

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	22-0377
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER#1 SUBJECT OFFICER #2
<b>Allegation 1:</b>	Harassment: Search (SUBJECT OFFICER #2 and SUBJECT OFFICER #1)
<b>Allegation 2:</b>	Harassment: Intimidation (SUBJECT OFFICER #1)
<b>Allegation 3:</b>	Harassment: Contacting Employer (SUBJECT OFFICER #1)
<b>Complaint Examiner:</b>	Adav Noti
<b>Merits Determination Date:</b>	February 17, 2023

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 April 12, 2022, SUBJECT OFFICER #1 harassed him by unlawfully searching certain objects in his home, by threatening to contact his employer, and by subsequently contacting that employer. Pursuant to D.C. Code Section 5-1107 (g-1)(1), the Executive Director of OPC alleges that SUBJECT OFFICER #2 also unlawfully searched the complainant's property.

**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 Subject Officers on December 21, 2022, 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 December 21, 2022, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On April 12, 2022, SUBJECT OFFICER #2 and SUBJECT OFFICER #1 responded to a domestic violence call at the complainant's home.
2. Upon SUBJECT OFFICER #2's arrival at the home, the complainant and his teenage son were in the main room, interacting with a number of other officers.
3. SUBJECT OFFICER #2 went into a side room and began speaking with the complainant's wife. During this conversation, the complainant's wife was seated behind a desk, upon which were two closed laptops. Each laptop had an ID card inserted into the laptop's card-reader slot.
4. SUBJECT OFFICER #1 arrived on the scene a few moments later and joined SUBJECT OFFICER #2 and the complainant's wife in the side room.
5. Shortly after SUBJECT OFFICER #1 arrived, SUBJECT OFFICER #2 asked the complainant's wife if she worked for the government. She said that she did not but that her husband did. SUBJECT OFFICER #2 asked "What does he do?" and started reaching for the ID card in one of the closed laptops. The complainant's wife saw SUBJECT OFFICER #2 reaching for the ID card and said, "I don't know, it depends on the card right there," referring to the card SUBJECT OFFICER #2 was reaching for. SUBJECT OFFICER #2, who was pulling the card out of the laptop simultaneously with the wife's response, removed the card from the laptop, looked at what was written on it, and put it back in the laptop.
6. A moment later, as the conversation continued, SUBJECT OFFICER #1 removed the same card from the laptop, looked at it, and put it back.
7. Shortly after that, SUBJECT OFFICER #2 removed the other ID card from the other laptop and read the employer information out loud. One of the officers took a picture of the card, and SUBJECT OFFICER #2 replaced it in the laptop.
8. Throughout the above events, the complainant was screaming abusively and obscenely at his wife and the other officers on the scene, including extensive use of racial and homophobic slurs.
9. When their conversation with the complainant's wife was complete, SUBJECT OFFICER #2 and SUBJECT OFFICER #1 left the side room and entered the main room. SUBJECT OFFICER #1 attempted to speak with the complainant's son. The complainant

interrupted her to prevent her from doing so, and SUBJECT OFFICER #1 responded that she was going to step outside to call child services and the complainant's employer. The complainant expressed confusion about the reference to his employer. SUBJECT OFFICER #1 re-emphasized that she was going to call the complainant's employer.

10. Multiple times during the remainder of this interaction, which lasted approximately 15 more minutes, the complainant yelled at SUBJECT OFFICER #1 that she had no right to contact his employer and accused her of racist conduct in doing so. SUBJECT OFFICER #1 stated to the complainant, as well as to his sister who had arrived on the scene, that she would contact the complainant's employer because he was a government employee.
11. The officers left the scene; the complainant was not arrested or charged with a crime.
12. Six days later, on April 18, 2022, SUBJECT OFFICER #1 called the government agency listed on one of the ID cards that the subject officers had removed from the complainant's computer. During this approximately five-minute call, SUBJECT OFFICER #1 stated to two of the agency's law enforcement officers that she had encountered the complainant on April 12 and wanted to "just make notification about his behavior and demeanor on scene." She characterized the complainant as creating a "very hostile environment" in his home that involved "a 13-year-old and the mother of their child," and she expressed concern about "his demeanor towards females." SUBJECT OFFICER #1 stated that it was "not [SUBJECT OFFICER #1's] first interaction with him where he's been hostile," and so "we just wanted to make notification." She stated "we didn't know if you needed to be made aware of the situation" but "our concern is just how hostile he is, and it's increasing."
13. Other statements SUBJECT OFFICER #1 made to the agency personnel during this call included that the complainant "did destroy property within the home," that "every time we interact with him it's escalated," and that "we got the mom out of the house that night . . . because he was so hostile."

