

Property Damage Caused by District of Columbia Police Action



Report and Recommendations of the
Police Complaints Board

to

**Mayor Anthony A. Williams,
The Council of the District of Columbia, and
Chief of Police Charles H. Ramsey**

September 28, 2005

Police Complaints Board

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I. INTRODUCTION AND OVERVIEW

The Office of Police Complaints (OPC) has received several police misconduct complaints alleging that Metropolitan Police Department (MPD) officers damaged or destroyed private property while carrying out their duties. Many of these complaints are based on damage caused during forcible entries that occur for the purpose of conducting searches and arrests. Other complaints involve property damage caused by police action unrelated to forcible entry. The common thread running through these complaints is that members of the public have resorted to filing police misconduct complaints because they did not have, and were not provided, information explaining how to file a claim that could lead to repair of damaged property or reimbursement of repair expenses. Under its statutory authority, the Police Complaints Board (PCB), OPC's governing body, examined MPD's policies and practices regarding property damage claims.¹

The primary policy governing these issues is MPD General Order 309.03, Forcible Entries by MPD Members, which establishes procedures for conducting forcible entries, including providing information to occupants or owners about repairing property damage that occurs during the course of a forcible entry. As written, General Order 309.03 appears to provide adequate information and assistance to persons who suffer property damage during a forcible entry. However, the complaints received by OPC indicate that these procedures are not always followed and that there are gaps in the general order that may lead to complaints. When a person suffers property damage that did not result from a forcible entry, PCB believes that the person would follow the same procedures to make a claim. However, PCB could not find any MPD policy that would provide information to MPD employees or members of the public who are in this situation.

Beyond MPD's policies, the information that is available to the public about filing property damage claims is significantly lacking. There is no information on MPD's website that advises people as to how to file a claim when property has been damaged by the police, and test calls to various MPD units and district stations were consistently answered by MPD staff members who were unaware that they should direct callers to the Office of Risk Management (ORM) within the District of Columbia's Office of the Attorney General in order to initiate a claim.

Taking steps to improve the way MPD responds to members of the public who suffer property damage because of police action would not only greatly assist the individuals who seek

¹ PCB "shall, where appropriate, make recommendations to [The Mayor, the Council, and the Chief of Police] concerning those elements of management of the MPD affecting the incidence of police misconduct, such as the recruitment, training, evaluation, discipline, and supervision of police officers." D.C. Official Code § 5-1104(d).

PCB would like to acknowledge the assistance of OPC's staff in preparing this report and recommendations. The project was conducted under the guidance of the agency's executive director, Philip K. Eure, deputy director, Thomas E. Sharp, and special assistant, Angela M. Kiper. OPC's 2005 summer law clerk, Thomas Moir, who is enrolled at the George Washington University Law School, and OPC's former management analyst, Ayris Scales, performed research and provided other valuable assistance.

redress for this specific grievance, but it also would benefit MPD and the District of Columbia, by reducing the number of police misconduct complaints and civil actions that stem from the lack of easily accessible, accurate information about the process for filing a claim for property damage caused by the police. Based on its findings, PCB recommends that the Mayor, the Council of the District of Columbia, and MPD make changes to MPD's existing policies, improve information available to the public, and provide training to MPD employees regarding the new policies and procedures.

II. PROPERTY DAMAGE CAUSED BY FORCIBLE ENTRY

MPD has a written policy regarding how its members should conduct forcible entries. MPD General Order 309.03, Part III, requires that, among other things, officers conducting a forcible entry must:

- Offer an explanation of the intrusion to the occupants or owners of the premises;
- Advise the occupants or owners that MPD will be responsible for repair of the damage as soon as possible when it appears the forcible entry is the result of misinformation, misinterpretation, or erroneous judgment;
- Immediately notify the dispatcher to contact the on-call Facilities Management staff member to make necessary repairs when it appears MPD is responsible for repairs;
- Inform the occupants or owners that MPD assumes no obligation to arrange for repairs when there is no apparent negligence or error on the part of MPD; and
- Refer owners or occupants who request information regarding how to assert a claim against the District of Columbia for the damage to the Investigative Unit of the Office of the Attorney General.²

When a residence that has been forcibly entered is unoccupied, officers must:

- Leave an MPD Form PD 240A, Notice of Forcible Entry Upon an Unoccupied Residence, in a conspicuous place identifying the officers responsible for the intrusion, and with instructions on how the occupant can contact these officers except where leaving the form would interfere with an investigation.

