

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	11-0507
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Seventh District
Allegation 1:	Insulting, demeaning, or humiliating language or conduct
Complaint Examiner:	Peter W. Tague
Merits Determination Date:	May 12, 2014

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints (OPC), formerly the Office of Citizen Complaint Review (OCCR), has the 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 that section. 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, alleged that on August 24, 2011, Metropolitan Police Department (MPD) Officer SUBJECT OFFICER, Seventh District, used language that was profane by saying, “[t]hese motherfuckers are soft up in here.”

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of the Report of Investigation (ROI) prepared by the OPC and the exhibits attached to that ROI, the objections submitted by SUBJECT OFFICER on February 14, 2014,¹ and OPC’s response to those objections, the Complaint Examiner found 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

¹ While contending that “there are issues of material fact in dispute,” SUBJECT OFFICER has failed to identify what those issues might be. See the letter submitted to OPC by the Fraternal Order of Police.

Based on a review of the ROI and its exhibits, the objections submitted by the subject officer, and OPC's response to the objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. COMPLAINANT filed a complaint with OPC on August 30, 2011. In his OPC statement, COMPLAINANT says that SUBJECT OFFICER used profanity in saying "[t]hese motherfuckers are soft up in here."

2. The context in which SUBJECT OFFICER is said to have spoken that sentence involved the arrest of a man suspected of distributing drugs. SUBJECT OFFICER was one of several officers who participated in the arrest.

3. COMPLAINANT watched part of the arrest (the event), and, in his statement to OPC, reported what he heard SUBJECT OFFICER say. He also used his cellphone to record part of the event. That audio- and video-recording includes what SUBJECT OFFICER is accused of having said (ROI Exhibit 14).

4. The acts recorded by COMPLAINANT with his cellphone were an interlude in what was otherwise an event fraught with tension between the citizens who observed the arrest and the police.

5. COMPLAINANT pointed the cellphone at the arrestee throughout the 3 minutes and 23 seconds that the recording lasts. The arrestee stood next to the right fender of an automobile, facing the cellphone, approximately 30 feet from COMPLAINANT. Four to five police officers, in addition to SUBJECT OFFICER, moved in and out of the events recorded.

6. At the video's inception, SUBJECT OFFICER stood about mid-way between the arrestee and COMPLAINANT, about 15 feet from each. No police officer was near him. He turned to face the general direction of the cellphone and, at around the 17th and 18th seconds of the recording, uttered the statement that is the subject of this complaint.

7. The recording of what SUBJECT OFFICER said is difficult to understand with respect to everything other than the one word that is the subject of this complaint.

8. It is clear that SUBJECT OFFICER said the word "motherfuckers."

9. COMPLAINANT reacted immediately to what SUBJECT OFFICER said. He did not repeat the word "motherfuckers." Instead, he said, "I'm not soft. The police are soft. Most likely you are the soft one"

10. SUBJECT OFFICER is not heard responding to Complainant Graham's retort about who is "soft." Instead, after he spoke, SUBJECT OFFICER walked to his left (the cellphone's right), out of the picture. No other police officer is shown in the video in the direction he moved.

11. It thus appears that SUBJECT OFFICER was speaking to himself rather than to another police officer when he said the word “motherfuckers,” and finished his comment.

IV. DISCUSSION

Pursuant to D.C. Code Section 5-1107(a), “[t]he Office [of Police Complaints] shall have the authority to receive and to ... adjudicate a citizen complaint against a member ... of the MPD ... that alleges abuse or misuse of police powers by such member” Those allegations may include, among other things, the use of language or conduct that is “insulting, demeaning, or humiliating.” Subsumed under that authorization is the jurisdiction to decide whether a police officer violated MPD General Order 201.26, Part V, Section C, Nos. 1-3. Part (3) of that General Order orders police officers to “[r]efrain from harsh, violent, coarse, profane, sarcastic, or insolent language.”

This complaint presents two issues. The first is whether SUBJECT OFFICER uttered the word “motherfuckers.” If so, the second is whether use of that word violates Part 3 of the General Order quoted above.

It is useful to identify how narrow this inquiry is. It is not critical to understand the rest of what SUBJECT OFFICER said, as reported by COMPLAINANT and recorded by him using his cellphone. It is also not relevant to ascertain SUBJECT OFFICER’s purpose in speaking as he did. Were those points necessary to resolve, a hearing would be required.

But a hearing is not required because it is clear, by a preponderance of the evidence, that SUBJECT OFFICER used the word “motherfucker” as he spoke while present during the arrest.

The recording is clear enough to find that SUBJECT OFFICER spoke that word. While unnecessary to support that finding, other evidence provides direct and circumstantial reinforcement for it.

The direct evidence is COMPLAINANT’s report of what SUBJECT OFFICER said.

The circumstantial evidence includes SUBJECT OFFICER’s own recall of this incident, as well as reports by other officers as to SUBJECT OFFICER’s use of the word “motherfuckers.” SUBJECT OFFICER does not himself deny having said the word “motherfuckers.” In his Statement to OPC, he said he did not “know if [I] commented” as alleged. He added that if he had used the word, he was speaking “to his partner as we were leaving.” (That claim is belied by the fact that SUBJECT OFFICER appears to be alone as he spoke the sentence or sentence fragment that includes the word “motherfuckers.” He does not appear to direct his statement to the citizens observing the event or to other officers.) In his interview with OPC, he did concede that he “has cursed ‘during work,’” and that he “‘generally’ does not say ‘motherfuckers.’”

Police officers have heard SUBJECT OFFICER use the word “motherfuckers” on other occasions. *See* Statements to OPC by WITNESS OFFICER #1 (ROI Exhibit 10), WITNESS OFFICER #2 (ROI Exhibit 11) and WITNESS OFFICER #3 (ROI Exhibit 13).

In particular, WITNESS OFFICER #1, while working with SUBJECT OFFICER on a drug Strike Force Unit for about one year, “heard SUBJECT OFFICER say things to the effect of, ‘These mother fuckers are soft out here.’ This comment ... [was] made in discussions comparing past and present drug dealers in the city.”

That comment mirrors what, according to COMPLAINANT, SUBJECT OFFICER said during this event.

Having found that SUBJECT OFFICER spoke the word “motherfuckers,” the second question is whether his use of that word amounts to “harsh, violent, coarse, profane, sarcastic or insolent language,” as forbidden by Part 3 of General Order 201.26, Part V, Section C. It does: the word qualifies as both “coarse” and “profane.”

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER violated Part 3 of General Order 201.16, Part V, Section C, in that he used coarse and profane language in public, in the course of his duties. Accordingly, the language allegation is sustained.

Allegation 1:	Sustained
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Submitted on May 12, 2014.

Peter W. Tague

[COMPLAINT EXAMINER’S NAME]
Complaint Examiner