#### **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.

#### **A. Harassment: Search**

When the Subject Officers arrived on the scene, each of the complainant’s two work ID cards was inserted into a laptop computer in such a way that the identifying text on the cards was not visible. The Subject Officers removed those cards from the respective laptops and reviewed the information written on them, which was personal information about the complainant’s employment. In other words, the Subject Officers invaded the complainant’s privacy by physically manipulating and examining the complainant’s property inside his home without a warrant. This is the textbook definition of an unlawful search. *See, e.g., Payton v. New York*, 445 U.S. 573, 586 (1980).

The Subject Officers do not dispute that they searched the complainant’s property; rather, the Subject Officers argue that the complainant’s wife gave them permission to do so. Even assuming (without deciding) that the complainant’s wife could have legally granted consent to search the complainant’s laptops, the BWC videos show that she did not. The “consent” on which the subject officers rely was the complainant’s wife’s response, after being asked where her husband worked, that she did not know and that the answer to the question “depended” on what was written on his ID card. On its face, nothing in that statement — a conditional response to a factual question — constitutes a grant of permission for the officers to do anything.<sup>1</sup>

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<sup>1</sup> To illustrate this point, consider if the officers had asked, “Does he have any drugs in the house?” and the complainant’s wife had answered, “I don’t know, depends what’s in his nightstand.” The officers might well have followed up by asking for permission to search the nightstand, but it would be frivolous for an officer to argue that such a statement *by itself* constituted consent to search.

In any event, the video clearly shows that SUBJECT OFFICER #2 began reaching for the card in the first laptop before the complainant's wife had even mentioned it. And SUBJECT OFFICER #2 removed the card from the second laptop, which the complainant's wife never referred to at all, and shared it with SUBJECT OFFICER #1. So even if the complainant's wife's statement that the identify of her husband's employer "depended" on what was written on his ID card could reasonably be construed as consent to search, that statement was not given prior to the search of the first laptop and it had no bearing on the search of the second.

Because the Subject Officers unlawfully searched the complainant's property without any plausible legal authority, I find that their respective searches recklessly violated the law and deprived the complainant of his legal rights, thereby constituting impermissible harassment under MPD General Order 120.25 and OPC's regulations.

The allegation of harassment against SUBJECT OFFICER #2 and SUBJECT OFFICER #1 is accordingly sustained.

**B. Harassment: Threatening to Contact Employer and Contacting Employer**

As described above, SUBJECT OFFICER #1 repeatedly told the complainant during the incident at his home that she was going to contact his employer, and six days later she called the complainant's employing agency to inform that agency about the incident and to provide SUBJECT OFFICER #1's opinions about the complainant's behavior.

SUBJECT OFFICER #1 does not claim that she had any legal right or obligation to make this phone call. Rather, she argues that the call did not constitute misconduct because she subjectively *believed* she "had a duty" to make it, and therefore any violation she might have committed was not knowingly or recklessly in violation of the complainant's rights.

SUBJECT OFFICER #1's assertion is inconsistent with the facts in the record of this case.

First, SUBJECT OFFICER #1 did not state that she was contacting the complainant's employer until immediately after the complainant directed hostile language towards her and blocked her from speaking with his son. Indeed, SUBJECT OFFICER #1's statement that she was going to call child services and the complainant's employer was a direct response to the complainant's aggressive and threatening interference in her attempt to console the teenage boy who was being subjected to his father's abusive behavior. The timing and tone of this exchange, which is clearly recorded on the body-worn camera videos, demonstrate that SUBJECT OFFICER #1 was speaking in reaction to the complainant's mistreatment of his wife and son, as well as of SUBJECT OFFICER #1. Indeed, the complainant perceived this, saying to SUBJECT OFFICER #1, "You want to punish [me] because you're mad." That explanation is significantly more consistent with the evidence than SUBJECT OFFICER #1's assertion that she consistently

believed she was under a duty to contact the complainant's employer but neglected to mention it until the complainant harassed her.<sup>2</sup>

