

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	20-0644
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Complaint Examiner:	Jennifer A. Fischer, Esq.
Merits Determination Date:	November 22, 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

The complainant, COMPLAINANT (“Complainant”), filed a complaint with the Office of Police Complaints (OPC) on July 10, 2020. Complainant alleged that on June 24-25, 2020,¹ Metropolitan Police Department (MPD) SUBJECT OFFICER (“Subject Officer”), harassed her when he entered her apartment unlawfully.²

Specifically, Complainant stated that on June 24, 2020, at approximately 10:30 p.m., she contacted MPD and requested officers respond to her residence to assist in locating her missing

¹ In her complaint form and during her OPC interview, Complainant reported the incident occurred on June 25, 2020, but OPC’s investigation and body-worn camera (BWC) footage confirmed that the incident began late on June 24 and continued into the early morning hours of June 25, 2020.

² In addition, Complainant alleged that WITNESS OFFICER #1, WITNESS OFFICER #2, SUBJECT OFFICER, and WITNESS OFFICER #3 used language or engaged in conduct toward her that was insulting, demeaning, or humiliating when they taunted her and were rude and unprofessional during their response to her missing daughter. Complainant further alleged that the officers harassed her by prolonging her detention and by not allowing her to enter her apartment. Complainant also alleged that WITNESS OFFICER #2 and SUBJECT OFFICER used unnecessary and excessive force when they pushed and pulled her away from her door while preventing her from entering her apartment. Lastly, Complainant alleged that WITNESS OFFICER #4 harassed her by unlawfully entering her residence. Pursuant to D.C. Code § 5-1108 (1), on September 17, 2021, a member of the Police Complaints Board dismissed this allegation, concurring with the determination made by OPC’s executive director.

sixteen-year-old daughter. Complainant remained outside of her apartment building and spoke with the officers who initially arrived, and provided them with information of her daughter's last known location in Maryland. Complainant showed the officers where her daughter's iPhone had last pinged and provided them with the names and contact information for the individuals her daughter was last seen with. Complainant explained to the officers that her seven-year-old daughter was inside the apartment asleep and after previous issues with her neighbors and the building managers complaining about police presence, she did not want the officers to enter the apartment building or her residence. Complainant alleged that Subject Officer, who had arrived at the scene some time after the initial officers, unlawfully entered her apartment.

Complainant reiterated to OPC that she continually told all officers that she did not consent to any officer entering her apartment to look for her missing sixteen-year-old daughter, as she had showed them clear evidence that her daughter was in Maryland and not in her D.C. apartment. She alleged that Subject Officer should not have opened the door to her residence and entered her apartment without her consent or exigent circumstances.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this Complaint because, based on a review of OPC's Report of Investigation (ROI), the Body Worn Camera Footage recorded by WITNESS OFFICER #2, WITNESS OFFICER #5, WITNESS OFFICER #4, and WITNESS OFFICER #6, and Subject Officer on June 24-25, 2020, the objections submitted by Subject Officer on October 12, 2021, and OPC's response to the objections dated October 20, 2021, the Complaint Examiner determined that the ROI 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 (ROI), the Body Worn Camera Footage recorded by WITNESS OFFICER #2, WITNESS OFFICER #5, WITNESS OFFICER #4, and WITNESS OFFICER #6, and Subject Officer on June 24-25, 2020, the objections submitted by Subject Officer on October 12, 2021, and OPC's response to the objections dated October 20, 2021, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant filed a complaint with OPC on July 10, 2020.
2. On June 24, 2020 at approximately 10:49 p.m., near AN ADDRESS IN NW, WASHINGTON, DC, Complainant reported to the D.C. police that her daughter was having a mental health crisis and was somewhere in Maryland. She was tracking her daughter's phone and could see her rough location in Riverdale, Maryland, but the Riverdale police wouldn't go to the location to look for her unless she filed a missing person's report with the D.C. police.

