

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	20-0223
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER #1 SUBJECT OFFICER #2
<b>Allegation 1:</b>	Harassment (SUBJECT OFFICER #1 and SUBJECT OFFICER #2)
<b>Allegation 2:</b>	Insulting, Demeaning, or Humiliating Language or Conduct (SUBJECT OFFICER #2)
<b>Complaint Examiner:</b>	Adav Noti
<b>Merits Determination Date:</b>	March 15, 2021

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 COMPLAINANT alleges that on January 6, 2020, Subject Officers SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed him by seizing and refusing to return his backpack. Complainant also alleges that SUBJECT OFFICER #2 used insulting, demeaning, or humiliating language — specifically, profanity and demeanor — towards Complainant.

**II. EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, the objections submitted by the Subject Officers on February 5, 2021, 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, the objections submitted by the Subject Officers on February 5, 2021, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On January 6, 2020, Complainant was outside with several other people in the BLOCK OF A STREET IN NW, WASHINGTON, DC. When Complainant briefly left the group to walk to a nearby store, he left his backpack with the other people and asked them to watch it while he was gone.
2. While Complainant was at the store, SUBJECT OFFICER #1 and other officers arrived on the scene and noticed Complainant's backpack sitting on top of an exterior mailbox.
3. SUBJECT OFFICER #1 called out to the people in the area "Whose backpack is this?" Another officer asked "Do y'all know whose it is?" SUBJECT OFFICER #1 said that the bag would be "found property" if "nobody claimed it." Several bystanders responded that it was their friend's bag, and that their friend had gone to the store.
4. SUBJECT OFFICER #1 told one of the bystanders to call the bag's owner and "tell him to come over so he can pick it up, because if not it's found property." A bystander said, "It wasn't left unattended, there was a person standing right here watching and everything!"
5. A bystander placed a video call to Complainant and held the phone up to SUBJECT OFFICER #1. SUBJECT OFFICER #1 told Complainant to "come over and get [the bag], come over and get it."
6. About 90 seconds later, Complainant returned from the store, and numerous bystanders identified him as the bag's owner. Complainant reached for his backpack. SUBJECT OFFICER #1 grabbed the straps, preventing Complainant from taking it.
7. SUBJECT OFFICER #1 said, "What's inside the bag?" Complainant responded, "Give me my bag. None of your business." Numerous bystanders, observing SUBJECT OFFICER #1's refusal to let go of the backpack, verified Complainant's ownership, telling the officers "It's his bag"; "That's his bag"; and "That's him right there."
8. SUBJECT OFFICER #1 and other officers stated that Complainant would need to produce ID or "something with [Complainant's] name on it."
9. By way of explaining their demand for ID, one officer said, "there could be a computer in there." Complainant responded, "there *is* a computer in there."

10. Complainant pointed to the logo on the bag and said “look at the bag”; then he unzipped his outer coat, pointed to the logo on his sweatshirt, and said “look at my shirt.” The backpack and Complainant’s sweatshirt bore identical corporate logos.
11. SUBJECT OFFICER #1 refused to give Complainant the bag, on the grounds that Complainant had not proved the bag was his. Complainant said, “You said ‘show proof that it’s your bag,’ and I proved it to you.” Complainant and several officers then debated whether Complainant was required to show ID to claim the bag.
12. Complainant asked, “Who’s in charge right here?” An officer indicated SUBJECT OFFICER #2.
13. Complainant approached SUBJECT OFFICER #2 and asked if his body-worn camera was activated. SUBJECT OFFICER #2 responded angrily, “Listen if you are going to ask me something, ask me something. Don’t waste my fucking time.”
14. SUBJECT OFFICER #2 then said to the other officers, “All right, let’s go, let’s go, just take the bag, c’mon, let’s go, hey let’s go,” and went to his car.
15. An officer told Complainant that, pursuant to SUBJECT OFFICER #2’s direction, Complainant would need to come to the police station to pick up his bag.
16. As the officers started leaving with his backpack, Complainant grudgingly indicated that he would show his ID and offered to hand it to an officer.
17. An officer told SUBJECT OFFICER #2, who was sitting in his car, that Complainant was willing to show ID. SUBJECT OFFICER #2 responded that Complainant would have to come to the police station to get his bag.
18. The officers left, taking Complainant’s bag with them.

#### **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.”

## **A. Harassment**

Harassment is defined in MPD General Order 120.25, Part III, Section B, No. 2 as “words, conduct, gestures, or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law, or internal guidelines of the MPD, so as to: (a) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (b) deny or impede the person in the exercise or enjoyment of any right, privilege, power, or immunity.”

