

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	09-0388
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, First District
Allegation 1:	Use of Excessive or Unnecessary Force
Allegation 2:	Failure to Identify
Complaint Examiner:	Colleen F. Shanahan
Merits Determination Date:	October 12, 2012

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 alleges that on July 3, 2009, the subject officer, used unnecessary or excessive force against her by pushing her. The complainant also alleges that SUBJECT OFFICER failed to identify himself by name and badge number when COMPLAINANT requested this information.¹

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, 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.

¹ OPC's Report of Investigation indicates that COMPLAINANT also made allegations concerning a second officer. These allegations are not before the Complaint Examiner and are not addressed in this decision.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation,² the Complaint Examiner finds the material facts regarding this complaint to be:

1. On July 3, 2009, COMPLAINANT was shopping at Urban Outfitters, a clothing store in Chinatown.
2. While in the store, SUBJECT OFFICER and WITNESS OFFICER #1, Badge No. 4643, First District, approached COMPLAINANT and informed her that the store manager wanted her to leave the store. COMPLAINANT agreed to leave the store.
3. As COMPLAINANT walked out of the store, SUBJECT OFFICER and WITNESS OFFICER #1 followed behind her.
4. Outside the store, COMPLAINANT asked SUBJECT OFFICER for a business card, and he replied he did not have one. COMPLAINANT then asked SUBJECT OFFICER for his name and badge number, and he turned and walked away without replying.
5. SUBJECT OFFICER and WITNESS OFFICER #1 then walked across 7th Street, N.W., to the Fuddruckers restaurant. COMPLAINANT followed them across the street.
6. WITNESS OFFICER #1 entered the restaurant first SUBJECT OFFICER followed behind him, and COMPLAINANT followed behind SUBJECT OFFICER.
7. When COMPLAINANT attempted to enter the restaurant behind SUBJECT OFFICER, SUBJECT OFFICER pushed COMPLAINANT backward onto the sidewalk, preventing her from entering Fuddruckers.
8. SUBJECT OFFICER did not tell COMPLAINANT to back up or stay away before he pushed her.
9. COMPLAINANT remained outside the restaurant, on the sidewalk.
10. Several minutes later, SUBJECT OFFICER and WITNESS OFFICER #1 exited the restaurant. COMPLAINANT asked SUBJECT OFFICER to call his supervisor and SUBJECT OFFICER declined.
11. By this time, COMPLAINANT had seen SUBJECT OFFICER'S nameplate on his uniform.

² SUBJECT OFFICER submitted no objections in this matter.

12. COMPLAINANT then called 911 from a nearby payphone and reported that “I was just assaulted by the Fuddruckers on 7th Street by SUBJECT OFFICER” and “There’s a Fuddruckers. 7th and H Street. The officer, SUBJECT OFFICER, pushed me out of the doorway.”
13. Approximately two hours later, WITNESS OFFICER #2,³ arrived at the scene. SUBJECT OFFICER was standing nearby while COMPLAINANT spoke with WITNESS OFFICER #2.
14. COMPLAINANT told WITNESS OFFICER #2 that SUBJECT OFFICER had made her leave Fuddruckers. WITNESS OFFICER #2 referred COMPLAINANT to the Office of Police Complaints and gave her SUBJECT OFFICER’S badge number.
15. COMPLAINANT then left the area.

IV. DISCUSSION

Pursuant to D.C. Official Code § 5-1107(a), “The Office [of Police Complaints] shall have the authority to receive and 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 ... (2) use of unnecessary or excessive force ... 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.”

A. SUBJECT OFFICER Used Excessive and Unnecessary Force Against COMPLAINANT

The regulations governing OPC define excessive or unnecessary force as “[u]nreasonable use of power, violence, or pressure under the particular circumstances. Factors to be considered when determining the ‘reasonableness’ of a use of force include the following: (1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of officer or others; (3) whether the subject was actively resisting arrest or attempting to evade arrest by flight; (4) the fact that officers are often required to make split second decisions regarding the use of force in a particular circumstance; (5) whether the officer adhered to the general orders, policies, procedures, practices and training of the MPD ... and (6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective.” D.C. Mun. Regs., tit. 6A, § 2199.1.