3. WITNESS OFFICER #5 was the first officer on the scene and he walked with Complainant to the street corner where she provided him with all the information about her daughter. She explained her daughter's mental health issues, that she had been refusing to take her medication, and that she hadn't seen her in a couple days. She explained how she had been tracking her on her phone, and that she had spoken to one of her daughter's friends on Instagram who has the name of the person whose house at which her daughter was presumed to be located. Complainant also explained that she could see her daughter's text messages and that she thought she had the phone number of the person she was with in Maryland. She answered all his questions.
4. WITNESS OFFICER #4 then arrived at the scene and WITNESS OFFICER #5 updated him on the information and told him that it was not the first time the Complainant's daughter had run away from home. WITNESS OFFICER #4 then spoke to Complainant and she provided him with the location of her daughter's iPhone in Riverdale, MD. She also answered his additional questions, which were repetitive of what she told WITNESS OFFICER #5. WITNESS OFFICER #4 and WITNESS OFFICER #5 then went to look at previous calls involving the Complainant's daughter.
5. WITNESS OFFICER #2 then arrived on the scene and also went to speak with Complainant. He had interacted with Complainant in the past at this address due to previous problems related to the daughter's mental health. Complainant explained the same information she had told WITNESS OFFICER #5 and WITNESS OFFICER #4.
6. Complainant explained that she was speaking to the police down the street from her apartment building because after a previous incidence of the police coming to her home, it drew negative attention to her family and the landlord emailed her with concerns that ultimately led to an e-mail to the entire building about police presence. As a result, she was worried about being evicted. It was an expensive building and as a single black woman she didn't want to draw attention to herself with having officers at her door nor did she want her neighbors seeing the police searching through her residence because she was afraid it would cause further problems with the building managers. She also explained that her seven-year-old daughter was in the apartment asleep. She insisted that the officers could not enter her apartment.
7. WITNESS OFFICER #2 explained to Complainant that he understood why she didn't want the police officers coming to her door, but that one action they take in a missing child case is to check the residence to make sure the child is not inside. He explained that there have been times where parents called to report a missing child, and the child was dead inside the home.
8. Complainant explained that her daughter was alive and she was tracking her phone. She showed WITNESS OFFICER #2 the tracking that showed where her daughter's phone was. She also provided WITNESS OFFICER #2 with contact information for an aunt and a friend of her daughter's who had seen her daughter earlier in the day in Maryland with

alcohol. She also showed him a picture from her daughter's Instagram account in which she had alcohol and gave him the Instagram names for her daughter, her daughter's boyfriend, and her aunt.

9. WITNESS OFFICER #2 then moved down the street and talked to WITNESS OFFICER #4. He explained that the daughter had previously been at PSYCHIATRIC HOSPITAL for three weeks and everything had been fine until she stopped taking her medication a couple weeks ago. He said that there was probably an outstanding case over the daughter because she has been out of control for a while and Complainant has been trying to get help. He explained that he'd been there before in relation to a problem with the daughter. WITNESS OFFICER #4 said that they couldn't classify as a missing person until they looked in the apartment and that the Watch Commanders wanted detectives to hold the situation until they do a search warrant, but he didn't think they could get one.
10. The aunt returned WITNESS OFFICER #2's call and she confirmed that she saw the daughter in Maryland earlier in the day and offered to go to the residence and pick her up and bring her home. WITNESS OFFICER #2 told her not to do that, but the aunt said that she would call her nephew to get the address where she saw the daughter and she would call WITNESS OFFICER #2 back. She called back a few minutes later and WITNESS OFFICER #2 spoke to the nephew who gave him the name and phone number of the man that the daughter was with. The nephew also explained where he had gone with her earlier in the day.
11. After getting off the phone, WITNESS OFFICER #4 told WITNESS OFFICER #2 that they could not classify it as a missing person until they could look in her apartment. WITNESS OFFICER #2 explained that Complainant had denied consent for a search of her apartment and why. WITNESS OFFICER #4 said that they could get a search warrant. WITNESS OFFICER #2 said that he didn't think Complainant's daughter was in her apartment. WITNESS OFFICER #4 agreed.
12. WITNESS OFFICER #2 and WITNESS OFFICER #4 discussed offering to have a non-uniformed female officer do the search and when WITNESS OFFICER #2 returned to speak to Complainant he made that offer. Complainant said "No, I don't want anybody in my apartment." He explained to her that to be able to take a report and make a missing person classification that they had to search her apartment. She said that she understood, but she didn't need him to take a report, she was just trying to do her due diligence. This conversation continued for a couple minutes with WITNESS OFFICER #4 joining part way through. Complainant continued to deny consent to search her residence and stated that she did not want the officers to take a report if it required searching her residence.
13. WITNESS OFFICER #2 and WITNESS OFFICER #4 left Complainant as Subject Officer arrived and started to ask Complainant questions. She asked why he was questioning her when she had already given all the information to two other officers. Subject Officer asked her who was watching her daughter while she was outside and she

said a friend. Subject Officer asked if the friend was male or female and Complainant said she wasn't going to answer any more of his questions and that she didn't consent to anyone going into her apartment. She said if it was a requirement to take a report, then they didn't need to take one and she was going to go inside and they could end all of this. After another minute of conversation about whether Complainant would allow Subject Officer's female partner to go in the house, Complainant, again, refused. Subject Officer walked over to WITNESS OFFICER #2 and WITNESS OFFICER #4.