The regulations governing OPC define harassment as “[w]ords, conduct, gestures or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law or internal guidelines of the MPD ... so as to (1) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (2) deny or impede the person in the exercise or enjoyment of any right, privilege, power or immunity. In determining whether conduct constitutes harassment, [OPC] will look to the totality of the circumstances surrounding the alleged incident, including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices, and training of the MPD ... the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating.” D.C. Mun. Regs. tit. 6A, § 2199.1.

Complainant alleges the Subject Officers harassed him by unlawfully seizing his backpack and refusing to return to him. The evidence shows the Subject Officers did so.

### *1. SUBJECT OFFICER #1*

Upon arriving at the scene, SUBJECT OFFICER #1 noticed Complainant’s backpack on top of an exterior mailbox and asked the other people on the scene who owned it. Numerous bystanders immediately informed SUBJECT OFFICER #1, in direct response to his inquiries, that they were watching the bag for its owner, who was at a nearby store. One of the bystanders even placed a video call to Complainant and held the phone up so SUBJECT OFFICER #1 could speak with Complainant directly and tell him to come back. Which Complainant promptly did, as SUBJECT OFFICER #1 had directed. Another bystander made clear to SUBJECT OFFICER #1 that the bag “wasn’t left unattended, there was a person standing right here watching and everything!”

Thus, within seconds of SUBJECT OFFICER #1’s arrival, the circumstances provided no indication that the backpack had been abandoned, and ample evidence — including multiple eyewitnesses and direct conversation with Complainant via video call — showing that it had not.

Yet when Complainant arrived to claim his bag as SUBJECT OFFICER #1 had instructed, SUBJECT OFFICER #1 changed gears and invented a new requirement, insisting Complainant would need to show identification to “prove” that the bag was Complainant’s. This is a baffling demand: how would showing ID prove ownership of the bag? Complainant rightly challenged SUBJECT OFFICER #1 on both the logic and the lawfulness of the ID

“requirement.” SUBJECT OFFICER #1 nonetheless dug in and repeatedly demanded to see Complainant’s ID. All of this while numerous bystanders were telling the officers “It’s his bag”; “That’s his bag”; and “That’s him right there.”

Rather than provide ID — which all parties seem to agree was not legally required<sup>1</sup> and would have proved nothing anyway — Complainant provided much clearer and more convincing evidence of ownership. He drew the officers’ attention to the fact that the bag had a corporate logo on it, and that the exact same corporate logo was on Complainant’s sweatshirt. In other words, Complainant was at that moment wearing clothes that indicated that both he and the backpack were affiliated with the same company. Complainant also verbally identified at least one item inside the bag, a computer.

For reasons that are unclear, SUBJECT OFFICER #1 found this proof lacking. SUBJECT OFFICER #1 did not explain on the scene why he disregarded every piece of evidence presented to him, nor does he explain his reasoning in his objections to the ROI.<sup>2</sup> It seems hard to imagine SUBJECT OFFICER #1 believed all the bystanders and Complainant had conspired, in less than 90 seconds, to dress Complainant in clothes that matched the backpack to effectuate the group’s collective, on-the-spot plot to steal the bag from the officers.

Ultimately, SUBJECT OFFICER #1’s reasoning is irrelevant because he had no authority to seize Complainant’s property in the first place. The Subject Officers claim that the bag was “found property” within the meaning of MPD orders, and therefore subject to seizure. That is not so. The MPD general order on which Subject Officers rely describes “found property” as property “turned over to a member of [MPD] by a citizen.” *See* MPD General Order 601.1.III.A.1. No citizen turned Complainant’s bag over to the Subject Officers; to the contrary, the citizens on the scene knew who owned it, and that it had never been abandoned.

Indeed, as noted previously, the Subject Officers were aware from within seconds of arriving on the scene that the bag had not in fact been “found.” Its owner was nearby and had asked his friends to watch it for a brief period. People do this every day, everywhere, and they do so with the reasonable expectation that police officers will not seize the property away from the people to whom it was entrusted.

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<sup>1</sup> In their objections to the ROI, the Subject Officers cite an MPD General Order regarding the criteria for returning found property. Even if this General Order were relevant (which it is not, because as explained below Complainant’s bag was not “found property”), the General Order does not require a person claiming the property on the scene to show ID.

