

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	21-0041
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Complaint Examiner:	Richard S. Ugelow
Merits Determination Date:	April 12, 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

On October 19, 2020, the complainant, COMPLAINANT, was driving on the A STREET IN NW, WASHINGTON, DC when she was stopped by MPD Officer SUBJECT OFFICER. The car COMPLAINANT was driving displayed an expired temporary license plate issued by Maryland. By directive of the Mayor, all Department of Motor Vehicles deadlines were extended because of the Covid-19 Public Health Emergency. COMPLAINANT alleges that SUBJECT OFFICER had no cause to stop her and that his actions constituted harassment.¹

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.

¹ COMPLAINANT also alleged that SUBJECT OFFICER discriminated against her based on her race, African American, when he pulled her over, and that he used language or engaged in conduct that was insulting, demeaning, or humiliating when he told her that she could renew her registration online. Pursuant to D.C. Code §5-1108(1), on February 21, 2021, a member of the Police Complaints Board dismissed these allegations, concurring with the determination made by OPC's executive director. See Exhibit 2. COMPLAINANT further alleged that the subject officer did not wear a mask or social distance during the traffic stop. This allegation is outside of OPC's jurisdiction and not before the Complaint Examiner.

OPC's Report of Investigation (ROI), the objections submitted by the D.C. Police Union on behalf of SUBJECT OFFICER on March 10, 2021, 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 SUBJECT OFFICER, the ROI and accompanying exhibits, the objections submitted on behalf of SUBJECT OFFICER and accompanying exhibits, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. At approximately 1:00 p.m. on October 19, 2020, the complainant, COMPLAINANT was driving on A STREET IN NW, WASHINGTON, DC.
2. SUBJECT OFFICER stopped COMPLAINANT for driving with an expired temporary license plate issued by the State of Maryland.
3. SUBJECT OFFICER did not have any other reason for stopping COMPLAINANT.
4. The temporary license plate on COMPLAINANT's car had expired on June 4, 2020.
5. Mayor Bowser issued an Executive Order that extended Department of Motor Vehicle deadlines for items such as car registrations until 45 days after the Covid-19 emergency was deemed to be over.
6. Pursuant to the Mayor's Executive Order, the temporary license plate on COMPLAINANT's car was still valid.
7. SUBJECT OFFICER knew that the temporary license plate was valid when he stopped COMPLAINANT. Exhibit 12.
8. SUBJECT OFFICER issued a written warning to COMPLAINANT.
9. On October 15, 2020, MPD Police Chief approved a teletype message, sent to all MPD officers by email, that in pertinent part advises:

All documents, expiring on or after March 1, 2020, will remain valid until 45 days after the COVID-19 public health emergency concludes. Those that are scheduled to expire will be granted a waiver without penalty until the DMV reopens at full operating capacity. Accordingly, all driver licenses, learner and provisional permits, identification cards, vehicle registrations, and inspection documents that expire on or after March 1, 2020, are not considered expired documents and do not constitute reasonable suspicion for members to conduct stops or other enforcement action. (Emphasis in original). Exhibit 10.

10. The October 15, 2020 teletype messages replaced similar message issued on May 5 and 15, 2020. See Exhibits 8 and 9.

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.”

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.

The facts in this case are not in dispute. SUBJECT OFFICER stopped COMPLAINANT without cause or justification. COMPLAINANT had not committed a traffic violation, was not acting or driving suspiciously, and there was nothing about her vehicle that indicated a safety infraction. The sole reason COMPLAINANT was stopped was because the temporary Maryland license plate on the car had expired on June 4, 2020. But, as acknowledged by SUBJECT OFFICER, the tag was still valid because of the Mayor’s Executive Order. Nevertheless, SUBJECT OFFICER claimed that he had the right to stop COMPLAINANT “To make sure you have insurance and make sure your driver’s license is valid.” SUBJECT OFFICER was wrong.

As the October 15, 2020 teletype message makes clear an expired vehicle registration does not constitute reasonable suspicion to conduct a traffic stop. Exhibit 10. SUBJECT OFFICER argues that he was unaware of Exhibit 10 and presumably the predecessor teletypes. Union objections, p. 4. SUBJECT OFFICER, as a member of MPD, has an obligation to be familiar with the laws and regulations that he is charged with enforcing. See MPD General Order 201.26. Here, SUBJECT OFFICER was on traffic patrol and thus had a particular obligation to know that the MPD had announced that an expired license plate is not considered an expired document and does not constitute reasonable suspicion for members to conduct stops or other enforcement action during the Covid-19 public health emergency. Accordingly, the Complaint Examiner concludes that SUBJECT OFFICER either intentionally and/or through gross malfeasance recklessly ignored MPD procedures and directives. The totality of the circumstances demonstrates that that SUBJECT OFFICER harassed COMPLAINANT when he stopped her car without justification in violation of MPD General Order 120.25 and D.C. Mun. Regs. tit. 6A, § 2199.1.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Sustained
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Submitted on April 12, 2021

Richard S. Ugelow
Complaint Examiner