

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	03-0459
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER , Youth and Preventive Service
<b>Allegation 1:</b>	Harassment
<b>Allegation 2:</b>	Insulting, Demeaning, or Humiliating Language or Conduct
<b>Complaint Examiner:</b>	Richard Jerome
<b>Merits Determination Date:</b>	August 16, 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 filed a complaint with the Office of Police Complaints (OPC), formerly the Office of Citizen Complaint Review (OCCR), on July 1, 2003. COMPLAINANT alleged that on May 21, 2003, SUBJECT OFFICER, Youth and Preventative Services, used language and engaged in conduct toward her that was insulting, demeaning, or humiliating. Specifically, SUBJECT OFFICER went to the complainant's house to retrieve an audiotape that related to an ongoing criminal investigation. The complainant alleged that while at COMPLAINANT's house, SUBJECT OFFICER said, "[G]ive me the goddamn tape." In addition, the OPC concluded that there was reasonable cause to allege that SUBJECT OFFICER harassed the complainant when he, accompanied by another detective and two uniformed officers, arrived at the complainant's residence without a warrant, knocked on the door multiple times, and used the threat of arrest to obtain the audiotape from 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 on June 23, 2005, the Complaint Examiner finds the material facts regarding this complaint to be:

1. In 2003, Complainant was a teacher at the LOCATION #1, S.E.
2. On May 21, 2003, SUBJECT OFFICER and WITNESS OFFICER #1, received a call from WITNESS OFFICER #2 to respond to LOCATION #1, S.E., to investigate an allegation of sexual abuse of a child. The detectives went to the school and met with the principal.
3. The detectives were told by the principal that the alleged sexual assault victim was a student in COMPLAINANT's class. They also were told that the complainant may have learned of the sexual abuse allegations and that Complainant made an audiotape of her classroom and the alleged victim may be on the tape.
4. In a memorandum dated June 17, 2003, COMPLAINANT states that the audiotape, which she calls a "Classroom Tape," was "made during a student sensing session on May 21, 2003." SUBJECT OFFICER "states that the tape was made of a "mock trial" in Complainant's classroom.
5. At the time SUBJECT OFFICER and WITNESS OFFICER #1 met with the principal, COMPLAINANT had already left the school and gone to her home at LOCATION #2, N.E.
6. SUBJECT OFFICER and WITNESS OFFICER #1 proceeded to COMPLAINANT's home at LOCATION #2, N.E. Because the detectives were in civilian clothes, they flagged down two uniformed officers, WITNESS OFFICER #3 and WITNESS OFFICER #4 to accompany them to COMPLAINANT's home.
7. At about 5:00 p.m., on May 21, 2003, SUBJECT OFFICER knocked on COMPLAINANT's door. SUBJECT OFFICER knocked a second time more loudly.
8. While there are some differences in the officers' statements and COMPLAINANT's statements regarding the conversation the officers had with COMPLAINANT in the doorway, COMPLAINANT and SUBJECT OFFICER agree on many of the facts. SUBJECT OFFICER asked Complainant if she was COMPLAINANT, and COMPLAINANT identified herself. SUBJECT OFFICER told COMPLAINANT that the officers were there to obtain the tape made in her classroom. COMPLAINANT asked the officers if they had a search warrant; SUBJECT OFFICER stated that a warrant was not needed. SUBJECT OFFICER states that he told COMPLAINANT that a warrant was not needed because they were not there to search the home. Both COMPLAINANT and SUBJECT OFFICER stated that loud words were spoken, although they disagree as to which of the two used loud language. Both agree that COMPLAINANT voluntarily allowed the officers inside the house, and they came in.

9. Once inside the house, the detectives directed COMPLAINANT to turn over the audiotape. COMPLAINANT initially did not do so, but she did get the audiotape and had it in her hand. Both COMPLAINANT and SUBJECT OFFICER agree that SUBJECT OFFICER told COMPLAINANT that if she did not give the officers the audiotape, she would be arrested for obstruction of justice. COMPLAINANT then handed WITNESS OFFICER #1 the tape.
10. During the officers' interaction with COMPLAINANT, she asked for their identification. While there is some dispute over when SUBJECT OFFICER provided his identification, all of the officers provided COMPLAINANT with their cards.
11. The audiotape was suspected evidence of a potential criminal violation and was part of an official police investigation.
12. After COMPLAINANT gave the tape to the detectives, they left her house.

