

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	20-0671
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER
<b>Allegation 1:</b>	Insulting, Demeaning, or Humiliating Language or Conduct
<b>Complaint Examiner:</b>	Peter Tague
<b>Merits Determination Date:</b>	February 4, 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, filed a complaint with the Office of Police Complaints (OPC) on July 20, 2020. COMPLAINANT alleged that on July 18, 2020, the subject officer, D.C. Housing Authority Police Department (DCHAPD) SUBJECT OFFICER, used language or engaged in conduct that was insulting, demeaning or humiliating toward WITNESS #1, when SUBJECT OFFICER used profanity toward and verbally berated WITNESS #1.

**II. EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation and the objections submitted by SUBJECT OFFICER on December 23, 2020, and OPC's response to those 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 SUBJECT OFFICER on December 23, 2020, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. At 6:00 p.m. on July 18, 2020, while delivering groceries to a resident at AN APARTMENT COMPLEX IN NW, WASHINGTON, DC, the complainant, COMPLAINANT, observed an encounter at the building's entrance between a police officer and a different resident of the building. The officer used profane and demeaning language and behavior during this fervid exchange in which the officer appeared to be blocking the resident's entry into the building. Report of Investigation (ROI) Exhs. 2 (COMPLAINANT Complaint) and 3 (COMPLAINANT Statement). In particular, COMPLAINANT recalled that the officer called the resident a "fucktard," a word COMPLAINANT equated to "retard."
2. COMPLAINANT's companion, WITNESS #2, also observed the incident. She agreed that by his language and conduct the officer insulted, demeaned and might have humiliated the resident. She does not recall the specific language she thought was offensive. ROI Exh. 5 (WITNESS #2 Statement).
3. The officer was SUBJECT OFFICER, employed by the District of Columbia's Housing Authority Police Department. The resident was WITNESS #1.
4. WITNESS #1, with whom SUBJECT OFFICER was quarreling, did not himself file a complaint with OPC. Indeed, he refused to cooperate with OPC's investigation of COMPLAINANT's complaint. ROI Exh. 8 (WITNESS #1 Statement).
5. That said, WITNESS #1 surely felt aggrieved by SUBJECT OFFICER' conduct. In two videos he took with his cellphone (posted to A SOCIAL MEDIA PLATFORM), recording different encounters between them, WITNESS #1 repeatedly, and heatedly, accuses the officer of "cussing" him.
6. There appears to be a lack of overlap between the incident observed by the complainant and WITNESS #2, the two encounters recorded by WITNESS #1, and another encounter described by SUBJECT OFFICER. Indeed, in his report to the police department (MPD PD Form 119, ROI Exh. 9) and in his interview with OPC (ROI Exh. 7), SUBJECT OFFICER seems not even to address the incident between him and WITNESS #1 that precipitated the complaint by COMPLAINANT.
7. SUBJECT OFFICER arrived at the building to replace WITNESS OFFICER at "post duty" at either 5:00 (ROI Exh. 7 (SUBJECT OFFICER Statement)) or 5:30 (ROI Exh. 9 (MPD DP Form 119)). Conversing outside the building, WITNESS OFFICER told SUBJECT OFFICER that in an earlier encounter with WITNESS #1, he had repeatedly called her a "bitch." ROI Exh. 7 (SUBJECT OFFICER Statement). In his official report, ROI Exh. 9, SUBJECT OFFICER provides context. The two officers were discussing "WITNESS #1 [sic] the building 'president' of his 'Black Seniors Matter' raley [sic] which occurred prior to the undersigned officer's [SUBJECT OFFICERS'] shift." From his apartment on the building's second floor, WITNESS #1—that is, WITNESS #1—

overheard the officers' conversation, and exploded with profanity "directed at both officers." *Id.*

8. After WITNESS OFFICER #1 departed, WITNESS #1 arrived to confront SUBJECT OFFICER and "continued to yell and using profane language." ROI Exh. 9. WITNESS #1 also recorded this "encounter on his cellphone." *Id.*
9. In his report SUBJECT OFFICER does not describe what he did during this encounter, how long it lasted or whether it was observed by anyone. This might have been the exchange observed by the complainant and WITNESS #2, but they time the encounter they saw somewhat later, at 6:00.
10. Of the two recordings made by WITNESS #1, the shorter one (30 seconds) occurs outside the building. ROI Exh. 12. WITNESS #1 insults SUBJECT OFFICER and tries to entice him to talk. ("Keep talkin, girl. You 'aint sayin nothin now is you, girl? Talk!") In response, SUBJECT OFFICER says "[i]f you are real about your shit, put your camera down and let's talk. Let's have a conversation." "Cussed out" by SUBJECT OFFICER, WITNESS #1 rejects the invitation. SUBJECT OFFICER tells WITNESS #1 to "have a blessed day," and walks away.
11. This brief encounter must not have been the one observed by the complainant and WITNESS #2, both because of its brevity and because SUBJECT OFFICER never uses profanity (except for "shit"), never uses the word "fucktard" (which the complainant says he did), even as SUBJECT OFFICER' statement ("real about your shit ...") could be viewed as an insult.
12. The second video (ROI Exh. 11) is longer (3:33 minutes). WITNESS #1 began filming outside the building, in pursuit of SUBJECT OFFICER. Agitated, WITNESS #1 shouts after SUBJECT OFFICER, asking why he has left and demanding to talk with him on video. Entering the lobby, WITNESS #1 says "He just disrespect me. He just cussed me out." Not in sight as WITNESS #1 continues filming, SUBJECT OFFICER then opens a door to emerge from a room perhaps thirty feet from WITNESS #1. SUBJECT OFFICER stops some ten feet from WITNESS #1, at the intersection of two hallways. WITNESS #1 repeats, nonstop, his accusation that SUBJECT OFFICER "cussed" him. WITNESS #1 is never more specific: in neither video does he quote what SUBJECT OFFICER said that he regarded as "cussing."
13. WITNESS #1 expressed his accusation so loudly that it is difficult to discern their exchange when SUBJECT OFFICER begins to speak. SUBJECT OFFICER asks WITNESS #1 whether he is on medication and if he should call CPEP (Comprehensive Psychiatric Emergency Program). WITNESS #1 hurls back, "He just cussed me out and harassed me. ... You just said eff Black Lives Matter and all that didn't you? You just cussed me out like a dog, man." Multiple times SUBJECT OFFICER denies having said anything to WITNESS #1. Their exchange shifts to President Trump. SUBJECT

