

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	01-0150
COMPLAINANT:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, 3rd District
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Linda R. Singer
Merits Determination Date:	April 7, 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

In a complaint filed on March 30, 2001, COMPLAINANT alleged the following:

1. That SUBJECT OFFICER, while off-duty and dressed in civilian clothes, allegedly harassed the COMPLAINANT by issuing him a ticket for parking on private property when others who were parked in the same area did not receive a ticket.
2. That SUBJECT OFFICER, while off-duty and dressed in civilian clothes, used demeaning language and conduct toward COMPLAINANT.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OCCR's Report of Investigation and the witness interviews, 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. SUBJECT OFFICER submitted no objections to the Report of Investigation.

III. FINDINGS OF FACT

The Complaint Examiner has reviewed the following: the Complaint; the Notice of Infraction; OCCR's Report of Investigation; the Memoranda of Interviews of COMPLAINANT; SUBJECT OFFICER, witnesses WITNESS #1 and WITNESS #2 (COMPLAINANT's co-worker and supervisor); WITNESS #3 (the occupant of the property at LOCATION #1, N.W.); and WITNESS OFFICER (who was summoned by COMPLAINANT and arrived at the scene one hour after the incident). Based on this review, the Complaint Examiner finds the following material facts regarding this Complaint:

1. COMPLAINANT, was working at his office at LOCATION #1, N.W., on March 22, 2001, between 10:45 a.m. and 2:00 p.m.
2. COMPLAINANT had parked his car in a space in the lot behind the adjacent building at LOCATION #1, N.W..
3. SUBJECT OFFICER knocked on the rear door of COMPLAINANT's office and told COMPLAINANT to move his car.
4. Previously, COMPLAINANT and his supervisor, WITNESS #2, had observed that SUBJECT OFFICER parked his private vehicle, a gray truck, in the area behind LOCATION #1, N.W. almost every day and later moved it to a parking space down the street.
5. COMPLAINANT declined SUBJECT OFFICER's request to move his car, stating that he did not have to comply with the request because the house did not belong to the officer.
6. SUBJECT OFFICER responded that he and his brother owned the property.
7. SUBJECT OFFICER threatened to issue a ticket if COMPLAINANT did not move his "fucking car now."
8. When COMPLAINANT returned to his office SUBJECT OFFICER blocked his car with the officer's truck.
9. SUBJECT OFFICER stated that he had called a tow truck and proceeded to issue a parking ticket.
10. SUBJECT OFFICER used further profanity to COMPLAINANT, including "motherfucker," "fuck you," and "if you're going to fuck with someone, I'll show you who to fuck with."

11. When COMPLAINANT's supervisor, asked SUBJECT OFFICER for his name and badge number, SUBJECT OFFICER provided his name.
12. PROPERTY OWNER, who is deceased, is the listed owner of the property at LOCATION #1, N.W.. WITNESS #3, who has paid the property taxes on the property since 1987, had given SUBJECT OFFICER permission to issue tickets to cars that parked on the property without WITNESS #3's permission.
13. SUBJECT OFFICER never ticketed or attempted to tow other vehicles that were parked on the property without WITNESS #3's permission.

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

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 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.

MPD General Order 201.26, Part I, Section C provides that "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 303.1, Part I, Section A, No. 2 states that "traffic enforcement may be taken under the following circumstances: ... Members who are not in uniform or are in unmarked vehicles may take enforcement action only in the case of a violation that is so grave as to pose an immediate threat to the safety of others." (Underlining in original.)

The Complaint Examiner finds that SUBJECT OFFICER violated all of these Orders. Even accepting the statement that WITNESS #3 had authorized SUBJECT OFFICER to issue tickets to vehicles that were parked on the property without his permission, COMPLAINANT's car posed no "immediate threat to the safety of others." Nor had SUBJECT OFFICER issued tickets to any of the other vehicles parked on the property without WITNESS #3's permission. There was no legitimate law enforcement purpose for writing the ticket, calling a tow truck, or attempting to block COMPLAINANT's car. All of these actions were observed by witnesses, who corroborated COMPLAINANT's version of the events in question.

Furthermore, in his encounters with COMPLAINANT, which were overheard by two witnesses, SUBJECT OFFICER used insulting, humiliating and demeaning language, which had the tendency to create disrespect for law enforcement.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Sustained
Allegation 2:	Sustained

Submitted on April 7, 2003.

LINDA R. SINGER
Complaint Examiner