

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	20-0118
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2
Allegation 1:	Discrimination (SUBJECT OFFICER #1 and SUBJECT OFFICER #2)
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct (SUBJECT OFFICER #2)
Complaint Examiner:	Laurie S. Kohn
Merits Determination Date:	July 20, 2020

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 alleged that on November 14, 2019, subject officers, Metropolitan Police Department (MPD) SUBJECT OFFICER #1, and SUBJECT OFFICER #2, discriminated against him based on his national origin. Further, Complainant alleged that SUBJECT OFFICER #2 used language toward him that was insulting, demeaning, or humiliating when she raised her voice and related to him in a disdainful and impolite manner.¹

Complainant alleged that the behavior at issue occurred on November 14, 2019 when he called for police intervention in a confrontation that he had with a resident of ADDRESS IS SE, WASHINGTON, DC. When Complainant checked on his truck at the same location at approximately 11:46 a.m., he saw a resident smoking by his truck. When she refused to move, he called the police because he was concerned about his truck. Complainant informed the 911

¹ In addition, Complaint also alleged that SUBJECT OFFICER #1 harassed him by giving his personal information to another individual. Pursuant to D.C. Code § 5-1108(1), on April 3, 2020, a member of the Police Complaints Board dismissed these allegations concurring with the determination made by OPC's Executive Director.

operator that he needed a Spanish-speaking officer. Instead, SUBJECT OFFICER #2 and SUBJECT OFFICER #1, who do not speak Spanish, responded to the call for service.

Complainant alleged that when the officers interacted with him, he was not able to communicate fully with them due to his language proficiency. He further reported that the officers did not inquire about his language proficiency or otherwise offer to wait for a Spanish-speaking officer, although from prior interactions and his request to dispatch for a Spanish-speaking officer, they were aware of his limited English proficiency.

Complainant alleged that during the interaction, SUBJECT OFFICER #2 treated him with disdain and behaved in an impolite and intimidating manner. Specifically, Complainant alleged that she raised her voice and seemed annoyed.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation including the body worn camera (BWC) footage, the objections submitted by SUBJECT OFFICER #1 and SUBJECT OFFICER #2 on May 8, 2020, and OPC's response to the 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 including the BWC footage, the objections submitted by SUBJECT OFFICER #1 and SUBJECT OFFICER #2 on May 8, 2020, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On November 14, 2019, at approximately 11:46 a.m. complainant called for emergency services regarding a resident who was smoking near his truck located in the parking lot behind ADDRESS IN SE, WASHINGTON, DC.
2. When the 911 operator picked up the call, the first thing Complainant said was to request a Spanish interpreter. The first time he made this request, which was in English, the operator did not understand. When he repeated the request, she understood and contacted the language line for interpretation.
3. Complainant explained that a resident was smoking in the parking lot and it was a no smoking zone. He explained the resident was putting out her cigarettes on the wall. When the dispatcher told Complainant to be on the lookout for officers, Complainant requested a Spanish-speaking officer. To which the dispatcher responded, "Yes, sir. Of course."