14. Subject Officer asked WITNESS OFFICER #2 and WITNESS OFFICER #4 if they had run a COBALT search. They responded that they had and had found nothing.
15. Complainant then asked if Complainant had any male associates stating, "Because it sounds like there is probably a boyfriend in there, and I think he's wanted, and that's why she doesn't want us in the house." He asked them who was watching the seven-year-old daughter and a discussion ensued in which WITNESS OFFICER #2 explained how when he'd been there before, a case worker had been trying to get the daughter to go willingly to the hospital, which is when she went to PIW. He also recalled an elderly female who he thought was living there. Complainant clarified that the woman on WITNESS OFFICER #2's previous visit had been a social worker. Subject Officer then went to his vehicle and ran a COBALT check.
16. Complainant went inside to use the bathroom, get water, and check on her daughter. Officers discussed whether Complainant would return, but WITNESS OFFICER #2 explained her situation and that last time he was there, Complainant had asked them to come in the back door. He said that she had never lied to him before.
17. A female and male detective arrived, and WITNESS OFFICER #4 and WITNESS OFFICER #2 explained the situation to them. Subject Officer interrupted and said he was going to go knock on Complainant's door while she wasn't inside so he could see who would answer. WITNESS OFFICER #2 said that she wouldn't answer, but Subject Officer said it was to see if someone else answered it. WITNESS OFFICER #4, while not prohibiting him from doing it, indicated his discomfort with the action when he said, "Uh. Dude" and covered his face with his hand. Nonetheless, Subject Officer continued to walk toward Complainant's building. WITNESS OFFICER #5 suggested that he wait until Complainant exited the building, but when Subject Officer kept walking, WITNESS OFFICER #5 suggested that he pretend he was speaking to security.
18. After Subject Officer left, both WITNESS OFFICER #4 and WITNESS OFFICER #2 stated that they didn't think anyone else was in the residence.
19. Subject Officer entered the building with WITNESS OFFICER #1 and they went to the security guard at the front desk and asked if anyone else had come out of Complainant's apartment and he told them no one.

20. Subject Officer and WITNESS OFFICER #1 walked downstairs and called an unknown person to ask them to try to get Complainant to leave her apartment and whether the Watch Commander had advised that they have enough for a “public safety exemption.”
21. When Complainant exited her apartment, Subject Officer and WITNESS OFFICER #1 stepped back out of view. Once she left the building, they walked upstairs and asked the security guard if the male who just left was with Complainant. The security guard verified that the male was not associated with Complainant. Subject Officer then walked toward Complainant’s apartment.
22. Subject Officer knocked on the door, but didn’t say anything. A child said, “Mommy, there’s someone at the door.” Subject Officer knocked again, and again did not say anything. After ten seconds of silence, Subject Officer knocked two additional times without saying anything. A child said, “hello?” Subject Officer then pushed the door open with his hand.
23. Subject Officer began talking with the child, asking if the child was inside by herself. The child responded, “No.” Subject Officer then asked the child who was inside with her. The child responded, “Actually, I’m here by myself.” Subject Officer then radioed WITNESS OFFICER #4 and asked him to come inside.
24. WITNESS OFFICER #1 spoke to the child and confirmed that she was not injured nor needing medical attention. She told WITNESS OFFICER #1 that the last time she saw her sixteen-year-old sister was two days ago when she left the apartment.
25. Meanwhile, outside, the detectives walked toward the building to try and speak with Complainant. Complainant walked past them as she exited the building and said she didn’t want to speak with them there and they walked to the corner.
26. Complainant said that she no longer wanted to speak to the officers and walked toward her building. The officers followed her and she told them to stop following her, “this is why I didn’t want to call. This is why I don’t call the police.”
27. When Complainant arrived at her apartment, Subject Officer was standing, straddling her entryway, holding the door open. Throughout the almost hour he stood there, he leaned forward on several occasions shining his flashlight into the apartment.
28. When Complainant saw him, she stated, “I’m not giving you consent to search.” He asked her who was in the apartment and Complainant told him, “my daughter.” When he asked who else, she said, “nobody else.” Subject Officer then ordered her away from her apartment door. Eventually, she walked with other officers down the hallway.

