

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF CITIZEN COMPLAINT REVIEW**

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	01-0041
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, 3rd District
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Allegation 3:	N/A
Complaint Examiner:	Shana L. Malinowski, Esq.
Merits Determination Date:	July 14, 2003

Pursuant to D.C. Official Code § 5-1107(a), the Office of Citizen Complaint Review (OCCR) has the authority to adjudicate citizen complaints against members of the Metropolitan Police Department (MPD) where such complaints allege abuse or misuse of police powers by members of the MPD, 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

In a complaint filed on February 8, 2001, COMPLAINANT alleged that SUBJECT OFFICER subjected her to language and conduct that was insulting, demeaning and humiliating. SUBJECT OFFICER also allegedly harassed the complainant when she and her husband, WITNESS #1, arrived at the home of WITNESS #2, COMPLAINANT's mother-in-law. The complainant claimed that when they arrived, SUBJECT OFFICER was shoving the complainant's nephew, WITNESS #3. The complainant said that she asked SUBJECT OFFICER about what was going on and he screamed at her and subsequently issued her two parking tickets.

II. EVIDENTIARY HEARING

An evidentiary hearing was conducted regarding this complaint on June 13, 2003. The Complaint Examiner heard the testimony of COMPLAINANT, SUBJECT OFFICER, WITNESS #1, WITNESS #2, and WITNESS OFFICER #1. A subpoena was issued to compel the presence of WITNESS #3 at the hearing; WITNESS #3 did not appear, and it was discovered

during the course of the hearing that he is currently incarcerated. No exhibits, other than those attached to the ROI, were introduced at the hearing.

III. FINDINGS OF FACT

Based on a review of OCCR's Report of Investigation and an evidentiary hearing conducted on June 13, 2003, the Complaint Examiner finds the material facts regarding this Complaint to be:

1. On February 1, 2001, at approximately 6:00 p.m., COMPLAINANT and her husband, WITNESS #1 arrived at the home of the complainant's mother-in-law, WITNESS #2, at LOCATION #1, NW, Washington, D.C.
2. When COMPLAINANT and WITNESS #1 arrived at LOCATION #1, NW, they observed SUBJECT OFFICER and the complainant's nephew, WITNESS #3, in front of the residence. Tr. at 15. COMPLAINANT and WITNESS #1 witnessed SUBJECT OFFICER restraining WITNESS #3. Id.
3. SUBJECT OFFICER had been called onto the scene by WITNESS OFFICER #1 to assist WITNESS OFFICER #1 in identifying and questioning individuals regarding a homicide that had occurred approximately a month and a half earlier at LOCATION #2, N.W. Tr. at 79.
4. At the time, SUBJECT OFFICER had been an officer with the MPD for seventeen years, was a patrol officer in DISTRICT 3, and was training officers in DISTRICT 3. Tr. at 77-78.
5. SUBJECT OFFICER is familiar with the area of LOCATION #2, N.W. as "not only [does he] live in the area, its . . . [his] particular PSA that [he] patrol[s]." Tr. at 80.
6. Among the individuals that WITNESS OFFICER #1 sought to identify and question was WITNESS #3. WITNESS OFFICER #1 had seen WITNESS #3 in the neighborhood "numerous times" and believed that WITNESS #3 "most likely" was selling narcotics. Tr. at 150-51.
7. When SUBJECT OFFICER and his trainee, WITNESS OFFICER #2, arrived at the LOCATION #2, N.W., SUBJECT OFFICER pointed out WITNESS #3 to SUBJECT OFFICER and asked "if he would figure out if WITNESS #3 belonged at LOCATION #1, N.W., if he lived there, see if it was home, that type of thing." Tr. at 154.

