

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	18-0712
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Retaliation
Allegation 2:	Failure to Identify
Complaint Examiner:	Richard S. Ugelow
Merits Determination Date:	April 5, 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 § 5-110. 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

The complainant, filed a complaint with the Office of Police Complaints (OPC) on September 4, 2018. COMPLAINANT alleged that on September 2, 2018, he was stopped by SUBJECT OFFICER at A STREET IN NW, WASHINGTON, DC for driving a car with an obstructed rear license plate. SUBJECT OFFICER asked for COMPLAINANT's driver's license, registration, proof of insurance and suggested that a warning would be issued because he might need to respond to another call. SUBJECT OFFICER reviewed and returned the driver's license and registration (COMPLAINANT's insurance information was on his phone). COMPLAINANT asked for SUBJECT OFFICER's name and badge number, which SUBJECT OFFICER said he would provide. When it became clear that SUBJECT OFFICER did not have to respond to another call, he again asked that COMPLAINANT for his driving papers, and proceeded to issue a ticket for driving with an obscured license plate. COMPLAINANT filed a timely complaint with OPC raising several issues, some of which OPC dismissed.¹ The

¹ COMPLAINANT alleged that SUBJECT OFFICER harassed him by unlawfully stopping him, issuing him an unlawful ticket, and threatening to arrest him. Moreover, COMPLAINANT alleged that SUBJECT OFFICER engaged in conduct toward him that was insulting, demeaning, or humiliating by using profanity. Finally, COMPLAINANT alleged that SUBJECT OFFICER discriminated against him based on his age, race, and sex.

remaining issues to be decided are whether (1) SUBJECT OFFICER retaliated against COMPLAINANT when asked for his name and badge number, and (2) SUBJECT OFFICER failed to identify himself properly.

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

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, 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 September 2, 2018, SUBJECT OFFICER stopped the complainant, COMPLAINANT at approximately 4:10 pm at A STREET IN NW, WASHINGTON, DC.
2. SUBJECT OFFICER was driving a marked MPD police cruiser and was in full uniform that included his name tag and badge.
3. COMPLAINANT's car was stopped because it had plastic over the rear license plate, which is a violation of DC law. Exhibit 7.
4. When SUBJECT OFFICER approached COMPLAINANT's car he said: "I'm SUBJECT OFFICER with the Metropolitan Police Department at REDACTED District. The reason I pulled you over is because your tags are covered. I need your license..."
5. As requested, COMPLAINANT provided SUBJECT OFFICER with his driver's license and registration but needed to locate his insurance information on his telephone.
6. While speaking with COMPLAINANT, SUBJECT OFFICER was monitoring his radio to determine if he needed to respond to another assignment, a possible code 1, requiring an immediate response. For this reason, he advised COMPLAINANT that he was going to warn him.
7. SUBJECT OFFICER returned COMPLAINANT's license and registration after giving them a cursory review.

8. COMPLAINANT said to SUBJECT OFFICER “This is the second time. Y’all keep...can I get your name and badge number please?” SUBJECT OFFICER responded “Yes. Yes sir. Absolutely. Absolutely.”
9. SUBJECT OFFICER responded: “That’s okay.” And then asked for COMPLAINANT for his license and registration.
10. When SUBJECT OFFICER asked for COMPLAINANT’s license and registration for the second time, he had just been informed that the code 1 had been downgraded to code 2 and that he would not need to respond.
11. COMPLAINANT exited his vehicle about 1.5 minutes into the stop and attempted to hand SUBJECT OFFICER a paper napkin, so he could write his name and badge number.
12. SUBJECT OFFICER responded to the effect that his name and badge number would be on the written citation and directed COMPLAINANT to return to his vehicle.
13. SUBJECT OFFICER returned to his cruiser and proceeded to write a \$500 citation for the covered license plate. Exhibit 12.
14. The traffic stop lasted approximately 6.5 minutes.
15. SUBJECT OFFICER told OPC that he almost always issues tickets for traffic stops. Exhibit 7.
16. At all times during the traffic stop, the BWC shows that SUBJECT OFFICER acted professionally and politely.
17. Prior to this incident, SUBJECT OFFICER had not any contact with . Exhibit 7.
18. COMPLAINANT made unsubstantiated allegations, including the use of profanity, threats, targeting by SUBJECT OFFICER, and discrimination. See footnote 1, above.

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.”

As discussed below, the allegations raised by this complaint against SUBJECT OFFICER are retaliation and failure to identify.

- 1. RETALIATION:** The regulations governing OPC define retaliation as “[a]ction that discriminates against a person for making or attempting to make a complaint pursuant to the [OPC Statute], including action taken against a person because he or she has opposed any practice made unlawful by this [Statute] or because he or she has made a complaint or expressed an intention to file a complaint, testified, assisted, or participated in any manner in an investigation, mediation, conciliation, complaint examination or other proceeding under this [Statute].” D.C. Mun. Regs. tit. 6A, § 2199.1. MPD General Order 120.25 defines retaliation in a similar fashion.

COMPLAINANT claims that because he asked for SUBJECT OFFICER’s name and badge number, SUBJECT OFFICER issued a \$500 citation as retaliation. The material facts are not in dispute.

On September 2, 2018, COMPLAINANT was driving a car with a plastic cover on the rear license plate, which is prohibited in the District of Columbia. There is no challenge to the lawfulness of the stop by SUBJECT OFFICER. Early in the stop, COMPLAINANT voluntarily advised SUBJECT OFFICER that he had earlier been stopped for this same infraction. There is no doubt that COMPLAINANT knew that he was committing a traffic infraction by driving with a covered license tag.