4. Shortly after Complainant's call, 911 dispatch received a call from the resident about whom Complainant had called 911. That caller reported the Complainant, whom she identified as the maintenance man in her building, was harassing her. When the dispatcher asked her what the man was saying, the caller said, "I don't know 'cause he keeps speaking Spanish."
5. Dispatch asked SUBJECT OFFICER #1 to respond to the incidents reported at ADDRESS IN SE, WASHINGTON, DC. When dispatch mentioned Complainant's name, SUBJECT OFFICER #1 said, "I'm familiar with the gentleman. We might need a Spanish-speaking officer as well."
6. Dispatch then asked if any Spanish-speaking officers were available, inquiring specifically about one officer who did not respond. Instead, SUBJECT OFFICER #2 said she would respond. Dispatch then said, "Alright. Disregard."
7. SUBJECT OFFICER #2 first arrived at the scene. She activated her body-worn camera. She spoke to the resident when she arrived and one of the first things she told the resident was that she was waiting for a Spanish-speaking officer.
8. The resident explained that she felt Complainant was harassing her, but explained that she did not understand much of what he was saying because he was speaking Spanish. She did say, however, that she understood the profanity.
9. SUBJECT OFFICER #1 arrived at the scene with his body-worn camera activated and met up with SUBJECT OFFICER #2 and the resident. SUBJECT OFFICER #1 said about Complainant, "all the time with him. What did he do?" After hearing the resident's account, the three went to the parking lot where they encountered Complainant.
10. Complainant, in halting and incomplete English, spoke about smoking and his truck, and expressed apparent concern that the resident was smoking where it was not permitted.
11. SUBJECT OFFICER #1 listened with apparent patience and addressed Complainant repeatedly as "sir." He explained to Complainant that since there was no sign to prohibit smoking outdoors, that the resident could smoke where she wanted.
12. SUBJECT OFFICER #2 communicated in an agitated fashion. She explained to Complainant that he is not the building manager. Although she addressed him as "sir" at the outset of her communication with him, as she continued to speak with him, she expressed more frustration, frequently interrupting him, speaking over him, and raising her voice.

13. SUBJECT OFFICER #2 said to Complainant, “You don’t even make sense. Do you hear what you’re saying?” She repeatedly told Complainant, “You’re ridiculous. You’re ridiculous.” She said, “You’re real ridiculous trying to control people’s lives. Like, seriously. You don’t even own the building.”
14. SUBJECT OFFICER #1 repeatedly asked for the building owner’s name and number. SUBJECT OFFICER #2, raising her voice, repeatedly directed Complainant to give SUBJECT OFFICER #1 the information – presumably the building owner’s name and number.
15. During the exchange about the building owner’s information, Complainant began asking why the officers were arresting him. He asked about this repeatedly. The officers did not clarify that they were not arresting him, nor did they make an effort to reduce his confusion.
16. After telling the resident she should get a stay away order, the officers and the resident went back into the building, leaving Complainant alone in the parking lot.
17. Both SUBJECT OFFICER #2 and SUBJECT OFFICER #1 had interacted with Complainant on several occasions prior to the incident on November 14, 2019. During each of those interactions, they had communicated with Complainant in English without the help of an interpreter.

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.”

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.”

Complainant alleged that SUBJECT OFFICER #2 used inappropriate words and engaged in wrongful conduct when she behaved in an impolite and intimidating manner, raising her voice and treating him with disdain during her interactions with him on November 14, 2019. MPD guidelines mandate and expect courtesy and patience from officers, even when their patience may be tried or when there may be provocation. The facts here show that SUBJECT OFFICER #2 engaged in conduct that amounted to language and conduct in violation of MPD guidelines.

SUBJECT OFFICER #2 contended in her OPC interview and in her objections that she acted professionally at all times and used a tone of voice that was appropriate given the circumstances. However, the body-worn camera footage reveals otherwise. At the scene, Complainant was clearly upset and frustrated, however, he maintained his composure at all times and did not act in a way to justify SUBJECT OFFICER #2’s conduct, which was required to be courteous and orderly at all times, *regardless of provocation*, had there been any.

SUBJECT OFFICER #1’s behavior generally provides a useful counterpoint in assessing the propriety of SUBJECT OFFICER #2’s conduct. SUBJECT OFFICER #1 addressed Complainant repeatedly as “sir,” and patiently waited as Complainant tried to express himself. Although SUBJECT OFFICER #1 was clearly frustrated by Complainant’s refusal to provide information about the building manager, he at all times spoke in a reasonable tone and at a reasonable volume. The body-worn camera footage clearly shows that SUBJECT OFFICER #1 had the scene under control.

By contrast, SUBJECT OFFICER #2’s conduct lacked courtesy and patience. From the start of the interaction, SUBJECT OFFICER #2 communicated in an agitated fashion. Although she addressed him as “sir” at the outset of her communication with him, as she continued to speak with him, she expressed more frustration, frequently interrupting him, speaking over him, and raising her voice.

