

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	11-0304
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER #1, Second District SUBJECT OFFICER #2, Second District
<b>Allegation 1:</b>	Harassment
<b>Complaint Examiner:</b>	Sean C. Staples
<b>Merits Determination Date:</b>	June 5, 2013

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 filed a complaint with the Office of Police Complaints (OPC) on May 9, 2011. COMPLAINANT alleged that SUBJECT OFFICER #1, Second District and SUBJECT OFFICER #2<sup>1</sup>, Second District, entered her home that day without her consent to serve her with a subpoena. COMPLAINANT alleged that she did not give the police officers permission to enter her home, they entered her home unlawfully, and that such entry constituted harassment.

**II. EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation with all related exhibits and SUBJECT OFFICERS' 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.

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<sup>1</sup> COMPLAINANT mistakenly identified UNINVOLVED OFFICER as a subject officer in place of SUBJECT OFFICER #2. UNINVOLVED OFFICER was not involved in this incident.

### III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation with all attached exhibits and the objections submitted by SUBJECT OFFICER #1 and SUBJECT OFFICER #2 on April 26, 2013, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On May 9, 2011 at approximately 8 a.m., SUBJECT OFFICER #1 and SUBJECT OFFICER #2 arrived at ADDRESS, the home of COMPLAINANT.
2. The express purpose of the officers' visit was to serve a subpoena.
3. SUBJECT OFFICER #1 knew COMPLAINANT. He had previous contact with her in connection with a grand jury investigation in the case of *United States v. Andre Reid*. COMPLAINANT had come to the United States Attorney's Office (USAO) on several occasions in response to subpoenas issued pursuant to that investigation.
4. COMPLAINANT brought her child, 10 months old at the time, to the USAO on several occasions and had, most recently, refused to testify in front of the grand jury because she was told she could not enter the grand jury room with her baby. In response, the prosecutor in the case issued another subpoena to COMPLAINANT commanding her to appear in the grand jury without the baby.
5. On the morning of May 9, 2011, subpoena in hand, SUBJECT OFFICER #1 knocked on the door of APARTMENT #. SUBJECT OFFICER #1 called out to COMPLAINANT through the door but did not receive an answer. The officers heard a baby crying. This initial knock and announce period lasted no longer than two minutes.
6. SUBJECT OFFICER #2 went downstairs to bring the security guard, WITNESS, to the apartment. SUBJECT OFFICER #2 asked WITNESS if he had a key to APARTMENT #. WITNESS indicated the officers would need to speak to an apartment manager to get access to a key. The officers never attempted to contact an apartment manager.
7. WITNESS agreed to observe the officers knocking on the door of APARTMENT #. The officers knocked on the door several times and received no response. WITNESS did not hear a baby crying.
8. As the officers knocked harder and harder on the unlocked door the door opened slightly. The officers called out to COMPLAINANT and again received no response. Both officers then entered the apartment. WITNESS estimates about two minutes elapsed from the time he arrived at the door of APARTMENT # until the officers entered the apartment.
9. The officers took a few paces inside the apartment and again announced their presence. COMPLAINANT came out of her bedroom holding her baby. The baby was not crying.

COMPLAINANT appeared angry at the officers' presence, cursed at them and commanded they leave. The officers handed COMPLAINANT the subpoena and left the apartment.

#### 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: (1) harassment..."

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.

The officers' unlawful entry into COMPLAINANT'S home constitutes harassment.

"It is a cardinal principal that searches conducted outside the judicial process, without prior approval by a judge or magistrate, are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions." *Mincy v. Arizona*, 427 U.S. 385, 390 (1978).

Warrantless entry is authorized if dangers are such that it cannot be delayed. *See e.g., Warden v. Hayden*, 387 U.S. 294 (1967). This "exigent circumstances" exception typically applies when officers are pursuing an offender they have probable cause to believe committed an offense. *See id.* This exception has been extended to cover "emergencies" where warrantless entry is permitted when a person inside a home is reasonably believed to be in peril. *United States v. Booth*, 455 A.2d 1351, 1354 (D.C. 1983). Such entries, however, are strictly circumscribed:

First, the police officer must have probable cause, based on specific and articulable facts, to believe that immediate entry is necessary to assist someone in danger of bodily harm inside the premises. Second, the entry must be tailored carefully to achieve that objective...; the officer can do no more than is reasonably necessary to ascertain whether someone is in need of assistance, and then to provide that assistance. Finally, the entry must not be motivated primarily by the intent to arrest or to search, but by an intent to investigate a genuine emergency and to render assistance.

*United States v. Booth*, 455 A.2d 1351 (1355-56) (footnotes omitted).

In this case, the officers did not have probable cause to believe that immediate entry was necessary to assist someone in danger of bodily harm. The fact that the officers heard a baby crying when they first went to the door, without more, does not provide probable cause to believe that the child was in harm's way. The officers had no additional facts to believe that the child was in the home unattended or otherwise in danger of bodily harm. Cf. *Booth* 455 A.2d at 1356 (emergency exception applied where officer received a radio run that an assault was in progress at the premises, observed dried blood on the face of the person answering the door and the person did not respond to the officer's question regarding where the blood came from).

SUBJECT OFFICER #1 attempts to justify his warrantless entry on the fact that COMPLAINANT, in response to previous subpoenas, refused to leave her child with available child care resources at the United States Attorney's Office. COMPLAINANT'S "great love" for her child gave him heightened sense of concern about the child's welfare when his repeated knocking at the door and announcing his presence received no response. There are no facts, other than some evidence of a crying child and an unanswered door for a relatively short period of time, to support any reasonable belief that the child was unattended. Further, there are many actions, short of entry into the apartment, the officers could have taken to investigate any safety concerns. The officers could have, as WITNESS suggested, contacted the property manager in an attempt to gain entry. The officers could have inquired as to whether the apartment had a phone for them to call to check on any occupants. The officers could have knocked on other apartment doors in attempt to gain information from neighbors on whether the child was truly unattended.

COMPLAINANT'S refusal to utilize the child care resources at the USAO so she could testify before the grand jury supports a reasonable belief that she was a reluctant witness. Her failure to answer the door that morning and her angry reaction to the officers upon their entry into her apartment, all support a reasonable belief that she deliberately did not respond to the officers at the door because she did not want to be served with a subpoena rather than the belief that the child in the apartment was in immediate danger of bodily harm.

Finally, in order for the emergency exception to apply, the entry must be motivated by the primary intent to investigate a genuine emergency and render assistance rather than to search or arrest. In this case, it is undisputed that the officers went to the apartment that morning with

the express purpose to search for COMPLAINANT and place her under subpoena. While that motivation may have been affected by concern for the child's welfare, the totality of the circumstances, including the failure of the officers to conduct any investigation into the child's well-being both before and after entering the apartment, support the conclusion that the primary motivation for the entry was service of process rather than to investigate a genuine emergency.

Because the officers knowingly entered COMPLAINANT'S apartment without her consent in violation of the Fourth Amendment to serve her with a subpoena, the Complaint Examiner finds, based on a preponderance of the evidence that the allegation of harassment is sustained.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER #1  
SUBJECT OFFICER #2

<b>Allegation 1: Harassment</b>	Sustained
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Submitted on June 5, 2013.

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Sean C. Staples  
Complaint Examiner