

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	01-0382
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, First District
Allegation 1:	Harassment
Complaint Examiner:	Katherine L. Garrett
Merits Determination Date:	November 19, 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 alleges that SUBJECT OFFICER harassed him on July 13, 2001 by following him as he drove to make a complaint following a traffic stop, and by issuing an unwarranted Notice of Infraction for a traffic violation Complainant purportedly committed en route.

II. EVIDENTIARY HEARING

An evidentiary hearing was conducted regarding this complaint on October 7, 2003. The Complaint Examiner heard the testimony of Complainant, SUBJECT OFFICER, WITNESS OFFICER #1, and WITNESS OFFICER #2. The following exhibits were admitted at the hearing:

- Complainant Exhibit 1: Map of Portion of District of Columbia, D Street, S.W., between 14th and 4th Streets, S.W.
- Complainant Exhibit 2: Business card of ATTORNEY.

SUBJECT OFFICER offered no exhibits.

III. FINDINGS OF FACT

Based on a review of OCCR's Report of Investigation, the objections submitted by SUBJECT OFFICER on July 23, 2003, stipulations entered into by the parties at the prehearing conference on September 10, 2003, and an evidentiary hearing conducted on October 7, 2003, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On July 13, 2001 at approximately 7:29 p.m., Complainant was driving his cab on 14th Street and made a right turn from 14th Street onto D Street, S.W.
2. SUBJECT OFFICER of the Metropolitan Police Department stopped Complainant's cab.
3. During the course of this stop, SUBJECT OFFICER unholstered his gun.
4. SUBJECT OFFICER issued Complainant a ticket/Notice of Infraction for the right turn Complainant had made onto D Street, S.W.
5. Complainant was upset with how SUBJECT OFFICER had conducted himself during this traffic stop, and expressed his feelings to SUBJECT OFFICER, indicating that he was going to head to the police station to file a complaint.
6. Complainant headed directly to the police station at 4th Street, S.W.
7. SUBJECT OFFICER also headed directly to the police station at 4th Street S.W., driving behind Complainant along the same route.
8. SUBJECT OFFICER was headed to the police station, which was within his regular beat, to use the bathroom.
9. Subsequently, on July 13, 2001 at 7:42 p.m., after Complainant made a right turn onto 4th Street, S.W. from Virginia Avenue, SUBJECT OFFICER stopped Complainant and issued a second Notice of Infraction.
10. This second Notice of Infraction was for failure to stop at the stop sign at the intersection of Virginia Avenue, and 4th Street, S.W.
11. As SUBJECT OFFICER pulled Complainant's cab over for this second stop, he radioed for a supervisor to meet him at the scene. After WITNESS OFFICER #1 came to the scene and spoke with Complainant, SUBJECT OFFICER issued the second Notice of Infraction.
12. After SUBJECT OFFICER issued the second Notice of Infraction, Complainant spoke with WITNESS OFFICER #1, and received paperwork and information on how to file a complaint with the Office of Citizen Complaint Review.

13. SUBJECT OFFICER was present in the station house for no more than the last half of Complainant's conversation with WITNESS OFFICER #1.
14. The first Notice of Infraction was dismissed, as SUBJECT OFFICER had mistakenly recorded the incorrect time on the ticket.
15. Complainant was found liable for the second Notice of Infraction – running the stop sign – after a hearing on October 17, 2001. Neither Complainant nor any representative on Complainant's behalf attended the October 17, 2001 hearing to contest the ticket.
16. WITNESS OFFICER #1 supervised SUBJECT OFFICER at the relevant times. She allows officers under her supervision to leave their beats for bathroom breaks without obtaining prior permission.
17. Supervisors have the authority to authorize officers under their supervision to use the bathroom in the station house without prior approval, if the station house is on the officers' beat.
18. The police station at 4th and Virginia Ave., S.W., was within SUBJECT OFFICER's assigned patrol beat at the time.

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

Complainant initially intended solely to complain about SUBJECT OFFICER's conduct during the original traffic stop at 14th and D Streets, S.W.² Complainant testified that he felt

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.

SUBJECT OFFICER had unholstered his weapon inappropriately during a routine traffic stop, in response to Complainant's efforts to understand the reason for the stop. SUBJECT OFFICER explained that he had unholstered his gun when Complainant failed to verbally acknowledge his request for identification and reached for something in the seat. Complainant was upset when SUBJECT OFFICER unholstered his gun – he described himself as “shaking.” Complainant testified that he sought to communicate to SUBJECT OFFICER at the time both his intention to cooperate, and his concern that SUBJECT OFFICER was not respecting his rights. Complainant's and SUBJECT OFFICER's perception of events during the first traffic stop differ. On the fact material to the claim of harassment, however, there is no disagreement: Complainant testified that he intended to go immediately to the station house to file a complaint about SUBJECT OFFICER, and SUBJECT OFFICER testified that he knew that was Complainant's plan. Hearing Transcript (hereafter “H.T.”), pp. 24, 70.