At one point, SUBJECT OFFICER #2 said to Complainant, “You don’t even make sense. Do you hear what you’re saying?” She told Complainant, “You’re ridiculous. You’re ridiculous.” Later, she said, “You’re real ridiculous trying to control people’s lives. Like, seriously. You don’t even own the building.”

These statements taken on their own would amount to impermissible language or conduct in violation of MPD rules requiring that all members be courteous and orderly and refrain from harsh, sarcastic or insolent language. However, considered in conjunction with Complainant’s extremely apparent lack of facility in English and his confusion at the scene, the conduct is particularly inappropriate and is directly in violation of the MPD General Order requiring members to refrain from “terms or name-calling which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person.” MPD General Order 201.26, Part IV, Section C (3).

SUBJECT OFFICER #2's conduct toward Complainant that included raising her voice, needlessly interrupting him, and making disdainful comments violated MPD guidelines and D.C. Code 5-1107.

Discrimination.

Under D.C. law and under MPD guidelines, officers may not discriminate against citizens based on national origin. Such conduct would constitute discrimination under OPC regulations, subjecting an officer to discipline. The District of Columbia Human Rights Act provides in pertinent part: [I]t shall be an unlawful discriminatory practice for a District government agency or office to limit or refuse to provide any. . .service, program, or benefit to any individual on the basis of an individual's actual or perceived: race, color . . . [or] national origin." D.C. Code §2-1402.73 (2015).

Further, MPD General Order 201.26 provides that, "[i]n accordance with D. C. Official Code § 2-1401, et. seq. (District of Columbia Human Rights Act), members shall not discriminate, either in the enforcement of the law, or in the provision of police service, on the basis of race, color, religion, national origin...." The regulations governing OPC define discriminatory treatment as "[c]onduct by a member of the MPD ... that results in the disparate treatment of persons because of their race, color, religion, national origin...." D.C. Mun. Regs. tit. 6A, § 2199.1.

Federal and D.C. law as well as police procedures also specifically address the provision of language access to citizens of limited English proficiency. Under Federal law, the government's failure to provide language access can under some circumstances amount to discrimination under Title VI of the Civil Rights Act of 1964. See generally, *Interpreting Injustice: The Department of Homeland Security's Failure to Comply with Federal Language Access Requirements in Immigration Detention*, 20 HARV. LATINO L. REV. 15 (2017).

By Presidential Order, Executive Order 13166, all recipients of federal funds, including the Metropolitan Police Department, must ensure meaningful access to their services by persons who have limited English proficiency. D.C.'s Language Access Act of 2004, D.C. Code 2-1931, requires that MPD provide oral language services to individual with limited English proficiency at a level equal to English proficient individuals.

Specific guidance is provided to officers interacting with individuals who have limited English proficiency in MPD General Order 304.18. The Order clearly sets forth the procedure for determining if an individual needs interpretation services and how to proceed if they do need such services. Under the Order, "[i]t is the policy of the MPD to provide free language access services to all limited and non-English proficient (LEP/NEP) individuals in a timely and effective manner. [Such provision] ...is a required activity for MPD members." GO-SPT-304.18 II. In relevant part, the Order sets forth the responsibilities upon an officer. The burden is on the officer to determine if an individual needs interpreter services, and the officer must follow protocol to ascertain if an individual does not request services but presents as if he/she has

limited proficiency. The Order makes it clear that it applies to interviewing victims as well as suspects. MPD General Order 304.18.

Complainant alleged that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 discriminated against him when they failed to provide him with adequate language access during their interaction on November 14, 2019. Based on the facts, the officers indeed discriminated against Complainant by failing to assure language access to an individual with limited English proficiency.

