

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	05-0455
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER, First District
<b>Allegation 1:</b>	Harassment
<b>Complaint Examiner:</b>	Laurie S. Kohn
<b>Merits Determination Date:</b>	November 23, 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**

The COMPLAINANT, filed a complaint with the Office of Police Complaints (OPC) on August 18, 2005. COMPLAINANT alleged that on August 17, 2005, the subject officer, Metropolitan Police Department (MPD) SUBJECT OFFICER,<sup>1</sup> First District, harassed her by wrongfully arresting her and that he used language or engaged in conduct toward her that was insulting, demeaning, or humiliating.<sup>2</sup>

Specifically, the complainant alleged that on August 17, 2005, at approximately 12:15 a.m., SUBJECT OFFICER knocked on the door of her apartment and asked her to step across the hallway to her brother's apartment. Upon entering her brother's apartment, COMPLAINANT saw that her brother, WITNESS #1, was under arrest for having assaulted his

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<sup>1</sup> At the time the incident at issue in this complaint took place, subject officer held the rank of officer, was identified by the BADGE NUMBER #1, and was assigned to the Sixth District. Subsequently, subject officer was promoted to the rank of sergeant, received a new BADGE NUMBER #2, and was assigned to the First District. SUBJECT OFFICER is referred to as officer in this report because he was an officer at the time of the incident under review.

<sup>2</sup> Upon review by the Office of Police Complaints, OPC determined that the allegation concerning insulting, demeaning, or humiliating language was insufficiently supported. Because there lacked reasonable cause to refer that allegation to a complaint examiner, that allegation was not the subject of the October 27, 2006 evidentiary hearing, nor is it the subject of this Merits Determination.

wife, WITNESS #2. SUBJECT OFFICER instructed COMPLAINANT to retrieve a few of her brother's personal belongings, including his wallet, keys, and money. After COMPLAINANT had obtained her brother's possessions, she returned to her apartment. Moments later, SUBJECT OFFICER again knocked on COMPLAINANT'S door. SUBJECT OFFICER told COMPLAINANT that the keys she had taken from her brother's apartment also contained the house keys to WITNESS #1 and WITNESS #2'S apartment. The subject officer asked COMPLAINANT to give him any keys to WITNESS #1 and WITNESS #2'S apartment that her brother previously had possessed.

COMPLAINANT alleged that she attempted to remove her brother's house keys from the key ring, but she had difficulty doing so because her brother's keys had become tangled with some of her keys, and her hands were shaking because she was nervous. SUBJECT OFFICER allegedly became impatient and shouted at COMPLAINANT to "give [him] the goddamn keys," or he would arrest her. COMPLAINANT stated that she therefore passed the keys to SUBJECT OFFICER, who then went back across the hall to WITNESS #1 and WITNESS #2'S apartment. COMPLAINANT further alleged that as SUBJECT OFFICER went back to her brother's apartment to hand the keys to her sister-in-law, COMPLAINANT asked him for his name and badge number. COMPLAINANT asserted that she asked SUBJECT OFFICER for his name and badge number because she was offended by how he had spoken to her. SUBJECT OFFICER allegedly blurted out his response so quickly that COMPLAINANT heard the badge number but was unable to understand the officer's name. Accordingly, COMPLAINANT then asked SUBJECT OFFICER to provide the correct spelling of his name. At that juncture, SUBJECT OFFICER allegedly stated, "Ma'am, you are under arrest."

SUBJECT OFFICER then entered COMPLAINANT'S apartment and handcuffed her. This caused COMPLAINANT'S 12-year-old daughter to become upset and begin crying. COMPLAINANT alleged that she asked SUBJECT OFFICER why she was under arrest, but he did not respond to her question. COMPLAINANT was transported to the Sixth District police station and charged with obstruction of justice. The complainant remained in custody for 18 hours before being released; however, the charges against her were "no papered," or dropped.

#### EVIDENTIARY HEARING

An evidentiary hearing was conducted regarding this complaint on October 27, 2006. The Complaint Examiner heard the testimony of COMPLAINANT, WITNESS #3, WITNESS #2, SUBJECT OFFICER, and WITNESS OFFICER #1.

