

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF POLICE COMPLAINTS**

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complainant No.:</b>	09-0227
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer, Badge No., District:</b>	SUBJECT OFFICER, First District
<b>Allegation 1:</b>	Harassment
<b>Complaint Examiner:</b>	Kevin D. Judd
<b>Merits Determination Date:</b>	February 9, 2012

Pursuant to D.C. Official Code § 5-1107(a), the Office of Police Complaints (OPC), formerly 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 timely filed with the Office of Police Complaints (OPC) on April 6, 2009, COMPLAINANT alleged that on March 13, 2009, SUBJECT OFFICER harassed him by searching his vehicle without his consent during a traffic stop.

**II. EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC'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. tit. 6A, § 2116.3.

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

Based on a review of OPC's Report of Investigation and the objections submitted by SUBJECT OFFICER on October 7, 2011, the Complaint Examiner finds the material facts regarding this complaint to be:

1. COMPLAINANT is a budget analyst for the U.S. Department of Homeland Security.
2. SUBJECT OFFICER was on evening tour of duty operating a marked cruiser on March 13, 2009 in the First District, PSA.
3. COMPLAINANT was stopped by SUBJECT OFFICER while he was driving his 1996 Burgundy Impala near the 800 block of North Capitol Street, N.E.
4. SUBJECT OFFICER searched COMPLAINANT'S vehicle without the COMPLAINANT'S consent during the traffic stop.
5. SUBJECT OFFICER offered not to issue COMPLAINANT a ticket for talking on his cell phone, if COMPLAINANT allowed him to search the vehicle. COMPLAINANT refused the offer. SUBJECT OFFICER reiterated his offer after he took COMPLAINANT'S license and registration to his marked vehicle for ten minutes. Again, COMPLAINANT refused the offer. At that point, SUBJECT OFFICER instructed COMPLAINANT to step out of his car, which COMPLAINANT did. After SUBJECT OFFICER told the COMPLAINANT he had the right to search his vehicle, SUBJECT OFFICER proceeded to search the vehicle's interior, including the glove compartment, as well as COMPLAINANT'S bag, which was located in the back seat on the driver's side of the vehicle.
6. COMPLAINANT called his wife on his cellular phone when SUBJECT OFFICER walked to his cruiser with the COMPLAINANT'S license and registration. COMPLAINANT'S wife heard the conversation of SUBJECT OFFICER and her husband, and specifically heard SUBJECT OFFICER say, "Are you going to let me search the car or I'm going to give you a ticket." She heard her husband respond in the negative.
7. SUBJECT OFFICER issued the COMPLAINANT a ticket for distracted driving. This ticket was not turned into the Office of Service Integrity, District of Columbia Department of Motor Vehicles.

#### **IV. DISCUSSION**

Pursuant to D.C. Official Code § 5-1107(a), “The Office [of Police Complaints] 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]; or (6) failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public.”

#### **Harassment**

Harassment is defined in MPD General Order 120.25, Part III, Section B, No. 2 as “words, conduct, gestures, or other actions directed at a person that are purposefully, knowingly, or recklessly in violation of the law, or internal guidelines of the MPD, so as to: (a) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (b) deny or impede the person in the exercise or enjoyment of any right, privilege, power or immunity.”

In determining whether conduct constitutes harassment, “[OPC] will look to the totality of the circumstances surrounding the alleged incident, including, where appropriate, whether the officer adhered to applicable orders, policies, procedures, practices, and training of the MPD ... the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating.” D.C. Mun. Regs. tit. 6A, § 2199.1.

COMPLAINANT alleged that SUBJECT OFFICER harassed him when SUBJECT OFFICER searched his vehicle without his consent. In this instance, both interviews and statements by COMPLAINANT and his wife contained in the Report of Investigation (ROI) provide sufficient evidence to prove that SUBJECT OFFICER harassed COMPLAINANT when SUBJECT OFFICER searched COMPLAINANT’S vehicle without COMPLAINANT’S consent during a traffic stop on March 13, 2009. It must be noted that in SUBJECT OFFICER’S interview and statement, he did not specifically deny COMPLAINANT’S allegation, but rather generally stated that he “do[es] not recall conducting a traffic stop at the 800 or 900 block of North Capitol Street NE.” Thus, there is no evidence to contradict COMPLAINANT and his wife’s account of the facts.

Based on the facts, it can only be concluded that the intentions of SUBJECT OFFICER were to harass COMPLAINANT. In this instance, there are no facts offered by SUBJECT OFFICER to suggest that there was probable cause, reasonable suspicion, or consent to search COMPLAINANT’S vehicle. *See, e.g., Michigan v. Long*, 463 U.S. 1032 (1983); *Schneckloth v.*

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*Bustamonte*, 412 U.S. 218 (1973); *Carroll v. U.S.*, 267 U.S. 132 (1925) (discussing exceptions to search warrant requirement). This was a simple traffic stop where COMPLAINANT was allegedly talking on his cellular phone while operating his vehicle. COMPLAINANT had the legal right to refuse the search of his vehicle by SUBJECT OFFICER. Here, COMPLAINANT twice refused SUBJECT OFFICER'S offer to search the vehicle in exchange for not writing up a ticket. Despite the COMPLAINANT'S objection to the search, SUBJECT OFFICER ordered COMPLAINANT out of his car and instructed him to sit on the curb while he searched the vehicle's interior, including the glove compartment and COMPLAINANT'S closed bag, which was located in the back seat on the driver's side of the vehicle. Ultimately, SUBJECT OFFICER allowed COMPLAINANT to get back into his car and to leave, but issued COMPLAINANT a citation for violating the District of Columbia's law against distracted driving. This citation was not turned into the Office of Service Integrity, District of Columbia Department of Motor Vehicles.

In this instance and any other instance, the bartering involved in not issuing a ticket to obtain permission to search a citizen's vehicle is shocking, uncalled for, abusive of authority and inconsistent with MPD's policy against harassment. SUBJECT OFFICER should not have engaged in this type of conduct, should not have detained COMPLAINANT, and should have allowed COMPLAINANT to go about his lawful business.

Based on the facts contained in the OPC Report of Investigation regarding SUBJECT OFFICER'S search of COMPLAINANT'S vehicle, COMPLAINANT'S allegation that SUBJECT OFFICER harassed him in violation of D.C. Code § 5-1107(a) and MPD General Order 120.25 will be sustained.

## V. SUMMARY OF MERITS DETERMINATION

[SUBJECT OFFICER'S NAME]

<b>Allegation 1: Harassment</b>	<b>Sustained</b>
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Submitted February 9, 2012

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Kevin D. Judd  
Complaint Examiner