

GOVERNMENT OF THE DISTRICT OF COLUMBIA

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.	12-0385
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1 SUBJECT OFFICER #2
Allegation 1:	Failure to Identify
Complaint Examiner:	C. Allen Foster
Merits Determination Date:	July 3, 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

COMPLAINANT contended that SUBJECT OFFICERS violated D.C. Code § 5-1107(a)(6) (Failure to Give Name and Badge Number), MPD General Order 201.26.V.C.1(e) and MPD General Order 110.11.V.B.3(d) (Failure to Wear Badge) when they refused to provide their names and badge numbers upon request and failed to wear or display their identification as required.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation and the attached exhibits, including videos of the incident produced by both Claimant and the MPD, 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 dated May 5, 2014, and the exhibits attached to it, and objections submitted by the subject officers on May 15 and 13, 2014, respectively, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On June 4, 2012, COMPLAINANT, a member of an activism group which purports to help persons who have lost their homes to foreclosure as a result of not paying their mortgages, was participating in a protest at a bank branch on I Street, N.W., with approximately 25 - 30 other members of the group.
2. COMPLAINANT and his fellow protesters, who were in the lobby of the bank branch, were told to leave by police officers because they were closing the bank branch office. After several requests were made by the police officers for COMPLAINANT to leave, he finally left the bank lobby and continued his demonstration outside.
3. As COMPLAINANT and the others were continuing their demonstration in front of the bank branch, SUBJECT OFFICER #1 was videotaping them at the instruction of the on-scene commander. SUBJECT OFFICER #2 stood nearby as security for SUBJECT OFFICER #1. Both officers wore blue MPD jackets which identified them as police officers but did not otherwise display their names or badge numbers.
4. The subject officers were assigned to videotape the demonstration because no one from the electronic surveillance unit was available. Neither of the subject officers normally record electronic surveillance.
5. The protesters took pictures of themselves, listened to one or more speeches by members of their group and accosted several passersby with accusations of illegal foreclosure practices by the bank.
6. The officers made an eight minute video and the protesters made a minute and a half video, both of which were made available to this Complaint Examiner.
7. The protesters aggressively chanted around the subject officers in an obvious attempt to distract them from their assigned duties.
8. A lawyer for an advocacy organization that provides legal advice to the group was present at the demonstration and advised the protesters, including COMPLAINANT, to request the names and badge numbers of the subject officers.

9. COMPLAINANT requested that the subject officers provide him with their names and badge numbers. SUBJECT OFFICER #1 responded that he would do so as soon as he completed his assigned task of videotaping the demonstration.
10. The police video demonstrates that, except when they were making speeches to or photographing each other, the protesters were spending more time and energy harassing the subject officers than they were communicating any opinion to the public. At one point, one or more of the protesters prevented SUBJECT OFFICER #1 from performing his job of filming the demonstration by blocking the camera with signs or with their faces. Someone in a coat and tie, who appeared to be the leader of the group, told the harassers to cool down.
11. One of the protesters – the Complaint Examiner does not know whether it was the complainant or not – asked for the subject officers’ names and badge numbers and, when told that they would be provided as soon as the officers completed their jobs, said, “That sounds like a ‘No’ to me.”
12. The protesters’ video -- the events it records are duplicated on the police video -- reveals the complainant or some other protester repeatedly, loudly and aggressively chanting a demand for the names and badge numbers of the officers, despite having been told that they would be provided as soon as the officers completed their job.
13. Neither of the subject officers made any comment to the protesters other than SUBJECT OFFICERS #1 AND 2 saying, several times, that they would provide their names and badge numbers when SUBJECT OFFICER #1 completed videotaping.
14. Despite SUBJECT OFFICER #1’s assurance that the subject officers would provide their names and badge numbers upon completion of his job, COMPLAINANT “relentlessly” (his words) continued to demand their names and badge numbers.
15. COMPLAINANT offered no need or reason for his request, and neither the complainant’s or the police video demonstrate any need or reason for the subject officers’ names and badge numbers other than the complainant’s comment in his written statement that the lawyer advised the protesters to do so. At the demonstration and in his Complaint, COMPLAINANT advanced no reason why the subject officers could not provide their names and badge numbers at the conclusion of SUBJECT OFFICER #1’s videotaping.
16. SUBJECT OFFICER #2’s written objections are uncontroverted that, when the protest was over, the demonstrators, including COMPLAINANT, left without

asking for, or giving the subject officers an opportunity to provide, their names and badge numbers.

IV. DISCUSSION AND MERITS DETERMINATION

Both the police video and the complainant's video of the incident reveal at least probable cause for the subject officers to believe that at least two of the demonstrators attempted to impede a law enforcement officer in the performance of his duties, in violation of D.C. Code § 22-405(b), by physically interfering with SUBJECT OFFICER #1's ability to video the demonstration. In addition, despite the demonstrators' aggressive and hostile actions, the subject officers did not cite them and acted throughout with restraint and commendable professionalism. The complainant himself concedes, and the videos show, that the subject officers did nothing to interfere with anyone's freedom of speech, right to assemble, right to petition or any other constitutional or statutory civil liberty and that the only thing the subject officers even said to the demonstrators was that they would supply their names and badge numbers when they had finished their assigned job. There is no evidence, including from the complainant, that the subject officers were not ready, willing and able to provide their names and badge numbers when their videotaping was complete. Indeed, the protester's response, "That sounds like a 'No' to me" tends to show that he thought he had enough evidence to complain about the subject officers without waiting around to see whether they would provide their names and badge numbers (the inference that the Complaint Examiner draws is that COMPLAINANT knew that they would provide their names and badge numbers and did not wait around to give them the opportunity).

MPD General Order 201.26.V.C.1(e) provides that, "When requested to do so, members shall give their first and last name and badge numbers in a respectful and polite manner." In this case, the complainant contends that he, and the videos demonstrate that a number of other protesters, asked for the names and badge numbers of the subject officers. As a result, they were required to provide their names and badge numbers. But, this Complaint Examiner does not interpret the directive as meaning that the officer has to provide his or her badge number immediately when there is reasonable cause for a moderate delay. Here, SUBJECT OFFICER #1 was performing an assigned task (at which he was not experienced) and SUBJECT OFFICER #2 was providing security for him. In the opinion of this Complaint Examiner, it was perfectly reasonable, under the statute, for them to inform the requesting demonstrators that they would give their names and badge numbers as soon as they completed their jobs. The videos establish that the subject officers made this response in a respectful and polite manner. No protester advanced any reason why a short delay in providing names and badge numbers was not reasonable; instead, the protester chose to interpret the subject officers' response as a refusal. It was not. The subject officers' evidence is undisputed that the protest broke up shortly thereafter and that the demonstrators did not thereafter ask them for, or give the subject officers the chance to provide, their names and badge numbers. Therefore, I find that the subject officers did not violate MPD General Order 201.26.V.C.1(e).

