

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	09-0316
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, First District
Allegation 1:	Harassment
Complaint Examiner:	Sean C. Staples
Merits Determination Date:	9/24/2012

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 filed a complaint with the Office of Police Complaints on June 1, 2009. COMPLAINANT alleged that MPD SUBJECT OFFICER harassed him by stopping, detaining and ticketing him without a legitimate law enforcement purpose. Specifically, that the SUBJECT OFFICER conducted a traffic stop of the COMPLAINANT on April 20, 2009, in the 1300 block of Canal Street, S.W., Washington, D.C., without cause or justification and engaged in a course of conduct throughout the traffic stop designed to intimidate and harass the COMPLAINANT. The COMPLAINANT alleges that the SUBJECT OFFICER has a personal vendetta against him and that the traffic stop and ensuing detention were in furtherance of that vendetta and not for any legitimate law enforcement purpose.

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.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation (ROI) and the exhibits attached thereto, the objections submitted by the SUBJECT OFFICER on June 22, 2012, OPC's response and witness statements attached thereto, the Complaint Examiner finds the material facts regarding this complaint to be:

1. SUBJECT OFFICER initiated a traffic stop of COMPLAINANT in the 1300 block of Canal Street, S.W., Washington, D.C. on April 20, 2009, at approximately 1930 hours.
2. SUBJECT OFFICER and COMPLAINANT had a personal relationship prior to April 20, 2009. The relationship between SUBJECT OFFICER and COMPLAINANT, whatever its character prior to April 20, 2009, had become contentious as of April 20, 2009.
3. SUBJECT OFFICER issued a notice of infraction (NOI) on the COMPLAINANT'S vehicle on April 12, 2009, for illegally parking in a bus zone.
4. During the course of the April 20, 2009, traffic stop, the SUBJECT OFFICER alleged that the COMPLAINANT smelled of alcohol. SUBJECT OFFICER radioed a request for an officer trained in administering standard field sobriety tests (SFST) to come to the scene.
5. OFFICER 1, OFFICER 2, AND OFFICER 3 responded to the scene to assist the SUBJECT OFFICER. OFFICER 1 is MPD-certified to conduct field sobriety tests.
6. OFFICER 1 approached the COMPLAINANT, asked him to step out of his vehicle, discussed the administration of field sobriety tests with the COMPLAINANT, conducted the horizontal nystagmus test and detected no signs of impairment. OFFICER 1 found the COMPLAINANT calm and friendly during their interactions. OFFICER 1 did not smell any alcohol emanating from the COMPLAINANT or his vehicle.
7. When OFFICER 2 and OFFICER 3 arrived at the scene they noticed that the SUBJECT OFFICER and the COMPLAINANT were engaged in a heated conversation. OFFICER 2 and OFFICER 3 each spoke to the COMPLAINANT. The COMPLAINANT told OFFICER 2 and OFFICER 3 that he and the SUBJECT OFFICER knew each other, that they had a falling out and that the SUBJECT OFFICER had been harassing him ever since. OFFICER 2 asked the SUBJECT OFFICER about the COMPLAINANT'S claims. The SUBJECT OFFICER told OFFICER 2 that he did not know the COMPLAINANT.
8. OFFICER 2 witnessed the field sobriety test administered by OFFICER 1. OFFICER 2 has been trained in the administration of field sobriety tests but is not certified by MPD to conduct them as part of her official duties. OFFICER 2 and OFFICER 3 did not smell any alcohol and did not see any signs that the COMPLAINANT was intoxicated. OFFICER 2 instructed the COMPLAINANT to go back to his vehicle. The COMPLAINANT complied. OFFICER 1 and OFFICER 2 told the SUBJECT OFFICER they did not see any

signs that the COMPLAINANT was intoxicated and that there was no probable cause for an arrest for driving under the influence of alcohol.

9. Upon hearing this report, the SUBJECT OFFICER immediately approached the COMPLAINANT and said, "I will get you. Even if I don't get you today, I will get you." The SUBJECT OFFICER repeated this several times. This conduct caused the COMPLAINANT to shout that he was being harassed and abused by the SUBJECT OFFICER. OFFICER 2 and OFFICER 3 had to step between the SUBJECT OFFICER and the COMPLAINANT and had to direct the SUBJECT OFFICER back to his police cruiser.
10. The SUBJECT OFFICER then gave the COMPLAINANT an NOI for failing to give hand or signal device. That NOI was later dismissed by the Department of Motor Vehicles Adjudication Services on July 10, 2009.

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; (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

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 SUBJECT OFFICER harassed the COMPLAINANT in this matter.

The COMPLAINANT and the SUBJECT OFFICER do not agree on whether the COMPLAINANT committed a traffic violation on April 20, 2009. Given the fact that the SUBJECT OFFICER’S actions during the traffic stop support the conclusion that he harassed the COMPLAINANT, it is unnecessary for this Complaint Examiner to resolve the factual dispute over whether or not the initial traffic stop was justified.