29. WITNESS OFFICER #4 approached Subject Officer who explained that he knocked on the door and the seven-year-old girl “was like, ‘mommy, mommy,’ so I opened the door.”
30. WITNESS OFFICER #4 asked if the door was unlocked and Subject Officer explained, “Yeah, the door was bolted.” In response to the question of how it was bolted, Subject Officer pointed to the door frame and said, “Just like that.” He explained, “I pushed it open because I heard her [the child]. I asked her if anyone else was here and she said, ‘yeah,’ then looked to her left so I said, ‘who else is here?’ then she said, ‘actually no one else is here.’”
31. WITNESS OFFICER #4 then asked Subject Officer, “So, was the door open, or no?” Subject Officer said, “It was locked to here,” and pointed to the doorframe where the handle meets the frame. WITNESS OFFICER #4 stated, “So it wasn’t open then. Okay.” Subject Officer replied, “It was cracked.” WITNESS OFFICER #4 then walked away and Subject Officer remained straddling the doorway, one foot inside the apartment.
32. While WITNESS OFFICER #4 and Subject Officer were talking, down the hall, WITNESS OFFICER #2 showed Complainant a photo and verified with her that it was her daughter’s boyfriend who she thought her daughter was with at the time.
33. The female and male detectives then approached Subject Officer at the apartment door and the female detective told him that child services was taking the case over. Subject Officer said, “So they don’t want us to wait until they show up so they can talk to her and they don’t think something else might be afoot?” The male detective responded, “It was never going to be a detective matter anyway.”
34. The male detective then stated to Subject Officer, “I mean, we go in there and search it, for what? You’re looking for a person, right? Huh? Right? I’m asking.” Subject Officer put his hands up in the air and said, “Yeah.” The detective continued, “Well, you’re looking like that and I’m asking you.” Subject Officer responded that there could be a possibly harmless reason that Complainant wouldn’t give them consent to search her apartment, but “that’s why I had to look. This is unsettling.”
35. When he was alone at the door, Subject Officer asked the seven-year-old girl five more times in several different ways who else was in the residence with her. Each time the child repeated that there was no one else in the residence.
36. WITNESS OFFICER #4 approached Subject Officer, still straddling the doorway, and told him that the Watch Commander, WITNESS OFFICER #6 was going to respond to the scene. Subject Officer told WITNESS OFFICER #4 that he had encountered a previous situation with a person who had escaped a psychiatric facility in which they had to open a closed, but similarly propped open door without consent or warrant based on a public safety exception and that he believed he had similar justification here. Subject

Officer asked if the Watch Commander could make the decision on whether there was enough of a public safety issue to justify opening the door to the residence. WITNESS OFFICER #4 confirmed the Watch Commander could make the call and instructed Subject Officer to remain as he was until the Watch Commander arrived.

37. About fifteen minutes later, WITNESS OFFICER #6 arrived and, outside of the apartment building, the male detective told him that Complainant was on the phone with her daughter and that the daughter was not in the apartment. He said that they were not going to get a search warrant and they did not have enough probable cause for a search. WITNESS OFFICER #6 then went to speak to Complainant in the apartment building. Complainant explained why she had called the police and that she had just ended a Facetime call with her daughter. She showed it to the male detective to prove that her daughter wasn't in her apartment and the officers had no reason to search. WITNESS OFFICER #6 then asked Complainant to call her daughter again on Facetime, which she did. WITNESS OFFICER #6 confirmed that it was her by a picture that Complainant showed her.
38. An officer then showed WITNESS OFFICER #6 another picture of the Complainant's daughter from a previous missing person's report and she confirmed it was the same female he saw in the Facetime call.
39. WITNESS OFFICER #6 and Complainant spoke outside the building and Complainant again explained everything to her, including why she hadn't wanted the police to be in her building or apartment because she was afraid of eviction. WITNESS OFFICER #6 said that after seeing Complainant's daughter on Facetime she was satisfied she wasn't in the residence and they would complete the missing person's report. WITNESS OFFICER #6 also checked with CFSA who said that they didn't have any immediate concern about the seven-year-old child in the apartment and didn't feel the residence needed to be searched.