After Complainant received the ticket from SUBJECT OFFICER, he left and immediately headed to the First District station house at 4th Street and Virginia Ave., S.W. SUBJECT OFFICER also returned to the station house. The parties followed the same short route: heading east on D Street, S.W.; following D Street as it ‘jogged’ down 12th Street, S.W., and into a merge with Virginia Avenue; thence to 4th Street, S.W., where they turned right to reach the station house. The route is a direct one to the station house, but is plainly not the only route there. It passes through an area largely populated with public agencies. Complainant's Exhibit 1 illustrates that four and a half blocks of the roughly seven-block route are bounded by federal or local agency buildings, and another block provides access to the agencies and buildings in L'Enfant Plaza.³

Complainant observed SUBJECT OFFICER's patrol car behind him, and testified that he accordingly took great pains to comply with the speed limit and traffic signals. He testified that he stopped at the intersection of 4th and Virginia, and as he began to turn right, was pulled over again by SUBJECT OFFICER. H.T., at 51-52. SUBJECT OFFICER testified that Complainant “rolled through” the stop sign, slowing only enough to make the right-hand turn onto 4th Street. Id. at 51. SUBJECT OFFICER pulled Complainant over again, and radioed for a supervisor to meet him. As soon as WITNESS OFFICER #1 joined them at the scene and spoke with Complainant, SUBJECT OFFICER wrote the ticket.

After receiving the second ticket, Complainant met WITNESS OFFICER #1 in the station house, told her about his concerns with SUBJECT OFFICER's conduct during the stop,

² Complainant's allegation of excessive or unnecessary force was dismissed on June 12, 2003 by a CCRB Member pursuant to D.C. Code Section 5-1108. ROI Exhibit 1.

³ The ROI stated that various government and private office buildings all “had restrooms that the subject officer could have used.” ROI, p. 4. There was no evidence that MPD officers in general, and SUBJECT OFFICER in particular, are able to gain after-hours access to public or private office buildings to use restrooms. There was no evidence that SUBJECT OFFICER departed from his normal practice by returning to the First District Station House to use the restroom.

and received information about the complaint process. H.T. 30. Meanwhile, SUBJECT OFFICER used the restroom, and came into the station house as WITNESS OFFICER #1 had asked him to do. Id. at 76, 90.

Complainant asserts first that SUBJECT OFFICER followed him to the station house for the purpose of harassing him, and second, harassed him by issuing a baseless ticket. Either act would meet the definition of harassment, if done with the intent 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.” D.C. Code Section 5-1107(a).

Complainant’s initial claim turns on why SUBJECT OFFICER took the same path to the station house as Complainant. Based on the demeanor of the witnesses, and the evidence in the Report of Investigation and the hearing, I find credible SUBJECT OFFICER’s explanation that his intention after the first stop was not to follow Complainant, but simply to return to the station house to use the restroom. The station house is on his regular assigned beat, and his testimony that he regularly uses the restroom in the station house garage was unchallenged. H.T., pp. 52, 59. Although SUBJECT OFFICER did not request permission to return to the station house to use the restroom – nominally required by MPD General Order 201.26, Part 1, Section B, No. 14 - - I find that to be in accordance with the practice in the First District, as testified to by WITNESS OFFICER #1 and SUBJECT OFFICER. WITNESS OFFICER #2, who at the time was the Deputy Director of the MPD Communications Division, testified that officers have the discretion not to radio in to go out of service to use the bathroom. H.T., p. 100. WITNESS OFFICER #1 testified that officers under her supervision can use the station house restroom without prior permission, and that [order] is a “very old order” and that enforcement is “lax if you have to come to the bathroom.” Id. at 88-89; ROI Ex. 7, p. 2. SUBJECT OFFICER explained that neither he nor his fellow First District officers typically request permission for short bathroom breaks, and that he did not do so in this case. H.T., pp. 67, 69. WITNESS OFFICER #2 also testified that supervisors could authorize officers to come to the station house to use the restroom without radioing for permission. Id. at 102.

The fact that SUBJECT OFFICER came into the station house and overheard part of Complainant’s conversation with WITNESS OFFICER #1, also does not, on balance, evidence an intent to harass Complainant. SUBJECT OFFICER and WITNESS OFFICER #1 testified that he came into the station house at WITNESS OFFICER #1’s request. Id. at 76, 90. WITNESS OFFICER #1 indicated she had asked SUBJECT OFFICER to meet with her to talk about the incident; SUBJECT OFFICER testified he planned to see if WITNESS OFFICER #1 wanted him to file a report on the incident. Id. at 77. SUBJECT OFFICER used the restroom, then waited for his supervisor – a legitimate course of action.

With respect to the second aspect of Complainant’s harassment claim, Complainant has not carried his burden of establishing that the second Notice of Infraction was issued without a specific law enforcement purpose. SUBJECT OFFICER testified that it is his practice to stop drivers who roll through stop signs in front of him. Id. at 74. While Complainant has asserted in the context of this proceeding that he did come to a full stop at the stop sign, he failed to appear

at the hearing to contest the ticket at the time. Complainant testified that he contacted an attorney to represent him in connection with the tickets he received on July 13, 2001, *id.* at 42, but offered no testimony to explain what, if anything, was done on his behalf. Complainant is highly educated, holding a Master's in Economics, has passed the CPA examination in Virginia, and speaks several languages fluently; he describes himself as a person who "knows [his] rights." *Id.* at 35. This evidence suggests that Complainant would have been vigorous in his efforts to challenge a ticket he believed to be unjustified. There was no evidence of such efforts. Based on the record before me, SUBJECT OFFICER had a specific law enforcement purpose in issuing the second Notice of Infraction to Complainant, namely citing a traffic violation he had witnessed.

Complainant's suggestion that SUBJECT OFFICER could have taken a different route to the station is sound, but not sufficient, evidence of harassment. In hindsight, perhaps, it would have been wise, after a potentially volatile traffic stop, to have selected a route that would not have been open to misinterpretation.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Exonerated
----------------------	------------

Submitted on November 19, 2003.

Katherine L. Garrett
Complaint Examiner