

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	03-0463
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER, Third District
<b>Allegation 1:</b>	Harassment
<b>Allegation 2:</b>	Insulting, Demeaning, or Humiliating Language or Conduct
<b>Allegation 3:</b>	Use of Excessive or Unnecessary Force
<b>Complaint Examiner:</b>	Leslie T. Annexstein
<b>Merits Determination Date:</b>	October 19, 2005

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 alleged that Metropolitan Police Department (MPD) SUBJECT OFFICER, (1) harassed her, (2) used language or engaged in conduct toward her that was insulting, demeaning, or humiliating, and (3) used unnecessary or excessive force against her. COMPLAINANT claimed that on June 8, 2003, SUBJECT OFFICER forced his way into her apartment without her permission by pushing the door open against her opposing force and then spoke with her inside her apartment in a loud voice that was disrespectful and offensive.<sup>1</sup>

**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

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<sup>1</sup> COMPLAINANT, a black female, also alleged that SUBJECT OFFICER, a white male, discriminated against her because of her race. The race discrimination allegation was dismissed on June 6, 2005, by a member of the Police Complaints Board.

Investigation presented no genuine issues of material fact in dispute that required a hearing.<sup>2</sup> See D.C. Mun. Regs., title 6A, § 2116.3.

### **III. FINDINGS OF FACT**

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

1. On Sunday, June 8, 2003, COMPLAINANT received a telephone call from WITNESS #1, the 14-year-old daughter of COMPLAINANT's ex-boyfriend. WITNESS #1 had lived with COMPLAINANT for two years, but had been asked to leave approximately a week earlier. WITNESS #1 called to ask if she could retrieve some of her belongings from the apartment.
2. COMPLAINANT denied WITNESS #1's request to remove items from the apartment. COMPLAINANT believed that the items WITNESS #1 wanted belonged to her and not to WITNESS #1.
3. Later, at approximately 5:30 p.m., COMPLAINANT received a call from the security officer of her apartment complex. The security officer stated that WITNESS #1 and two other females were at the entrance of the apartment building and that WITNESS #1 was calling the MPD.
4. At approximately 5:40 p.m., the security guard called 911 and stated that a "young lady" could not get her clothes from a woman in an apartment. The dispatcher informed him that the police could not force an apartment dweller to allow the young woman in and stated that they would probably advise her to take COMPLAINANT to small claims court. The dispatcher took the name and location and two patrol cars were dispatched at 5:45 p.m.
5. SUBJECT OFFICER and WITNESS OFFICER #1,<sup>3</sup> arrived at the apartment complex. WITNESS #1 told them that she used to live with COMPLAINANT, but that COMPLAINANT had kicked her out and would not let her back in to collect her belongings.
6. The officers escorted WITNESS #1 to the apartment. WITNESS #1 had a key to the apartment and put the key in the lock. SUBJECT OFFICER turned the knob and opened the door, putting his body halfway into the apartment.

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<sup>2</sup> It is noted that SUBJECT OFFICER did not submit any objections regarding this complaint.

<sup>3</sup> COMPLAINANT did not file a complaint against WITNESS OFFICER #1.