#### II. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER, and an evidentiary hearing conducted on October 27, 2006, the Complaint Examiner finds the material facts regarding this complaint to be:

1. SUBJECT OFFICER arrived at the apartment of WITNESS #2 just past midnight on August 17, 2005. He had come to the apartment to make an arrest of WITNESS #2'S husband and to serve the papers related to the Temporary Protection Order (TPO) that WITNESS #2 had obtained against her husband.
2. After making the arrest, WITNESS #1 requested that his sister, COMPLAINANT, be permitted to enter the apartment to retrieve certain of his personal belongings including his wallet, keys, and money.
3. Although WITNESS #2 initially resisted this request, SUBJECT OFFICER left the apartment to retrieve COMPLAINANT, who lived directly across the hallway.
4. After SUBJECT OFFICER knocked on the door, COMPLAINANT came, as requested, to WITNESS #1 and WITNESS #2'S apartment. Upon seeing her brother, she became concerned and asked why he was under arrest. Neither SUBJECT OFFICER, nor the other officer at the scene informed COMPLAINANT about the cause of the arrest or the existence of a TPO.
5. Because she had been told earlier in the day, COMPLAINANT was aware that there had been a physical altercation between her brother and WITNESS #2, and that her brother feared that WITNESS #2 might seek a protection order.
6. COMPLAINANT retrieved WITNESS #1'S keys, wallet, and money and left the apartment.
7. Upon COMPLAINANT'S departure, WITNESS #2 realized that the keys that COMPLAINANT had taken included keys to WITNESS #1 and WITNESS #2'S apartment that, pursuant to the TPO, were to be confiscated from WITNESS #1. Upon this realization, SUBJECT OFFICER returned to COMPLAINANT'S door to retrieve the keys.
8. Upon knocking, SUBJECT OFFICER entered the COMPLAINANT'S apartment. At the time, COMPLAINANT was at the door, her twelve-year-old daughter, WITNESS #3, was in the adjacent living room watching television. From the loveseat on which she was sitting, WITNESS #3 could see the apartment door.
9. SUBJECT OFFICER then told COMPLAINANT she had to give him the keys to WITNESS #1 and WITNESS #2'S apartment. COMPLAINANT never saw the Temporary Protection Order that required that WITNESS #1'S keys be returned to WITNESS #2.
10. COMPLAINANT went to retrieve the keys from a table. She did not give the keys immediately to SUBJECT OFFICER. After approximately two minutes, the subject

officer obtained the keys. COMPLAINANT believed that the subject officer may have thought she was resisting releasing the keys.

11. SUBJECT OFFICER returned to WITNESS #2'S apartment to give the keys to her. While the officer was with WITNESS #2, COMPLAINANT asked the subject officer for his name and badge number.
12. SUBJECT OFFICER soon thereafter placed COMPLAINANT under arrest for Assault on a Police Officer in violation of D.C. Code Ann. §22-405.
13. The charges against COMPLAINANT were later converted to Obstruction of Justice, D.C. Code Ann. § 22-722. Ultimately, these charges were no papered by the U.S. Attorney's Office.

## **II. 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]."

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.

The question to be addressed in this case is whether or not SUBJECT OFFICER'S arrest of COMPLAINANT qualified as harassment in that it was an act 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. As the COMPLAINANT bears the burden of proving by a preponderance of the evidence that the alleged harassment occurred. Specifically, this opinion will address whether the subject officer had probable cause to believe COMPLAINANT had committed an Assault on a Police Officer in violation of D.C. Code Ann. § 22-405, the charge for which she was initially arrested,<sup>3</sup> which could have acted as the “specific law enforcement purpose” that justified his decision to arrest her.

Under D.C. Code Ann. § 22-405: “Whoever without justifiable and excusable cause, assaults, *resists*, opposes, impedes, intimidates, or interferes with any officer...while engaged in or on account of his or her official duties, shall be fined not more than \$5,000 or imprisoned not more than 5 years.” (emphasis added).

The Report of Investigation cites to *In re C.L.D.*, in which the D.C. Court of Appeals analyzed the conduct required to convict a defendant who was charged with resisting a police officer under D.C. Code Ann. § 22-405. *In re C.L.D.*, 739 A.2d 353 (D.C. 1999). The court held that resisting a police officer under this section requires that a person’s conduct “go beyond speech and mere passive resistance or avoidance, and cross the line into active confrontation, obstruction or other action directed against an officer’s performance in the line of duty.” *Id.* at 357. While this case is inapposite because it deals not directly with the conduct required to give an officer probable cause to arrest for this offense,<sup>4</sup> it gives us some guidance about what conduct might reasonably justify the probable cause determination.

Under the facts presented in the Report of Investigation, the subject officer’s Objections, and the evidentiary hearing, there has been adequate proof that the subject officer had probable cause to determine that COMPLAINANT had violated D.C. Code Ann. § 22 -405 when she delayed in returning the keys to the subject officer after he had demanded them several times. In her interview with OPC, she stated that she returned the keys in under two minutes. At trial, she reaffirmed that it took her one to two minutes to give him the keys. By COMPLAINANT’S own testimony in the hearing, she admits that she acted in a way that could have suggested to the subject officer that she was resisting his orders to turn over the keys. In fact, she stated that she “just assumed that he assumed that I wasn’t trying to hand him off the keys.” Later, she also told the subject officer on cross examination, “You were thinking that I was being resistant when that wasn’t the case.” When asked if his perception could have been reasonable, COMPLAINANT answered, “It could have been, yes.” Withholding the keys in a way that could have been reasonably perceived as resistant for one to two minutes certainly exceeds mere passive resistance. Under the Court of Appeals analysis in *In re C.L.D.*, the subject officer could have

