

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	02-0464
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1, Third District SUBJECT OFFICER #2, Third District
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Richard Jerome
Merits Determination Date:	May 24, 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

The COMPLAINANT filed a complaint with the Office of Police Complaints (OPC), formerly the Office of Citizen Complaint Review (OCCR), on September 17, 2002. COMPLAINANT alleged that on August 29, 2002, two subject officers, Metropolitan Police Department (MPD) SUBJECT OFFICER #1, Third District, and SUBJECT OFFICER #2, Third District, harassed her. COMPLAINANT further alleged that SUBJECT OFFICER #1 also used language or engaged in conduct toward her that was insulting, demeaning, or humiliating.

Specifically, COMPLAINANT said that while she was standing in an alley behind 1429 Clifton Street, N.W., waiting for her car to be repaired, SUBJECT OFFICER #1 and SUBJECT OFFICER #2 stopped their police cruiser nearby. SUBJECT OFFICER #1 approached COMPLAINANT, “like he was going to then shoot [her] or hurt [her].” Complainant alleged that SUBJECT OFFICER #1 made her show him what she had in her pockets, which was white tissue paper. COMPLAINANT alleged that SUBJECT OFFICER #1 told her to “take what [she] had out of [her] pockets and acting like [she] had stolen something or [had] crack cocaine in [her] pockets.” The complainant also alleged that SUBJECT OFFICER #1 “continued to tell [her] to shut up and treated [her] like [she] was not a citizen or human.” SUBJECT OFFICER #1 took the complainant’s license and ran a check for warrants in his patrol car while SUBJECT OFFICER #2 stayed with the complainant.

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.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation and the objections submitted by SUBJECT OFFICER #1 on April 25, 2005, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On August 29, 2002, at approximately 12:40 p.m., COMPLAINANT was standing in an alley behind 1429 Clifton Street, N.W., waiting for her car to be repaired.
2. On August 29, 2002, Metropolitan Police Department (MPD) SUBJECT OFFICER #1, was training SUBJECT OFFICER #2, as they patrolled the area of 1429 Clifton Street, N.W.
3. SUBJECT OFFICER #1 and SUBJECT OFFICER #2 saw COMPLAINANT standing in the alley. They then got out of their police cruiser and approached COMPLAINANT.
4. SUBJECT OFFICER #1 asked COMPLAINANT what she was doing in standing in the alley. COMPLAINANT told him she was having work done on her car in one of the garages in the alley.
5. COMPLAINANT was holding a tissue in her hand and SUBJECT OFFICER #1 told her to unroll the tissue.
6. SUBJECT OFFICER #1 then asked COMPLAINANT what she had in her pocket. SUBJECT OFFICER #1 told the complainant to remove the items from her pocket.
7. COMPLAINANT removed several tissues from her pocket, which SUBJECT OFFICER #1 then ordered her to unroll. COMPLAINANT unrolled each tissue and showed the officers there was nothing inside of them.
8. SUBJECT OFFICER #1 then asked COMPLAINANT for her identification. COMPLAINANT told SUBJECT OFFICER #1 that her driver's license was in her car and that the car was being worked on at a garage, which was further down the alley. She was told to get her license.
9. COMPLAINANT walked toward the garage to her car and the officers followed her to the garage.

10. COMPLAINANT got her license from the car and gave it to one of the officers.
11. Once SUBJECT OFFICER #1 was in possession of the license, he walked back to his patrol car and checked COMPLAINANT's name for warrants while SUBJECT OFFICER #2 waited with COMPLAINANT. The computer did not return any warrants issued in the complainant's name. SUBJECT OFFICER #1 walked toward the complainant to return her license.
12. When SUBJECT OFFICER #1 returned, COMPLAINANT saw WITNESS #1, a candidate for a seat on the District of Columbia Council, across the street. COMPLAINANT called out to her to get her attention.
13. SUBJECT OFFICER #1 then gave COMPLAINANT back her license, and both officers returned to their police car and departed the scene.

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]."

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."¹

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."

¹ The Police Complaints Board, formerly the Citizen Complaint Review Board, which is OPC's governing body, promulgated regulations regarding OPC on August 30, 2002. See 49 D.C. Reg. 8347. This Merits Determination does not rely on the definition of "harassment" contained in the regulations because the underlying conduct alleged in the complaint occurred before the regulations took effect on August 30, 2002.

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.”