IV. DISCUSSION

Complainant alleged that Subject Officer harassed her when he opened the door to her apartment and stepped inside.

Pursuant to D.C. Official Code § 5-1107(a), and (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.

As discussed below, Subject Officer's behavior here constituted harassment. He violated Complainant's Fourth Amendment expectation of privacy in her home by opening her door and stepping his foot inside to hold the door open. His statements during the encounter show that he recklessly violated Complainant's Fourth Amendment rights.

A. Harassment

Harassment is defined in MPD General Order 120.25, Part III, Section B, No. 2 and in the regulations governing OPC 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.”

“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.

B. Subject Officer’s Warrantless Entry into Complainant’s Home Without Her Consent Was a Reckless Violation of the Fourth Amendment.

Here, it is undisputed that Subject Officer pushed open the closed door to Complainant’s apartment, stepped inside and remained with one foot inside the apartment throughout the incident, and occasionally leaned inside the apartment and flashed his flashlight. It is also undisputed that Subject Officer did not have consent from Complainant nor had a search warrant. The question is, then, whether Subject Officer’s opening of Complainant’s closed door and his stepping his foot inside the apartment constituted an entry of Complainant’s home for Fourth Amendment purposes, and, if so, if Subject Officer had any exception from the warrant requirement. If Subject Officer’s entry was a violation of her Fourth Amendment rights, then the question is whether his violation was purposeful, knowing, or reckless.

1. Subject Officer’s Entry into Complainant’s Home Was a Violation of the Fourth Amendment.

Subject Officer’s entry into Complainant’s apartment here was in violation of the Fourth Amendment. The Fourth Amendment protects against a consent-less and warrantless entry into a home barring the existence of circumstances that would justify an exception to those requirements. *Payton v. New York*, 445 U.S. 573, 590 (1980). The Supreme Court has stated that any physical intrusion into a home constitutes an entry, “The Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.” *Id.* (emphasis added). Many courts have concluded that this includes even placing a foot in the door to prevent someone inside from closing the door. *Dalcour v. City of Lakewood*, 492 Fed. App’x 924, 932-34 (10th Cir. 2012); *Siedentop v. State*, 337 P.3d 1, 3 (Alaska Ct. App. 2014). Moreover, the use of listening and heat sensor devices have been considered an “entry” even though the home wasn’t even physically breached.

Silverman v. United States, 337 U.S. 505, 512 (1961); *Kyllo v. United States*, 533 U.S. 27, 37-40 (2001). Thus, opening the closed door and stepping a foot inside to hold the door open was a breach of the threshold of Complainant's home and constituted an entry for Fourth Amendment purposes.

Subject Officer's representative argues, incorrectly and using case law that has no bearing on this allegation, that Subject Officer's opening the shut door, and stepping a foot inside the doorway and leaning into the home did not constitute entry for Fourth Amendment purposes. *U.S. v. Santana*, 427 U.S. 38, 42 (1976) (a person standing fully visible to the public does not have a Fourth Amendment expectation of privacy when s/he has knowingly exposed herself to the public); *White v. U.S.*, 346 F.2d 800, 801-2 (D.C. 1965) (When an officer is announcing himself prior to executing a search warrant, stepping onto the threshold of the doorway was not a violation of the announcement of identity and purpose requirements for executing a search warrant); *Coffin v. Brandau*, 642 F.3d 999, 1013-18 (11th Circ. 2001) (Sheriff's deputies violated the Fourth Amendment when they stuck a foot in to prevent a garage door from closing and then entered the garage and arrested Appellant, but the Fourth Amendment jurisprudence as to entering garages was not sufficiently established to breach qualified immunity as to the Deputies.). Here, Complainant did not leave her apartment door open and visible to the public as in *Santana*, and Subject Officer did not have a search warrant *as in White*. Moreover, in *Coffin*, the officers fully entered the Appellant's garage, they did not merely stick a foot in, so it has no bearing on the situation here.

Thus, Subject Officer's opening of the closed door of Complainant's apartment (locked, cracked or otherwise) and stepping a foot inside the door constitutes a Fourth Amendment violation in the absence of a warrant, consent, or another exigent circumstance.

