

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

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| <b>Complaint No.:</b>                               | 18-0464                   |
| <b>Complainant:</b>                                 | COMPLAINANT               |
| <b>Subject Officer(s),<br/>Badge No., District:</b> | SUBJECT OFFICER           |
| <b>Allegation 1:</b>                                | Language or Conduct       |
| <b>Complaint Examiner:</b>                          | Jennifer A. Fischer, Esq. |
| <b>Merits Determination Date:</b>                   | April 18, 2019            |

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 filed a complaint with the Office of Police Complaints (OPC) on May 8, 2018. Complainant alleged that on May 4, 2018, the subject officer, Metropolitan Police Department (MPD) SUBJECT OFFICER, used language or engaged in conduct that was insulting, demeaning, or humiliating when he used profanity toward her son, WITNESS.<sup>1</sup>

Specifically, Complainant stated that on May 4, 2018, while Subject Officer was arresting WITNESS for operating a motorcycle without a driver's permit, Subject Officer used profane language toward her son, telling him, "You doing bullshit."

**II. EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this Complaint because, based on a review of OPC's Report of Investigation (ROI), the Body Worn Camera Footage recorded by SUBJECT OFFICER, WITNESS OFFICER #2, WITNESS OFFICER #3, and WITNESS

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<sup>1</sup> In addition to this allegation, COMPLAINANT also alleged that SUBJECT OFFICER failed to provide his name and badge number upon request. COMPLAINANT also alleged that WITNESS OFFICER #1 harassed her son by ordering MPD officers to watch him. Pursuant to DC Code § 5-1107(1), on March 11, 2019, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director.

OFFICER #1 on May 4, 2018, the objections submitted by Subject Officer on April 3, 2019, and OPC's response to the objections dated April 4, 2019, the Complaint Examiner determined that the ROI 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 recorded by SUBJECT OFFICER, WITNESS OFFICER #2, WITNESS OFFICER #3, and WITNESS OFFICER #1 on May 4, 2018, the objections submitted by Subject Officer on April 3, 2019, and OPC's response to the objections dated April 4, 2019, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant filed a complaint with OPC on May 8, 2018.
2. Subject Officer, along with WITNESS OFFICER #2 and WITNESS OFFICER #3, arrested WITNESS on May 4, 2018 for driving a scooter without a license.
3. During the arrest, Subject Officer used profanity, specifically "fucking," and "shit," while speaking with WITNESS.

### **IV. DISCUSSION – Language or Conduct**

Complainant alleged that Subject Officer used profanity during the arrest of WITNESS on May 4, 2018. Complainant told OPC that MPD officers arrived to arrest her son at her residence, IN SW, WASHINGTON, DC, for riding a scooter without a license. According to Complainant, as the officer spoke to WITNESS prior to and during the arrest she heard Subject Officer tell her son, "You doing bullshit."

Pursuant to D.C. Official Code § 5-1107(a), "The Office [of Police Complaints] shall have the authority to receive and 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: (3) use of language or conduct that is insulting, demeaning, or humiliating."

MPD General Order 201.26 (effective April 5, 2011), Part V, Section C, Nos. 1(a) and 3 state, "All members shall: (1) Be courteous and orderly in their dealings with the public. (a) Members shall perform their duties quietly, remaining calm regardless of provocation to do otherwise. (3) 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 told OPC that the officers arrested WITNESS for operating a scooter without a license after witnessing him operate it without a helmet or registered tags. He stated that they tried to stop WITNESS immediately, but he rode away and they weren't able to. After driving around the area, they found WITNESS at home with the scooter.

Subject Officer was not able to remember if he used profanity during the incident. Ex. 7 at 3:00. He stated that if he did use profanity, however, it was because he had been in this PSA for some time, has had a relationship with these youth for a while, and he's from the district so he connects with the people in that community in a different way. Ex. 7 at 4:50 and 10:50. He said he can relate to them and any profanity would not have been meant to be disrespectful. *Id.*

Subject Officer also stated that he generally tries to monitor his profanity when speaking to citizens in other areas of the city as he understands that the use of profanity is generally frowned upon. Ex. 7 at 5:23 and 8:20. Subject Officer reiterated a couple times his frustration with WITNESS for not living up to his potential. He said that he sees WITNESS as talented and he's been trying to get him on the right path. He could make a lot of money with his skill, but he keeps doing dumb stuff. Ex. 6:43 and 10:09.

BWC footage from the incident corroborated Complainant's assertion regarding Subject Officer's use of profanity while arresting WITNESS for driving without a permit:

- "You're riding the fucking scooter even though you don't got no license." (SUBJECT OFFICER BWC at 7:09)
- "Y'all got too much time to be doin' dumb shit, man." (SUBJECT OFFICER BWC at 7:24)
- "Y'all know how to take this shit apart, put this shit back together." (SUBJECT OFFICER BWC at 7:28)
- "You know how much money you can make from doing shit like that, man? But y'all wanna do dumb shit." (SUBJECT OFFICER BWC at 7:30)
- "Get your shit legit, man, you'd be good." (SUBJECT OFFICER BWC at 7:50)

The BWC footage shows that Subject Officer spoke to WITNESS using profanity in violation of MPD General Order 201.26. Although Subject Officer explained that any use of profanity would have been due to his connection with the people of that community, the General Order does not provide an exception to the use of profanity when performing his duties.

Moreover, Subject Officer explained that he did not use profanity when policing other parts of the city. MPD General Order 304.15 II. And III. prohibits treating persons differently on the basis of place of residence. Thus, the General Orders do not allow for the differential use of profanity as described by Subject Officer, not even because he has a special connection with the person he is interacting with. If anything, the differential treatment is biased policing.

Complaint Examiner finds that Subject Officer used profanity when speaking to Complainant's son in violation of D.C. Code § 5-1107 and MPD General Order 201.26.

Complainant's allegation for violation of language and conduct that is insulting, demeaning or humiliating is, therefore, sustained.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

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| <b>Language and Conduct</b> | Sustained |
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Submitted on April 18, 2019.

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Jennifer A. Fischer, Esq.  
Complaint Examiner