

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	02-0030
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER; 1st District
<b>Allegation 1:</b>	Harassment
<b>Complaint Examiner:</b>	Maia Caplan
<b>Merits Determination Date:</b>	May 19, 2004

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 with the Office of Citizen Complaint Review (OCCR) on November 1, 2001, COMPLAINANT alleged that SUBJECT OFFICER harassed him. Specifically, that on or about October 1, 2001, SUBJECT OFFICER stopped COMPLAINANT and several of his friends in an alleyway near 5th and H Streets, N.W., accused them of concealing drugs, and ordered them to face the wall. SUBJECT OFFICER then frisked the group, permitting them to leave after no drugs were found. On or about November 1, 2001, COMPLAINANT further alleges that he was sitting on a bench on 5th Street when SUBJECT OFFICER came up to him, accused him of concealing drugs and said, “put down your cane or I’ll shoot you.” On other occasions, Complainant asserts that the Officer demanded to see his identification and “patted” him down.

**II. EVIDENTIARY HEARING**

On April 28, 2004, the Complaint Examiner conducted an evidentiary hearing on the complaint. COMPLAINANT did not appear at the hearing. The hearing proceeded as the absence was adjudged to be without good cause pursuant to OCCR Regulation Section 2118. COMPLAINANT was aware of the complaint process yet had not contacted his attorney for

approximately two years, and she could not locate him.<sup>1</sup> Neither counsel nor the OCCR could locate COMPLAINANT's alleged witnesses. Two affidavits both signed by COMPLAINANT on October 18, 2001 were admitted as Complainant's Exhibits 1 and 2. SUBJECT OFFICER appeared and testified.

### **III. FINDINGS OF FACT**

Based on a review of OCCR's Report of Investigation, the Memoranda of Interviews of COMPLAINANT and SUBJECT OFFICER, the evidentiary hearing conducted on April 28, 2003, and the entire record, the Complaint Examiner finds by a preponderance of the evidence the material facts regarding this complaint to be:

1. One evening in late September or early October, 2001, after darkness, SUBJECT OFFICER received a phone call from the Director of the Gospel Mission complaining that three Black males were in the alley behind the Mission "doing drugs."
2. The alley runs off of 6th Street, N.W., and has a small open area that cannot be viewed from the street.
3. SUBJECT OFFICER arrived inside the alley within a few minutes and found COMPLAINANT, a homeless man, and two other Black males. As he approached, SUBJECT OFFICER believed that he saw one of the men toss a drug implement.
4. SUBJECT OFFICER frisked the men for weapons then spoke with them.
5. COMPLAINANT was displeased with the process and complained to SUBJECT OFFICER. SUBJECT OFFICER gave COMPLAINANT his name and badge number.
6. Following the frisk, SUBJECT OFFICER told the men that they were free to leave and they left.
7. Over the following couple of months, SUBJECT OFFICER and COMPLAINANT had numerous encounters.

### **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

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<sup>1</sup> On April 29, 2004, OCCR Executive Director, Phillip Eure, declined to dismiss the matter despite COMPLAINANT's absence for lack of good cause.

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>2</sup>

According to COMPLAINANT, as documented in his statements to the Investigators and Affidavits, SUBJECT OFFICER harassed him by ordering him up against the wall and improperly frisking him in the Fall of 2001, and thereafter stopping him on numerous occasions with no specific law enforcement purpose. On one such alleged occasion, COMPLAINANT alleges that SUBJECT OFFICER threatened to shoot him. On other occasions, he allegedly demanded to see identification, or ordered COMPLAINANT to move on even though COMPLAINANT was lawfully going about his business. COMPLAINANT contends that SUBJECT OFFICER treated him thusly because he is hostile to homeless people and frequently harasses them. He does not provide any specific dates or times, except to say that the frisk occurred “on or about October 1.”

There is no corroboration in the record of COMPLAINANT’s allegations. In addition, SUBJECT OFFICER had no opportunity to cross-examine COMPLAINANT at hearing, and COMPLAINANT’s absence critically precluded an assessment by the Hearing Examiner of his credibility. Contradicting COMPLAINANT, SUBJECT OFFICER testified that he had a specific law enforcement purpose in stopping and frisking COMPLAINANT in the alley because minutes before he received a credible complaint of drug use there by three Black males, COMPLAINANT was one of three Black males suspiciously grouped together in the alley, SUBJECT OFFICER saw them throw away drug paraphernalia as he approached, it was dark and the alley gathering area secluded, and SUBJECT OFFICER believed that the men might have been carrying a weapon. Assuming these conditions, a frisk was permissible. MPD Special Order 304.10.C.1-2.

In addition, while SUBJECT OFFICER confirmed that he had numerous interactions with COMPLAINANT following the frisk incident, he denied at Hearing that these were “stops” within the meaning of MPD Special Order 304.10.B, and denied having ever threatened to shoot COMPLAINANT, or otherwise harassing him for identification or to move on. According to SUBJECT OFFICER, he frequently had “contact” with COMPLAINANT, sometimes asking

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<sup>2</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.

him and others “what they were up to,” and the like. SUBJECT OFFICER also testified that, in his experience, COMPLAINANT displayed the physical characteristics of a crack addict, and that there was a considerable amount of drug activity in the area during this period. Where the overall circumstances reasonably arouse the curiosity, concern, or suspicion of an officer, these contacts are permissible. MPD Special Order 304.10.A. SUBJECT OFFICER’s explanation is not discredited by the account in the ROI that SUBJECT OFFICER admitted to “stopping” COMPLAINANT on several occasions—to the contrary, in his interview SUBJECT OFFICER stated that his “interaction with [COMPLAINANT] was always limited to contacts. . . .” June 25, 2002, Memorandum of Interview. Additionally, while SUBJECT OFFICER’s statements at the Pre-Hearing Conference and Hearing as to whether following the frisk he completed a PD Form 251 in accordance with Department policy were inconsistent, failure to complete the form does not constitute proof that a violation of MPD Special Order 01-01 occurred.

The sole witness at Hearing, SUBJECT OFFICER, thus articulated an explanation of his frisk of and subsequent interactions with COMPLAINANT that is consistent with MPD 304.10. Given this, the uncorroborated nature of the complaint allegations, as well as diminished weight necessarily accorded COMPLAINANT’s out-of-court statements, the Complaint Examiner concludes that there are insufficient facts to sustain the allegation.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

<b>Allegation 1:</b>	Insufficient Facts
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Submitted on May 19, 2004.

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Maia Caplan  
Complaint Examiner