As Subject Officer did not have a warrant or consent, he required some other exemption to the Fourth Amendment requirement. Subject Officer repeatedly tried to justify his actions during the encounter as meeting a "public safety" exception. In his objections to the ROI, his representative also argues that he met the "emergency doctrine" exception to the Fourth Amendment warrant requirement. Complaint Examiner understands both these references as variations on the exigent circumstances exception. As the Supreme Court noted in *Mincey v. Arizona*, 437 U.S. 385 (1978), "the emergency doctrine" is "nothing more than a specific application of the exigent circumstances exception to the Fourth Amendment warrant requirement. *Id.* at 392. Such an exception requires that 1) the officer had probable cause to conduct the search, and 2) "obtaining a search warrant was impracticable because the officers reasonably believed there was an immediate need to act in order to protect or preserve life or to prevent serious bodily injury." *Id.*

Subject Officer did not meet the requirements for an exigent circumstances exception as he did not have probable cause to enter Complainant's residence nor was obtaining a search warrant impractical. In fact, the investigating officers concluded and stated, on multiple occasions: a) that they did not believe Complainant's daughter was in her residence; b) that they

did not have sufficient probable cause to obtain a search warrant nor were they intending to apply for a search warrant. Subject Officer was aware that this was the case.

- When discussing the need to search Complainant's apartment to be able to classify her missing person report, her refusal to allow them entry, and whether they could apply for a search warrant, WITNESS OFFICER #4 stated that he didn't think they could get one. WITNESS OFFICER #2 BWC 22:09.
- Later, in response to a similar conversation about getting a search warrant, both WITNESS OFFICER #2 and WITNESS OFFICER #4 said that they didn't believe Complainant's daughter was in her apartment. WITNESS OFFICER #2 BWC 45:40; WITNESS OFFICER #4 BWC 1:06:08.
- Immediately after Subject Officer left the other officers to knock on Complainant's door WITNESS OFFICER #4 and WITNESS OFFICER #2 reiterated to each other that they didn't think anyone else was in the residence. WITNESS OFFICER #2 BWC 1:07:30; WITNESS OFFICER #4 BWC 1:27:53.
- When the Watch Commander arrived, the male detective explained to her that they did not have enough probable cause for a search warrant. WITNESS OFFICER #6 BWC 5:03.
- Prior to knocking on Complainant's door, Subject Officer on the phone asked whether the Watch Commander had advised that they have enough for a "public safety exemption." SUBJECT OFFICER BWC 15:00. His repeat of this question to WITNESS OFFICER #4 later in the evening after he had already opened the door indicates that the answer was no. SUBJECT OFFICER BWC 44:57; WITNESS OFFICER #4 BWC 2:10.

Subject Officer alone thought something more sinister was happening, despite having limited information, and took it upon himself to find out what it was, which led to the Fourth Amendment violation.

- Despite the fact that three other officers (WITNESS OFFICER #5, WITNESS OFFICER #2, and WITNESS OFFICER #4) had already been on the scene and speaking with Complainant for over a half hour prior to his arrival and WITNESS OFFICER #2 clearly had prior experience with Complainant and her missing daughter, Subject Officer, with very limited discussion of what had occurred prior to his arrival, decided that "there was probably a boyfriend in there, and I think he's wanted, and that's why she doesn't want us in the house." SUBJECT OFFICER BWC 5:18; WITNESS OFFICER #2 BWC 55:20.
- Subject Officer then reran the COBALT check that other officers had told him they had already run and found nothing. SUBJECT OFFICER BWC 5:18.
- When he returned, he told WITNESS OFFICER #2, WITNESS OFFICER #4, and the female detective that he was going to go in and knock on Complainant's door. WITNESS OFFICER #2 tried to dissuade him by saying that she wouldn't answer it, but Subject Officer responded that it was to see if someone else answered it. WITNESS OFFICER #4, while not prohibiting him from doing it, indicated his discomfort with the action when he said, "Uh. Dude" and covered his face with

his hand.³ WITNESS OFFICER #2 BWC 1:02:36; SUBJECT OFFICER BWC 12:40; WITNESS OFFICER #4 BWC 1:23:00.