8. SUBJECT OFFICER and WITNESS #3 began to walk “down the street, the BLOCK NEAR LOCATION #1, N.W. . . . WITNESS #3 stopped one house short of LOCATION #1, N.W.” SUBJECT OFFICER asked WITNESS #3 whether he, “ want[ed] to come up to the door and go get [his] grandmother.” WITNESS #3 responded that “he didn't want to speak to his grandmother, [SUBJECT OFFICER] wanted to speak to his grandmother. And if [he] wanted to speak to her, [he] should go up and knock on the door.” Tr. at 85-86.
9. SUBJECT OFFICER went up the steps at LOCATION #1, N.W. and shouted through the screen door that he was with the police and was looking for someone that could identify WITNESS #3.
10. The person SUBJECT OFFICER spoke to “didn't bother to come to the door” and instead “yelled out the door, through the screen.” Tr. at 111. The woman SUBJECT OFFICER spoke to identified herself as WITNESS #3's grandmother, and said that she did not know where WITNESS #3 was. Id. at 87.
11. At about this time, WITNESS OFFICER #1 had walked from the LOCATION #2, N.W., to LOCATION #1, N.W. Tr. at 88. WITNESS OFFICER #1 waited at the bottom of the steps while SUBJECT OFFICER spoke to WITNESS #2. When SUBJECT OFFICER came down the steps, WITNESS OFFICER #1 went up “to talk to the grandmother and just explain to her why [they] knocked on the door, why [they] wanted to establish whether or not [WITNESS #3] lived [there] . . .” Id. at 156.
12. At approximately this time, COMPLAINANT and WITNESS #1 pulled up to LOCATION #1, N.W. Tr. at 89-90. WITNESS #1 exited the car, followed by COMPLAINANT. Id. at 92.
13. COMPLAINANT asked SUBJECT OFFICER why he “had her nephew and what did [he] want with him.” Tr. at 93.
14. WITNESS #2, COMPLAINANT and WITNESS #1 each witnessed SUBJECT OFFICER restraining WITNESS #3 in some way. Tr. at 15-16; 50; 64.
15. When COMPLAINANT began to question SUBJECT OFFICER, she was concerned that there “could be something going on in the house,” or that there was “something happening to [her] mother-in-law and [her] father-in-law,” and that there were “children in [the house] as well.” Tr. at 26-27. Her in-laws are elderly and ill. Id. at 19.

16. SUBJECT OFFICER did not respond immediately to COMPLAINANT, and continued to interact with WITNESS #3.
17. The record supports that a verbal altercation between COMPLAINANT and SUBJECT OFFICER followed soon thereafter. Tr. at 15-16; 93-94.
18. During the discussion between COMPLAINANT and SUBJECT OFFICER, WITNESS #1 went “in the house for a minute or two” to get his mother. Tr. at 22.
19. WITNESS #2 came out of the house and remained on her steps; she could not hear what SUBJECT OFFICER and COMPLAINANT were saying to each other, but that she “kn[ew] they was [sic] talking about the parking [tickets].” Tr. at 67.
20. At some point during the interaction between COMPLAINANT and SUBJECT OFFICER, SUBJECT OFFICER noticed COMPLAINANT’s car parked in front of LOCATION #1, N.W. He asked her if it was her car, and she said that it was. Tr. at 19-20.
21. SUBJECT OFFICER also requested COMPLAINANT’s drivers license, which she gave to him. Tr. at 20.
22. SUBJECT OFFICER issued COMPLAINANT two Notices of Infraction (“NOI”). The first was for “improper display of tag” and the second was for no standing in an evening rush hour zone. Tr. at 95-97.
23. Both WITNESS OFFICER #1 and WITNESS OFFICER #2 were present when SUBJECT OFFICER issued the NOIs. Tr. at 97.
24. COMPLAINANT had asked both SUBJECT OFFICER and WITNESS OFFICER #1 why SUBJECT OFFICER issued the tickets. Tr. at 24; 36-37.
25. COMPLAINANT challenged the NOI for improper display of tags at a hearing on August, 15, 2001 and was found liable. ROI, Ex. 7. COMPLAINANT admitted that her license plate was not properly displayed. Tr. at 33.
26. The second NOI was for no standing in an evening rush hour zone. ROI, Ex. 7. Signs on the street prohibited parking during morning rush hour only. ROI, Ex. 14. COMPLAINANT and WITNESS #1 informed SUBJECT OFFICER that it was legal to park on the street at that time. WITNESS #1

- showed the sign to both SUBJECT OFFICER and WITNESS OFFICER #1. Tr. at 47; 61.
27. WITNESS OFFICER #1 recalled WITNESS #1 speaking to him, and that WITNESS #1 “was just upset and he was just appealing as to why he got the ticket to [him].” Tr. at 162; see also id. at 164. WITNESS OFFICER #1 could not recall if WITNESS #1 pointed out the sign to him or not. Tr. at 164-65.
 28. SUBJECT OFFICER did not look at the signs on the street indicating that it was legal to park there at that time. Tr. at 125.
 29. COMPLAINANT also challenged the rush hour NOI at a hearing on June 5, 2001. The infraction was dismissed as SUBJECT OFFICER did not appear. ROI, Ex. 7. SUBJECT OFFICER had not received notice of the hearing. Tr. at 100.
 30. There were other cars parked in the vicinity of COMPLAINANT’ car. Tr. at 53. SUBJECT OFFICER gave no other tickets. ROI, Ex. 15.

