

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	03-0313
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER, 4 <sup>th</sup> District
<b>Allegation 1:</b>	Harassment
<b>Allegation 2:</b>	Insulting, Demeaning, or Humiliating Language
<b>Complaint Examiner:</b>	Laurie S. Kohn
<b>Merits Determination Date:</b>	5 May 2006

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**

The complainant, COMPLAINANT, filed this complaint with the Office of Police Complaints (OPC) on April 21, 2003. COMPLAINANT alleged that on March 31, 2003, the subject officer, Metropolitan Police Department (MPD) SUBJECT OFFICER, Fourth District,<sup>1</sup> harassed her and used language or engaged in conduct toward her that was insulting, demeaning or humiliating. Complainant, who was the resident manager of an apartment building, alleged that the Subject Officer used language and conduct to force her to permit a non-leaseholder to enter the apartment of a tenant who was not home.<sup>2</sup>

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<sup>1</sup> The complainant alleged that the subject officer told her his name was either WITNESS OFFICER #1 or WITNESS OFFICER #1. Through its investigation, OPC determined that no officer named WITNESS OFFICER #1 responded to the scene and that the subject officer is SUBJECT OFFICER. Identification of the subject officer is discussed in footnote 2.

<sup>2</sup> The complainant stated on her complaint form that six officers responded to the scene and that all were verbally abusive toward her. However, during subsequent interviews by OPC, COMPLAINANT alleged that only two of the officers, SUBJECT OFFICER and his partner, WITNESS OFFICER #2, were verbally abusive and that SUBJECT OFFICER was the only one who tried to force her to let a non-leaseholder enter one of the apartments. WITNESS OFFICER #2 is not included as a subject officer because he is no longer employed by MPD. OPC determined based

Specifically, COMPLAINANT alleged that on the evening of March 31, 2003, she was on duty as the resident manager of the LOCATION #1. At approximately 7:30 p.m., she was approached by WITNESS #1, a woman who had been illegally subletting an apartment from leaseholder WITNESS #2 and who had previously been evicted by WITNESS #2. COMPLAINANT alleged that WITNESS #1 requested that she let WITNESS #1 into WITNESS #2's apartment. COMPLAINANT declined to let WITNESS #1 into the apartment because WITNESS #1 was not a leaseholder, WITNESS #2 was not home, and WITNESS #2 had not given consent for WITNESS #1 to enter. WITNESS #1 then became extremely angry and created a loud disturbance, prompting COMPLAINANT to call the police.

COMPLAINANT reported that several officers responded to the scene, but an officer who was white, muscular, and bald and who was later identified as SUBJECT OFFICER, assumed the lead role. SUBJECT OFFICER was accompanied by another officer who witnesses reported was also white, but not bald. This officer was later identified as WITNESS OFFICER #2. Rather than order WITNESS #1 to leave, SUBJECT OFFICER sided with WITNESS #1 and allegedly proceeded to harshly order COMPLAINANT, under threat of arrest, to let WITNESS #1 into WITNESS #2's apartment. The subject officer allegedly yelled at COMPLAINANT, made disrespectful comments to her, directed her not to speak, and repeatedly threatened to arrest her if she did not let WITNESS #1 enter WITNESS #2's apartment. SUBJECT OFFICER eventually left after speaking on the phone with WITNESS #3, whom he also allegedly directed not to speak and threatened to arrest. COMPLAINANT alleged that SUBJECT OFFICER behaved so aggressively and offensively toward her throughout the incident that she felt intimidated and humiliated by the subject officer's conduct.

## **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., title 6A, § 2116.3.

## **III. FINDINGS OF FACT**

Based on a review of OPC's Report of Investigation,<sup>3</sup> the Complaint Examiner finds the material facts regarding this complaint to be:

1. On or about March 31, 2003, WITNESS #2, who was a leaseholder in the LOCATION #1, barred WITNESS #1, who had been staying with her, from her apartment. At no time

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on its investigation, discussed herein, that the other officers who responded to the scene are not subjects of the complaint.

<sup>3</sup> Despite an invitation to do so, SUBJECT OFFICER failed to submit any objections for consideration.

did WITNESS #2 give the management of the LOCATION #1 permission to afford WITNESS #1 access to her apartment. At no time during the events at issue on March 31, 2003 was WITNESS #2 present.