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<sup>3</sup> That this charge was later converted to Obstruction of Justice under D.C. Code Ann. § 22-722 is irrelevant. Similarly, that this charge was later “no papered,” that is, not pursued by the United States Attorney’s Office is also irrelevant. The sole issue is whether, at the time that the subject officer made the decision to arrest, he had probable cause to make the arrest based on complainant’s conduct and the charge for which he arrested her.

<sup>4</sup> *See In re CLD*, 739A.2d 353, 355 (“It is important to bear in mind that the issue before us is not whether the police officer had reason to act as he did. . . The question before us is whether C.L.D.’s conduct violated the statute.”)

perceived this conduct as active obstruction. Under these facts, SUBJECT OFFICER would have had probable cause to believe that COMPLAINANT was violating D.C. Code Ann. § 22-405 by resisting a police officer while engaged in his official duties.<sup>5</sup>

Another version of events would not make sense. The evidence does not show that SUBJECT OFFICER was angry with or carried a vendetta against COMPLAINANT. WITNESS #3 admitted at trial that she was distracted by the television and does not recall if the officer was angry or rough with her mother. WITNESS #2 testified that his demeanor was “okay” during this encounter. Since he did not act in a way that would suggest to the witnesses’ that he was agitated, angry, or bore a grudge toward COMPLAINANT, then it does not follow that the subject officer would have had any motive to subject her to a false arrest.

In addition, the evidence does not prove that the subject officer would have had reason to believe that COMPLAINANT had justifiable or excusable cause for refusing to comply with his instructions to turn over the keys. Even in her initial complaint, COMPLAINANT did not mention feeling confused about the validity of the subject officer’s order. She simply alleged that he asked for the keys and that she tried to hand them over, but had trouble doing so because her hands were shaking. At trial, she again did not mention asking to see the order that authorized the officer to take the keys. When questioned explicitly if she asked to see an order, she testified that she did not recall asking to see one. Although other witnesses, including the subject officer and WITNESS #3, testified that COMPLAINANT did ask to see an order justifying the officer’s request for the keys, this testimony does not sufficiently prove that the subject officer should have had reason to believe that COMPLAINANT had cause for resisting his orders. The subject officer testified that he explained that the temporary protection order required that he take the keys, but that he refused to show her the paperwork. This testimony does not contradict COMPLAINANT’S testimony in any way, nor does it provide COMPLAINANT with justifiable cause to resist the subject officer’s orders.<sup>6</sup>

These facts distinguish this case from OPC Case No. 05-0262, which is cited to in the Report of Investigation and which dealt with whether the subject officers harassed the complainant by threatening to arrest him for refusing the officers entry to his building in violation of D.C. Code Ann. § 22-405. 2006 DC Police Lexis 1. In the prior OPC case, the

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<sup>5</sup> It is important to note that while the subject officer made a justifiable arrest under this fact pattern, the hearing examiner is not convinced that the circumstances *necessitated* an arrest. By the time the arrest was made, the subject officer had already retrieved the keys and accomplished his business. Police officers have discretion to arrest even when probable cause exists, and this may have been a moment to exercise that discretion differently.

<sup>6</sup> The hearing examiner, however, does caution here, that the subject officer’s refusal to show COMPLAINANT the paperwork that justified his order seems needlessly combative and irrational. During a confrontation such as this, showing COMPLAINANT the paperwork might have defused the situation adequately and prevented it from escalating. The paperwork would have undeniably illustrated to COMPLAINANT that this requirement to turn over the keys was judicially imposed and not *merely* imposed by the whim of a police officer who had drawn her into her brother’s business late at night.

complainant had justifiable and excusable cause for resisting the police orders since the officers failed to produce a warrant for entry on to the premises. Further, the subject officers acknowledged, in the prior OPC case, that the complainant was not required to unlock the door for the officers, proving that they knew that complainant's conduct failed to give them probable cause to arrest under D.C. Code Ann. § 22-405.

Therefore, based on the facts as presented by COMPLAINANT in her complaint, interview, and at the evidentiary hearing, she has not met her burden of proof that SUBJECT OFFICER unlawfully harassed her by subjecting her to an arrest that an act was 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.

### **III. SUMMARY OF MERITS DETERMINATION**

#### **SUBJECT OFFICER**

<b>Allegation 1:Harassment</b>	Exonerated.
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Submitted on November 23, 2006.

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Laurie S. Kohn  
Complaint Examiner