

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	04-0379
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Third District
Allegation 1:	Harassment
Allegation 2:	Discriminatory Treatment
Complaint Examiner:	Turna R. Lewis
Merits Determination Date:	September 13, 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

COMPLAINANT alleged that on September 4, 2004, Metropolitan Police Department SUBJECT OFFICER, Third District, harassed him and discriminated against him on the basis of his place of residence. The Complainant alleged that he was in Dunbar Park when SUBJECT OFFICER and WITNESS OFFICER #1 entered the park and directed homeless individuals to leave. COMPLAINANT alleges SUBJECT OFFICER approached him and ordered him to leave the park. When Complainant refused, he alleges that SUBJECT OFFICER handcuffed him and arrested him without cause. Complainant alleges SUBJECT OFFICER's actions constituted harassment because there was no legal justification for the arrest and discrimination because of his status as a homeless person. COMPLAINANT further alleged that he suffered injuries when SUBJECT OFFICER handcuffed him.

II. EVIDENTIARY HEARING

The Complaint Examiner initially determined that an evidentiary hearing was required. The Office of Police Complaints attempted to contact the Complainant for a pre-hearing conference, but was unsuccessful in locating Complainant. Thus, a pre-hearing conference was not held. Based on a subsequent review of OPC's Report of Investigation, Complaint Examiner later determined that the Report of Investigation presented no genuine issues of material fact in

dispute, therefore a hearing was not required. *See* D.C. Municipal Regulations (DCMR) Title 6A, § 2116.3. The Report of Investigation, attached exhibits, and SUBJECT OFFICER' written objections to the ROI are entered into the record as the evidence of record.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation (ROI) and the objections submitted by SUBJECT OFFICER on July 6, 2007, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant filed a complaint with the Office of Police Complaints on September 8, 2004. (ROI, Ex. 1.)
2. Complaint alleged that on September 4, 2004, SUBJECT OFFICER, Third District, harassed him and discriminated against him on the basis of his homelessness when he ordered him to leave Dunbar Park, located at the intersection of New Jersey and O Streets, NW, and then arrested him for refusing to leave the park.
3. On September 4, 2004, Covenant Evangelist Center, a church located across the street from Dunbar Park, hosted its annual church festival. The Center provided clothing and food to homeless persons and homeless persons were in the areas of the Center and Dunbar Park on this day.
4. On September 4, 2004, at approximately 12:30 p.m., Complainant was in Dunbar Park when SUBJECT OFFICER and WITNESS OFFICER #1 approached him and ordered that he and other individuals leave the park.
5. Complainant refused to leave the park, stating that he was not doing anything illegal. Complainant requested a reason for SUBJECT OFFICER's order to leave the park. SUBJECT OFFICER arrested Complainant when he refused to leave the park. (ROI, Ex. 17.)
6. Complainant was handcuffed and arrested for disorderly conduct for which he elected to forfeit collateral of \$25.00. No subsequent trial was held. (ROI, Ex. 3.)
7. Complainant was transported via transport van to 3rd District.
8. A radio run tape, dated September 4, 2004, made at approximately 12:25 p.m., between SUBJECT OFFICER and the dispatcher, recorded SUBJECT OFFICER stating to the dispatcher that he wanted to be held at the park because there was "some disorderliness." (ROI, Ex. 19.)
9. No other individuals were arrested at the park by SUBJECT OFFICER except for Complainant.

10. As of August 3, 2005, Complainant had no criminal record except for his arrest by SUBJECT OFFICER on September 4, 2004. (ROI, Ex.17, 18.)
11. Residents who live near the park and the District of Columbia Parks and Recreation organize joint clean-up days of the park. On those occasions, those persons in the park, including the homeless, are asked to exit the park pending completion of the cleaning.

IV. DISCUSSION

A. 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

The first issue is whether SUBJECT OFFICER had a legitimate, police-related reason for initiating contact with Complainant. MPD General Order 304-10, Part I. A, “Contacts,” prescribes the circumstances under which an officer may initiate a contact, stop, or frisk of a citizen. “While an officer may initiate a contact for any legitimate, police-related purpose, contacts shall not be conducted in a hostile or aggressive manner, nor as a means of harassing any citizen or attempting to coerce a citizen to leave an area. Contacts shall not be initiated merely because a person is “hanging around,” “loitering,” or “standing on the corner,” unless the

overall circumstances are such as would reasonably arouse the curiosity, concern, or suspicion of the officer.” (MPD General Order, 304-10, Part I.A. Contacts.)

SUBJECT OFFICER admits that he directed persons he describes as appearing to be homeless, including Complainant, to exit Dunbar Park, a direct violation of MPD 304-10. (ROI, ex. 7.) His allegation that he entered the park because of suspected drug activity is not supported by the evidence of record. SUBJECT OFFICER alleged that that he responded to Dunbar Park in response to a radio run call or a call from WITNESS OFFICER #2 about a complaint of drugs. (ROI, Ex. 8.) The radio run call that SUBJECT OFFICER states initiated his responding to Dunbar Park was not found during the OPC investigation, nor did SUBJECT OFFICER produce the transcript. Nothing in the evidence of record corroborates SUBJECT OFFICER’s assertion of drug activity in Dunbar Park. WITNESS OFFICER’s statement provided during his OPC interview does not corroborate SUBJECT OFFICER statement that WITNESS OFFICER #2 directed him to report to Dunbar Park to investigate drug activity. (ROI, Ex. 8,13.) There is no record of a radio run tape assigning SUBJECT OFFICER to Dunbar Park to investigate drug activity. However a radio run tape, made on September 4, 2004, at approximately 12:25, the same time as the arrest of Complainant records SUBJECT OFFICER asking to stay in the park to investigate “disorderliness.” (ROI, Ex. 19.)

