

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	05-0274
Complainant:	COMPLAINANT
Officer (s), Badge No., District:	SUBJECT OFFICER, Financial Crimes Branch
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Paula Xinis
Merits Determination Date:	June 17, 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 alleges that SUBJECT OFFICER harassed her and her two children when he forcibly pushed her children into separate holding areas in the Rhode Island Avenue Youth Division police station, and when he repeatedly called COMPLAINANT threatening to arrest her without cause. Further, COMPLAINANT alleges that SUBJECT OFFICER used insulting, demeaning and humiliating language and conduct during the same conversation with her.

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. The documentary evidence, therefore, presents a sufficient and accurate disclosure of the facts necessary to reach a determination. *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 attached exhibits, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On the evening of May 6, 2005, SUBJECT OFFICER was working at the Metropolitan Police Department's Youth Investigations Branch on Rhode Island Avenue, in Northeast Washington, D.C.
2. SUBJECT OFFICER was approached by WITNESS #1 who had custody of his two children, WITNESS #2, age 13, and WITNESS #3, age 9, for the weekend. WITNESS #1 stated to SUBJECT OFFICER that he believed his children were "stealing" various small items from him and his new wife.
3. SUBJECT OFFICER suggested to WITNESS #1 that he attempt the "scare" the children so as to teach them a lesson about stealing. SUBJECT OFFICER then locked WITNESS #2 in a holding cell and placed WITNESS #3 in an adjacent conference room. During this time, WITNESS OFFICER #1, who was present at the station, observed SUBJECT OFFICER was talking in a loud, abrupt, and nasty manner, telling one of the children to "shut up" and "be quiet." The children estimate that they were held in these rooms for nearly an hour. At some point, SUBJECT OFFICER let both children out, only to place WITNESS #3 briefly in the holding cell because WITNESS #3 purportedly was smirking.
4. While the children were detained, SUBJECT OFFICER also called the children's mother, COMPLAINANT, at about 8:30 p.m. on her cell phone. COMPLAINANT was awakened to SUBJECT OFFICER pressing her, in a nasty tone, about COMPLAINANT's supposed urging of her children to steal from their father. SUBJECT OFFICER then told COMPLAINANT that he was going to take statements from the children and have her arrested.
5. When COMPLAINANT attempted to tell the SUBJECT OFFICER that she did not instruct her children to steal, the SUBJECT OFFICER persisted that he was going to arrest COMPLAINANT if she did not call him back on a landline within 15 minutes. Specifically, SUBJECT OFFICER, with a nasty tone to his voice, stated words to the effect of, "Do you hear me, do you hear me COMPLAINANT, I'm going to arrest you. I don't care about custody or what. I'll show you. You need to call me back on a landline right away."
6. COMPLAINANT then informed SUBJECT OFFICER that she could not call him back right away, to which he replied, "No! You call me back in fifteen minutes, do you hear

me COMPLAINANT, fifteen minutes, because if this happens again, I'm going to have you arrested.”

7. COMPLAINANT then called 911 to verify that the person who called her was indeed a police officer. When she made contact with SUBJECT OFFICER again, she asked for the name of his supervisor, to which SUBJECT OFFICER replied, “I'm the supervisor.” When COMPLAINANT pressed for his supervisor's name, SUBJECT OFFICER hesitated and then said “Tate or Williams.”
8. Approximately 15 minutes later, SUBJECT OFFICER called the complainant again, and asked, in an intimidating voice, if the person who answered was COMPLAINANT. When COMPLAINANT requested that their call be recorded, SUBJECT OFFICER hung up.
9. The next day, COMPLAINANT spoke with WITNESS OFFICER #2 at the MPD Youth Investigations Branch where her children had been held by SUBJECT OFFICER. After learning of the incident, WITNESS OFFICER #2 contacted SUBJECT OFFICER who confirmed that he called COMPLAINANT to “scare” her. WITNESS OFFICER #2 also describes SUBJECT OFFICER as customarily loud and abrupt with “no people skills,” and WITNESS OFFICER #2 could see “how COMPLAINANT would have taken offense to him.”
10. WITNESS OFFICER #2 also requested from SUBJECT OFFICER the case file for this matter but SUBJECT OFFICER said he was not finished with it. Subsequent to the onset of the OPC investigation, WITNESS OFFICER #2 attempted to locate the file pertaining to this incident in the MPD database and could find no record of it.
11. SUBJECT OFFICER, when interviewed by an OPC investigator, denied specific recollection of this incident. Further, he refused to sign and certify the truthfulness of his oral statement that the investigator had reduced to writing, despite being given appropriate opportunity to amend the statement to his satisfaction.