It is undisputed that the SUBJECT OFFICER and the COMPLAINANT had a personal relationship that began on or around December 2008. Indeed, the SUBJECT OFFICER, in his statement to OPC, goes into great detail about the existence and nature of that relationship. On the date of this incident, however, when OFFICER 2 confronted the SUBJECT OFFICER regarding the COMPLAINANT’S claims of continued harassment, the SUBJECT OFFICER claimed not to know the COMPLAINANT. This is clearly not credible.

Further, the SUBJECT OFFICER issued the COMPLAINANT at least one other NOI on April 12, 2009, eight days prior to the one issued in this case. The SUBJECT OFFICER maintains, however, in his April 15, 2010, statement to OPC that he never issued the COMPLAINANT a NOI prior to the one issued on April 20, 2009, and that he did not know as he was initiating the stop on April 20, 2009, that he was stopping the COMPLAINANT. Admittedly, the April 12, 2009, NOI was not given directly to the COMPLAINANT but rather to his vehicle. The fact that a relationship existed between the COMPLAINANT and the SUBJECT OFFICER, that they had each been to each other’s homes, that the SUBJECT OFFICER had stayed with the COMPLAINANT for multiple days during Inauguration week in January 2009, and that the SUBJECT OFFICER worked in the COMPLAINANT’S neighborhood, discredit the SUBJECT OFFICER’S claim that he did not know that the car he ticketed on April 12 and stopped on April 20 belonged to the COMPLAINANT.

The SUBJECT OFFICER maintains in both his statement to OPC and in his objections to OPC’s ROI that the COMPLAINANT appeared intoxicated during the April 20, 2009, traffic stop. This is not credible. Three MPD officers, two trained in the submission of field sobriety tests, all provided sworn statements that there were no signs the COMPLAINANT was intoxicated.¹

¹ The SUBJECT OFFICER, in his objections to the OPC ROI, offers two civilian witnesses who would testify that the COMPLAINANT “looked drunk” and was “speaking loudly” prior to the traffic stop in this case. Assuming, without deciding, the witnesses are credible, it does not change the fact that three trained MPD officers who responded to the

The finding of harassment in this case is perhaps most supported by what the SUBJECT OFFICER did upon receiving the report that there was no probable cause to believe the COMPLAINANT was intoxicated. The SUBJECT OFFICER immediately approached the COMPLAINANT in a hostile manner and told him in no uncertain terms, repeatedly, that he would “get him.” Indeed the SUBJECT OFFICER’S actions were so aggressive that the other officers on the scene had to separate him and the COMPLAINANT.

This Complaint Examiner sees two possible motivations for the SUBJECT OFFICER’S conduct: (1) that the SUBJECT OFFICER reasonably believed that the COMPLAINANT was intoxicated, despite the assessment by all of the other trained officers at the scene, and wanted to communicate to the COMPLAINANT that at some point he would arrest the COMPLAINANT for driving under the influence, or (2) that the SUBJECT OFFICER knew there was no evidence the COMPLAINANT was intoxicated and was indeed pursuing a personal vendetta against the COMPLAINANT evidenced by words and conduct the SUBJECT OFFICER used to knowingly subject the COMPLAINANT to mistreatment by putting him in fear of further detention without legal cause or justification.

The first explanation is not plausible. If the SUBJECT OFFICER truly believed the COMPLAINANT was driving under the influence of alcohol, the SUBJECT OFFICER had the option, indeed the responsibility, to go up his chain of command and request further support at the scene to address any disagreement he may have had with the conclusion of the SFST-trained officer and the other officers. The SUBJECT OFFICER, at the time of the traffic stop, did not take issue with the fact that all of the officers on the scene concluded there was no probable cause to arrest the COMPLAINANT. Instead, he approached the COMPLAINANT in an aggressive manner and threatened the COMPLAINANT with future detention without legal justification.

The existence of a previous relationship between the SUBJECT OFFICER and the COMPLAINANT, the SUBJECT OFFICER’S attempt to deny that relationship to the other officers on the scene, the SUBJECT OFFICER’S request that the COMPLAINANT be subject to field sobriety tests despite overwhelming evidence that the COMPLAINANT showed absolutely no signs of intoxication, the SUBJECT OFFICER’S threatening words and conduct toward the COMPLAINANT after the SUBJECT OFFICER learned there was no probable cause to arrest the COMPLAINANT and the totality of the circumstances during the traffic stop, all support a finding that the SUBJECT OFFICER’S words, conduct and continued detention of the COMPLAINANT during the traffic stop subjected the COMPLAINANT to detention and mistreatment without legal justification.

The Complaint Examiner finds, based on a preponderance of the evidence, that the allegation of harassment is sustained.

scene and interacted with the COMPLAINANT all found no evidence that he had consumed any alcohol at the time he was detained by the SUBJECT OFFICER.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Sustained
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Submitted on September 24, 2012.

Sean C. Staples
Complaint Examiner