

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	20-0131
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Discrimination
Complaint Examiner:	Richard S. Ugelow
Merits Determination Date:	June 11, 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

On October 2, 2019, COMPLAINANT¹ was denied entrance to AN MPD LOCATION because of an extant order. COMPLAINANT was arrested by Special Police Officer (SPO) SPO and placed in handcuffs.² WITNESS OFFICER #1 assisted with the arrest. Subject officer, SUBJECT OFFICER, was dispatched to transport COMPLAINANT to the MPD DISTRICT STATION station for processing. SUBJECT OFFICER was not present when COMPLAINANT was arrested, neither was he involved in any questioning of her. COMPLAINANT is a Spanish speaker. The ROI determined that SUBJECT OFFICER did not provide COMPLAINANT with a Spanish language interpreter, even though one was requested.³

¹ According to the ROI, COMPLAINANT is a transgender woman who prefers to use her legal name on government documents but wishes to be addressed with female pronouns. Accordingly, this decision will follow that protocol.

² SPO is not an MPD officer and is not subject to the jurisdiction of the Office of Police Complaints.

³ COMPLAINANT alleged that SUBJECT OFFICER harassed her by unlawfully arresting her. Furthermore, COMPLAINANT alleged that WITNESS OFFICER #2 discriminated against her based on her national origin. Pursuant to D.C. Code Section 5-1108(1), on April 9, 2020, a member of the Police Complaints Board dismissed these allegations concurring with the determination made by OPC's executive director. See Exhibit 3.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint. The Complaint Examiner determined that no genuine issues of material facts are in dispute that required a hearing based on a review of the Body Worn Camera (BWC) footage for SUBJECT OFFICER WITNESS OFFICER #1, and WITNESS OFFICER #2, the OPC's Report of Investigation (ROI), the objections submitted by the Fraternal Order of Police (FOP) on behalf of SUBJECT OFFICER on May 11, 2020, and OPC's response to the objections. *See* D.C. Mun. Regs. tit. 6A, § 2116.3.

III. FINDINGS OF FACT

Based on a review of the BWC footage for footage for SUBJECT OFFICER, WITNESS OFFICER #1, and WITNESS OFFICER #2, the OPC's ROI, the objections submitted by the Fraternal Order of Police (FOP) on behalf of SUBJECT OFFICER on May 11, 2020, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Around noon, on October 2, 2019, the complainant, COMPLAINANT, sought to enter AN MPD LOCATION IN NW, WASHINGTON, DC.
2. By an extant order, COMPLAINANT was barred from entering THE MPD LOCATION IN NW, WASHINGTON, DC. See Exhibit 12.
3. COMPLAINANT was arrested by Special Police Officer SPO for unlawful entry.
4. WITNESS OFFICER #1 who was on an upper floor of THE MPD LOCATION IN NW, WASHINGTON, DC. when COMPLAINANT sought to enter the building. WITNESS OFFICER #1 assisted SPO with the arrest.
5. SUBJECT OFFICER was dispatched by the AN MPD DISTRICT STATION to transport COMPLAINANT to the station for processing.
6. SPO escorted COMPLAINANT to SUBJECT OFFICER and the MPD cruiser that was parked in front of THE MPD LOCATION IN NW, WASHINGTON, DC.
7. COMPLAINANT is heard speaking loudly in Spanish as she was escorted by WITNESS OFFICER #1 and SPO to the cruiser.
8. Before being placed in the cruiser, COMPLAINANT was patted down by a female SPO.
9. After the pat down, SUBJECT OFFICER placed COMPLAINANT in the rear seat of the cruiser to wait until SPO secured his weapon and was available to accompany them to the MPD DISTRICT STATION.