7. COMPLAINANT tried to push the door closed. SUBJECT OFFICER pushed back and entered the apartment despite COMPLAINANT's efforts to keep him out. SUBJECT OFFICER and WITNESS OFFICER #1 entered the apartment.
8. Once inside the apartment, SUBJECT OFFICER told COMPLAINANT that he was going to get WITNESS #1's belongings. SUBJECT OFFICER spoke to COMPLAINANT in a loud voice and he and COMPLAINANT argued. COMPLAINANT describes SUBJECT OFFICER as "loud, boisterous, and intimidating" and SUBJECT OFFICER described COMPLAINANT as "nasty and loud."
9. COMPLAINANT called her father, WITNESS #2, a retired Third District MPD officer, who lives directly below her. COMPLAINANT told her father that the police had forced their way into her apartment. WITNESS #2 heard male and female voices yelling in the background and he went to his daughter's apartment.
10. When WITNESS #2 arrived at his daughter's apartment he heard her say to SUBJECT OFFICER, "You didn't have to put your hands on me." WITNESS #2 told COMPLAINANT to let WITNESS #1 have the belongings she wanted.
11. COMPLAINANT, SUBJECT OFFICER, and WITNESS #1 went into the bedroom to get the belongings. A shouting match ensued between COMPLAINANT and SUBJECT OFFICER because COMPLAINANT asserted that the items that WITNESS #1 wanted to take belonged to her and not to WITNESS #1.
12. WITNESS #2 intervened, and SUBJECT OFFICER and COMPLAINANT were able to work out what items WITNESS #1 could take. COMPLAINANT allowed WITNESS #1 to take a backpack with books.
13. WITNESS #1, SUBJECT OFFICER, and WITNESS OFFICER #1 then left COMPLAINANT's apartment.

#### **IV. DISCUSSION**

##### Allegation 1: Harassment

Pursuant to D.C. Official Code § 5-1107(a), "[t]he 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; [and] (3) use of language or conduct that is insulting, demeaning, or humiliating...."

Harassment, as defined by MPD Special Order 01-01, Part III, Section G, includes "acts that are intended to bother, annoy, or otherwise interfere with a citizen's ability to go about lawful business normally, in the absence of a specific law enforcement purpose."

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., title 6A, § 2199.1.

SUBJECT OFFICER entered COMPLAINANT’S apartment and searched the apartment for WITNESS #1’s belongings without her consent and without a warrant or court order. SUBJECT OFFICER was well aware of the fact that, at the time of his entry into COMPLAINANT’S apartment, she was not involved in any criminal or harmful activity. Indeed, SUBJECT OFFICER knew that he was proceeding solely based on the account of a minor child who had previously lived with COMPLAINANT, but no longer lived with her. SUBJECT OFFICER also knew that COMPLAINANT did not want WITNESS #1 in the apartment. Further, SUBJECT OFFICER did not attempt to gain any additional information regarding the situation before forcing his way into COMPLAINANT’S apartment against her will.

Based on the totality of the circumstances, there are no facts that justify SUBJECT OFFICER’S forced and warrantless entry into COMPLAINANT’S apartment. Although SUBJECT OFFICER’S intent may have been to assist WITNESS #1, he carried out this intent by superseding the rights afforded to COMPLAINANT to be secure in her person and property. By entering COMPLAINANT’S apartment, SUBJECT OFFICER bothered and annoyed COMPLAINANT and interfered with her ability to go about her lawful business in the privacy of her own home, in the absence of a legitimate law enforcement purpose. The situation was compounded by SUBJECT OFFICER’S conduct in arguing with COMPLAINANT and proceeding to the bedroom with WITNESS #1 in search of her alleged belongings. Therefore, SUBJECT OFFICER harassed COMPLAINANT in violation of MPD Special Order 01-01, Part III, Section G.

Allegation 2: Insulting, Demeaning, or Humiliating Language or Conduct

Language or conduct that is insulting, humiliating, or demeaning, as defined by MPD Special Order 01-01, Part III, Section H “includes, but is not limited to acts, words, phrases, slang, slurs, epithets, ‘street’ talk or other language which would be likely to demean the person to whom it is directed or to offend a citizen overhearing the language; demeaning language includes language of such kind that its use by a member tends to create disrespect for law enforcement whether or not it is directed at a specific individual.”

MPD General Order 201.26, Part I, Section C provides that “[a]ll members of the department shall be courteous and orderly in their dealings with the public. They shall perform their duties quietly, remaining calm regardless of provocation to do otherwise.”

Once SUBJECT OFFICER entered COMPLAINANT’S apartment, he spoke to her in a loud voice, informing her that he would be retrieving WITNESS #1’s belongings. At no time did SUBJECT OFFICER request COMPLAINANT’s permission to enter or remain in her apartment, or to search her apartment for WITNESS #1’s belongings. Instead, after entering the apartment against COMPLAINANT’s will in the first instance, SUBJECT OFFICER continued to inform COMPLAINANT that he was getting WITNESS #1’s belongings, regardless of her consent, in a loud voice.

