

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	22-0078
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1	Language or Conduct
Complaint Examiner:	Jennifer A. Fischer, Esq.
Merits Determination Date:	May 25, 2022

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 November 10, 2021. During the course of the investigation, OPC determined that on November 4, 2021, Metropolitan Police Department (MPD) SUBJECT OFFICER (Subject Officer) used language or engaged in conduct that was insulting, demeaning, or humiliating when he made derogatory and homophobic comments about the LGBTQ community. OPC added this allegation pursuant to D.C. Code Section 5-1107(g-1)(1), which allows the Executive Director to initiate a complaint against subject officers when the Executive Director discovers evidence of abuse or misuse of police powers that was not alleged by the complainant in the original complaint.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, Body Worn Camera Footage recorded by Subject Officer on November 4, 2021, objections submitted by Subject Officer on May 4, 2022 (Subject Officers' Objections), and OPC's response to the objections dated May 12, 2022, 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, Body Worn Camera Footage recorded by Subject Officer on November 4, 2021, objections submitted by Subject Officer on May 4, 2022 (Subject Officers' Objections), and OPC's response to the objections dated May 12, 2022, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant filed a complaint with OPC on November 10, 2021.
2. At approximately 10:35 am, Subject Officer approached Complainant in the lobby of the MPD DISTRICT police station. She introduced herself and explained that she had been having issues with "gays" attacking her because she is not gay and they want to make her gay. She asked to file a complaint.
3. Subject Officer asked Complainant where she lived. When she said Maryland, he told her that she would have to file the complaint there. She protested that the gays who were attacking her were in D.C., but he told her that the gays she was looking for were in Maryland and he said he would be right back and walked away.
4. In the control room, Subject Officer began laughing and explained the situation to the other officers. Another officer suggested that he give her the number to CPEP. Subject Officer then looked something up and wrote something down on a paper.
5. Subject Officer then returned to the lobby and gave her the paper with the number on it, telling her to call it because the people there might be able to help her.
6. As Complainant prepared to leave, Subject Officer told her, "Hopefully the gays don't bother you. They bother me too." After Complainant responded that she was surprised that they were bothering her because she is not gay, Subject Officer added, "Yeah. I know we have them here too. Even in this building. It's bad. You have no idea."
7. Complainant said that she would call the number he gave her and Subject Officer told her to be safe and that he hoped that they didn't get her. He continued, "It's like a disease," which, because Complainant was not hearing him, he repeated, loudly, three times.
8. Subject Officer then returned to the control room where he started laughing again before turning off his BWC.

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..."

Insulting, demeaning or humiliating language or conduct is defined under D.C. Mun. Regs. Tit. 6A, § 2199.1 as “language or conduct that is intended to or has the effect of causing a reasonable person to experience distress, anxiety or apprehension.”

MPD General Order 201.26 requires that “All members shall: (1) Be courteous and orderly in their dealings with the public. (a) Members shall perform their duties quietly, remaining calm regardless of provocation to do otherwise. (3) 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.” MPD General Order 201.26 (effective April 5, 2011), Part V. The general order goes on to state, “(1) It is expected that every member of this Department is keenly aware of the fact that public support and cooperation is essential if members are to effectively fulfill their police responsibilities. The extent to which the public will cooperate with the MPD is dependent upon its respect for and confidence in, the MPD and its members. (2) In any effort to strengthen the citizen-police officer relationship, the personal conduct and attitude of the police officer is of paramount importance. Members must understand that the basis of a professional attitude is a desire and a willingness to serve the public.” *Id.*

Subject Officer violated General Order 201.26 when he engaged in name-calling, which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person or group. In particular, he said that gay people bothered him, that they were in the police station building and it was bad, and that it was like a disease, which he repeated four times in the public lobby loudly so that Complainant could hear him. SUBJECT OFFICER BWC 7:04.

These statements constitute insulting, demeaning and humiliating language. Not only was it derogatory, disrespectful, and offensive to the dignity of the LGBTQ community, but it was stated loudly in the public lobby of the police station where other community members and co-workers, some of whom by Subject Officer’s statement, are members of the LGBTQ community. Thus, these statements would have the effect of causing a reasonable person to experience distress, anxiety or apprehension.

Subject Officer claimed during his interview with OPC that he made the statements to ease Complainant’s concerns about gay people in the community. Exh. 5 at 9:50. That it was intended to make her realize that gay people were everywhere, including in that building. *Id.* Except that his statements were not comforting nor easing of Complainant’s concerns. On the contrary, they took Complainant’s fears about gay people and amplified them, loudly and in a public forum where anyone in the community or in the police department could have heard them. The comments are all the more disconcerting in that in Subject Officer’s initial interview with OPC, he did not even initially recognize his comments to be derogatory or homophobic. Exh. 5 at 7:55. A minute later in his interview he acknowledged that these were probably not appropriate comments to make to a member of the public. Exh. 5 at 8:38.

In his objections, Subject Officer said that the comments were meant to indicate to Complainant that he was listening to her concerns. Except that his comments did not simply reflect back Complainant’s allegations that she was being attacked. Instead, he added fuel to the fire by saying that he too was bothered by them, and that it was “bad.” And then he made it worse by saying that being gay was like a disease. There was zero necessity for Subject Officer

to make these statements. He could have simply given Complainant the phone number and left it at that. He could have simply repeated back her accusation and informed her the appropriate place to file a complaint. He could have inquired further to find out what was the basis for her complaint that may have had something of merit even if in a homophobic package. Instead he laughed about her behind her back and then loudly made derogatory and homophobic slurs.


Therefore, Subject Officer's words and conduct were insulting, demeaning, and humiliating in violation of DC Code § 5-1107. Thus, the language or conduct allegation is sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation	Language or Conduct	Sustained
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Submitted on May 25, 2022.



Jennifer A. Fischer, Esq.
Complaint Examiner