shut off, as well as the physical positioning during this stop created an atmosphere in which SUBJECT OFFICER #2 berated COMPLAINANT.

Furthermore, SUBJECT OFFICER #2's questioning of COMPLAINANT continued after the decision not to detain her² or her companion and after a search of her vehicle yielded nothing else illegal,³ and therefore was unnecessary, without legitimate law enforcement purpose and had the effect of demeaning COMPLAINANT. SUBJECT OFFICER #2's repeated patronizing questions and threats of contacting her family and her employer, that he carried out, were also humiliating. It can be surmised from his various statements that SUBJECT OFFICER #2 was likely personally offended by COMPLAINANT and WITNESS #1 smoking marijuana in such close proximity to multiple police officers. *See* for example several segments of SUBJECT OFFICER #2's body-worn camera footage e.g. "Ya'll over here smoking marijuana?"[05:25]; "How you all smoking marijuana and the police are right here?"[05:50]; "I don't even get y'all man. We sitting right there and y'all just over there just getting toasted." [06:10]; "You put yourself in that predicament. Why would you smoke a joint when seven police cars are standing there?" ~[13:30] SUBJECT OFFICER #2's actions may have also been prompted by the fact that he has a granddaughter and his personal views on marijuana consumption.⁴ Whatever the motivation, berating COMPLAINANT and speaking to her in a condescending manner were not appropriate.

² SUBJECT OFFICER #2 and SUBJECT OFFICER #1 had a brief discussion about what to do with COMPLAINANT – SUBJECT OFFICER #2 asks SUBJECT OFFICER #1 what he wants to do with COMPLAINANT. At approximately 11:37, on SUBJECT OFFICER #2's body-worn camera footage, SUBJECT OFFICER #1 says, "Cut 'em loose."

³ SUBJECT OFFICER #1 searched COMPLAINANT's car (with her consent) and after doing so at approximately 21:43 on his body worn camera footage says "Nothing here."

⁴ "You back here over here getting juiced up. You brought it on yourself. We sitting here. We smell it. We trying to figure out where it's coming from. You two over here getting high in front of a restaurant while people are eating. I'd be upset if I was sitting there trying to enjoy my meal and I keep smelling somebody smoking marijuana..." SUBJECT OFFICER #2 body-worn camera footage at ~[15:00].

SUBJECT OFFICER #2 asserts that he talks to everyone, even his own family, the way that he spoke to COMPLAINANT. He said that many people find him condescending and that he is not going to change his tone. While this approach may be consistent for SUBJECT OFFICER #2, it does not make it acceptable police conduct when MPD's standards of conduct require courteous engagement with civilians. Moreover, SUBJECT OFFICER #2's body-worn camera footage provides several minutes of an earlier separate incident across the street from COMPLAINANT's stop, in which SUBJECT OFFICER #2 interacted with and questioned a suspect in a markedly different and almost understanding tone. While the circumstances were distinct, they demonstrate SUBJECT OFFICER #2 taking a varied approach to interacting with civilians and undermine SUBJECT OFFICER #2's suggestion that his response to COMPLAINANT was not uniquely motivated.

COMPLAINANT's allegation of inappropriate language or conduct is sustained.

B. 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).

SUBJECT OFFICER #2 and SUBJECT OFFICER #1 harassed COMPLAINANT when they went to her place of work and family's business and disclosed their encounter with COMPLAINANT. Notably SUBJECT OFFICER #2 and SUBJECT OFFICER #1 promptly left the scene at A STREET IN NW, WASHINGTON, DC, to speak with COMPLAINANT's employer and relatives despite repeated requests from COMPLAINANT that they not do so. They spoke openly with COMPLAINANT's aunt about the incident and then spoke with COMPLAINANT's mother on the phone. When they spoke on the phone with the complainant's mother, WITNESS #3, the officers were again open with her about the stop and raised unfounded allegations about COMPLAINANT, with no legitimate law enforcement purpose.

