

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	05-0372
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1, Second District
Allegation 1:	Insulting, Demeaning, or Humiliating Language or Conduct
Allegation 2:	Discriminatory Treatment
Complaint Examiner:	Eleanor Nace
Merits Determination Date:	December 8, 2006

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 this complaint with the Office of Police Complaints (OPC) on August 3, 2005. COMPLAINANT alleged that on July 6, 2005, Metropolitan Police Department (MPD) Officer SUBJECT OFFICER #1, Second District, who is African American, used language or engaged in conduct toward her that was insulting, demeaning or humiliating, and unlawfully discriminated against her by denying her adequate police service based her age, race, and sex, in that she is a middle-aged African American woman.¹

Specifically, COMPLAINANT, an African-American female and a self-employed accountant, alleged that in early July 2005, she discovered that some of her personal property, including \$3,500 in cash and several pairs of designer jeans, were missing from a storage facility

¹ The Complainant also alleged that a second officer, SUBJECT OFFICER #2, Second District, engaged in the same misconduct toward her as SUBJECT OFFICER #1. SUBJECT OFFICER #2 is not included as a subject officer, however, because MPD terminated his employment shortly after this complaint was filed with OPC. Additionally, because SUBJECT OFFICER #2 was terminated before OPC had the opportunity to interview him, he also is not included as a witness officer.

in Arlington, Virginia.² COMPLAINANT believed that the missing items had been stolen in the District of Columbia by employees of a moving company who in February 2005 had moved her belongings from her former residence in the District of Columbia's Georgetown neighborhood to a storage facility in Arlington, Virginia. On July 6, 2005, the Complainant twice attempted to report the alleged theft to officers at MPD's Second District station. The first time COMPLAINANT went to the Second District, MPD WITNESS OFFICER #1 allegedly refused to take a report on the ground that the missing property most likely was stolen from the storage facility in Arlington, Virginia. WITNESS OFFICER #1 allegedly urged COMPLAINANT to report the matter to the Arlington County Police Department. The police in Arlington County in turn sent COMPLAINANT back to the District of Columbia, based on their belief that her property most likely had been stolen while the movers were loading it in the District of Columbia.

When COMPLAINANT returned to MPD's Second District station, SUBJECT OFFICER #1 allegedly refused to assist her and advised her to report the alleged theft in Virginia. Because COMPLAINANT already had traveled back and forth between MPD's Second District station and the Arlington County police, she requested to speak to a supervisor. COMPLAINANT then spoke to WITNESS OFFICER #2, who ordered SUBJECT OFFICER #1 to take a report. Rather than assist the Complainant, however, SUBJECT OFFICER #1 allegedly openly refused to take the report and loudly uttered to WITNESS OFFICER #2, "You all kiss a lot of ass up here and take a lot of mess from these people." SUBJECT OFFICER #1 allegedly announced that he did not believe COMPLAINANT's theft allegations and, according to COMPLAINANT, he began "ranting and raving, ... pacing back and forth," and laughing derisively at her while continuing to refuse to assist her.

At that point, a different officer, SUBJECT OFFICER #2, intervened and prepared a lost property report rather than a theft report. While SUBJECT OFFICER #2 was interviewing the Complainant, he allegedly openly expressed disbelief in the Complainant's theft allegations, laughed mockingly at her, and asked her inappropriate questions, such as whether she had been in jail between February 2005, when she first stored her property, and July 2005, when she allegedly discovered that a portion of her property was missing. SUBJECT OFFICER #2 also allegedly made inappropriate comments such as, "[There was] no way a woman like [the complainant] could have [had] that much money."

SUBJECT OFFICER #1 remained present while SUBJECT OFFICER #2 interviewed COMPLAINANT, and he allegedly interjected, loudly agreeing that he too disbelieved the Complainant and laughing at COMPLAINANT in concert with SUBJECT OFFICER #2. COMPLAINANT stated that other members of the public were present while SUBJECT OFFICER #1 and SUBJECT OFFICER #2 interacted with her, and their behavior toward her made her feel embarrassed as well as disrespected.

