

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	03-0525
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER, Second District
<b>Allegation 1:</b>	Harassment
<b>Allegation 2:</b>	Insulting, Demeaning, or Humiliating Language or Conduct
<b>Complaint Examiner:</b>	Maia Caplan
<b>Merits Determination Date:</b>	May 4, 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**

COMPLAINANT alleged that SUBJECT OFFICER (1) harassed him and (2) engaged in conduct or language that was insulting, demeaning or humiliating to him. COMPLAINANT claimed that on August 11, 2003, he honked his car horn at SUBJECT OFFICER because SUBJECT OFFICER was backing up toward his car. When SUBJECT OFFICER did not stop, he honked a second time because he feared getting hit and wanted to ensure that the Officer was aware of him. COMPLAINANT further alleged that SUBJECT OFFICER then stopped, exited the squad car and approached his car, spoke to him in a discourteous manner, and unjustly ticketed him for making excessive noise. Six witnesses corroborate COMPLAINANT's assertions.

**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 and the objections submitted by SUBJECT OFFICER on March 15, 2006, the Complaint Examiner finds the material facts regarding this complaint to be:

1. COMPLAINANT turned right into the service lane abutting the Prime Rib restaurant at 2020 K Street, N.W. on the evening of August 11, 2003 to attend a birthday dinner for his 84-year-old father-in-law. His father-in-law, mother-in-law, wife, and adult son, were passengers in the car.
2. A construction fence bordered the neighboring establishment and slightly protruded so as to impede a clear view of traffic in the service lane from K Street, and conversely, of incoming vehicles for those already in the lane.
3. COMPLAINANT turned into the service lane, he saw SUBJECT OFFICER's squad car for the first time. SUBJECT OFFICER's car started backing up and moving directly toward COMPLAINANT's car.
4. COMPLAINANT honked his horn to avert an accident.
5. SUBJECT OFFICER continued to proceed backward. COMPLAINANT honked again, this time holding the horn for approximately 2-4 seconds until SUBJECT OFFICER stopped.
6. SUBJECT OFFICER then exited his car and approached the COMPLAINANT's vehicle and issued a \$25.00 ticket to COMPLAINANT for unnecessary or excessive noise in violation of 18 DCMR § 730.3.
7. SUBJECT OFFICER's language and demeanor were angry and discourteous in communicating with COMPLAINANT. He did not use profane language.
8. SUBJECT OFFICER refused to entertain COMPLAINANT's explanation for his honks.
9. 84-year-old WITNESS #1 exited COMPLAINANT's car in an additional attempt to discuss the ticket with SUBJECT OFFICER. SUBJECT OFFICER directed WITNESS #1 to get back into the car immediately.
10. WITNESS #2, a pedestrian, witnessed the entire incident and approached SUBJECT OFFICER to express his concern over the ticket. He was instructed by WITNESS OFFICER #1, also present, to move away.
11. WITNESS #3, a valet for the Prime Rib restaurant, witnessed the incident. He could not hear the discussions.

#### **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].”

##### **A. Harassment**

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.”

Harassment is further defined in OPC’s regulations 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 ... 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

The crux of COMPLAINANT’s complaint is that SUBJECT OFFICER lacked a valid law enforcement basis for ticketing him, and by doing so anyway, interfered with his ability to go about his lawful business normally—that is proceeding without unwarranted and upsetting police interference to a dinner celebrating his 84-year-old father-in-law.

The District of Columbia’s Vehicle and Traffic regulations provide that “[t]he driver of a motor vehicle shall, when reasonably necessary to ensure safe operation, give audible warning with his or her horn, but shall not otherwise use the horn when upon a highway.” D.C. Mun. Regs. Titl 18 § 730.3. Inasmuch as COMPLAINANT sounded his horn to avert an accident, or sounded it reasonably believing that he needed to do so to avert an accident, his conduct was fully permissible. COMPLAINANT stated that he honked in order to prevent SUBJECT OFFICER from backing into him. Six other witnesses have corroborated this in statements to the OPC, including two non-family members, WITNESS #2 and WITNESS #3. WITNESS #2 was

sufficiently upset that he attempted contemporaneously to share his observations in favor of COMPLAINANT with the Officer but was rebuffed.

In his favor, SUBJECT OFFICER contends that COMPLAINANT was not in any danger because he was not backing up. All of the other witnesses contradict this, with the exception of WITNESS OFFICER #1 who could not recall. SUBJECT OFFICER's and WITNESS OFFICER #1's shared contention that COMPLAINANT honked because he was "impatient" is likewise contradicted by the two disinterested witnesses, as well as the Complainant and the other COMPLAINANT witnesses.

The Officers' account of the incident is thus insufficient to rebut the weight of the evidence that SUBJECT OFFICER ticketed COMPLAINANT without legal justification and with the effect of bothering, annoying and interfering with the Complainant's ability to go about his lawful business normally. MPD Special Order 01-01. SUBJECT OFFICER's actions also subjected the Complainant to mistreatment and impeded him in the exercise or enjoyment of the right to go to dinner peaceably with his family and without the disturbance of an undeserved citation. D.C. Mun. Regs., Title 6A, § 2199.1. As such, the Complaint Examiner finds that SUBJECT OFFICER harassed COMPLAINANT in violation of MPD Special Order 01-01.

#### **B. Language or Conduct**

MPD General Order 201.26, Part I, Section C, Nos. 1 and 3 provides that "[a]ll 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. . . . Members shall refrain from harsh, violent, coarse, profane, sarcastic or insolent language. Members shall not use terms or resort to name calling which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person."

The cornerstone of courteous and orderly dealings between police officers and the public is acting when legally justified and not out of embarrassment, spite, or some other inappropriate motive. In this instance, the weight of the evidence evinces that SUBJECT OFFICER ticketed COMPLAINANT for inappropriate motives. Moreover, the Complainant as well as other passengers in his vehicle asserted that SUBJECT OFFICER spoke in an angry and imprudent manner to COMPLAINANT. These are credible allegations considering the totality of the circumstances. Whether or not SUBJECT OFFICER appropriately resisted discussing the circumstances of the ticket with Complainant does not alter the conclusion that SUBJECT OFFICER otherwise transgressed governing standards.

The Complaint Examiner therefore finds that SUBJECT OFFICER used language or engaged in conduct toward the Complainant that was insulting, demeaning, and humiliating, in violation of MPD General Order 201. 26.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

<b>Allegation 1:</b>	Sustained
<b>Allegation 2:</b>	Sustained

Submitted on May 4, 2006.

---

MAIA CAPLAN  
Complaint Examiner