

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	05-0018
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, 4 th District
Allegation 1:	Harassment
Complaint Examiner:	Eleanor Nace
Merits Determination Date:	August 21, 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, filed a complaint with the Office of Police Complaints (OPC), formerly the Office of Citizen Complaint Review (OCCR), on October 20, 2004. COMPLAINANT alleged that on October 16, 2004, the subject officer, Metropolitan Police Department (MPD) SUBJECT OFFICER, Fourth District, harassed him by arresting him for unlawful entry while he was smoking a cigarette outside of his girlfriend's apartment building.¹

COMPLAINANT alleged that at the time of the incident, he was visiting his girlfriend, WITNESS #1, who lives at LOCATION #1, and his friend, WITNESS #2, who lives in the same apartment building. WITNESS #1 and the complainant also are the parents of a young child. While visiting WITNESS #1, the complainant wished to smoke a cigarette, which is not allowed in WITNESS #1's apartment, so he went to see WITNESS #2. COMPLAINANT and WITNESS #2 observed from her window several police cars pulling up and parking in front of the apartment building. Upon leaving WITNESS #2's apartment to observe the activity, COMPLAINANT saw the subject officer, SUBJECT OFFICER, try to disperse from the scene a

¹ The complainant also stated in his complaint form and in his statement to OPC that SUBJECT OFFICER accused him of not being American and unable to speak English. The complainant informed OPC that he is not originally from the United States, but from Trinidad and Tobago. In his interview with OPC, COMPLAINANT told OPC that he did not find the statement by SUBJECT OFFICER to be insulting, demeaning, or humiliating. Therefore, the only allegation was harassment.

group of children. As the sergeant was trying to get the children to move along, the children laughed at him. SUBJECT OFFICER then reportedly told the children that “in the next five years they would be in handcuffs,” or words to that effect. The complainant indicated that he shook his head disapprovingly in response to the remark. Apparently SUBJECT OFFICER noticed his reaction and approached the complainant.

SUBJECT OFFICER demanded to see COMPLAINANT’s driver’s license and asked if he lived in the building. The complainant responded that he lived in the apartment and produced his license. His driver’s license is from Maryland, and contained his Maryland home address. Once COMPLAINANT presented his driver’s license to SUBJECT OFFICER, the subject officer reportedly told the complainant that he was under arrest for unlawful entry. The complainant tried to explain to the officer that he was visiting his girlfriend, WITNESS #1, in the building, that he had keys to her apartment, and often stayed there. WITNESS #2 and WITNESS #1 also came outside to inform the subject officer that COMPLAINANT was an approved visitor. According to the complainant, SUBJECT OFFICER still proceeded to handcuff and arrest him for unlawful entry.

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, the objections submitted by SUBJECT OFFICER on June 18, 2007, and the Memo from Thomas E. Sharp to the Complaint Examiner dated June 22, 2007, the Complaint Examiner finds the material facts regarding this complaint to be:

1. COMPLAINANT, was at LOCATION, Washington, D.C., on the afternoon of October 16, 2004.
2. COMPLAINANT’s girlfriend WITNESS #1 (who is also the mother of his child) leases apartment # in that building.
3. COMPLAINANT also is friends with WITNESS #2, who lives in the same building and is related to WITNESS #1.
4. COMPLAINANT visits the building often, has a key to WITNESS #1’s apartment, and frequently stays with WITNESS #1.

5. COMPLAINANT wanted a cigarette and WITNESS #1 does not permit smoking in her apartment so he went down to WITNESS #2's apartment. He and WITNESS #2 noticed police activity and went outside. WITNESS #2 returned to her apartment.
6. COMPLAINANT was standing outside the apartment building smoking his cigarette. He observed the SUBJECT OFFICER tell a group of laughing children to move along.
7. COMPLAINANT heard SUBJECT OFFICER tell the children that in the next five years, they would be in handcuffs, or words to that effect. COMPLAINANT shook his head disapprovingly.
8. WITNESS #3, owner and manager of the apartment complex, had previously asked members of the Metropolitan Police Department to assist him with removing loiterers from his privately owned property.
9. SUBJECT OFFICER approached COMPLAINANT, asked for identification, and asked if he lived in the building. COMPLAINANT stated that he lived there.
10. COMPLAINANT produced a Maryland driver's license with a Maryland address.
11. SUBJECT OFFICER told COMPLAINANT that he was under arrest for unlawful entry.
12. COMPLAINANT tried to explain to SUBJECT OFFICER that he was visiting WITNESS #1, that they had a child together, that he had a key to her apartment, and that he frequently stayed there.
13. SUBJECT OFFICER did not listen to COMPLAINANT's explanation.
14. Both WITNESS #1 and WITNESS #2 soon came out of the building. Each separately tried to tell SUBJECT OFFICER about COMPLAINANT's relationships and his legitimate reasons for being on the premises. SUBJECT OFFICER did not listen to WITNESS #1 or WITNESS #2.
15. WITNESS #1 produced a copy of her lease and a copy of her daughter's birth certificate bearing COMPLAINANT's name. SUBJECT OFFICER ignored this evidence and continued to process the arrest for unlawful entry.
16. Tenants are permitted to have guests and visitors.