Subject Officer's representative's explanation of the "emergency doctrine" and citation of cases suggests he is arguing that a mere missing person's report is enough to trigger a search of the missing person's residence. That is a vastly incorrect representation of those cases, however, all of which require the same criteria to be met as the Supreme Court required in *Mincey*, *Brimage v. State*, 918 S.W.2d 466, 482 (Tex. Crim. App. 1996); *People v. Wharton*, 809 P.2d 290 (Cal 1991); *Chaney v. State*, 612 P.2d 269, 272 (Okla. Crim. App. 1980). Moreover, MPD General Order 304.03, which deals with missing person reports, also does not support a search in violation of the warrant requirement. Rather, it requires searches of the missing person's residence in cases of persons age 12 and over only "if warranted." GO 304.03 V.A.6.c.(2). Here, as concluded by multiple officers, such a search was not warranted.

Whether Subject Officer's entry constituted harassment depends on whether it was done purposefully, knowingly, or recklessly in violation of the law. Subject Officer in his interview with OPC indicated that the opening of the door and the stepping his foot inside to hold the door open did not constitute an entry for Fourth Amendment purposes. Exh. 5 at 18:29, 28:30. His statements might suggest that Subject Officer did not know opening the door and stepping his foot inside constituted an entry for Fourth Amendment purposes. His repeated efforts to justify it during the encounter, however, indicate that he knew that his actions did, in fact, constitute a Fourth Amendment entry and that he was seeking hindsight support to justify it under an exception.⁴

- As discussed above, prior to knocking on Complainant's door, Subject Officer had asked an unknown person on the phone if he had a "public safety" exception to enter the apartment and the answer was evidently, no. SUBJECT OFFICER BWC 15:00.

³ Although WITNESS OFFICER #4 is not a Subject of this allegation, it is concerning that as the superior officer on the scene, given that he knew they did not have basis for a search warrant, that he did not believe the missing girl or anyone besides the seven-year-old daughter was in the apartment, and that he knew of Complainant's concerns regarding the police in her building, that he did nothing more to reign in Subject Officer's actions here.

⁴ OPC investigators also told Complaint Examiner about observing MPD's 2019 PDT training in which officers are taught the law around what constitutes a Fourth Amendment entry. According to the OPC investigator, the Tactical Village instructors used a role-playing scenario to demonstrate that crossing the threshold constitutes an unlawful entry. The officers were greeted at the door of a home by a community member who called for service and the instructors presented them with various enticements to enter. For instance, there was a shotgun visible in plain view on the couch and when the officer asked the resident for identification, the instructor would intentionally drop the ID to tempt the officer to cross the threshold to pick it up, believing that they were doing something helpful. Because there is a lack of documentary evidence of this training (not even as an affidavit by the observing investigator) and Subject Officer was thus not able to respond to it, it has not been considered in the decision here. Complaint Examiner raises it because although it is unnecessary to reach the decision here, it only makes Subject Officer's behavior and later denial of his knowledge of the law even more egregious.

- When Subject Officer first justified his decision to open the door to WITNESS OFFICER #4 he explained that it was because after he knocked, the seven-year old daughter, who he already knew was inside, said, “Mommy, mommy.” SUBJECT OFFICER BWC 21:27; WITNESS OFFICER #4 BWC 1:31:46. What she actually said, however, was “mommy, mommy, someone’s at the door.” SUBJECT OFFICER BWC 21:27. Complainant had already explained that her seven-year-old daughter was inside sleeping and so the girl’s response suggested neither that she was in distress, nor that there was anyone else in the apartment. Rather, it indicated she had woken up with the door knock and thought her mother was still there. Moreover, his stated reason to knock on the door was to see if “someone else” answered, not out of concern for a young girl who he already knew was inside. SUBJECT OFFICER BWC 13:00. Subject Officer himself stated in his interview with OPC that neither prior to knocking nor based on the girl’s response did he have any reason to think the girl was in distress. Exh. 5 at 12:55. So the girl’s statement, without something more, did not provide any justification to open the door, especially when his reason for knocking was to see if someone else answered.
- Subject Officer tried to retroactively justify his action by claiming that the girl’s responses to his questions about who else was in the apartment after he had opened the door and her looking to the left suggested that she wasn’t alone. SUBJECT OFFICER BWC 21:37; WITNESS OFFICER #4 BWC 1:32:01. Except even if the question and look did suggest the possibility of the presence of another person, these were questions asked and movement seen AFTER he had already opened the door and stepped inside to hold the door. Thus, they provided no justification for his initial action.
- Later when WITNESS OFFICER #4 said to Subject Officer “so [the door] wasn’t open then.” Subject Officer replied, “it was cracked.” SUBJECT OFFICER BWC 21:55; WITNESS OFFICER #4 BWC 1:32:18. Subject Officer’s attempt to minimize his opening of a closed door – locked or not, cracked or not - suggests that he knew his opening it fully so he could see inside was unlawful.
- When the male detective spoke to Subject Officer and told him that they were turning the case over to Child Protection, Subject Officer said, “they don’t think something else might be afoot?” And when the male detective pushed him by emphasizing that they were only looking for the sixteen-year-old daughter, Subject Officer responded, “it just feels unsettling not to search the apartment.” SUBJECT OFFICER BWC 32:36. His reactions to the male detective show that his reason for pushing open the door was not out of worry for the seven-year-old girl, but solely to determine if someone else was in the apartment.
- That Subject Officer’s intent was to search for something he alone seemed to think was nefarious rather than concern for a seven-year-old girl is confirmed by his asking the girl five more times who else is in the apartment with her. SUBJECT OFFICER BWC 17:30.

