

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	02-0254
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER, 5th District
<b>Allegation 1:</b>	Insulting, Demeaning, or Humiliating Language or Conduct
<b>Complaint Examiner:</b>	Christopher Davies
<b>Merits Determination Date:</b>	December 23, 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 May 2, 2002, COMPLAINANT alleged that SUBJECT OFFICER addressed COMPLAINANT with insulting, demeaning, and humiliating language.

**II. EVIDENTIARY HEARING**

Based on my initial review of the paper record in this matter, I concluded that an evidentiary hearing was appropriate. A telephonic pre-hearing conference was therefore scheduled for November 19, 2003. COMPLAINANT did not acknowledge receiving notice of the pre-hearing conference. SUBJECT OFFICER, however, acknowledged receiving notice of the hearing and informed OCCR where to reach him for the hearing. COMPLAINANT did not participate in the hearing, and SUBJECT OFFICER was not at the location where he had told OCCR he could be reached. The complainant in a companion case against SUBJECT OFFICER (OCCR Case No. 02-0261) participated in the conference but decided at its conclusion that he would voluntarily dismiss his complaint.<sup>1</sup> The complainant in the companion case, however, is

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<sup>1</sup> The complainant in the companion case made substantially the same allegations against SUBJECT OFFICER. During the pre-hearing conference, the complainant in the companion case informed me that he was withdrawing his complaint as a matter of personal convenience, not because he was retracting his factual allegations against SUBJECT OFFICER. Indeed, he affirmed his conviction that SUBJECT OFFICER had used offensive and inappropriate language.

an acquaintance of COMPLAINANT's and agreed to contact him, inform him of the proceedings, and invite him to contact OCCR regarding his prosecution of this matter. Because neither COMPLAINANT nor SUBJECT OFFICER appeared at the pre-hearing conference or subsequently contacted OCCR, no evidentiary hearing was scheduled. My decision therefore rests solely on the written record (including exhibits) prepared by the OCCR Staff.

### **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. Early on the morning of March 30, 2002, COMPLAINANT and some companions were present at Able Towing Co.
2. SUBJECT OFFICER was also present at Able Towing at the same time.
3. COMPLAINANT and his companions exchanged words with SUBJECT OFFICER and then left the scene.

### **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: ... use of language or conduct that is insulting, demeaning, or humiliating . . . ."

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."

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."

Early in the morning of March 30, 2002, COMPLAINANT and some companions went to Able Towing to meet another acquaintance whose car had been towed at some point earlier in the night. COMPLAINANT alleges that, while they were waiting outside Able Towing, SUBJECT OFFICER addressed him and his friends with expletives, threats, and other inappropriate and demeaning language. SUBJECT OFFICER denies COMPLAINANT's allegations and claims instead that their exchange was civil. Civilian witnesses corroborate

COMPLAINANT's allegations, and MPD witnesses do not remember hearing SUBJECT OFFICER make the profanity-laced threats attributed to him by COMPLAINANT.

Based on my initial review of the record, I concluded that the merits of COMPLAINANT's complaint depended largely on assessing whether COMPLAINANT or SUBJECT OFFICER was the more credible witness. I therefore determined that an evidentiary hearing would be necessary. As summarized above, OCCR informed COMPLAINANT and SUBJECT OFFICER of my decision and scheduled a pre-hearing conference. Regrettably, neither party attended the pre-hearing conference. Nor did either party contact me or – to my knowledge – OCCR after they had missed the pre-hearing conference. I am therefore left to decide this case on the investigative record prepared by OCCR.

The investigative record in this matter supports the plausibility of either story. On the one hand, COMPLAINANT's version of events makes sense and is supported by others who were present. On the other hand, SUBJECT OFFICER's story makes equally good sense and is supported by yet others who were in the vicinity at the time.

While the investigative record in this matter is consistent with there having been reasonable cause to believe that SUBJECT OFFICER violated MPD General Order 201.26, the applicable regulations require that COMPLAINANT prove his allegations by a preponderance of the evidence. *See* D.C. Mun. Regs. tit. 6A, § 2118.5(a) (2003). The investigative record, standing alone, does not offer a sufficient basis to determine what happened at Able Towing on March 30. Furthermore, COMPLAINANT's failure to prosecute this case – and in particular my inability to assess COMPLAINANT's credibility at a live hearing – leaves me unable to determine whether his allegations are supported by the weight of the evidence.<sup>2</sup> I therefore cannot sustain COMPLAINANT's complaint. Because I have never heard from SUBJECT OFFICER, however, I am similarly unable to determine whether his version of events is credible.<sup>3</sup> I therefore cannot exonerate SUBJECT OFFICER.

In light of the disinterest evinced by both COMPLAINANT and SUBJECT OFFICER in this proceeding, I do not have sufficient facts with which to decide the merits of COMPLAINANT's complaint.

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<sup>2</sup> The allegations in the companion case that was voluntarily dismissed supported COMPLAINANT's description of the incident with SUBJECT OFFICER. Because that complainant voluntarily withdrew his complaint, however, I assign little weight to his allegations.

<sup>3</sup> Nor do I find useful the OCCR's interviews of other MPD officers who were present at the scene. Although those officers testified that they did not hear SUBJECT OFFICER use inappropriate language, the interviews do not establish whether they were close enough to the conversations between COMPLAINANT and SUBJECT OFFICER to hear what was said and whether there were other conversations between COMPLAINANT and SUBJECT OFFICER for which they were not present.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

<b>Allegation 1:</b>	Insufficient Facts
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Submitted on December 23, 2003.

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Christopher Davies  
Complaint Examiner