

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	18-0468
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Meaghan Hannan Davant
Merits Determination Date:	December 20, 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, filed a complaint with the OPC on May 8, 2018 alleging that Metropolitan Police Department (MPD) SUBJECT OFFICER, used or engaged in conduct toward the complainant that was insulting, demeaning or humiliating when she used profanity and acted in an unprofessional manner.¹

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation and exhibits thereto and the objections submitted by

¹ COMPLAINANT also alleged that SUBJECT OFFICER and WITNESS OFFICER #1 harassed him on May 4, 2018, and again on May 6, 2018, by ordering locksmiths to break the locks on COMPLAINANT's restaurant and allowing a person who allegedly breached a contract with COMPLAINANT to remove fixtures from the restaurant. COMPLAINANT further alleged that WITNESS OFFICER #2 harassed him on May 4, 2018 by confiscating his restaurant licenses and handing them to the party allegedly in breach, and by threatening to "lock [COMPLAINANT] up," and that this comment by WITNESS OFFICER #2 constituted use of language or conduct towards him that was insulting, demeaning, or humiliating. Finally, COMPLAINANT alleged that, on May 4, 2018, WITNESS OFFICER #1 and COMPLAINANT used language or engaged in conduct that was insulting, demeaning or humiliating to COMPLAINANT by ordering locksmiths to remove the locks on the restaurant. Pursuant to D.C. Code § 5-1108(1), on October 25, 2018, a member of the Police Complaints Board dismissed these allegations, concurring with the decision made by the OPC's Executive Director.

SUBJECT OFFICER on November 16, 2018, 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 and exhibits thereto, and the objections submitted by SUBJECT OFFICER on November 16, 2018, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On May 6, 2018, SUBJECT OFFICER and WITNESS OFFICER #1 responded to a call placed by COMPLAINANT, concerning a landlord/tenant dispute at COMPLAINANT's restaurant, located at NW, WASHINGTON DC.
2. SUBJECT OFFICER, who is trained as a Crisis Intervention Officer ("CIO"), had interacted with COMPLAINANT on numerous previous occasions. In fact, SUBJECT OFFICER responded to a similar call from COMPLAINANT two days earlier, on May 4, 2018, regarding the same landlord/tenant dispute.
3. Upon arriving at the scene, SUBJECT OFFICER told COMPLAINANT, "You gotta stop with that shit man because we are tired of coming here every day."
4. Later in their interaction, SUBJECT OFFICER told COMPLAINANT, "you started this shit," and "you did this shit yesterday," referring to COMPLAINANT's May 4, 2018 call for service.
5. In his interview with OPC, COMPLAINANT recalled SUBJECT OFFICER's use of profanity and described her demeanor as "unprofessional."
6. On several occasions, a bystander at the scene attempted to intervene between SUBJECT OFFICER and COMPLAINANT. At three separate points, SUBJECT OFFICER, told the bystander, "nobody asked you shit;" "zip it because I'm tired of this shit," and "cut that bullshit with me."
7. The bystander told SUBJECT OFFICER, "You don't have to say bullshit. You are an officer...you're supposed to be nice." To this, SUBJECT OFFICER responded, "I use the word bullshit any time I want."
8. Each of the above quoted statements were clearly recorded by SUBJECT OFFICER's body worn camera (BWC).
9. In her November 16, 2018 objections, SUBJECT OFFICER admits that she "became frustrated" with COMPLAINANT on May 6, 2018, "los[t] patience" and said, "the word 'shit' a number of times." She notes, however, that the comments were not "a matter of

disrespect toward COMPLAINANT. SUBJECT OFFICER explained that she spoke the words because she was “frustrated at the lack of progress they were making after hours of effort, i.e., it was the situation that was bullshit.”

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.”

It is clear from the evidence, including both COMPLAINANT and SUBJECT OFFICER’s interviews with OPC and the BWC footage reviewed, that SUBJECT OFFICER used profanity on multiple occasions during the May 4, 2018 call for service. In her written objections, SUBJECT OFFICER further admits to using profanity in both her interactions with COMPLAINANT and a bystander.

In her objections, SUBJECT OFFICER argued that her use of profanity was not “a matter of disrespect toward COMPLAINANT,” and instead resulted from her own frustration at the “lack of progress” in her interactions with COMPLAINANT, despite having responded to multiple calls for service, on multiple days, concerning the same or similar issues. On review of the BWC footage, SUBJECT OFFICER does not appear to be acting in a manner that is combative, or with any malicious intent; in fact, she is quite genial with both COMPLAINANT and the bystander and exhibits a great deal of patience.

However, the section of the General Order prohibiting officers’ use of profane language does not differentiate between when profanity *may* or *may not* be used. In other words, even if SUBJECT OFFICER had used profanity in a joking or otherwise friendly manner, such speech would still violate the letter of the law. The use of profanity by any MPD Officer is *malum*

prohibitum, an unlawful act by virtue of the statute itself, and not *malum in se*, conduct that is innately wrong or immoral.

Moreover, the General Order does not provide any exception to the prohibition against profanity based on the speaker's *intent*. Thereby, the fact that SUBJECT OFFICER's comments were not intended as "disrespect" to COMPLAINANT is irrelevant. Instead, the General Order states that an officer may not use any language "which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person." Here, both COMPLAINANT and the bystander stated that they were personally offended by SUBJECT OFFICER's language. In fact, the bystander put SUBJECT OFFICER on notice that he was surprised and offended by her language, stating, "You don't have to say bullshit. You are an officer...you're supposed to be nice." SUBJECT OFFICER's response, "I use the word bullshit any time I want," was not only disrespectful to the bystander, but showed a blatant disregard for her duties and obligations under the General Order.

Based on the totality of the circumstances, SUBJECT OFFICER used or engaged in conduct toward the complainant that was insulting, demeaning or humiliating when she used profanity and acted in an unprofessional manner, thereby violating § 5-1107(a) and MPD General Order 201.26.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Insulting, Demeaning, or Humiliating Language or Conduct	Sustained.
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Submitted December 20, 2018.

Meaghan Hannan Davant
Complaint Examiner