SUBJECT OFFICER #2 and SUBJECT OFFICER #1 asserted that based on their prior interactions with Complainant and based on the incident in question, they believed Complainant was not in need of language access services. SUBJECT OFFICER #1 had interacted with Complainant four or five times prior to the incident in question and SUBJECT OFFICER #2 about three times. Both officers claimed that Complainant had never requested language services and that they had spoken English to him and that he understood. SUBJECT OFFICER #2 pointed out that she “could fully understand him.”

The facts show a very different picture. First, when Complainant called 911, the first thing he said to the dispatcher was that he wanted a Spanish interpreter. The dispatcher had trouble understanding this request, stated in English. But once she understood, she appropriately called the language line. At the end of the call, Complainant asked that she dispatch an officer who speaks Spanish. The dispatcher answered, “yes, sir. Of course.”

Similarly, Complainant’s request for language access services was properly conveyed to both officers, providing them with adequate basis for providing the services they were legally mandated to provide. In the MPD Event Chronologies for both Complainant and the resident’s calls for emergency service, there are notes about Complainant’s need for language access services. One noted that a Spanish-speaking officer was needed. The other stated that the maintenance man spoke Spanish.

Radio communications also properly and clearly conveyed Complainant’s need for language access services to both officers. When the dispatcher asked SUBJECT OFFICER #1 to respond to the incident, he responded that he was familiar with Complainant: “We might need a Spanish-speaking officer as well.” The dispatcher asked if any were available. Despite her inability to speak Spanish, SUBJECT OFFICER #2 indicated she would respond. When she arrived at the scene, however, she remained aware of the need for language access. When talking with the resident, SUBJECT OFFICER #2 said they were waiting for a Spanish-speaking officer. The resident’s account of her interaction with Complainant further reinforced that need to SUBJECT OFFICER #2. The resident reported that she couldn’t understand Complainant because he was speaking Spanish.

Despite the clear communication from dispatch about the need for language access services, and despite SUBJECT OFFICER #1 and SUBJECT OFFICER #2’s stated knowledge

of the need for a Spanish-speaking officer, the two officers persisted in communicating in English with Complainant without following protocol regarding language access.

Once interacting with Complainant, there were further facts that should have led the subject officers to provide language access as required by law and guidelines. First, Complainant's English was hard to follow. For example, Complainant stated, "The cigarette start back here. The explosion is fine." In fact, SUBJECT OFFICER #2 seemed to note Complainant's limited proficiency by stating, "You don't even make sense."

Second, the facts illustrate that Complainant was having trouble understanding the officers. SUBJECT OFFICER #2 told Complainant, "You can't keep harassing someone, sir." In response, Complainant said, "Okay. Arrest me. What is your argument?" This unresponsive retort continued. When SUBJECT OFFICER #2 demanded that Complainant provide SUBJECT OFFICER #1 with the building manager's information, Complainant responded, "No. No. No. What are you argument for arresting me?"

In spite of the dispatch indicating language access services were needed, SUBJECT OFFICER #1's knowledge, which he stated, that a Spanish-speaking officer was needed, SUBJECT OFFICER #2's knowledge of the need for language services, which she repeated to the resident, and in spite of Complainant's limited ability to fluently communicate and understand at the scene, the subject officers failed to get a Spanish-speaking officer or use the language line.

The officers' claims that Complainant never requested language services are an inapposite defense. First, Complainant did request language services, and that request was recorded in comments to the Event Chronology, which they could have reviewed on their computers. Second, under General Order 304.18(V)(A) it was not incumbent upon complainant to make such a request. Officers are directed that when they suspect someone has limited English proficiency, that they shall ask the individual if he/she speaks English very well. Depending on the individual's response, they can either continue or they must obtain language access services. Here, the inquiry was never made – despite all the ample evidence that Complainant needed language access services.

Both subject officers discriminated against Complainant when they failed to screen for and provide language access services to Complainant despite the ample facts to show he requested and needed such services.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1

Allegation 1: Discrimination	Sustained
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SUBJECT OFFICER #2

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

Submitted on July 20, 2020

Laurie S. Kohn
Complaint Examiner