

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	01-0058
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER 1st District
Allegation 1:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Cynthia B. Schultz
Merits Determination Date:	May 8, 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) 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 alleged that SUBJECT OFFICER engaged in conduct that was insulting, demeaning, or humiliating to her. COMPLAINANT claimed that on February 15, 2001, SUBJECT OFFICER used inappropriate language and tone while issuing her a traffic citation for failure to yield for an emergency vehicle. COMPLAINANT contends that SUBJECT OFFICER's improper conduct and use of profane language was insulting, demeaning, and humiliating.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OCCR'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 OCCR's Report of Investigation and Exhibits attached thereto and to which no objections were submitted by SUBJECT OFFICER, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On February 15, 2001, at approximately 2:20 p.m., SUBJECT OFFICER was dispatched to a motorcycle accident.
2. En route to the location of the motorcycle accident, SUBJECT OFFICER approached a red light at LOCATION #1, N.W. and was behind COMPLAINANT's vehicle.
3. On February 15, 2001 at approximately 2:30 p.m., COMPLAINANT was stopped in her car at a red light on LOCATION #1, N.W. waiting to turn left onto LOCATION #2, N.W.
4. While waiting for the traffic signal to turn green, COMPLAINANT purchased a box of donuts from a street vendor.
5. SUBJECT OFFICER approached the intersection and had his sirens on and lights flashing.
6. There was traffic at the intersection.
7. SUBJECT OFFICER stated over the loudspeaker "get your damn cars out of the way."
8. COMPLAINANT moved into the intersection after the light turned green and stopped her car suddenly after she believed that she had gotten out of the way of SUBJECT OFFICER.
9. SUBJECT OFFICER pulled behind COMPLAINANT and stated over the loudspeaker, "I got something for your ass, pull over."
10. The donut vendor, WITNESS #1, heard the Officer make the remarks in paragraphs 7 and 9 above and noted that COMPLAINANT appeared frightened and upset.
11. SUBJECT OFFICER approached COMPLAINANT's vehicle and told her in a loud voice that she was suppose to yield for an emergency vehicle.
12. SUBJECT OFFICER issued COMPLAINANT a citation for failure to yield to an emergency vehicle and left the scene to proceed to the location of the motorcycle accident.
13. SUBJECT OFFICER did not radio in his stop of and citation to COMPLAINANT to the dispatch operator.

14. SUBJECT OFFICER arrived at the scene of the motorcycle accident and spoke with WITNESS OFFICER #1. SUBJECT OFFICER asked WITNESS OFFICER #1 to follow him back to the scene of the citation to COMPLAINANT so that he could ticket the vendor for vending without a license. Both officers were in separate vehicles and returned to the location around LOCATION #1, N.W. to look for the vendor.
15. Both SUBJECT OFFICER and WITNESS OFFICER #1 did not see the vendor and did not stop and exit their vehicles.
16. SUBJECT OFFICER failed to appear for the administrative hearing scheduled for May 23, 2001, on the COMPLAINANT's traffic citation.
17. The Notice of Infraction was dismissed, because SUBJECT OFFICER failed to appear and the ticket was coded wrong.
18. SUBJECT OFFICER was provided the opportunity in a letter dated March 5, 2003, to submit written objections to OCCR's Report of Investigation.
19. SUBJECT OFFICER did not file or submit any written objections.

IV. DISCUSSION

Pursuant to D.C. Code Section 5-1107(a), "The Office [of Citizen Complaint Review] shall have the authority to receive and to dismiss, conciliate, mediate, or 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... (3) Use of language or conduct that is insulting, demeaning, or humiliating... ."

MPD General Order 201.26, Part I, Section C, No. 1 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... ." MPD General Order 201.26, Part I, Section C, No. 3 states, "Members shall refrain from harsh, violent, coarse, profane, sarcastic, or insolent language... ."

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."

On February 15, 2001, SUBJECT OFFICER was responding to dispatched radio call. En route to that call, he stopped and ticketed COMPLAINANT for failure to yield to an emergency vehicle. He did not radio his interim stop and citation to the dispatcher.

COMPLAINANT contends that while she was stopped at a red light at the intersection of LOCATION #1, N.W., she purchased a box of donuts from a street vendor. The street vendor, WITNESS #1, stated that he sold the donuts to COMPLAINANT. Both COMPLAINANT and WITNESS #1 stated that there was heavy traffic at the intersection.

SUBJECT OFFICER contends that, en route to the motorcycle accident, he stopped at the same traffic light as COMPLAINANT and that when the traffic light turned green, he honked his horn and, in response, COMPLAINANT drove into the middle of the intersection, slammed on the brakes and gave him a finger. The Complaint Examiner finds that even if COMPLAINANT had conducted herself in this manner, which the facts do not support, provocation is irrelevant to SUBJECT OFFICER's conduct and language. MPD General Order 201.26, Part I, Section C, No. 1.

COMPLAINANT contends that SUBJECT OFFICER spoke over the loudspeaker and stated "get your damn cars out of the way." She then contends that she drove her car forward to make way for SUBJECT OFFICER and stopped abruptly to allow him to pass. She further contends that SUBJECT OFFICER pulled behind COMPLAINANT and stated over the loudspeaker, "I got something for your ass, pull over." WITNESS #1 corroborated COMPLAINANT's statement on both accounts. SUBJECT OFFICER denied using the loudspeaker at any time during the incident with COMPLAINANT and he denied using any profanity.

WITNESS #1, the street vendor, stated almost verbatim the same sentences that COMPLAINANT contends SUBJECT OFFICER spoke over the loudspeaker, despite the fact that he was interviewed weeks after the incident occurred. WITNESS #1 also noted that COMPLAINANT appeared frightened and upset. The Complaint Examiner finds the statements of both COMPLAINANT and WITNESS #1 to be more credible than those of SUBJECT OFFICER.

SUBJECT OFFICER did not submit any written objections to the final ROI.

Based upon the foregoing facts and discussion and on the facts set forth in the ROI and the exhibits attached thereto, the Complaint Examiner finds that SUBJECT OFFICER violated MPD General Order 201.26, Part I, Section C, No. 1 by failing to be courteous in his dealing with the public and performing his duties quietly and calmly regardless of any alleged provocation by COMPLAINANT. Furthermore, SUBJECT OFFICER violated MPD Special Order 01-01, Part III, Section H in so far that the language used by SUBJECT OFFICER was insulting, humiliating and demeaning. Not only did it demean COMPLAINANT but it was also offensive to those within earshot of SUBJECT OFFICER's statements over the loudspeaker.

Accordingly, the ROI is sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Sustained
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Submitted on May 8, 2003.

Cynthia B. Schultz,
Complaint Examiner