IV. DISCUSSION

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 A review of the Report of Investigation and accompanying exhibits, and an evidentiary hearing persuades the Complaint Examiner that SUBJECT OFFICER harassed COMPLAINANT when he issued her an NOI for no standing during evening rush hour when the area only restricted parking during the morning rush hour.

The Complaint Examiner believes that it was not unreasonable or inappropriate for COMPLAINANT to have inquired to SUBJECT OFFICER what was going on when she and her husband arrived at LOCATION #1, N.W. COMPLAINANT, WITNESS #1, and WITNESS #2 all testified that they observed SUBJECT OFFICER holding WITNESS #3 in some manner. See, e.g. Tr. at 15-16; 50; 64. While WITNESS OFFICER #1 testified that SUBJECT OFFICER did not touch WITNESS #3, the record reflects that WITNESS OFFICER #1 was not present the entire time, and during part of the time was up on the top of the steps speaking to WITNESS #2. Tr. at 88; 156. Therefore, the fact that WITNESS OFFICER #1 did not observe SUBJECT

¹ The Citizen Complaint Review Board, which is OCCR’s governing body, promulgated regulations regarding OCCR 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.

OFFICER holding WITNESS #3 does not discredit the testimony of the witnesses that did observe this behavior.

The record reflects that SUBJECT OFFICER became frustrated during the chain of events that took place at LOCATION #1, N.W. on the evening of the incident. SUBJECT OFFICER had been called in as back-up and asked to question potential witnesses in connection with a recent homicide. SUBJECT OFFICER testified that WITNESS #3 was behaving uncooperatively in refusing to accompany SUBJECT OFFICER to WITNESS #3's grandmother's house, and that when SUBJECT OFFICER sought to speak to someone who could identify WITNESS #3, WITNESS #2 did not come out of the house to speak to him. It appears that, when COMPLAINANT began to question SUBJECT OFFICER while he was dealing with uncooperative individuals, one of whom was a suspected drug dealer, he responded in an unprofessional matter by giving her a clearly unwarranted parking ticket.

While the record reflects that SUBJECT OFFICER was restraining WITNESS #3 in some way, this fact is not determinative. Even if, as SUBJECT OFFICER states, he did not "handle[]" WITNESS #3, see Tr. at 98, COMPLAINANT had the legal right to question SUBJECT OFFICER regarding his interaction with her nephew, a juvenile. Also, COMPLAINANT testified that she was concerned that something had happened to her elderly in-laws. Id. at 26-27. Considering that there were at least three police officers on the block and a recent homicide a few doors down from the home of her in-laws, the Complaint Examiner finds these concerns, and COMPLAINANT's questioning, to be reasonable.

While SUBJECT OFFICER claims that this complaint was motivated by COMPLAINANT's anger, which was caused by him not responding to her immediately, the Complaint Examiner does not find this theory to be credible. It seems highly unlikely that COMPLAINANT and her family would have fabricated a story that SUBJECT OFFICER was mishandling her nephew simply because SUBJECT OFFICER did not respond immediately to her questions. Moreover, if SUBJECT OFFICER was simply talking to WITNESS #3 as he stated during the hearing, see, e.g., Tr. at 93, it would seem unlikely that he would be so focused on what he was saying that he would not acknowledge and respond to COMPLAINANT, particularly if she was angry and upset, as SUBJECT OFFICER recalled. Id.