MPD General Order 304.10 governs police-citizen contacts, stops and frisks. Under this general order, a police officer has the authority to conduct a “stop” of a citizen when the officer has reasonable suspicion to believe the citizen is involved in criminal activity. The general order defines a stop as “the temporary detention of a person for the purpose of determining whether probable cause exists to arrest that person.” The general order further states, “A stop occurs whenever an officer uses his/her authority to compel a person to halt, remain in a certain place, or to perform some act (such as walking to a nearby location where the officer can use a radio or telephone.” The general order provides the basis for a stop to be when an officer “reasonably suspects that a person has committed, is committing, or is about to commit any crime.” (*Emphasis in original*). The general order also requires the officer to provide justification for the stop. It states, “Every officer conducting a stop must be prepared to cite the particular factors which supported the determination that ‘reasonable suspicion’ was present. The record of the stop (P.D. Form 251 or P.D. Form 76) shall contain all factors relied on, whether or not they are specifically described in part IB2.” Section IB2 provides factors that an officer may consider when making a determination that they have reasonable suspicion to conduct a stop.

A police officer can also have a “contact” with a citizen. A contact is defined by MPD General Order 304.10 as a “face-to-face communication with an individual citizen under circumstances in which the citizen is free not to respond, and to leave.” The general order states that “contacts may be initiated by an officer when he/she reasonably believes that some investigatory inquiry into a situation is warranted.” However, a contact requires the “voluntary cooperativeness of a citizen who is free not to respond and to leave.” Additionally, the general order states that “[p]ersons ‘contacted’ may not be detained in any manner against their will, nor frisked. They may not be required to answer the officer’s questions or to respond in any way to the officer if they choose not to do so. The officer may not use force or coercion to require citizens to stop or to respond. Officers must constantly keep in mind that the distinction between a ‘contact’ and a ‘stop’ ... depends in large part on whether under the particular circumstances a citizen could reasonably perceive that he/she is not free to leave the officer’s presence. Therefore, since the individual may [leave], and is presumed to be innocent of wrongdoing of any kind, officers shall take special care to act in as a restrained and courteous manner as possible. Officers should avoid gruffness, short responses which could be misunderstood or requests that sound as commands. All verbal requests during the ‘contact’ should be phrased with optional words such as ‘may,’ ‘would you mind,’ or words of similar import.” (*Emphasis in original*).

Based on the guidance provided in MPD General Order 304.10, SUBJECT OFFICER #1 and SUBJECT OFFICER #2 conducted a stop of COMPLAINANT. For the interaction between the officers and the complainant to be a contact, SUBJECT OFFICER #1 would have had to make it clear to COMPLAINANT that her cooperation was voluntary. Based on

SUBJECT OFFICER #1's own version of the event, the officers' conduct would not have reasonably indicated to COMPLAINANT that she was free to leave. In fact, even when SUBJECT OFFICER #1 asked for COMPLAINANT's driver's license and she indicated it was in her car, she was escorted to where her car was located. Also according to their own versions, the officers did not use words indicated by the general order such as "may, would you mind, or words of similar import" that would have made it clear to COMPLAINANT that her cooperation was voluntary. In fact, SUBJECT OFFICER #1 demanded she show them what was in her pockets and to unroll the tissues once she pulled them out. He also demanded her license.

SUBJECT OFFICER #1 ordered COMPLAINANT to show him what she had in her pockets, thereby conducting a search of her. Even after she explained she only had tissue in her pockets, he made her open each tissue to verify they did not contain anything. Even though he did not place his hands on her, SUBJECT OFFICER #1 used his law enforcement authority to conduct a search of COMPLAINANT by ordering her to show him the contents of her pockets. This search was not based on any reasonable suspicion or probable cause. SUBJECT OFFICER #1's only justification for stopping COMPLAINANT was that she was standing in an alley, in an area known for drug activity, and that as he approached she may have put something in her pocket. SUBJECT OFFICER #2, who was three days out of the academy and in training at the time, said he did not recall the incident at all, but remembered that he heard the area where the incident occurred was a known drug area where several drug arrests have been made in the past.

Even if it were true that the area where COMPLAINANT was standing was located in a high drug area, SUBJECT OFFICER #1 indicated that COMPLAINANT was alone. He never indicated that he witnessed her trying to sell or buy drugs from any other person. MPD General Order 304.10 does not support the officer's right to detain COMPLAINANT based on her being in the alley and maybe having something in her hands. If he wanted to talk to her for a consensual contact, he was required to follow the guidance pertaining to citizen contacts, absent any reasonable suspicion or probable cause to do otherwise. Additionally, if he had probable cause to stop COMPLAINANT, order her to show him what she had in her pockets, and demand her identification, then he was required to document that probable cause and the stop properly, as provided by the general order. Once COMPLAINANT attempted to get the attention of WITNESS #1, SUBJECT OFFICER #1 terminated the stop and left the area.

Additionally, officers are required by MPD General Order 304.1 to file a Form P.D. 251 or Form P.D. 76 and articulate the reasonable suspicion to justify a stop. Based on the information provided by MPD, the officers failed to complete either of these required forms after stopping and searching COMPLAINANT.