General Order 309.03 is commendable in several respects in that it acknowledges potential liability for damage caused by MPD error, establishes procedures for responding to requests for damage claim information when such requests are made at the time the forcible entry takes place, and provides for immediate repairs by MPD in appropriate cases. It also

² The order, which was issued on March 28, 2003, actually refers to the "Office of the Attorney General" as the "Office of the Corporation Counsel," which was the agency's prior name. The agency's name changed on May 26, 2004.

recognizes that MPD's "responsibility to maintain the public trust" requires providing information and assistance to people whose property has been damaged by the police. Nevertheless, it is clear from OPC's complaints that General Order 309.03 is not always followed, and that revising certain provisions of this general order would greatly improve the handling of individuals whose property is damaged during forcible entries. Consideration of the allegations in a few of the complaints that OPC has received helps illustrate the problem.

In one complaint, the complainant alleged that MPD officers forcibly entered his sister's home while he was an occupant. The officers damaged the front door by kicking it open and proceeded to kick open and damage bedroom doors, even after another officer had entered and announced that the complainant's sister's residence was the wrong house. The officers departed without sending an MPD repair crew and without providing any information to the complainant or his sister regarding how to file a claim with the city for repairs or compensation.

In another complaint, the complainant alleged that MPD officers broke his door during a forcible entry, handcuffed him to a chair, conducted a search that tore his home apart, and failed to produce a warrant until moments before exiting. Although the complainant's address was listed on the warrant, the complainant genuinely believed that his home had been targeted by mistake. If the complainant was right, then this forcible entry was the result of misinformation or misinterpretation of information. However, MPD failed to provide any repair or damage claim information to the complainant.

In a third complaint, the complainant alleged that while police officers were present in his home investigating a non-threatening, non-emergency matter, other officers arrived and entered forcibly by kicking through and shattering the glass storm door at the entrance to the home. Notwithstanding MPD's mistake, the officers neither arranged for repairs nor provided the complainant any information about how to seek compensation for the necessary repairs.

Based on these and other complaints that have been filed with OPC, it appears that even when a forcible entry occurs because of MPD error, the provisions of General Order 309.03 that direct officers to contact the Facilities Management unit to arrange for immediate repairs and to advise occupants that they may file a claim with the Office of Risk Management are not always carried out. OPC's complaints also illustrate that it can be difficult for police officers on the scene to determine that an error has occurred, particularly in cases where the residence searched is correctly identified in a warrant but the warrant is based on misinformation. The complaints also suggest that due to the startling and unsettling nature of a forcible entry, the occupants often lack the presence of mind to ask for damage claim information, and the police officers may be too occupied with other details of the entry and search to inform the occupants of MPD's criteria for assuming property damage liability.

One way to ensure that occupants of a home that is forcibly entered receive information notifying them that they may legitimately seek repair or compensation if they believe that a mistake has occurred would be to revise the PD 240A. The new PD 240A should include contact information for the officers who conducted the entry as well as information regarding the circumstances under which MPD will and will not assume liability for property damage caused during forcible entries. The revised form also should include clear directions on contacting the Office of Risk Management.

At the same time that the PD 240A is revised, General Order 309.03 should be revised to require that officers leave a copy of the new PD 240A both when the premises entered is occupied and when it is unoccupied. In its current form, the order does not require that the form be left at occupied residences. Leaving the form even in cases where the premises are occupied would relieve MPD officers of the burden of remembering to inform occupants of their right to repairs where a mistake has occurred. It also would relieve occupants of the obligation to request damage claim information at the time of the incident.

In addition to revising the contents of the PD 240A and expanding the circumstances under which it is given out following a forcible entry, MPD should take steps to ensure that officers follow the provisions of General Order 309.03 that direct officers to quickly arrange for repairs where it is evident that MPD has made a mistake. Enforcing this policy benefits citizens and engenders the kind of community goodwill that is essential to police work. Enforcing the existing provisions of General Order 309.03 that encourage speedy repair also has the potential to reduce the incidence of civil actions brought to recover compensation for damages and reduce the cost to the District of Columbia of property damage related claims. An example of this can be seen in the Los Angeles County Sheriff's Department (LASD). LASD has adopted a policy whereby citizens are provided information through the department's website about how to file a claim for damage to property caused by an LASD officer, and it has established a special unit within the department to quickly and thoroughly respond to the claims. LASD has discovered that by acknowledging citizens' loss and providing fast and fair compensation for the damage, civil actions for property damage claims have been reduced dramatically, and the cost to the county of addressing such claims is substantially less. LASD also found that ignoring claims tended to make claimants angry and in turn more likely to engage lawyers and demand greater compensation.³

In the District of Columbia, providing citizens with information about how to file a property damage claim coupled with quick and fair response to the claims would not only save money but also would likely lead to fewer police misconduct complaints, where such complaints are based on the desire to seek redress for property damage.