OFFICER responds, when taunted by WITNESS #1 (“Donald Trump is your wife”), that he (WITNESS #1) should not “disrespect” the president. Taunted again, SUBJECT OFFICER raises his voice to say “God bless America” and “God bless our president, Mr. Trump.” Bickering continues until WITNESS #1 leaves when SUBJECT OFFICER says, repeatedly, “Have a blessed day, sir.” Since this exchange occurred inside the building, this too does not seem to have been the incident described by the complainant and WITNESS #2.

14. Turning to SUBJECT OFFICER’ language, the complainant and WITNESS #2 both accuse him of using profane and insulting language. In particular—and the only word either recalls—the complainant says SUBJECT OFFICER called WITNESS #1 a “fucktard.” SUBJECT OFFICER denies using that epithet. He does admit using the word “shit” (which, in his interview, he delicately spells rather than utters (ROI Exh. 7 (SUBJECT OFFICER Statement)). In the shorter of the two videos he does use that word (as described above in paragraph 10). In the longer video he neither curses nor uses language that could be interpreted as insulting or demeaning.

#### **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 ... (3) use of language or conduct that is insulting, demeaning, or humiliating ....”

The complainant and WITNESS #2 agree in accusing SUBJECT OFFICER of using invective in a confrontation they observed between the officer and WITNESS #1. While only the complainant recalls SUBJECT OFFICER’ specific language (“fucktard”), the two eyewitnesses considered SUBJECT OFFICER’ words and conduct insulting, demeaning and humiliating toward WITNESS #1. The complainant was so upset that he filed the complaint even as neither he nor WITNESS #2 was the recipient of the abuse.

SUBJECT OFFICER denies using the word “fucktard.” Nor did he say it during the two exchanges that were filmed by WITNESS #1. But the complainant’s and WITNESS #2’s description and assessment of SUBJECT OFFICER’ behavior deserve credit. There is no reason to believe either is lying or errs in their recall and characterization of the officer’s behavior. Accordingly, SUBJECT OFFICER did not “refrain from rude or demeaning behavior,” DCHAPD General Order 402 (effective December 1, 1998), Part 402.1.4(c), and used language that was “demeaning,” and “that can readily be interpreted as offensive by people ....” *Id.* Part 402.1.4(b)(2) and (b)(3).

That said, in the videos of two exchanges with WITNESS #1, SUBJECT OFFICER acts with commendable restraint in the face of WITNESS OFFICER #1’s taunting and heated, unspecified accusations that SUBJECT OFFICER has “cussed” him.

In the shorter of the two confrontations recorded by WITNESS #1, SUBJECT OFFICER did use the word “shit.” That word, uttered so frequently by so many, in different contexts, has lost most of its opprobrious power. It is used more to underscore a point than to upbraid or demean another person. Nonetheless, its inclusion here converts SUBJECT OFFICER’ statement into a challenge, an insinuation that WITNESS #1 was wrong, even less than competent, in the latter’s assessment of what seems to have been the topic underlying all these exchanges, as well as that between WITNESS OFFICER and WITNESS #1: the latter’s involvement in the building’s “Black Seniors Matter” movement.

In a letter dated December 23, 2020, sent to OPC on behalf of SUBJECT OFFICER, A REPRESENTATIVE FOR SUBJECT OFFICER, says that “SUBJECT OFFICER is very remorseful for the role that he played and has since then apologized for his actions. WITNESS #1 and SUBJECT OFFICER has shaken hands and SUBJECT OFFICER has since then worked at the same location with no incident.” While SUBJECT OFFICER response, as described, is also commendable, it is does not erase the offensiveness of his conduct as reported by COMPLAINANT and WITNESS #2.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

<b>Allegation 1: insulting, demeaning, humiliating conduct</b>	Sustained
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Submitted on January 28, 2021.

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Peter Tague  
Complaint Examiner