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].”

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 (2002)

MPD General Order 304.10 (effective July 1, 1973) governs police-citizen contacts, stops and frisks. See Exhibit 13. The order states in part, “[c]ontacts may be initiated by an officer when he/she reasonably believes that some investigatory inquiry into a situation is warranted,” and may not be conducted “as a means of harassing any citizen or attempting to coerce a citizen to leave the area.” SUBJECT OFFICER maintains that due to the illegal drug activity occurring around the apartment complex, the property owner, WITNESS #3, gave him permission to arrest non-residents of the building for unlawful entry. This is contrary to the facts as well as the law.

It appears, from WITNESS #3's OPC interview, that the owner did give MPD permission to question those individuals who did not belong on the property. However, WITNESS #3 could not authorize the police to break the law, nor did he do so. Even assuming that

the property owner gave the subject officer permission to question persons who were not residents of the building and to arrest loiterers, it is clear that SUBJECT OFFICER should not have arrested COMPLAINANT for unlawful entry.

The District's unlawful entry statute, D.C. Code § 22-3302 (2006), provides that "[a]ny person who, without lawful authority, shall enter, or attempt to enter, any public or private dwelling, building, or other property . . . against the will of the lawful occupant or of the person lawfully in charge thereof . . . shall be deemed guilty of a misdemeanor."

The phrase "person lawfully in charge" has been interpreted by the District of Columbia Court of Appeals to mean a person who can be reasonably considered to have the authority to order someone to leave the premises. See *Woll v. U.S.*, 570 A.2d 819, 822 (D.C. 1990). According to the court, "more than one person can have the authority to order someone to leave either public or private premises." *Id.* Furthermore, a person cannot be convicted under the statute if he or she has a legitimate reason for coming to the premises, such as visiting a tenant. See *Bean v. U.S.*, 709 A.2d 85 (D.C. 1998) (court reversing unlawful entry conviction stemming from violation of barring order where defendant was invited to apartment complex by tenant and property owner stated that visitation was a legitimate reason for being on the premises).

COMPLAINANT stated that when initially approached by the sergeant, he told SUBJECT OFFICER that he lived in the apartment. Upon seeing the complainant's Maryland driver's license, SUBJECT OFFICER believed that the complainant did not live in the apartment and proceeded to arrest him for unlawful entry. However, COMPLAINANT, WITNESS #2, the complainant's friend and a tenant of the building, and WITNESS #1, the complainant's girlfriend and an apartment resident, all explained to the sergeant that COMPLAINANT was a visitor and that COMPLAINANT and WITNESS #1 have a daughter together. Upon discovering that the complainant was an actual visitor and was not on the property illegally, SUBJECT OFFICER lacked probable cause to arrest the complainant.

Moreover, WITNESS #3, the owner of the apartment complex, told OPC that although he has asked MPD officers to remove loiterers from the property, he did not want the officers harassing his tenants and their guests. WITNESS #3 believed that officers should allow persons to go on their way if the individual has a lawful reason to be in the building, even if the person is not on the lease.

Once WITNESS #2 and WITNESS #1 asserted that COMPLAINANT was a visitor in the building and was a frequent guest of WITNESS #1, SUBJECT OFFICER should not have arrested COMPLAINANT. The evidence presented to him was clear and unambiguous. He chose to ignore it. Not only did he ignore the complainant's perfectly reasonable explanation for his presence, but SUBJECT OFFICER ignored the evidence presented by not one but two residents of the building, one of whom even showed him her lease, and a birth certificate with COMPLAINANT's name on it.

The subject officer's arrest of the complainant bothered the complainant and interfered with his ability to go about his lawful business. With his purposeful, knowing, and reckless violation of District of Columbia law and MPD orders, SUBJECT OFFICER subjected the complainant to an unlawful seizure. Therefore, SUBJECT OFFICER harassed the complainant in violation of MPD General Order 01-01.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Sustained
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Submitted on August 21, 2007.

ELEANOR NACE
Complaint Examiner