

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	04-0268
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, 3 rd District
Allegation 1:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Amy E. Wind
Merits Determination Date:	September 4, 2007

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, alleged that on May 11, 2004, Metropolitan Police Department (MPD) SUBJECT OFFICER used language and engaged in conduct toward him that was insulting, demeaning, or humiliating. The events at issue occurred at the Third District station when COMPLAINANT attempted to retrieve property that had been confiscated as a result of his arrest earlier that day. COMPLAINANT asserted that SUBJECT OFFICER cursed at him when he asked to see the contents of the bag containing the personal property before signing the station's property book acknowledging receipt. Ex. 3.¹ He further asserted that when he objected that certain property was not in the bag, SUBJECT OFFICER told him "it was not [the officer's] problem" and that he could forget about receiving his property. Ex. 3, p. 4. COMPLAINANT further alleged that when he asked another MPD employee who was at the counter if he could use the phone, SUBJECT OFFICER interrupted and said, "No, we ain't got no damn phone" and "shut up or I'll lock your ass back up." Ex. 3, pp. 4-5.

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

¹ Citations refer to the exhibits contained in the Report of Investigation.

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,² the Complaint Examiner finds the material facts regarding this complaint to be:

1. On May 11, 2004, COMPLAINANT was arrested for failing to obey an officer and transported to the Third District police station for processing. Ex. 3, pp. 1, 4.
2. Immediately upon his release, COMPLAINANT re-entered the Third District police station and went to the counter to retrieve property that had been confiscated as a result of his arrest. Ex. 3, p. 4. He was agitated, but not yelling or cursing or using insulting language. Ex. 4, p. 1.
3. COMPLAINANT gave SUBJECT OFFICER, who was working at the station's counter, his property receipt and asked the officer to return the property that had been taken upon his arrest. Ex. 4, p. 1. SUBJECT OFFICER brought to the counter a property bag and property book, which he asked COMPLAINANT to sign to acknowledge receipt of the property. Exs. 3, p. 4; 4, p. 1.
4. COMPLAINANT asked to see the contents of the bag before acknowledging receipt of his property. However, SUBJECT OFFICER insisted that he could deliver the property only if COMPLAINANT signed the book. Exs. 3, p. 4; 4, p. 1. They argued about this, with COMPLAINANT asking what if something were missing and SUBJECT OFFICER responding, "that is not my problem." Ex. 4, p. 2. SUBJECT OFFICER finally said, "forget it," closed the property book and took away the property bag and book. Exs. 3, p. 4; 4, p. 2.
5. After a delay, another employee working the counter, TECHNICIAN #1, was instructed by a supervisor at the station, WITNESS OFFICER #2, to retrieve the re-sealable property bag and show the contents to COMPLAINANT. Ex. 4, p. 2. COMPLAINANT noted that in fact certain items (keys, credit cards) were missing, but TECHNICIAN #1 explained that he would have to sign for the property and file a complaint about the missing items. Ex. 4, p. 3. COMPLAINANT signed the property book, received his property, and sat down in the station lobby to wait for instructions on filing a complaint. Ex. 4, p. 3.

² Although offered an opportunity to respond to the Report of Investigation, SUBJECT OFFICER did not submit any objections or comments.

6. COMPLAINANT asked TECHNICIAN #1 if he could use a phone to advise his family of his whereabouts. SUBJECT OFFICER interjected, “we ain’t got no damn phone.” Exs. 3, p. 5; 4, p. 3. When COMPLAINANT replied that he was talking to TECHNICIAN #1, SUBJECT OFFICER replied, “shut up or I’ll lock your ass back up.” Exs. 3, p. 5; 4, p. 2.
7. COMPLAINANT waited in the lobby for at least another hour until WITNESS OFFICER #2 returned and advised him how to file a complaint about his arrest and the missing property. Ex. 4, p. 3.

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].”

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.”

A. Insulting, Humiliating or Demeaning Language

MPD General Order 201.26, Part I, Section C (1) 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.” It also provides that “[m]embers shall refrain from harsh, violent, coarse, profane, sarcastic or insolent language.” MPD General Order 201.26, Part I, Section C (3).