2. At approximately 7:30 on March 31, 2003, WITNESS #1 sought out COMPLAINANT, the Resident Manager of the LOCATION #1 in the main office. COMPLAINANT was with her son, WITNESS #4, in the office when WITNESS #1 arrived.
3. WITNESS #1 insisted on gaining access to WITNESS #2's apartment. When COMPLAINANT refused, WITNESS #2 became agitated and refused to leave until she was able to enter the apartment. At this point, COMPLAINANT called 911. Shortly thereafter, WITNESS #2 called 911 for assistance as well.
4. Three teams of officers responded to the LOCATION #1: (1) SUBJECT OFFICER and WITNESS OFFICER #2; (2) WITNESS OFFICER #3 and WITNESS OFFICER #4; and (3) WITNESS OFFICER #5 and WITNESS OFFICER #6. SUBJECT OFFICER and WITNESS OFFICER #2, remained on the scene for at least 30 minutes. WITNESS OFFICER #3 and WITNESS OFFICER #4, remained on the scene for only 5 minutes. The third team, WITNESS OFFICER #5 and WITNESS OFFICER #6, were on the scene for approximately ten minutes before departing.
5. SUBJECT OFFICER is a Caucasian male who is 5'9", approximately 205 lbs., and bald. WITNESS OFFICER #2, who is no longer with MPD, is a cubby Caucasian male with a full head of hair.
6. Upon arriving on the scene, SUBJECT OFFICER first spoke with WITNESS #1. SUBJECT OFFICER felt that WITNESS #1 should be permitted to enter the apartment to retrieve her belongings. He felt sympathy for WITNESS #1 and wanted to help her. The officers then spoke with COMPLAINANT and urged her to permit WITNESS #1 to enter the apartment. On several occasions, SUBJECT OFFICER told COMPLAINANT that she "was not the law," and directed her not to speak. SUBJECT OFFICER raised his voice and spoke in an intimidating tone. SUBJECT OFFICER told COMPLAINANT that he would arrest her if she did not permit WITNESS #1 to enter the apartment. COMPLAINANT was visibly upset and crying.
7. During this incident, COMPLAINANT called WITNESS #5, who is the property manager for the LOCATION #1. WITNESS #5 supported COMPLAINANT's position that she could not allow a non-leaseholder into an apartment without the resident's permission. WITNESS #5 heard COMPLAINANT crying and heard loud angry male voices over the phone. COMPLAINANT told WITNESS #5 that the officers were threatening to arrest her. SUBJECT OFFICER refused to speak to WITNESS #5 on the phone but she could hear him speaking in a threatening tone. WITNESS #5 called WITNESS #3, Vice President of Residential Properties at PROPERTY MANAGEMENT COMPANY, to intervene.

8. WITNESS #3 called COMPLAINANT at the LOCATION #1 during this incident. WITNESS #3 asked to speak to SUBJECT OFFICER but he initially refused. SUBJECT OFFICER said that he would lock WITNESS #3 up as well if they did not permit WITNESS #1 to enter the apartment. During this conversation, SUBJECT OFFICER told COMPLAINANT to give him the keys or face incarceration. Finally, SUBJECT OFFICER agreed to speak with WITNESS #3. When WITNESS #3 again reiterated that WITNESS #1 could not be let into the apartment, WITNESS #3 told her to be quiet and that he would recommend that WITNESS #1 sue PROPERTY MANAGEMENT COMPANY.
9. SUBJECT OFFICER and WITNESS OFFICER #2 left soon thereafter.
10. COMPLAINANT was traumatized and was fearful of the police in the aftermath of this incident.

#### **IV. DISCUSSION**

##### Allegation 1: Harassment

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].”

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.”

The regulations governing OPC define harassment as “[w]ords, 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 (1) subject the person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien, or other infringement of personal or property rights; or (2) 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., title 6A, § 2199.1

In this case, when SUBJECT OFFICER repeatedly threatened to arrest COMPLAINANT and WITNESS #3 in the absence of a specific law enforcement purpose, he violated MPD Special Order 01-01, Section III, Part G, and D.C. Municipal Regulations, title 6A, § 2199.1. The allegations that SUBJECT OFFICER threatened to arrest COMPLAINANT and WITNESS #3 are supported by ample credible evidence. Both COMPLAINANT and WITNESS #3 alleged that they heard SUBJECT OFFICER state that he would lock COMPLAINANT up if she did not give him the keys. WITNESS #3 also reported that SUBJECT OFFICER threatened to lock WITNESS #3 up for their failure to grant access to WITNESS #1. Although WITNESS #5 did not hear SUBJECT OFFICER make these threats over the phone, she reported that COMPLAINANT told her about the threats when they spoke on the phone during the incident. SUBJECT OFFICER's flat denial of making any threats to arrest the civilians is simply not credible in the face of highly reliable evidence to the contrary from multiple witnesses.<sup>4</sup>

