

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	01-0309
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER, 3rd District
<b>Allegation 1:</b>	Harassment
<b>Complaint Examiner:</b>	Eleanor Nace
<b>Merits Determination Date:</b>	April 30, 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 June 22, 2001, COMPLAINANT alleged that SUBJECT OFFICER subjected him to harassment in the area of LOCATION #1, N.W., on June 19, 2001, by arranging to have the van he was driving impounded without justification. COMPLAINANT alleged that after borrowing the van of his fiancée, WITNESS #1, he parked it on LOCATION #1, N.W. He stated he was talking with some friends on the sidewalk when SUBJECT OFFICER arrived and asked Complainant to take a Breathalyzer test. Complainant alleged that when he refused, SUBJECT OFFICER called for a towing company to transport the van to a towing lot, for no reason.

**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**

The Complaint Examiner has reviewed the following: the Complaint; OCCR's Report of Investigation; Memoranda of Interviews with Complainant, SUBJECT OFFICER, WITNESS #1 (Complainant's fiancée, owner of the van, and traffic patroller in 3rd District at time of the incident), WITNESS #2, WITNESS OFFICER #1(WITNESS #1's supervisor at time of incident), WITNESS OFFICER #2 and WITNESS OFFICER #3 (also on the scene briefly);

receipt from the towing company; MPD Special Order 01-01, Part III, Section G; MPD General Order 303.3.

SUBJECT OFFICER did not submit objections.

Based on this review, the Complaint Examiner finds the following material facts regarding this Complaint:

1. On June 19, 2001, COMPLAINANT borrowed a gray Toyota Sienna van from his fiancée, WITNESS #1.
2. The van was properly registered in WITNESS #1's name, had un-expired tags, and was insured.
3. WITNESS #1 was employed at the 3<sup>rd</sup> Police District at the time.
4. Sometime between 7:30 and 8:30 p.m. on June 19, 2001, the van was legally parked between 1713 and 1715 LOCATION #1, N.W. Complainant was talking to his cousin, WITNESS #3, and a friend, WITNESS #2. A group of 7 or 8 other people, holding beer cans, were standing half a block away from Complainant on LOCATION #1, N.W., when SUBJECT OFFICER drove up and approached those individuals, who walked away.
5. SUBJECT OFFICER approached Complainant and his companions, and asked who was driving the van. Complainant said that he was. SUBJECT OFFICER accused Complainant and his companions of drinking alcohol and smoking. Complainant denied the allegations.
6. SUBJECT OFFICER checked Complainant's driver's license number and the license plate number, and then asked for the keys to the van. Complainant told the officer he did not have the keys to the van.
7. SUBJECT OFFICER asked Complainant to take a Breathalyzer. Complainant refused, because he was not drinking or driving.
8. SUBJECT OFFICER told Complainant that if he did not take a Breathalyzer, the van would be towed.
9. After calling for backup, and for a tow truck, SUBJECT OFFICER searched the van.
10. Before he had the van towed, SUBJECT OFFICER knew it was owned by an employee of the Police Department.
11. It cost Complainant \$200 to retrieve his fiancée's vehicle from the impound lot.

12. SUBJECT OFFICER told the investigator that he noticed that the van had expired temporary paper license plate tags, and that he had observed Complainant walk from the liquor store toward the van. SUBJECT OFFICER said he issued citations for expired tags, for no insurance, and for no registration. He said he thought he was doing Complainant a favor by issuing the citations and impounding the vehicle rather than arresting Complainant.
13. There is no record of any citations being issued to Complainant or the vehicle's owner on or near the date of the incident.
14. SUBJECT OFFICER told the investigator that no other officers responded to the scene. Two officers told the investigator that they were on the scene.
15. Complainant's fiancée, the owner of the van, was transferred from the 3<sup>rd</sup> District after she complained about SUBJECT OFFICER's treatment of Complainant and the impounding of her van.

#### **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."<sup>1</sup>

The Complaint Examiner finds that SUBJECT OFFICER harassed COMPLAINANT, within the meaning of MPD Special Order 01-01, Part III, Section G. The officer had no justification for impounding the van. He had ample opportunity to reconsider his decision but chose not to do so. Witnesses, including other police officers, corroborated Complainant's statements, and support a finding that SUBJECT OFFICER's explanations were not credible.

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<sup>1</sup> 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.

His actions constituted an abuse of his authority and resulted in a substantial and totally unnecessary hardship to Complainant.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

<b>Allegation 1:</b>	Sustained
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Submitted on April 30, 2003.

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ELEANOR NACE  
Complaint Examiner