#### **IV. DISCUSSION**

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; (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].”

##### **A. Harassment Allegation**

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 follows: “Harassment: Words, 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 or the covered law enforcement agency, 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, the Office 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 or the covered law enforcement agency, 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 OPC determined that there was reasonable cause to allege that SUBJECT OFFICER engaged in harassment of the complainant, based on COMPLAINANT's description of her interaction with SUBJECT OFFICER. According to COMPLAINANT, SUBJECT OFFICER loudly knocked on the complainant's door multiple times, and when the complainant came to the door, SUBJECT OFFICER used "loud and boisterous language." She states that he told her he was there to "seize the tape." She asked SUBJECT OFFICER if he had a warrant, and he told her that he did not need one. After the detectives entered the house, COMPLAINANT alleges that SUBJECT OFFICER continued to demand the tape using "abusive, intimidating language," and twice swore at her to give him "the goddamn tape." She states that he took out his handcuffs and told her she would be arrested for obstruction of justice if she did not turn over the tape. According to COMPLAINANT, she gave the officers the tape because of SUBJECT OFFICER's "inappropriate conduct."

SUBJECT OFFICER states that he knocked on the door a second time more loudly because the door was not answered after his first knock. He agrees that he raised his voice in interacting with COMPLAINANT, but states he did so in order to be heard because she was yelling. He states that he told COMPLAINANT that he was there to obtain the audiotape, but denies that he stated he was at the house to "seize" the tape. He states that he answered COMPLAINANT that he did not have a warrant and stated a warrant was not needed because he was not there to search her home. Also, he denies that he told COMPLAINANT to give him "the goddamn tape" or used any profanity during the encounter. While he states that he did tell COMPLAINANT that if she did not give the detectives the tape she would be obstructing justice and be subject to arrest, he denies that he took out or displayed his handcuffs. He states that he did have the authority to arrest her for obstruction of justice and thus he was not threatening her, but was acting within his authority.

A finding of harassment might be warranted if SUBJECT OFFICER clearly meant to intimidate and coerce COMPLAINANT in turning over the audiotape and if he did not have the legal authority to justify his conduct. However, it does not appear to the Complaint Examiner that this is the case. SUBJECT OFFICER and WITNESS OFFICER #1 were investigating an allegation of sexual abuse of a child. In conducting that investigation, SUBJECT OFFICER and WITNESS OFFICER #1 went to LOCATION #1, S.E., to interview the principal and to interview COMPLAINANT. If, as SUBJECT OFFICER was told, COMPLAINANT learned of the criminal allegations, she was a "mandated reporter" under D.C. law, requiring her to report the alleged crime. COMPLAINANT had left the school for her home and the detectives proceeded to her home as part of their investigation. SUBJECT OFFICER's efforts to interview her regarding any facts she knew about the criminal allegations would have been in compliance with D.C. law and MPD policies and practices. While SUBJECT OFFICER did not have a warrant to search COMPLAINANT's home, he did not attempt to conduct a search. Instead, both SUBJECT OFFICER and COMPLAINANT, as well as the other officers, agree that COMPLAINANT voluntarily allowed the officers to come into her home.

The most significant question relating to the harassment allegation is whether SUBJECT OFFICER's obtaining the audiotape, without a warrant and after stating that COMPLAINANT would be arrested for obstruction of justice if she did not turn over the tape, constituted harassment. SUBJECT OFFICER believed that the audiotape was suspected evidence of alleged criminal action.

His assertion that COMPLAINANT would be subject to arrest for obstruction of justice if she did not hand over the tape would not be harassment if it was based on a good faith belief that COMPLAINANT did not have a right to conceal the tape or refuse to provide it to the officers.

The audiotape was made at the school in the classroom, and COMPLAINANT labeled it a "Classroom Tape" in her June 15, 2003, memorandum. Certainly, if it was school property, given that it was suspected evidence relevant to an official police investigation, COMPLAINANT would not have had any right to keep the tape and could not have refused to provide it to the detectives. A warrant would not have been required to obtain the tape.