SUBJECT OFFICER had no legal justification for threatening to arrest either civilian in this case. SUBJECT OFFICER's role at the scene was to mediate between COMPLAINANT, the resident manager of an apartment building, and WITNESS #1, who had lived in the building, but had no legal right to enter the building since she was a non-leaseholder. Even by SUBJECT OFFICER's own account, he suggested that he understood that WITNESS #1 was not on the lease for the apartment to which she wanted to gain access. Both COMPLAINANT and WITNESS #3 informed him unambiguously of this fact. Instead of supporting COMPLAINANT in enforcing D.C. Code § 22-3302, Unlawful Entry on Property, SUBJECT OFFICER, by his account as well as by the account of the civilian witnesses, sought to convince COMPLAINANT to grant WITNESS #1 access to the apartment. Under D.C. Code, WITNESS #1 was not permitted to enter the dwelling because her entry was "against the will of the lawful occupant." D.C. Code § 22-3302 (2005). Further, despite SUBJECT OFFICER's statement that COMPLAINANT was unpleasant to deal with, the facts illustrate that COMPLAINANT's behavior did not give SUBJECT OFFICER any reason to threaten arrest. In fact, SUBJECT OFFICER himself does not suggest COMPLAINANT was acting in a way that justified arrest. Therefore, not only did SUBJECT OFFICER have no legal purpose for threatening to arrest COMPLAINANT for her failure to grant WITNESS #1 access, but he threatened to arrest COMPLAINANT *unless* she assisted WITNESS #1 in illegal conduct.

Based on these well-supported allegations and SUBJECT OFFICER's own statements, this Examiner finds that SUBJECT OFFICER's threats to arrest COMPLAINANT and WITNESS #3 amounted to harassment in violation of the MPD Order and the D.C. Municipal Regulations.

#### Allegation 2: Language or Conduct that is Insulting, Humiliating, or Demeaning

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<sup>4</sup> It should be noted that SUBJECT OFFICER refused to sign his statement to OPC. Although he indicated that he had been directed to refrain from signing by authorities at MPD, his failure to certify the veracity of his statement under penalty of perjury affects the weight that his statement is given.

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.”

In this case, SUBJECT OFFICER’s shouting and his repeated refusal to permit COMPLAINANT and WITNESS #3 to speak amounted to Language or Conduct that is Demeaning, Insulting or Humiliating in violation of MPD Special Order 01-101, Part III, Section H and General Order 201.26, Part I, Section C. Although SUBJECT OFFICER maintained that he was not rude or disrespectful during the incident, the investigation revealed otherwise. Two witnesses and the complainant allege that SUBJECT OFFICER’s voice was raised during this incident. COMPLAINANT reported that SUBJECT OFFICER screamed at her. WITNESS #5 reported that she could hear an officer who was very loud and shouting. In fact, she reported that it sounded as if the officer was “having a tantrum.”<sup>5</sup> Finally, WITNESS #3 reported that WITNESS #5 had told her that she had heard yelling at the scene. WITNESS #5’s report is reliable since it was repeated to WITNESS #3 as soon as she was able to dial the phone and inform WITNESS #3 about the incident.

Furthermore, SUBJECT OFFICER’s repeated directives to COMPLAINANT and WITNESS #3 that they should be quiet were demeaning and lacking in courtesy, especially given the circumstances of this incident where the citizens were trying to uphold the law and protect themselves from liability. COMPLAINANT’s and WITNESS #3’s credible reports support the allegations that SUBJECT OFFICER refused to allow them to speak and variously told them to “be quiet” and that he didn’t want to hear anything they had to say. Even crediting SUBJECT OFFICER’s statement that COMPLAINANT was upset and not pleasant to deal with, SUBJECT OFFICER had no license to use discourteous and offensive comments in this context. Therefore, SUBJECT OFFICER’s shouting and directives that COMPLAINANT and WITNESS #3 be quiet violated MPD Special and General Orders.

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<sup>5</sup> Although WITNESS #5 could not identify the officers, COMPLAINANT’s and WITNESS #3’s statements strongly suggest that the officer who was shouting was SUBJECT OFFICER. Further, SUBJECT OFFICER does not allege that any of his colleagues raised their voices.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

<b>Allegation 1: Harassment</b>	Sustained
<b>Allegation 2:</b> Language or Conduct that is Demeaning, Insulting or Humiliating.	Sustained

Submitted on May 5, 2006.

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Laurie S. Kohn  
Complaint Examiner