² COMPLAINANT did not specify in her complaint or in her statement to OPC the precise amount of money she discovered missing from her stored property. However, the MPD Form (PD) 251 Incident Report prepared in connection with this matter indicates that the complainant told MPD that \$3,500 in cash had been stolen from her stored property.

COMPLAINANT further alleged that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 treated her disrespectfully because she is a middle-aged African American woman and, thereby, subjected her to unlawful discrimination. Specifically, COMPLAINANT alleged that the officers disbelieved her claims and felt comfortable treating her disrespectfully because of her race, gender, and “mature ... age.”³ COMPLAINANT felt that if she had been a white person, the officers would have treated her with respect and professionalism. COMPLAINANT alleged that she felt so frightened, embarrassed, and angered by the way SUBJECT OFFICER #1 and SUBJECT OFFICER #2 treated her that she called the Mayor’s office from a pay phone in the Second District station and obtained information on how to file this complaint. A copy of the complaint, which was submitted in a timely manner and in the proper form, is attached to the Report of Investigation as **Exhibit 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., title 6A, § 2116.3. Any relevant and material factual disputes were resolved in favor of the Complainant because of supporting evidence and credibility determinations.

III. FINDINGS OF FACT

Based on a review of OPC’s Report of Investigation, including all related exhibits, and OPC’s letters to the complainant and the subject officer, the Complaint Examiner finds the material facts regarding this complaint to be:

1. COMPLAINANT went to the MPD’s Second District on July 6, 2005, to report the theft of cash and designer jeans.
2. On her first visit to the police station, she was told to report the theft to the Arlington County Police Department.
3. The police in Arlington referred COMPLAINANT back to the District of Columbia.
4. On returning to the Second District on July 6, 2005, COMPLAINANT spoke with SUBJECT OFFICER #1. He refused to assist her and told her to go to Virginia. Because of the prior events of the day, she asked to speak to a supervisor.
5. WITNESS OFFICER #2 spoke to COMPLAINANT and told SUBJECT OFFICER #1 to take a report from COMPLAINANT.

³ The complainant described herself as “a very mature woman by age.” However, she did not provide her date of birth or specify her age. The complainant appeared to OPC INVESTIGATOR to be middle aged.

6. Instead, SUBJECT OFFICER #1 refused and became upset and angry. What he said exactly at this point is unclear, but WITNESS OFFICER #2 said that SUBJECT OFFICER #1 said, "This is some bullshit. Sarge, you need to quit kissing these people's asses." The Complainant reported that SUBJECT OFFICER #1 said, "You all kiss a lot of ass up here and take a lot of mess from these people." The general gist of these statements is the same.
7. WITNESS OFFICER #2 made it clear that a report was to be taken and left the area.
8. SUBJECT OFFICER #1 did not take a report but ranted and raved and paced back and forth, laughing at COMPLAINANT and refusing to assist her.
9. SUBJECT OFFICER #2 intervened and prepared a lost property report rather than a theft report. SUBJECT OFFICER #1 remained in the area.
10. While taking the report, SUBJECT OFFICER #2 allegedly expressed disbelief in COMPLAINANT's theft allegations, laughed at her, and asked inappropriate questions.
11. During this time, SUBJECT OFFICER #1 interjected loudly that he too did not believe COMPLAINANT and laughed mockingly at her.
12. There were other members of the public present at this time.
13. COMPLAINANT was embarrassed and frightened and felt she was treated with a lack of respect.

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; or (5) retaliation against a person for filing a complaint pursuant to [the Act]."

Two of these issues are involved in this case: language or conduct that is insulting, demeaning or humiliating, and discrimination.

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 “All 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.”

In this case, COMPLAINANT has alleged that SUBJECT OFFICER #1 used language and engaged in conduct that was insulting, demeaning and humiliating to her. She bases this claim on the following conduct: (1) insisting that she report her theft allegations to police in Virginia after she had already been turned away by Virginia police and advised by them to pursue her allegations at MPD’s Second District; (2) refusing to take a theft report from her, in direct contravention of WITNESS OFFICER #2’s direct order; (3) using profane language in reference to her and in her presence during a disrespectful verbal exchange with WITNESS OFFICER #2; (4) “[going] ballistic,” “ranting and raving,” and “pacing back and forth,” while refusing to take her report; (5) interjecting that he did not believe her claims while SUBJECT OFFICER #2 interviewed her; (6) laughing derisively at her along with SUBJECT OFFICER #2; and (7) falsely claiming that he had called the Arlington County police and been told that she should return to the Arlington County police to report the alleged theft of items of her personal property.