III. PROPERTY DAMAGE CAUSED BY POLICE ACTION OTHER THAN FORCIBLE ENTRY

Although fewer in number than complaints involving forcible entry, OPC has also received complaints alleging that police have damaged property under circumstances that did not involve forcible entry. The majority of these complaints concern damage to cars. Specifically, citizens have complained about cars being dented when persons subject to police handling have been thrown against them, and citizens have also alleged that cars have been damaged when officers have had cause to search or investigate their vehicles.

In the District of Columbia, all persons who allege damage to property caused by District of Columbia employees acting in the course of their employment must file a claim with the

³ The Los Angeles County Sheriff's Department, Nineteenth Semiannual Report 31-33 (Feb. 2005), available at <http://www.parc.info/pubs/pdf/19threport.pdf>.

Office of Risk Management in order to attempt to recover. Even so, in cases where property is damaged because of police action, people naturally turn to MPD first. However, MPD's written policies do not prescribe procedures for disseminating claim information or making repairs except where damage is based on forcible entry. In addition, there is no mechanism for informing members of the public that the proper starting point for making a claim for damages against MPD is the Office of Risk Management.

IV. INFORMATION AVAILABLE TO THE PUBLIC REGARDING PROPERTY DAMAGE CLAIMS

The difficulty faced by the public when trying to obtain accurate information from MPD about the city's claims process is particularly apparent when trying to call various units or district stations within the Department. Although not a scientific undertaking, OPC made a series of test calls to various branches of MPD in an effort to determine where a person might be able to get information through MPD about the claims process. Calls were placed to district stations as well as to MPD headquarters, including to the Facilities Management unit. None of those calls resulted in information steering the caller to the Office of Risk Management. In most instances, OPC's testers were told by the MPD employee who answered the telephone that the employee did not know what a person whose property had been damaged by MPD officers could do to obtain repair or compensation. The results of OPC's telephone tests contribute to PCB's view that MPD staff members need training about the damage claim process so they can respond accurately to people who call seeking information about property damage caused by an MPD officer.

The difficulty in obtaining damage claim information from MPD by telephone is compounded by the fact that MPD does not include such information on its website. A short message on the MPD website briefly explaining the circumstances under which a person might be entitled to compensation for property damage and directing all potential claimants to the Office of Risk Management would be helpful. The Los Angeles County Sheriff's Department discussed above has a link on its website to the Los Angeles County damage claim form. MPD could take a similar approach by adding a link to the ORM webpage, which in turn would lead citizens to the District of Columbia's claim form.

Another reason that it would be especially helpful for MPD to include on its website a separate message relating to property damage claims is that the site currently directs citizens who have a complaint against MPD to the Office of Professional Responsibility or to OPC. Although these directions clearly refer to police misconduct, in the absence of information addressing property damage, citizens might be tempted to seek assistance with a property damage matter through OPR or OPC, neither of which is the proper forum.

V. RECOMMENDATIONS

Based on its findings, PCB recommends that the Mayor, the Council of the District of Columbia, and MPD:

1. Revise MPD General Order 309.03 to require that officers making forcible entries leave an MPD Form PD 240A where a location is unoccupied as well as when a

location is occupied. Also MPD should create a policy for guiding its staff members in responding to property damage caused by police action other than forcible entries. At present, it appears that there is no policy that covers these situations.

2. Revise the PD 240A so that it informs citizens both that MPD officers conducted a forcible entry and that citizens may direct a claim for damages to ORM. The reference to ORM should include all relevant contact information. In addition, this information should be added to MPD's and the city's websites. The information on the websites should be easy to locate and should explain the process for initiating a claim for property damage based on police action and direct people to ORM through a link to the specific ORM web page that contains the directions and form for filing a claim.
3. Train MPD employees about MPD's procedures for filing property damage claims so they can accurately respond to requests for information from the public. Ideally this training should be provided to all MPD staff members, but an emphasis should be placed on training MPD officials, because an official should always be involved in authorizing, conducting, and documenting forced entries and other forms of property damage.