10. While they were waiting, SUBJECT OFFICER asked, “are you okay, ma’am?” COMPLAINANT replied, “no English.” SUBJECT OFFICER also asked, “why did they bar you?” To which, COMPLAINANT replied, “somebody speak Spanish.”
11. While sitting in the cruiser, COMPLAINANT complained “Too hot for me here. Open the door too hot.” SUBJECT OFFICER then opened the cruiser’s rear passenger door.
12. Shortly thereafter, SUBJECT OFFICER again asked why she was barred from the building. COMPLAINANT is heard to respond in Spanish.
13. During the approximately five-minute ride to the DISTRICT STATION, SUBJECT OFFICER did not speak to her.
14. At the DISTRICT STATION, SUBJECT OFFICER assisted SPO in completing the arrest log. As part of that process, SUBJECT OFFICER sought several times to obtain the correct spelling of COMPLAINANT’s first name.
15. COMPLAINANT, again in broken English, said that she also used REDACTED as her first name. SUBJECT OFFICER responded: “Transgender, right?”
16. SUBJECT OFFICER then asked whether COMPLAINANT wanted to be searched by a male or female. To which she replied, “Somebody. Somebody. Intèrprete. I speak no English. Intèrprete. You supposed put intèrprete for me.”
17. SUBJECT OFFICER does not speak Spanish and did not seek an interpreter.
18. WITNESS OFFICER #2, a female MDP officer, searched COMPLAINANT.
19. WITNESS OFFICER #2 overheard the entire colloquy between SPO, SUBJECT OFFICER and COMPLAINANT that took place while the paperwork was completed at the DISTRICT STATION.
20. WITNESS OFFICER #2 interaction with COMPLAINANT was entirely in English. WITNESS OFFICER #2 asked COMPLAINANT to, among other requests, “step out,” “go to the bench, please,” “turn around,” “I want to take your handcuffs off,” “do you have anything in your pockets?” “take off your earring,” “sit down,” “stand up,” “put your hands of the wall.” COMPLAINANT complied with these requests.
21. WITNESS OFFICER #2 does not speak Spanish and did not request an interpreter.
22. COMPLAINANT’s primary language is Spanish, but she does speak and understand some English. See Exhibit 3, p.4
23. According to the FOP objections, COMPLAINANT “was provided language access services before being released from custody.” See FOP objections, p. 3.

24. COMPLAINANT filed complaints with OPC, on November 21 and 22, 2019. Among other complaints, most of which have no relationship to her arrest on October 2, 2019, COMPLAINANT alleged that SUBJECT OFFICER discriminated against her on the basis of national origin by arresting her. See footnote 3, above.
25. COMPLAINANT did not complain to OPC that she was improperly denied a language interpreter.⁴

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.”

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 facility, service, program, or benefit to any individual on the basis of an individual's actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, disability, matriculation, political affiliation, source of income, or place of residence or business.

D.C. Code §2-1402.73 (2015).

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, sex, age, marital status, personal appearance, sexual orientation, gender identity and expression, familial status, family responsibilities, matriculation, political affiliation,

⁴ OPC properly can identify violations of MPD regulations during the course of its investigation, even though the complainant did not explicitly articulate the allegation in her initial complaint form.

genetic information, disability, source of income, status as a victim of an intra-family offense and place of residence or business.

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, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, place of residence or business or any other ground of discrimination prohibited under the statutory and the common law of the District of Columbia.” D.C. Mun. Regs. tit. 6A, § 2199.1.

The ROI determined that SUBJECT OFFICER violated General Order 304.18(I) when he failed to provide COMPLAINANT with language access services. This finding is based on a review of the BWC footage and COMPLAINANT’s apparent request for an interpreter. “Intèrprete. I speak no English.”

As relevant to COMPLAINANT, General Order 304.18 generally requires that she be provided language services equal to similarly situated English-speaking individuals. In particular, the General Order provides:

IV. REGULATIONS

- A. Members who encounter a person who is LEP/NEP shall take all necessary and appropriate steps, consistent with their obligations, to establish and maintain timely and effective communication with the LEP/NEP person including but not limited to:
1. Asking all customers if they need assistance in a language other than English and automatically calling the language line when they encounter a LEP/NEP constituent;
 - and 2. Providing language assistance – either by phone or through a qualified interpreter – at all times if one is requested by an LEP/NEP constituent - regardless of the constituent’s perceived level of English proficiency.

SUBJECT OFFICER’s first encounter with COMPLAINANT was AT AN MPD LOCATION IN NW, WASHINGTON, DC. just before she was patted down. Until the moment she was seated in the MPD cruiser, COMPLAINANT was in the custody of SPO. SUBJECT OFFICER’s job was to transport COMPLAINANT from AN MPD LOCATION IN NW, WASHINGTON, DC. to the DISTRICT STATION. He was not the arresting officer and he did not interrogate her.⁵ His role was purely administrative; i.e., to get COMPLAINANT from point A to point B and to assist with the requisite paperwork.⁶

⁵ SUBJECT OFFICER’s name appears on MPD Form PD 163, Arrest/Prosecution Report only because SPO does not have an arrest account with the MPD.