Indeed, when COMPLAINANT called her father, WITNESS #2, he heard male and female voices yelling in the background. Once WITNESS #2 arrived at the apartment and advised his daughter to allow WITNESS #1 to collect her belongings, he also heard a shouting match between SUBJECT OFFICER and COMPLAINANT.

SUBJECT OFFICER’s unwarranted entry into COMPLAINANT’s apartment without her consent, his insistence on retrieving WITNESS #1’s belongings, and his speaking to the complainant in a loud voice were disrespectful and offensive to the complainant. This conduct was not courteous and orderly toward the complainant. Therefore, SUBJECT OFFICER used language or engaged in conduct toward the complainant that was insulting, demeaning, or humiliating, in violation of MPD General Order 201.26, Part I, Section C, No. 1.

### Allegation 3: Use of Excessive or Unnecessary Force

MPD General Order 901.07, Part II states, “[t]he 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 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.”

MPD General Order 901.07, Part V, Section B, No. 1 states, “[t]he Department recognizes and employs the Use of Force Continuum. Members in response to resistant or dangerous individuals may apply escalating options of force (see Use of Force Continuum Chart attached). The options include: a. Cooperative Controls, such as verbal persuasion; b. Contact Controls, such as hand control procedures, firm grip, escort and control holds; c. Compliance Techniques, such as Oleoresin Capsicum (OC) Spray (non-deadly); d. Defensive Tactics, such as less-than-lethal weapons, including impact weapons, such as a baton, or ASP, and including less-than lethal projectiles used by the Emergency Response Team and during times of civil disobedience (e.g. 12 gauge shotgun, 27 mm gas guns, and rubber bullets), and canines; e. deadly Force (including deadly applications of less-than-lethal weapons).”

Application of the Use of Force Continuum for the Metropolitan Police Department provides guidance to MPD officers on the appropriate use of force. This guidance states that “[t]he policy of the Metropolitan Police Department is that an officer shall use only that force that is reasonable necessary to effectively bring an incident under control, while protecting the lives of the officers and others.” The guidance also states, “...The officer’s response to a subject’s action must be based on the totality of [the] circumstances, which an officer reasonable believes to exist at the time of the confrontation.”

SUBJECT OFFICER pushed the door of the apartment open against COMPLAINANT’S opposing force. The act of pushing the door open against COMPLAINANT’S opposing force constitutes unnecessary or excessive force as SUBJECT OFFICER had no legal authority to take any action – physical or nonphysical – to enter the apartment. It was not necessary to exert force to control a person or incident in order to protect the lives of others. Indeed, SUBJECT OFFICER’S own behavior in forcing his way into the apartment without justification created an environment that could have escalated into a situation that would have required some reasonable force. Thus, rather than preventing or diffusing a confrontation, SUBJECT OFFICER’S actions ignited a confrontation between the police and a citizen. As discussed above, SUBJECT OFFICER acted solely on the basis of what he had been told by WITNESS #1, a minor child who did not live in the apartment. He did not seek a warrant to enter the apartment and did not request COMPLAINANT’S permission to enter the apartment. Since it was not reasonably necessary for SUBJECT OFFICER to enter the apartment, it was not reasonably necessary for him to physically force his way inside against the resistance of COMPLAINANT. Therefore, SUBJECT OFFICER’S use of force to gain entry into COMPLAINANT’S apartment was unnecessary or excessive under the circumstances, in violation of MPD General Order 901.07.

**V. SUMMARY OF MERITS DETERMINATION**

Officer SUBJECT OFFICER

<b>Allegation 1:</b>	Sustained
<b>Allegation 2:</b>	Sustained
<b>Allegation 3:</b>	Sustained

Submitted on October 19, 2005.

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Leslie T. Annexstein  
Complaint Examiner