The body-worn camera footage from the stop and the visit to THE COMPLAINANT'S WORKPLACE, reveals the officers' various speculations about COMPLAINANT and possible motivations for SUBJECT OFFICER #2's actions. The officers speculate to themselves while at the COMPLAINANT'S WORKPLACE (and during the original stop) about the clothing in COMPLAINANT's car and wonder “how she gets her money.” The officers made several

assumptions in reaching these conclusions that were directly controverted by COMPLAINANT and WITNESS #1 who provided sensible explanations for their relationship and items in the car. Despite this, the officers ran with their conclusions and made some suggestive comments to this effect to COMPLAINANT's family and employer.⁵ Moreover, there was no indication of any illegal activity at the stop beyond smoking marijuana publicly and driving under the influence for which SUBJECT OFFICER #2 and SUBJECT OFFICER #1 determined not to arrest or give a citation to COMPLAINANT or WITNESS #1. Per their own admission, they completed no paperwork around their encounter. They did not direct COMPLAINANT to park her vehicle after alleging that she was under the influence of marijuana. They did not require that someone else, such as her aunt or mother, come to the scene to take responsibility for the vehicle. There was no legitimate law enforcement purpose for going to COMPLAINANT's place of employment and speaking openly in their place of business with her aunt and mother about the stop that just occurred. To the contrary, SUBJECT OFFICER #2 presented as personally offended that COMPLAINANT was smoking marijuana (*see infra* at 4) and suggested that he was informing WITNESS #3 because if the complainant were his child or grandchild he would want to know about the stop. These inferred and stated motivations are in violation of Metropolitan Police Department Sworn Law Enforcement Officer Code of Ethics, MPD General Order 201.36 (effective April 11, 2005), Part III. ("I will never act officiously or permit personal feelings, prejudices...to influence my decision.")

At the time of the incident, COMPLAINANT was twenty-three years old – not a minor - and repeatedly pleaded with the officers not to talk with her family or employer. The officers had no authority or law enforcement purpose to report the incident to her family let alone her employer. In fact, the officers acted in an officious manner by going to her place of work and doing so violated COMPLAINANT's privacy and the Metropolitan Police Department Sworn Law Enforcement Officer Code of Ethics, MPD General Order 201.36 (effective April 11, 2005), Part III. ("I will never act officiously..."); ("I will be exemplary in obeying the law and the regulations of my Department. Whatever I see or hear of a confidential nature, or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.)) That COMPLAINANT's family is also her employer makes the officers' actions an even greater violation of COMPLAINANT's right to privacy that could have jeopardize her livelihood. That the officers discussed the stop and raised concerns about COMPLAINANT against her wishes and openly at her place of employment to her mother and aunt constitutes harassment.⁶

⁵ The available body-worn camera footage does not reveal the officers directly saying to COMPLAINANT's family/employer that COMPLAINANT was a stripper or prostitute. The officers do ask COMPLAINANT's mother if COMPLAINANT was living out of her car. SUBJECT OFFICER #2's body-worn camera was turned off before the end of the encounter. Whether the officers directly made these statements to COMPLAINANT's family/employer is inconsequential as going to her place of employment and speaking with her aunt and mother about the stop alone was officious conduct that violated COMPLAINANT's privacy and constitutes harassment.

⁶ SUBJECT OFFICER #2 and SUBJECT OFFICER #1 expressed that their actions came from a place of concern. Despite their stated intentions, their actions were officious and reckless, violated COMPLAINANT's right to privacy, potentially jeopardized her livelihood and constituted harassment. The officers also assert that their actions were an effort at community policing. Unfortunately, the officers' actions were officious and not aligned with the

V. SUMMARY OF MERITS DETERMINATION
SUBJECT OFFICER #2

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

SUBJECT OFFICER #1

Allegation 1: Harassment	Sustained
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Submitted on November 26, 2018

Rebecca Goldfrank
Complaint Examiner

core values of community policing. The Bureau of Justice Statistics describes Community Policing as: "Police and citizens often come into contact with each other for reasons other than criminal investigation. In addition to enforcing criminal law, police officers often engage in community service. Community service may include providing information and/or assistance to people in need, as well as offering youth education and coordinating community outreach efforts. In many communities, police officers network to establish partnerships between residents and the law enforcement agency. Community-oriented policing seeks to address the causes of crime and to reduce fear of social disorder through problem-solving strategies and police-community partnerships. Typically, it involves a greater use of foot and bicycle patrols and frequent meetings with community groups." Bureau of Justice Statistics Website available at: <https://www.bjs.gov/index.cfm?ty=tp&tid=81>, last visited November 20, 2018.