

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	01-0099
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER #1, 1st District
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Eleanor Nace
Merits Determination Date:	November 5, 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 #1 harassed him, discriminated against him on the basis of his race, used unnecessary or excessive force against him and subjected him to language or conduct that was insulting, demeaning or humiliating. COMPLAINANT also alleged that a second subject officer, SUBJECT OFFICER #2, who was a D.C. Housing Authority officer at the time, used unnecessary or excessive force against him, discriminated against him on the basis of his race, and subjected him to language or conduct that was insulting, demeaning or humiliating.

Specifically, COMPLAINANT alleged that on January 29, 2001, SUBJECT OFFICER #1, who is white, stopped COMPLAINANT, who is black, and arrested him for disorderly conduct. COMPLAINANT alleged that the officer did not have a legitimate reason for stopping him and arresting him, and that he did so because COMPLAINANT is black. The complainant also alleged that the officer grabbed him, pulled his shoulder out of its socket, and cursed at him, during the course of his arrest. He also alleged that SUBJECT OFFICER #2, who is black, struck him in the head and rib cage and cursed at him.

On July 26, 2003, a member of the Citizen Complaint Review Board dismissed the allegations that SUBJECT OFFICER #1 used unnecessary or excessive force against the complainant, and dismissed the discrimination claim, concurring with the determination made by OCCR's executive director. The CCRB member also dismissed all the allegations against SUBJECT OFFICER #2, concurring with the determination made by OCCR's executive director.

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, the Complaint Examiner finds the material facts regarding this complaint to be:

1. COMPLAINANT resided at LOCATION #1, S.W., Washington, D.C., on January 29, 2001, the date of the complaint.
2. At approximately 6:30 p.m., he walked his children to his wife's car, parked in front of his address. He then went for a walk in his neighborhood, smoking a cigarette as he walked.
3. SUBJECT OFFICER #2 responded to a call about a civil protection order (CPO) violation at LOCATION #1, S.W., early in the evening of January 29, 2001. SUBJECT OFFICER #1 was already on the scene. The woman who had the CPO, WITNESS #1, pointed out the patio window of her apartment toward a male figure who was outside the building, between Delaware and Canal Streets, S.W.
4. WITNESS #1 identified the man as WITNESS #2, black, 6'4" tall, 180 pounds, wearing a green army jacket, blue jeans, and a cap. She also said he was smoking a cigarette.
5. COMPLAINANT is 5'6" and was wearing a brown coat, a purple shirt and black pants at the time he was stopped by the police.
6. While searching for the alleged CPO violator, the officers spied COMPLAINANT walking in the 1300 block of Canal Street, S.W. SUBJECT OFFICER #1 stopped COMPLAINANT. The lights on his car were flashing. Then SUBJECT OFFICER #2 approached in his car and stopped as well.
7. COMPLAINANT did not know why he was being stopped, and he kept asking. He may have called SUBJECT OFFICER #1 a "motherfucker" at one point. He objected to being stopped, questioned and handcuffed. SUBJECT OFFICER #2 heard SUBJECT OFFICER #1 say, "I'm not going to beat too many motherfuckers tonight." (He later amended this testimony and said "be" instead of "beat," but this is not credible.)

8. Before even finding out COMPLAINANT's name, and thus determining whether he was or was not the subject the officers were looking for, SUBJECT OFFICER #1 arrested COMPLAINANT for disorderly conduct.
9. No more than five (5) minutes elapsed between the time SUBJECT OFFICER #1 approached COMPLAINANT and the time of his arrest.
10. In the course of COMPLAINANT's encounter with SUBJECT OFFICER #1 and SUBJECT OFFICER #2, several individuals came out of their homes on the other side of Canal Street and watched. It was not yet 7 p.m.
11. After arresting COMPLAINANT, SUBJECT OFFICER #1 made no further effort that evening to locate WITNESS #2, the alleged violator of the CPO for whom he had been looking.
12. D.C. Code Section 22-1321 states:

Whoever, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(1) Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others; (2) congregates with others on a public street and refuses to move on when ordered by the police; [or] (3) shouts or makes a noise either outside or inside a building during the nighttime to the annoyance or disturbance or any considerable number of persons . . . shall be fined not more than \$250 or imprisoned not more than 90 days or both.

IV. DISCUSSION

Pursuant to D.C. Official Code § 5-1107(a), "The Office [of Citizen Complaint Review] 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

The complainant was walking down the street in his neighborhood when he was accosted by a police officer in a car with flashing lights, who was then joined by a second officer. Neither the complainant’s physical stature nor his clothing matched those of the person the police were looking for, and the officers had the individual’s name as well. Although the complainant’s attitude toward SUBJECT OFFICER #1 may have been disrespectful and annoying, his behavior did not justify an arrest for disorderly conduct, given the statutory definition set forth above. COMPLAINANT had no intent to provoke a breach of the peace; his behavior was offensive to no one but the officers; and, if people came out to see what was going on, they were likely drawn by the flashing lights just as much if not more than any yelling, and there is no evidence that a “considerable number of persons” gathered. The officers may have had a legitimate reason to stop COMPLAINANT, but instead of quickly ruling him out as the suspect, WITNESS #2, SUBJECT OFFICER #1 arrested him. In so doing, he committed harassment, because this action clearly “interfered with . . . [the complainant’s] ability to go about lawful business normally, in the absence of a specific law enforcement purpose.”

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.”

COMPLAINANT alleged that SUBJECT OFFICER #1 cursed at him throughout the incident. This allegation is corroborated at least in part by SUBJECT OFFICER #2. Although he tried to retract or modify his statement, SUBJECT OFFICER #2 said that he heard SUBJECT OFFICER #1 say to the complainant, as he (SUBJECT OFFICER #2) was approaching the scene, “I’m not going to beat too many mother fuckers tonight.” This language is insulting and demeaning.

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.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1, 1st District

Allegation 1:	Sustained
Allegation 2:	Sustained

Submitted on November 5, 2003.

ELEANOR NACE
Complaint Examiner