Even without a factual determination regarding the property rights of the audiotape, however, SUBJECT OFFICER's actions and statement that COMPLAINANT would be arrested for obstruction of justice if she did not turn over the tape were not "purposefully, knowingly or recklessly in violation of the law or internal guidelines of the MPD." SUBJECT OFFICER had a specific law enforcement purpose for seeking to obtain the tape and states he believed that he correctly directed COMPLAINANT to turn over the tape or be arrested for obstruction of justice. Under District of Columbia law, obstruction of justice includes the offense of tampering with physical evidence. D.C. Code 22-727 states that a person commits the offense of tampering with physical evidence "if, knowing or having reason to believe an official proceeding has begun or knowing that an official proceeding is likely to instituted, that person alters, destroys, mutilates, conceals, or removes a record, document, or other object, with intent to impair its integrity or its availability for use in the official proceeding." An "official proceeding" under the statute includes an investigation by the Metropolitan Police Department. D.C. Code 22-721(4). Therefore, SUBJECT OFFICER did not act "purposefully, knowingly or recklessly" in violation of law when he stated that COMPLAINANT would be obstructing justice and would be arrested if she did not turn over the tape.<sup>1</sup> The Complaint Examiner determines that SUBJECT OFFICER should be exonerated from the allegation of harassment.

## **B. Language Allegation**

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, Nos. 1 and 3 state: "All members of the department shall be courteous and orderly in their dealings with the public. They shall perform their

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<sup>1</sup> D.C. Code 22-722(a)(6) also defines obstruction of justice as when a person "corruptly or by threats of force, in any way obstructs or impedes or endeavors to obstruct or impede the due administration of justice in any official proceeding." While SUBJECT OFFICER may have believed that COMPLAINANT impeded his investigation (and therefore an official proceeding) by refusing to hand over the tape, it cannot be said that she acted "corruptly or by threats of force."

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.”

In this case, the subject officer and his fellow officers were investigating a serious allegation – sexual abuse of a young child by his parent. The complainant alleges that during the course of the investigation, the subject officer used language and conduct toward her that was insulting, demeaning, or humiliating. Specifically, in COMPLAINANT’s interview with OPC, she stated that the officers knocked on her door several times loudly and that SUBJECT OFFICER made loud demands when they spoke at the door. According to COMPLAINANT, after she invited the officers inside, SUBJECT OFFICER demanded the audiotape relevant to his investigation by saying twice “Give me the goddamn tape.” COMPLAINANT states that she told SUBJECT OFFICER that she found that language disrespectful and that she did not use such language in her house. SUBJECT OFFICER threatened to arrest her for obstructing justice when she refused to give him the tape.

Based on OPC’s Report of Investigation, the complainant, the subject officer and WITNESS OFFICER #1 generally agree on many key points. WITNESS OFFICER #4 and WITNESS OFFICER #3 also confirm points of the story in general terms and do not contradict the other witnesses. However, the officers state that they could not hear much of what was said and they could not distinguish between SUBJECT OFFICER and WITNESS OFFICER #1, so they did not know which one was doing or saying any particular thing.

The witnesses all agree that the four officers arrived at COMPLAINANT’s home and knocked multiple times on the door. COMPLAINANT eventually answered the door and SUBJECT OFFICER talked to her, explaining that the officers were there to get the audiotape she had from school. They all agree that COMPLAINANT voluntarily let the officers into her house and she asked the officers if they had a warrant. COMPLAINANT and SUBJECT OFFICER agree that he told her that the officers did not need a warrant, and all of the witnesses agree that SUBJECT OFFICER initially demanded the tape and told COMPLAINANT she would be arrested for obstruction of justice if she did not turn over the tape. SUBJECT OFFICER, WITNESS OFFICER #1, and WITNESS OFFICER #3 also agree that, at some point, COMPLAINANT was upset and said something to the effect: “I rebuke you” in the name of Jesus or the Lord, and made religious references. She eventually gave them the tape and asked for their identification, which they provided. After getting the tape and giving their identification, all of the officers left.

The disagreement arises with respect to who made the multiple demands for the tape, what language was used, and to which detective the complainant eventually gave the tape. COMPLAINANT contended that it was SUBJECT OFFICER who made the demands for the tape, he repeated the same language, which was “Give me the goddamn tape” and she gave the tape to WITNESS OFFICER #1 because of the way that SUBJECT OFFICER behaved.