COMPLAINANT complained that SUBJECT OFFICER used profane and disrespectful language in dealing with him at the Third District station counter. Ex. 3, pp. 4-5. SUBJECT OFFICER denied this, stating that his demeanor had been completely professional and that it had

been COMPLAINANT who was “yelling and cursing.” Ex. 6, p. 1.³ COMPLAINANT’s allegations that SUBJECT OFFICER said that “we ain’t got no damn phone” and “shut up or I’ll lock your ass up” were corroborated by an independent witness, TECHNICIAN #1. Ex. 4, p. 1. These expressions were coarse and profane, as well as gratuitous in the situation, as TECHNICIAN #1 confirmed that it was SUBJECT OFFICER and not COMPLAINANT who was yelling. Ex. 4, p. 1. Further, the language was such as to humiliate COMPLAINANT, who had no choice but to accept the language or risk being “locked up” again.

The evidence supports the conclusion that SUBJECT OFFICER spoke to COMPLAINANT with impermissibly insulting, demeaning or humiliating language.

B. Insulting, Humiliating or Demeaning Conduct

COMPLAINANT complained that SUBJECT OFFICER refused to let him review his property prior to signing for it in the property book, insisting that he must sign the book and finally saying “forget it” and taking both the property and book away. Ex. 3, p. 4. COMPLAINANT also asserted that SUBJECT OFFICER told him there was “no damn phone.”

MPD General Order 201.26, Part I, Section C (1) requires that “[m]embers shall fulfill proper requests for information or assistance, or they shall aid the person in otherwise obtaining the requested information or assistance.” SUBJECT OFFICER refused to let COMPLAINANT review the contents of the bag before signing the property book, something TECHNICIAN #1 did later as directed by the supervisor. Additionally, he later offered an explanation as to why some of COMPLAINANT’s property was not in the property bag (more valuable items were kept by another officer, who was not present at that moment), but there is no indication that he attempted to explain this to COMPLAINANT. Instead, he said “forget it.” Exs. 3, 4.

Further, when COMPLAINANT sought permission to use a phone, he interrupted with “there ain’t no damn phone.” TECHNICIAN #1 confirmed that although there was no station phone for public use, there in fact was a pay phone to which members of the public were routinely directed. Ex. 4, p. 2.

Finally, COMPLAINANT asserted that he was kept waiting for hours at the station while attempting to retrieve his property. Ex. 3, pp. 5. However, this appears to be attributable to the

³ Consideration of SUBJECT OFFICER’s version of events is problematic, since he allowed himself to be interviewed by OPC but refused to sign or even review for accuracy the typewritten account of his statement. See Ex. 7 (Memorandum of Investigative Activity). Further, SUBJECT OFFICER offered no objections to the Report of Investigation, although provided an opportunity to do so. Although SUBJECT OFFICER’s refusal to review and sign his statement could warrant an adverse inference as to the credibility of his account (as summarized by the investigator), this is unnecessary in this complaint because of the existence of an independent third-party witness (TECHNICIAN #1) as to the relevant events. This Complaint Examiner, however, expresses concern as to (a) whether SUBJECT OFFICER met his obligation to cooperate in the investigation, and (b) why his FOP representative, who was present at the interview (see Ex. 7) was complicit in this lack of cooperation.

fact that WITNESS OFFICER #2 was busy and initially unaware that COMPLAINANT was still waiting for him. Ex. 4, p. 3. Thus, the time spent waiting was not directly attributable to SUBJECT OFFICER's conduct.

Nonetheless, SUBJECT OFFICER violated the requirement of MPD General Order 201.26, Part I, Section C (1) that members of the department fulfill legitimate requests of members of the public, and he did it in such a way that demeaned and humiliated COMPLAINANT. Thus, the evidence also supports the conclusion that SUBJECT OFFICER engaged in conduct that was insulting, humiliating or demeaning.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Insulting, Demeaning, or Humiliating Language or Conduct	Sustained
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Submitted on September 4, 2007.

Amy E. Wind

Complaint Examiner