MPD General Order 901.07, Part II, states, “The policy of the Metropolitan Police Department is to preserve human life when using lawful authority to use force. Therefore, officers of the Metropolitan Police Department shall use the minimum amount of force that the

³ At the time of the incident, WITNESS OFFICER #2 was assigned to the First District.

objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others.” The MPD recognizes and uses the Use of Force Continuum. MPD General Order 901.07, Part III defines “use of force” as “any physical contact used to effect, influence or persuade an individual to comply with an order from an officer.”

Applying the relevant factors, it is beyond doubt that SUBJECT OFFICER’S use of force against COMPLAINANT was unreasonable, excessive, and unnecessary. The first four factors in D.C. Mun. Regs., tit. 6A, § 2199.1 provide no support for the reasonable use of force in this incident. First, there is no issue of the “severity of the crime” because there is no evidence that COMPLAINANT engaged in any crime during this incident. Second, there is no evidence that COMPLAINANT posed a threat to SUBJECT OFFICER or bystanders, let alone “an immediate threat to the safety of officer [sic] or others.” Third, there is no evidence that COMPLAINANT was “actively resisting arrest or attempting to evade arrest by flight.” Fourth, “the fact that officers are often required to make split second decisions regarding the use of force” does not support the reasonableness of force because the record reflects no evidence of the need for a split second decision during this incident.

The fifth factor, “whether the officer adhered to [] general orders, policies, procedures, practices and training” and the sixth factor, “the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective,” ask whether SUBJECT OFFICER’S push of COMPLAINANT went beyond the minimum level of force necessary to achieve SUBJECT OFFICER’S objective. SUBJECT OFFICER’S putative goal in pushing COMPLAINANT was to stop her from entering Fuddruckers or to keep COMPLAINANT away from him. There is no evidence that either of these objectives were legitimate bases for the use of force. MPD General Order 901.07, Section V states “a member’s decision to use non-deadly force must involve one of or more of the following: (a) to protect life or property, (b) to make a lawful arrest, (c) to prevent the escape of a person in custody, (d) to control a situation and/or subdue and restrain a resisting individual.” There is no evidence that any of these situations were present when SUBJECT OFFICER pushed COMPLAINANT.

Regardless of the objective, the record shows that SUBJECT OFFICER made no verbal order or request before pushing COMPLAINANT, contrary to the provision of MPD General Order 901.07, Part V, which states that officers should begin with “advice, warning and verbal persuasion.” Further, SUBJECT OFFICER made no lesser application of force before pushing COMPLAINANT, contrary to MPD General Order 901.07, Part V, describing the use of “cooperative controls” such as verbal persuasion and “contact controls” such as hand control procedures, and firm grip before using greater force. Finally, SUBJECT OFFICER did not adhere to MPD General Order 901.07’s instruction to “modify [his] level of force in relation to the amount of resistance offered by a subject. As the subject offers less resistance, the member shall lower the amount or type of force used.” Because SUBJECT OFFICER did not attempt lower levels of force, and there is no evidence that such lesser techniques would be inadequate, SUBJECT OFFICER’S actions were in violation of MPD General Order 901.07.

Thus, SUBJECT OFFICER used unnecessary and excessive force against COMPLAINANT in violation of D.C. Mun. Regs., tit. 6A, § 2199.1 and MPD General Order 901.07, and COMPLAINANT complaint is sustained.

B. SUBJECT OFFICER Failed to Identify Himself by Name and Badge Number When Requested by COMPLAINANT

MPD General Order 201.26 requires MPD officers to “give their names and badge numbers in a respectful, polite manner” when requested to do so by a member of the public. Pursuant to Part II, Section D, No. 1 of General Order 201.26, MPD officers are also required to identify themselves by displaying their badge or picture identification before taking police action, “except when impractical, unfeasible, or where their identity is obvious.”

The evidence shows that COMPLAINANT requested SUBJECT OFFICER’S name and badge number, and SUBJECT OFFICER did not provide it. There is no evidence in the record that such identification was impractical or unfeasible. Thus, SUBJECT OFFICER failed to identify himself when requested in violation of MPD General Order 201.26 and the complaint is sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER, Metropolitan Police Department:

Allegation 1:	Sustained
Allegation 2:	Sustained

Submitted on October 12, 2012.

Colleen F. Shanahan
Complaint Examiner