SUBJECT OFFICER #1 confirmed most of the facts provided by COMPLAINANT. SUBJECT OFFICER #2 was unable to recall the incident. COMPLAINANT was standing in an alley waiting for her car to be repaired. Two police officers approached her without probable cause or reasonable suspicion. One of the officers asked her if she had put anything in her pocket. When she denied placing anything in her pocket, SUBJECT OFFICER #1 ordered her to empty her pants pockets. After COMPLAINANT took the tissues out of her pockets and showed

them to the officers, SUBJECT OFFICER #1 asked for her license to check for warrants and she was escorted to her car to retrieve her purse. A reasonable person would have felt that he or she was being detained and thus not free to leave and decline the officers' requests. SUBJECT OFFICER #1 acknowledged that COMPLAINANT was very upset that she had been stopped and stated that "COMPLAINANT (sic) was noticeably annoyed by our presence." Also, had COMPLAINANT believed she was free to leave and not respond to the officers' request, she would not have yelled to try to get the D.C. Council candidate's attention regarding the stop.

SUBJECT OFFICER #1 prevented COMPLAINANT from going about her lawful business when he stopped her. He further did not have a legitimate justification to order her to show him what she had in her hand and in her pockets. He also did not have legitimate justification to order her to retrieve her license, because she was not operating a motor vehicle at the time. In addition, he failed to document the stop as required by MPD General Order 304.10. The Complaint Examiner therefore concludes that SUBJECT OFFICER #1 harassed COMPLAINANT in violation of MPD Special Order 01-01 and MPD General Order 304.10.

The allegation against SUBJECT OFFICER #2 is a closer call. SUBJECT OFFICER #2 was a probationary police officer (trainee), on his third day in patrol; he had graduated from the Academy two weeks earlier. There is no dispute that SUBJECT OFFICER #2 exited the patrol car, approached COMPLAINANT, accompanied SUBJECT OFFICER #1 during the stop, and stood with COMPLAINANT while SUBJECT OFFICER #1 went back to the patrol car to check on warrants. However, in her complaint and her interview, COMPLAINANT did not identify SUBJECT OFFICER #2 as issuing any orders or commands or asking her any questions. All of the actions which distinguished the encounter as a stop and detention, as opposed to a voluntary contact, were described by COMPLAINANT as being taken by SUBJECT OFFICER #1. Therefore, the Complaint Examiner concludes that there is insufficient evidence to sustain the allegation that SUBJECT OFFICER #2 harassed COMPLAINANT in violation of MPD Special Order 01-01 and MPD General Order 304.10.

Language or Conduct

MPD General Order 201.26, Part I, Section C, No. 1 and 3 states: "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. . . . Members shall refrain from harsh, violent, coarse, profane, sarcastic, or insolent language. Members shall not use terms or resort to name calling which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person."

COMPLAINANT alleged that SUBJECT OFFICER #1 told her to "shut-up" after she asked him and SUBJECT OFFICER #2 their reason for stopping her. She alleged that SUBJECT OFFICER #1 "continued to tell [her] to shut up and treated [her] like [she] was not a citizen or human" after she tried to get the attention of a woman she believed to be WITNESS #1, a candidate to the District of Columbia Council. She also stated that SUBJECT OFFICER #1 responded "What are you calling her for, I am not scared of her or anybody."

COMPLAINANT also told OPC that SUBJECT OFFICER #1 made her feel as though he was going to shoot or hurt her. However, she did not provide any specific description of the actions of the officers that made her feel threatened. She did state that the officers walked towards her, then asked her questions and ordered that she empty her pockets and retrieve her license.

SUBJECT OFFICER #1 denied approaching the complainant in a threatening manner. SUBJECT OFFICER #1 also denied using the word “shut-up” at any point during his interaction with the complainant, and stated that he did not curse or threaten COMPLAINANT. While there may have been other witnesses present during the interaction act (e.g., “WITNESS #2”), OPC was unable to locate or interview WITNESS #2. While COMPLAINANT was stopped, detained, and required to empty her pockets and retrieve her license, there is insufficient evidence to support an allegation of disrespectful and offensive conduct by SUBJECT OFFICER #1. Because there is no independent evidence or corroborating witnesses to the incident, and SUBJECT OFFICER #1’s description of the incident differs from COMPLAINANT’s, the Complaint Examiner concludes that there is insufficient evidence to sustain the allegation of the use of language toward COMPLAINANT that was insulting, demeaning, or humiliating, in violation of MPD General Order 201.26. With respect to SUBJECT OFFICER #2, the complainant did not allege any language or conduct by SUBJECT OFFICER #2 to support this aspect of the complaint against SUBJECT OFFICER #2. Therefore the Complaint Examiner concludes that this allegation against SUBJECT OFFICER #2 is unfounded.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1, Third District

Allegation 1:	Sustained
Allegation 2:	Insufficient Facts

SUBJECT OFFICER #2, Third District

Allegation 1:	Insufficient Facts
Allegation 2:	Unfounded

Submitted on May 24, 2005.

RICHARD JEROME
Complaint Examiner