- That Subject Officer knew he might have unlawfully opened the door and stood with his foot inside of it is also demonstrated by his later explanation to WITNESS OFFICER #4 that he'd worked on another missing person case in which he had to make entry with a door closed, but propped to prevent it from locking, due to exigent circumstances, and thus he felt that there were public safety issues in this case which also allowed him to open the door. He then asked if the Watch Commander could make the decision whether there was enough of a public safety issue to justify opening the door to the residence. SUBJECT OFFICER BWC 44:57; WITNESS OFFICER #4 BWC2 2:10. His statements and question to WITNESS OFFICER #4 evidences a specific understanding that in order to push open a closed door and stand with his foot inside holding the door open required him to have an exception to the warrant requirement, which he did not have here.

Subject Officer's representative makes multiple additional arguments that suggest that the Watch Commander, or WITNESS OFFICER #4, or both, approved of the entry. Even if that is correct, which it is not, it doesn't change that there was a violation since such an approval would have taken place after Subject Officer took the action. Prior to Subject Officer opening the door, the Watch Commander had said that that they needed to search the apartment to be able to take a missing person's report, but there is at no time a statement indicating that it being a missing person situation allowed them to enter the apartment without a search warrant. Exh. 7 at 4:00; SUBJECT OFFICER BWC. Rather, on multiple occasions officers say that they need to get a search warrant, but that they don't think they have enough basis to do so. WITNESS OFFICER #2 BWC 45:40, 58:52; WITNESS OFFICER #4 BWC 1:06:02, 1:19:10; SUBJECT OFFICER BWC 32:36; WITNESS OFFICER #6 BWC 5:03; Exh. 7 at 4:42. At no time during the incident does WITNESS OFFICER #4 express approval of Subject Officer's actions. SUBJECT OFFICER BWC.

Although WITNESS OFFICER #4 stated during his interview with OPC that he thought Subject Officer's actions were lawful, he said it was because he understood that Subject Officer thought that the child's voice on the other side of the cracked door could have been the individual they were looking for. Exh. 7 at 5:49, 18:05. Except at no time during the interaction does Subject Officer ever state that he thought the child who said, "mommy, mommy" might have been the missing daughter. SUBJECT OFFICER BWC. Rather, he knew a little girl was inside and it was clearly the voice of a little girl, not a sixteen-year-old voice. SUBJECT OFFICER BWC. Thus, to the extent WITNESS OFFICER #4 concluded that Subject Officer's actions were lawful, it was based on an incorrect understanding of what occurred before Subject Officer opened the door. Moreover, WITNESS OFFICER #4's repeated questions of Subject Officer as to whether the door had been open or closed would have been unnecessary if he didn't think what Subject Officer did was likely an unlawful "entry" for Fourth Amendment purposes. SUBJECT OFFICER BWC 21:55; WITNESS OFFICER #4 BWC 1:32:18.

For these reasons, Subject Officer violated Complainant's Fourth Amendment rights when he opened the closed door to her apartment and stood with one foot inside the apartment to hold the door open. Subject Officer also knew that his conduct did not meet an exception to the warrant requirement. Thus, the allegation of harassment against Subject Officer is sustained.

SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation: Harassment	Sustained
-------------------------------	-----------

Submitted on November 22, 2021.

Jennifer A. Fischer, Esq.
Complaint Examiner