⁶ The BWC footage shows SPO completing the arrest log with the guidance of SUBJECT OFFICER.

The BWC footage shows that SUBJECT OFFICER and COMPLAINANT were able to communicate effectively. When COMPLAINANT complained about being hot, SUBJECT OFFICER opened the car door. While waiting for SPO, SUBJECT OFFICER casually asked why she was barred from the building. COMPLAINANT responded in Spanish and he did not pursue the matter.

While assisting SPO in completing the paperwork at the DISTRICT STATION, SUBJECT OFFICER had difficulty understanding the spelling of COMPLAINANT's first name. When COMPLAINANT was asked whether she wanted to be searched by a male or female that she asked for an interpreter by saying: "Somebody. Somebody. Intèrprete. I speak no English. Intèrprete. You supposed put intèrprete for me." This exchange took place at the very end of SUBJECT OFFICER's interaction with COMPLAINANT when he released her to WITNESS OFFICER #2 for the search. It took approximately four minutes from the time SUBJECT OFFICER, SPO and COMPLAINANT arrived at the DISTRICT STATION until she was released to be searched by WITNESS OFFICER #2. SUBJECT OFFICER did not speak with COMPLAINANT from the time they left THE MPD LOCATION IN NW, WASHINGTON, DC, until they arrived at the DISTRICT STATION. And at DISTRICT STATION they exchanged very few words.

Further, it is questionable whether it was even practical for SUBJECT OFFICER to request an interpreter or call the language line when COMPLAINANT was sitting in the car on A STREET IN NW, WASHINGTON, DC. The idea was to get her to the DISTRICT STATION without delay. Very few words were exchanged between SUBJECT OFFICER and COMPLAINANT while they waited for SPO. The most important words spoken by COMPLAINANT -- that she was hot -- were clearly understood by SUBJECT OFFICER and acted on.

In reviewing OPC's ROI, it is important to understand how OPC addressed an identical complaint against WITNESS OFFICER #2. When discussing whether WITNESS OFFICER #2 should have requested an interpreter, OPC specifically found that "COMPLAINANT generally understood and complied with WITNESS OFFICER #2's requests." COMPLAINANT complied with requests to turn around so that handcuffs could be removed; COMPLAINANT stated (in broken English) that her pockets were empty; she removed her earring, and she sat down and stood up as requested by WITNESS OFFICER #2. Exhibit 3, p. 4. Under these circumstances, OPC concluded COMPLAINANT's interaction with WITNESS OFFICER #2 "was limited to a prisoner search, OPC does not believe any further communication was necessary, so OPC cannot find that WITNESS OFFICER #2 deprived COMPLAINANT of her rights in this instance." Id. at 5. OPC arrived at this conclusion even though it found that COMPLAINANT specifically requested an interpreter at the DISTRICT STATION when she said "Somebody speak Spanish. I no English." Id. at 4. WITNESS OFFICER #2 was present when COMPLAINANT made this statement.

The Complaint Examiner agrees with OPC's findings about WITNESS OFFICER #2 and believes that a similar analysis applies to SUBJECT OFFICER. Like WITNESS OFFICER #2,

the evidence is that COMPLAINANT and SUBJECT OFFICER communicated effectively, at least until SUBJECT OFFICER sought to obtain the correct spelling of her first name. It is too thin a read to find a violation of General Order 304.18 based on SUBJECT OFFICER's difficulty in obtaining the correct spelling of COMPLAINANT's first name. This a common error, even among people who speak the same language.

Moreover, according to the FOP, COMPLAINANT did receive language assistance before being released from custody. See FOP objections, p 3. The only issue is whether she should have received such services sooner. SUBJECT OFFICER's interaction was limited to transportation and assisting with paperwork. In other words, he was performing largely administrative duties that did not affect COMPLAINANT's rights. Here, the Complaint Examiner paraphrases OPC's determination about WITNESS OFFICER #2: Substantive communication between COMPLAINANT and SUBJECT OFFICER was unnecessary, so the Complaint Examiner cannot find that SUBJECT OFFICER deprived COMPLAINANT of her rights in this instance. See generally Exhibit 3, pp. 4-5.

For the foregoing reasons, the Complaint Examiner concludes that there is insufficient evidence to find that SUBJECT OFFICER violated D.C. Code § 5-1107 and MPD General Order 120.25.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Discrimination	Insufficient Facts
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Submitted on June 11, 2020.

Richard S. Ugelow
Complaint Examiner