The investigation revealed the following: SUBJECT OFFICER #1 acknowledged that he believed COMPLAINANT’s theft allegations were within the jurisdiction of police in Virginia and that, accordingly, he refused to take a theft report from her. He also conceded that in refusing to take a report from COMPLAINANT, he disobeyed the direct order of a supervisory officer, WITNESS OFFICER #2. However, SUBJECT OFFICER #1 denied that he used profanity in his verbal exchange with WITNESS OFFICER #2 and alleged that because his remark was made to WITNESS OFFICER #2 rather than COMPLAINANT, it was not an offense against COMPLAINANT. SUBJECT OFFICER #1 further denied having behaved in a caustic manner toward COMPLAINANT while SUBJECT OFFICER #2 interviewed her, claiming that he interjected in a playful and joking manner during which he, COMPLAINANT, and SUBJECT OFFICER #2 all laughed in a friendly manner.

However, the Complaint Examiner does not credit SUBJECT OFFICER #1’s claim that he did not use profanity in objecting to WITNESS OFFICER #2’s order, because WITNESS OFFICER #2 corroborated COMPLAINANT’s account. The complainant alleged that SUBJECT OFFICER #1 said, “You all kiss a lot of ass up here and take a lot of mess from these people.” WITNESS OFFICER #2 stated that SUBJECT OFFICER #1 said, “This is some bullshit. Sarge, you need to quit kissing these people’s asses.” Despite that this remark was not made to COMPLAINANT, it clearly was about her and falls within the definition of language or conduct that is demeaning, insulting, or humiliating contained in MPD Special Order 01-01 in that it had the potential to demean the person to whom it was directed and to offend persons, such as COMPLAINANT, who overheard it as well as create disrespect for law enforcement “whether or not it [was] directed at a specific individual.”

The Complaint Examiner also does not credit SUBJECT OFFICER #1's assertion that to the extent he interjected comments and laughed while SUBJECT OFFICER #2 was interviewing COMPLAINANT, it was done in a friendly, non-hostile manner. The complainant's assertion that the subject officer's interjections were done in a mocking manner and so offended and frightened her that she called the mayor's office from a pay phone in the Second District so she could obtain information regarding how to file a police misconduct complaint with OPC and against SUBJECT OFFICER #1 and SUBJECT OFFICER #2 is more credible and consistent with the other evidence in this matter. OPC does not believe that COMPLAINANT would have felt compelled to take such drastic action if she had merely been a participant in a good-natured and friendly exchange. COMPLAINANT's description of SUBJECT OFFICER #1's manner is corroborated by WITNESS OFFICER #2 who stated that while the complainant was calm, polite, and patient, SUBJECT OFFICER #1 was angry, upset, and acted inappropriately towards him.

Accordingly, in light of the foregoing, the Complaint Examiner finds that SUBJECT OFFICER #1 used language or engaged in conduct toward COMPLAINANT that was insulting, demeaning, or humiliating, in violation of MPD General Order 201.26.

Discrimination

Discrimination, as defined by MPD Special Order 01-01, Part III, Section D includes "failure to provide proper police service, either in the enforcement of the law or in the provision of police service, on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, physical handicap, source of income, or place of residence or business."

MPD General Order 201.26, Part I, Section A provides that "In accordance with the District of Columbia Human Rights Law, members shall not discriminate, either in the enforcement of the law, or in the provision of police service, on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, physical handicap, source of income, or place of residence or business...."