None of the six witness officers who responded to the scene, including SUBJECT OFFICER’s partner, WITNESS OFFICER #1, corroborated his assertion of drug activity, nor was anyone arrested at the scene for drug-related offenses. (ROI, Ex. 9, 10, 11, 12, 13, and 14.) WITNESS OFFICER #1, who was present when Complainant was arrested, did not corroborate SUBJECT OFFICER’s allegation that Complainant was disorderly before or after he was asked to leave the park. SUBJECT OFFICER states that after Complainant was directed to leave the park he became loud, using profanity against him and WITNESS OFFICER #1. SUBJECT OFFICER asserts that people across the street at the Center were watching Complainant’s behavior. However, the evidence of record does not corroborate SUBJECT OFFICER’s allegation of Complainant’s disorderly conduct. None of the witness officers on the scene, including SUBJECT OFFICER and his partner, WITNESS OFFICER #1, interviewed any of the alleged witnesses to Complainant’s alleged disorderly conduct. The evidence of record does not include any witness statements except those of witness officers, who do not corroborate SUBJECT OFFICER’s allegations. Based on these facts, SUBJECT OFFICER’s actions in directing Complainant and others to leave Dunbar Park violated MPD General Order, 304-10, Part I.A. Contacts.

D.C. Official Code § 22-1321 defines disorderly conduct as:

Whoever, with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby: (1) acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others; (2) congregates with others on a public street and refuses to move on when ordered by the police; (3) shouts or makes a noise either outside or inside a building during the nighttime to the annoyance or disturbance of any considerable number of persons; (4) interferes with any person in any place by jostling against such person or

unnecessarily crowding such person or by placing a hand in the proximity of such person's pocketbook, or handbag; or (5) causes a disturbance in any streetcar, railroad car, omnibus, or other public conveyance by running through it, climbing through windows or upon the seats, or otherwise annoying passengers or employees, shall be fined not more than \$250 or imprisoned not more than 90 days, or both. (2001.)

According to SUBJECT OFFICER, Complainant's disorderly conduct consisted of "...being loud and boisterous and yelling at us [SUBJECT OFFICER and WITNESS OFFICER #1] and using profanity ...people at the church were watching with the interaction...I don't know, but there may have been people in the nearby building, who heard COMPLAINANT shout." (ROI, Ex. 7.) SUBJECT OFFICER's failure to obtain any statements from those persons he alleges witnessed Complainant's disorderly conduct raises questions about the existence of these parties and the credibility of his statements. None of the police witnesses, including SUBJECT OFFICER's partner at the scene, WITNESS OFFICER #1, provided corroborating statements.

During the OPC investigation, the investigators obtained statements from two citizen witnesses. Both of these witnesses corroborated Complainant's assertion that he did not engage in disorderly conduct. (ROI, ex. 5 and 6). Further, in his Objections to ROI, SUBJECT OFFICER suggests that because Complainant told him he was "acting like an asshole man," and because he was "...prepared to defy SUBJECT OFFICER regardless of his reason for asking him to leave the park," he was justified in arresting Complainant. The police regulations are very clear in stating that an officer shall not contact citizen for the purpose of attempting to coerce a citizen to leave an area "because a person is "hanging around," "loitering," or "standing on the corner," unless the overall circumstances are such as would reasonably arouse the curiosity, concern, or suspicion of the officer." Here, SUBJECT OFFICER had no legally justified police-related rationale for approaching Complainant and thus no basis for asking him to leave the park. (MPD General Order 304.10, Police-Citizen Contacts.) Based upon the totality of circumstances and the weight of the credible evidence of record, Complainant's allegation of harassment is sustained.

B. Discrimination

Discrimination, as defined by MPD Special Order 01-01, Part III, Section D, includes "failure to provide proper police service, either in the enforcement of the law or in the provision of police service, on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, physical handicap, source of income, or place of residence or business."

MPD General Order 201.26, Part I, Section A provides that "In accordance with the District of Columbia Human Rights Law, members shall not discriminate, either in the enforcement of the law, or in the provision of police service, on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family

responsibilities, matriculation, political affiliation, physical handicap, source of income, or place of residence or business....”

The regulations governing OPC define discriminatory treatment as “[c]onduct by a member of the MPD ... that results in the disparate treatment of persons because of their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, place of residence or business or any other ground of discrimination prohibited under the statutory and the common law of the District of Columbia.” D.C. Mun. Regs., title 6A, § 2199.1

Upon entering Dunbar Park, SUBJECT OFFICER described those in the park as appearing to be homeless. The Complainant alleges that his homeless status was a factor in the arrest. SUBJECT OFFICER contends that he was investigating drug activity in Dunbar Park. His credibility is undermined by the fact that none of the witnesses, including his partner, corroborated his purpose for being in Dunbar Park. SUBJECT OFFICER was aware of the annual church festival that provided food and clothes to homeless persons. SUBJECT OFFICER viewed everyone in Dunbar Park that day as homeless and he directed each of them to leave the park for no apparent reason other than that they appeared to be homeless, a clear violation of MPD General Order 304-10, Police-Citizen Contacts. No one in the park was arrested for any drug-related offenses and no witnesses corroborated SUBJECT OFFICER’s allegation of drug activity. Based on the credible evidence of record, SUBJECT OFFICER engaged in discrimination when he initiated contact with Complainant without a legitimate, police-related reason, and then arrested him for disorderly conduct.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Sustained
Allegation 2:	Sustained

Submitted on September 13, 2007.

Turna R. Lewis
Complaint Examiner