<sup>2</sup> In their objections to the ROI, the Subject Officers incorrectly assert that “[d]uring this time, [Complainant] became extremely difficult and aggressive with the officers.” Complainant insisted on his rights, but he was not “difficult” except to the extent he pointed out — correctly — that SUBJECT OFFICER #1’s demand for ID was nonsensical and baseless. SUBJECT OFFICER #1, on the other hand, *did* act in a “difficult” manner, offering shifting and confused explanations for his demands and thwarting Complainant’s effort to engage in a reasoned dialogue.

SUBJECT OFFICER #1's other argument is essentially that, even if his legal characterization of the bag as "found property" is incorrect, he did not harass Complainant within the meaning of the relevant regulations because he merely made a mistake. It is true that innocent mistakes are not misconduct under OPC rules. But the evidence shows SUBJECT OFFICER #1 knew what he was doing was incorrect: two of the things he said upon arriving at the scene were, "tell [Complainant] to come over so he can pick [the bag] up, *because if not* it is found property," and that the bag would be treated as found property "*if nobody claimed it.*" In other words, SUBJECT OFFICER #1 was aware that the only way the bag could be classified as abandoned or found would be if Complainant failed to "pick up" or "claim" it. Thus, SUBJECT OFFICER #1's decision not to give Complainant his bag even when he did arrive to claim his property was in knowing disregard of the rule that SUBJECT OFFICER #1 himself had paraphrased.

The allegation that SUBJECT OFFICER #1 harassed Complainant by wrongfully seizing his property and refusing to return it is sustained.

## 2. SUBJECT OFFICER #2

When Complainant eventually relented to multiple officers' demands and offered to show ID, SUBJECT OFFICER #2 refused to even look at it. Instead, he affirmatively directed the other officers to leave the scene and take the bag with them. This was plainly harassing. To tell Complainant that his bag would be seized if he did not show ID, but then to order the bag seized anyway when he tried to comply, demonstrates that SUBJECT OFFICER #2 was not acting in good faith when he deprived Complainant of his property.

As with SUBJECT OFFICER #1, SUBJECT OFFICER #2's suggestion that he merely made a mistake is unpersuasive. SUBJECT OFFICER #2 stood on the scene for several minutes, watching officers under his command demand to see Complainant's ID as a condition for returning the backpack. SUBJECT OFFICER #2 then refused to return the bag when Complainant tried to show ID. In other words, even if one were to credit SUBJECT OFFICER #2's suggestion that he simply erred in thinking Complainant was legally required to show ID, that would mean SUBJECT OFFICER #2 knowingly violated *his own understanding* of the law by refusing to return Complainant's backpack when Complainant attempted to comply with the ID "requirement."

The allegation that SUBJECT OFFICER #2 harassed Complainant by wrongfully directing other officers not to return Complainant's property is sustained.

### **B. Language or Conduct (SUBJECT OFFICER #2)**

Pursuant 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 alleges that SUBJECT OFFICER #2 committed misconduct in telling Complainant not to “waste [SUBJECT OFFICER #2’s] fucking time” by asking questions. SUBJECT OFFICER #2 does not dispute — or even address — this allegation in his objections to the ROI. In any event, the evidence amply establishes its validity.

The officers’ body-worn camera videos show other officers directed Complainant to speak with SUBJECT OFFICER #2 about the return of his backpack. Complainant followed this instruction, approached SUBJECT OFFICER #2, and asked if his camera was activated. SUBJECT OFFICER #2 snapped at Complainant, “Listen if you are going to ask me something, ask me something. Don’t waste my fucking time.”

To be clear, this was not casual or conversational profanity. SUBJECT OFFICER #2 angrily, aggressively, and without any provocation lashed out at Complainant for “wasting [his] fucking time” before Complainant — who was being improperly deprived of his own property — had said so much as one word to the SUBJECT OFFICER #2 about the backpack. There was no cause or excuse for this “harsh . . . coarse, [and] profane” language, MPD General Order 201.26.V.C, and SUBJECT OFFICER #2 offers none.

The allegation that SUBJECT OFFICER #2 used insulting, demeaning, or humiliating language towards Complainant is sustained.

## V. SUMMARY OF MERITS DETERMINATION

### SUBJECT OFFICER #1

<b>Allegation 1: Harassment</b>	Sustained
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### SUBJECT OFFICER #2

<b>Allegation 1: Harassment</b>	Sustained
<b>Allegation 2: Language &amp; Conduct</b>	Sustained

Submitted on March 15, 2021.

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Adav Noti  
Complaint Examiner