Rather, the record reflects that SUBJECT OFFICER did not respond to COMPLAINANT in a controlled way, but proceeded to give her two NOIs in response to her questioning and accusations. Such action did not serve to diffuse the situation. While the first NOI was legitimate, and did serve a legitimate law enforcement purpose, the record reflects that the second NOI, charging a violation of rush hour parking restrictions, was issued without regard to the surrounding signs and the explanation of the FAMILY that parking was permitted at that time. While SUBJECT OFFICER testified that no one present at the scene told him that the sign only prohibited parking during morning rush hour, see Tr. at 125, the Complaint Examiner is persuaded that both COMPLAINANT and WITNESS #1 attempted to explain to SUBJECT OFFICER that parking was permitted at that time on that side of the street, and to show

SUBJECT OFFICER the nearby signs, and that SUBJECT OFFICER ignored them. SUBJECT OFFICER did testify that COMPLAINANT complained to him and to the other officers about the ticket. Tr. at 97. It seems highly unlikely that, in complaining about the ticket, she would not articulate her actual reasons for the complaint, *i.e.*, that the ticket was simply wrong. Similarly, WITNESS OFFICER #1 testified that WITNESS #1 complained about the ticket to him. Tr. at 162; 164. While WITNESS OFFICER #1 could not recall whether or not WITNESS #1 pointed out the sign, it seems very unlikely to the Complaint Examiner, after observing the witnesses and their demeanor, and hearing their testimony, that WITNESS #1 would not complain to SUBJECT OFFICER about the wrongfulness of SUBJECT OFFICER's actions and attempt to show him the sign.

SUBJECT OFFICER testified repeatedly that he did not want to give COMPLAINANT a ticket:

- “I actually issued that ticket not because I was trying to harass COMPLAINANT, but because it was rush hour.” Tr. at 117.
- “I explained to [OCCR investigators] that the reason I was there was not to issue a ticket . . . I explained to them the real reason we were there was to interview the grandmother from [sic] what was going on up the street and what the grandson, what he was actually doing.” Tr. at 120.
- “I never wanted to issue a ticket.” Tr. at 142.

The Complaint Examiner does not credit this testimony. SUBJECT OFFICER had discretion to issue this ticket. If his true concern was that COMPLAINANT was impeding rush hour traffic, he could have asked her to move her car, and could have listened to her when she said that she was permitted to park there. The Complaint Examiner finds that there was no legitimate law enforcement justification for issuing this ticket.

Moreover, the Complaint Examiner is not persuaded by SUBJECT OFFICER's testimony that he made a mistake. Rather, as SUBJECT OFFICER himself testified, “[n]ot only do[es he] live in the area, it's [his] PSA, [his] particular PSA that [he] patrols.” Tr. at 80. It does not seem credible that after seventeen years as a member of the MPD and in patrolling the area where he both lives and works, that SUBJECT OFFICER would not know the basic traffic control laws of the area. In issuing this NOI, SUBJECT OFFICER violated the cited MPD order when he bothered, annoyed or otherwise interfered with COMPLAINANT's ability to go about lawful business normally as she was permitted to park there.

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.”

With respect to complainant’s allegation that SUBJECT OFFICER used insulting or demeaning language when addressing her, the Complaint Examiner finds that “there are insufficient facts to decide whether the alleged misconduct occurred.” OCCR Reg. § 2120.2(c). SUBJECT OFFICER testified that he did not use such language. Tr. at 98. COMPLAINANT testified that SUBJECT OFFICER cursed at her. See, e.g. id. at 15-16. Her husband, WITNESS #1 testified that SUBJECT OFFICER cursed at COMPLAINANT, but the Complaint Examiner cannot determine from the record what WITNESS #1 actually heard and what was relayed to him by COMPLAINANT. See, e.g. id. at 55-56; 61. WITNESS #2 testified that SUBJECT OFFICER “yelled” at her, see id. at 66, but it appears that SUBJECT OFFICER was speaking to WITNESS #2 through a screen door and could not see her while he was speaking to her. WITNESS #2 further testified that she could not hear the exchange of words between COMPLAINANT and SUBJECT OFFICER from where she stood at the top of the steps. Id. at 67. WITNESS OFFICER #1 testified that he did not hear SUBJECT OFFICER use profanities with COMPLAINANT. Id. at 159.

The complainant must prove the allegations in the Complaint by a preponderance of the evidence. OCCR Reg. § 2118.5(a). The Complaint Examiner finds that, while there are some facts to support the allegation, the complainant has not met her burden of proof with respect to the allegation of use of insulting or demeaning language.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Sustained
Allegation 2:	Insufficient Facts

Submitted on

Shana L. Malinowski, Esq.
Complaint Examiner