At the time of the stop, SUBJECT OFFICER was in full uniform, including his name tag and badge number that were clearly visible to COMPLAINANT. Upon approaching COMPLAINANT, he identified himself as “SUBJECT OFFICER of the Metropolitan Police Department at REDACTED District.” In response to an initial request, SUBJECT OFFICER told COMPLAINANT that he would “absolutely” provide his name and badge number. COMPLAINANT provided his license and registration, as requested by SUBJECT OFFICER. After a cursory review, SUBJECT OFFICER returned the documents to COMPLAINANT.

At the time of the stop, SUBJECT OFFICER was monitoring radio transmissions to determine if he needed to terminate the traffic stop and respond to another, more serious, assignment. For this reason, SUBJECT OFFICER returned the license and registration and advised COMPLAINANT that a warning would be issued. The nature of the warning - oral or written – was not specified by SUBJECT OFFICER. The Complaint Examiner assumes that the warning would have been oral, since SUBJECT OFFICER would have wanted to terminate the traffic stop immediately in order to respond to the other assignment.

When SUBJECT OFFICER learned that he did not need to respond to another assignment, he again asked COMPLAINANT for his license, registration, and insurance. COMPLAINANT provided the registration and license but told SUBJECT OFFICER that he needed to find the insurance information on his phone. At this time, COMPLAINANT exited his car, repeated his request for SUBJECT OFFICER's name and badge number and attempted to give SUBJECT OFFICER a paper napkin on which to write the information. SUBJECT OFFICER got into his cruiser to conduct a computer search of COMPLAINANT's records and to write the ticket. SUBJECT OFFICER directed COMPLAINANT to return to his vehicle.

As shown by the BWC footage, all of the described events took place in a little over 6.5 minutes. And for about half of that time, SUBJECT OFFICER was in his cruiser conducting a computer search of COMPLAINANT's records and writing the ticket. Thus, SUBJECT OFFICER interacted with COMPLAINANT for roughly three minutes.

Here, SUBJECT OFFICER openly identified himself to COMPLAINANT. Virtually the first words spoken when he approached COMPLAINANT's vehicle were: "I am SUBJECT OFFICER from the Metropolitan Police Department at REDACTED District." Because SUBJECT OFFICER was monitoring his radio in order to determine his assignment priorities, he was not positioned to write his name and badge number immediately. Moreover, when asked by COMPLAINANT for his name and badge number he said "Yes, Yes sir. Absolutely. Absolutely." Indeed, SUBJECT OFFICER indicated his willingness to provide the requested information on more than one occasion. In fact, SUBJECT OFFICER did provide his name (admittedly difficult to read) and badge number (fully legible) on the traffic citation within seven minutes of being asked. Thus, it is counter intuitive to believe that SUBJECT OFFICER would retaliate because he was asked for his name and badge number.

Moreover, from the outset of the stop it was SUBJECT OFFICER's intention to write a ticket. See Exhibit 7. (SUBJECT OFFICER stopped the complainant with the goal of issuing a citation."). That intention was compromised only because of the potential to respond to code 1. It seems particularly logical and appropriate to issue a traffic citation where, as here, COMPLAINANT continued to engage in conduct that he had previously been warned violated DC law. Thus, the totality of the evidence and the circumstances of this traffic stop are to the effect that SUBJECT OFFICER did not retaliate against COMPLAINANT when he wrote a traffic citation for a covered license plate.

- 2. FAILURE TO IDENTIFY:** MPD General Order 201.26 requires MPD officers to "give their first and last name and badge numbers in a respectful and polite manner" when requested to do so by a member of the public. MPD officers are also required to identify themselves by displaying their badge or identification folder before taking police action, "except when impractical, unfeasible, or where their identity is obvious."

The General Order 201.26 states that officers should “identify themselves by displaying their badge or identification folder.” SUBJECT OFFICER was wearing his name plate and badge, which was visible to COMPLAINANT. Moreover, at the very beginning of the stop, SUBJECT OFFICER identified himself by his last name to COMPLAINANT. Importantly, SUBJECT OFFICER indicated his intention to provide the requested information. At the time of the initial request, SUBJECT OFFICER was distracted by the chatter on his radio. In effect, he was listening to COMPLAINANT with one ear and listening to his radio with the other to determine if he had to terminate the stop and respond to another, more critical, call for assistance. Under these circumstances, it is understandable that SUBJECT OFFICER did not respond immediately to a request to provide his full name and badge number to COMPLAINANT. Further, when COMPLAINANT began waiving and trying to hand a paper napkin to SUBJECT OFFICER, he was told to return to his vehicle or be placed in handcuffs, which seems consistent with MPD protocol. Nevertheless, within two or three minutes, COMPLAINANT had the requested information when he was handed the traffic citation.

In sum, the General Order should be applied in the context and unique circumstances of this particular stop. Here, SUBJECT OFFICER was distracted by the chatter on his radio, he acted professionally and politely, he affirmatively indicated his intention to provide his name and badge number, and the requested information was on the traffic citation. For these reasons, the Complaint Examiner finds that SUBJECT OFFICER did not violate General Order 201.26.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Retaliation	Exonerated
Allegation 2: Failure to Identify	Exonerated

Submitted on April 5, 2019.

Richard S. Ugelow
Complaint Examiner