The regulations governing OPC define discriminatory treatment as "[c]onduct by a member of the MPD ... that results in the disparate treatment of persons because of their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, place of residence or business or any other ground of discrimination prohibited under the statutory and the common law of the District of Columbia." D.C. Mun. Regs., title 6A, § 2199.1

COMPLAINANT alleged that SUBJECT OFFICER #1 and SUBJECT OFFICER #2, both of whom are African American, disbelieved her theft allegations and treated her disrespectfully because she is a middle-aged African American woman. COMPLAINANT maintains that if she had been a white person, she would have been treated with respect and professionalism. In support of her contention that she was subjected to age, race, and gender

discrimination, COMPLAINANT points primarily to remarks that were made by SUBJECT OFFICER #2, who is not a subject of this complaint because of his termination from MPD on September 16, 2005. Specifically, COMPLAINANT alleged that SUBJECT OFFICER #2 said, "Where have you been since February, in jail?" and "[T]here was no way a woman like [you] could have [had] that much money." SUBJECT OFFICER #2 also allegedly said "I don't believe you have anything," followed by loud, mocking laughter. Additionally, SUBJECT OFFICER #2 allegedly asked COMPLAINANT how much money she had in her possession on July 6, 2005, and how much money she had in the bank, and he refused to tell her why such information was relevant.

SUBJECT OFFICER #1 allegedly said, "I don't believe her," in response to information COMPLAINANT provided to SUBJECT OFFICER #2 regarding either her financial status or the amount of money that allegedly was stolen from the storage facility. SUBJECT OFFICER #1 also allegedly joined SUBJECT OFFICER #2 in laughing at COMPLAINANT.

SUBJECT OFFICER #1 denied that he made any remarks (1) expressing disbelief in the complainant's allegations, (2) suggesting that COMPLAINANT may have been in jail, (3) or questioning the value of any of COMPLAINANT's assets. SUBJECT OFFICER #1 further contended that he did not refuse to take a report from the complainant because of her age, race, or gender, but because he firmly believed that since she did not discover her property missing until after it had been moved to Virginia, her report of crime was outside MPD's jurisdiction.

It is well established that unlawful discrimination may be proved by presenting evidence of discriminatory remarks. *See, e.g., Hollins v. Federal National Mortgage Association*, 760 A.2d 563, 574-75 (D.C. 2000) (language which reflects a discriminatory attitude can serve as evidence of unlawful discrimination). Here, however, it appears that, with the exception of one comment, all of the allegedly discriminatory comments were made by SUBJECT OFFICER #2 who is not a subject officer in this complaint. Even assuming that subject SUBJECT OFFICER #1 interjected once, as alleged, to say that he didn't believe COMPLAINANT had the amount of money she claimed, the weight of the evidence suggests that subject SUBJECT OFFICER #1 refused to assist COMPLAINANT and treated her disrespectfully, not because she was a middle-aged African American woman, but because he felt strongly that her theft claim should have been reported in Virginia. Moreover, it appears that the subject officer became further irritated at COMPLAINANT because WITNESS OFFICER #2 did not agree with his jurisdictional assessment and attempted to force him to take a report.

Therefore, the Complaint Examiner cannot conclude that subject SUBJECT OFFICER #1 subjected COMPLAINANT to unlawful discrimination based upon her age, race, and sex, in violation of MPD General Order 201.26.⁴

Although the complainant did not allege that she was subjected to discrimination based on place of residence, OPC considered whether such discrimination occurred in light of subject

⁴ We note that the complainant refused to furnish information about her age to OPC.

SUBJECT OFFICER #1's admission that his use of the term "these people" in complaining to WITNESS OFFICER #2 referred to people who reside in or engage in substantial activity within the boundaries of MPD's Second District. Although the complainant technically no longer was a resident of the Second District on July 6, 2005, because she was complaining about an event that allegedly occurred as a result of her former status as a resident of the Second District, she was, for purposes of this discrimination analysis, fairly considered a resident of the Second District. The Complaint Examiner shares the OPC's conclusion that it was SUBJECT OFFICER #1's belief that Virginia was the proper venue rather than COMPLAINANT's affiliation with the Second District that primarily motivated SUBJECT OFFICER #1's unprofessional behavior toward the complainant.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1

Allegation 1:	Sustained
Allegation 2:	Exonerated

Submitted on December 8, 2006.

ELEANOR NACE
Complaint Examiner