WITNESS OFFICER #1 states that complainant opened the door with hostility and loudly said “Why are you here?” He confirms that SUBJECT OFFICER demanded the tape and said very directly that “If you don’t give us the tape, you’ll be arrested for obstruction of justice.” He denies,

however, that SUBJECT OFFICER said “Give me the goddamn tape.” WITNESS OFFICER #1 does not indicate in his OPC interview that he said anything during the exchange. He indicates that COMPLAINANT retrieved the tape from the stereo system and then said “I rebuke you in the name of Lord” and gave the tape to SUBJECT OFFICER.

According to SUBJECT OFFICER, he did not bang on complainant’s door, but knocked more loudly a second time because COMPLAINANT had not answered the door. SUBJECT OFFICER denies that he said “Give me the goddamn tape,” and he states that WITNESS OFFICER #1 did not use profanity. SUBJECT OFFICER agrees that he raised his voice, but he states that he raised his voice so COMPLAINANT could “hear and understand” him because she was yelling and refused to speak in a normal tone of voice. SUBJECT OFFICER states that after he spoke with COMPLAINANT initially, it was WITNESS OFFICER #1 who said “sternly and loudly” to COMPLAINANT, “Give me the tape.” According to SUBJECT OFFICER, Complainant responded “I don’t know who you are talking to like that but I rebuke you in the name of Jesus.” SUBJECT OFFICER asserts that this was said not because of the officers’ profanity, but because Complainant resented the officers questioning her judgment, having been a teacher for 21 years. He also asserts that COMPLAINANT makes a statement on the audio in a very similar vein. According to SUBJECT OFFICER, COMPLAINANT states during the mock trial, “I rebuke him in the name of Jesus” referring to the alleged abuser.<sup>2</sup> SUBJECT OFFICER states that COMPLAINANT gave the tape to WITNESS OFFICER #1.

WITNESS OFFICER #3 states that Complainant appeared “shocked” to see the officers when she opened the door and that, after they entered into the house, he heard bickering back and forth between COMPLAINANT and one of the detectives. He did hear COMPLAINANT respond something to the effect of “not blaspheming Jesus” and that she appeared offended by what was said to her by the detective. WITNESS OFFICER #4 states that COMPLAINANT appeared “agitated, very defensive, worked up” when she opened the door to the officers. According to WITNESS OFFICER #4, there were raised voices between COMPLAINANT and the detective who asked for the tape. The detective raised his tone and the complainant was yelling. However, WITNESS OFFICER #4 could not hear exactly what was said.

Based on all of the statements of those involved in the matter, it is clear that SUBJECT OFFICER and COMPLAINANT exchanged words in a loud tone of voice. It appears that the discussion became heated. Under the MPD’s General Orders, officers should “be courteous and orderly in their dealings with the public. They shall perform their duties quietly, remaining calm regardless of provocation to do otherwise.” SUBJECT OFFICER may not have performed his duties quietly, but this in and of itself would not rise to the level of language or conduct that is insulting, humiliating, or demeaning. The use of profanity would raise the conduct to a different level. If SUBJECT OFFICER did state “Give me the goddamn tape” twice, it would reach the level of “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

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<sup>2</sup> The Complaint Examiner obtained a copy of the tape, as discussed below.

member tends to create disrespect for law enforcement whether or not it is directed at a specific individual.”

At first glance, COMPLAINANT’s statement of “I rebuke you” in the name of Jesus or the Lord,” suggests that SUBJECT OFFICER did say “Give me the goddamn tape.” SUBJECT OFFICER and WITNESS OFFICER #1 deny that this was said, however. The Complaint Examiner obtained a copy of the audiotape from the OPC. Towards the end of the tape, the complainant tells the alleged victim that “... if it is not right, you say [to the alleged abuser] ‘In the name of Jesus I rebuke it’ and ‘I rebuke you in the name of Jesus,’ and this will not happen again.” This suggests that a statement of this kind is one COMPLAINANT might make, but that it is not necessarily in response to SUBJECT OFFICERS’ profanity. The Complaint Examiner determines that there is insufficient evidence to determine that SUBJECT OFFICER used insulting, demeaning or humiliating language or conduct in violation of MPD General Order 201.26

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

<b>Allegation 1:</b>	Exonerated
<b>Allegation 2:</b>	Insufficient Facts

Submitted on August 16, 2005.

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RICHARD JEROME  
Complaint Examiner