Second, the six-day delay between when SUBJECT OFFICER #1 told the complainant that she would call his employer and when she actually made that call renders fairly implausible her claim that she believed she was required to make the notification. In her objections to the ROI, SUBJECT OFFICER #1 states that she delayed in contacting the employer because she wanted to give the complainant "the chance to report the incident on his own." But if SUBJECT OFFICER #1 believed she was required to notify government employers regarding certain threatening conduct by their employees, why would she wait nearly a week to wait to give the threatening civilian "a chance" to act on his threats? That would seem to defeat the entire purpose of a notification requirement. SUBJECT OFFICER #1's explanation of the delay makes little sense.

Third, SUBJECT OFFICER #1 testified to OPC that at some point she asked a supervisor whether she would be permitted to contact the complainant's employer, and she stated that the supervisor responded in the affirmative. But even if SUBJECT OFFICER #1 did ask this question — which the supervisor testified she had no memory of — it is not recorded on the video of SUBJECT OFFICER #1's time in the complainant's home, which means it could only have come *after* SUBJECT OFFICER #1 repeatedly told the complainant that she was going to call his employer. Any conversation with the supervisor therefore could not have been the source of or justification for SUBJECT OFFICER #1's statements that she was going to make that call.

Fourth, the content of SUBJECT OFFICER #1's call to the complainant's employer is inconsistent with her explanation in several ways. SUBJECT OFFICER #1 told the complainant's employer that she had interacted with the complainant previously in similar circumstances. Given her stated belief that she was required to notify his employer, this suggests she would have contacted the employer after those prior incidents, but she did not. Furthermore, during the April 18 call, SUBJECT OFFICER #1 did not merely inform the employer about the complainant's police contact; rather she described a wealth of the complainant's most personal information, opined on his relationship with his wife and child, and even divulged the sensitive fact of where the complainant's wife had gone when she left the home. And in the process of doing so, SUBJECT OFFICER #1 acknowledged that she "*didn't know* if [the agency] needed to be made aware of the situation," and she said repeatedly that she "wanted" to make the notification. None of this is consistent with SUBJECT OFFICER #1's assertion in her objections to the ROI that she acted with "tact and care" to make a notification she thought was required,

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<sup>2</sup> The complaint's conduct was indeed shocking — all the more so because he carried it out in front of his minor child. But of course police officers are not empowered to impose extrajudicial punishments for even appalling conduct. Indeed, the complaint's reaction here is a good example of why: SUBJECT OFFICER #1's statement that she was going to call the complainant's employer only inflamed and escalated the situation, making the complainant even more angry based on his (accurate) perception that SUBJECT OFFICER #1 was unlawfully trying to cause him harm.

but all of it is consistent with SUBJECT OFFICER #1 acting voluntarily because she was troubled by the complainant's behavior.

Finally, given the realities of police interactions with civilians, it is difficult to believe that a trained MPD officer genuinely thought she was required to call the employer of a civilian whom she had not arrested to report that he had engaged in conduct that was not illegal. Police officers have countless encounters with civilians acting badly that do not result in employer notifications. Indeed, there is no evidence in the record – apart from very limited examples involving active-duty military members – that such interactions *ever* lead to officers calling the employers of civilians in situations in which no one was arrested or charged, no investigation is ongoing, and no crime was committed.

For all of these reasons, I find that the preponderance of the evidence shows that SUBJECT OFFICER #1 had no legal authority to call the complainant's employer, and that she did not believe she was required to make such a call. Therefore, SUBJECT OFFICER #1's threats to notify the complainant's employer and her notification to that employer recklessly deprived the complainant of his rights.

The allegation that SUBJECT OFFICER #1 harassed the complainant is accordingly sustained.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER #1

<b>Allegation 1:</b> Harassment (Search)	Sustained
<b>Allegation 2:</b> Harassment (Intimidation)	Sustained
<b>Allegation 3:</b> Harassment (Contacting Employer)	Sustained

SUBJECT OFFICER #2

<b>Allegation 1:</b> Harassment (Search)	Sustained
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Submitted on February 17, 2023.

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Complaint Examiner