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].”

Allegation #1: 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 the OPC regulations as “words, 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.” D.C. Mun. Regs. Title 6A, § 2199.1. 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.” *Id.*

SUBJECT OFFICER’s conduct toward both COMPLAINANT and her children clearly constitute harassment in that the SUBJECT OFFICER, without any law enforcement purpose, interfered with their ability to go about their business normally. First with respect to COMPLAINANT, SUBJECT OFFICER called her repeatedly threatening to arrest her absent probable cause. The detective had not taken any routine or expected steps consistent with building a criminal case against an individual, such as opening a case file or preserving a record of the incident. In fact, SUBJECT OFFICER admitted to WITNESS OFFICER #2 that his goal that night was to “scare” COMPLAINANT, not further a criminal investigation.

To make matters worse, SUBJECT OFFICER was rude, loud and abrupt with COMPLAINANT, demanding, without explanation, that COMPLAINANT call him on his land line. And when COMPLAINANT asked SUBJECT OFFICER for his supervisor, she was met with a snide retort that he is the supervisor. SUBJECT OFFICER also hung up on COMPLAINANT when she requested that their final phone conversation be recorded. Notably, the SUBJECT OFFICER has offered no specific, credible response to COMPLAINANT’s version of events and, instead refused to provide a sworn, written statement about this incident.¹

¹SUBJECT OFFICER asserts in his objections to OPC’s Report of Investigation that he refused to sign his statement because he had not personally written it. Further, the Detective asserts that he should be given the opportunity in an evidentiary hearing, rather than a written statement, to challenge the evidence presented by the other witnesses. This argument is unavailing. OPC procedures provide that all witnesses will be interviewed by an OPC investigator, and witness statements will be reduced to writing. The witness then has the opportunity to review the written statement prepared during the witness interview, and to modify, add or subtract to the statement until it reflects all of the information that the witness deems pertinent and is worded as the witness desires. After the statement is completed, the witness may review it again and make further changes until he is satisfied. Only then is he asked to sign the

When considering the totality of the circumstances, SUBJECT OFFICER's words and conduct, bereft of any law enforcement purpose, were instead designed to intimidate, bother and interfere with COMPLAINANT's ability to go about her lawful business.

Second, as to the children WITNESS #2 and WITNESS #3, SUBJECT OFFICER also harassed them when he locked WITNESS #2 in a holding cell and WITNESS #3 in an adjacent conference room for an hour. Again, no evidence exists that SUBJECT OFFICER was engaging in law enforcement duties such as investigating the children's alleged thievery. SUBJECT OFFICER did not take the children's statements, open a case file, or try to speak with WITNESS #1's wife and son, the other purported victims of the theft. Rather, SUBJECT OFFICER and WITNESS #1 discussed overtly that SUBJECT OFFICER should "scare" the children, as he did their mother. Scaring children by separating them from each other and their parent for nearly an hour without legitimate investigative purpose is plainly harassment.

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

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, slangs, slurs, epithets or 'street' talk or other language that would be likely to demean the person to whom it is directed or to offend a citizen overhearing the language." MPD General Order 201.26, Part I, Section C provides that "all members of the department shall be courteous in their dealings with the public. They shall perform their duties quietly, remaining calm regardless of provocation to do otherwise . . . They shall be quiet, orderly and attentive and shall exercise patience and discretion in the performance of their duties." *Id.*

SUBJECT OFFICER, in an arbitrary exercise of his authority, rudely demanded that COMPLAINANT call him on a land line within 15 minutes or she would be arrested. Furthermore, WITNESS OFFICER #1 corroborates COMPLAINANT's recollection, describing SUBJECT OFFICER's demeanor as "loud, nasty and . . . cursing" when he was on the phone with COMPLAINANT. WITNESS OFFICER #1 further noted that SUBJECT OFFICER told WITNESS #2 and WITNESS #3 to "shut up" and "be quiet." Even the children's father, WITNESS #1, who expressed satisfaction with the detective's approach to the situation, noted that SUBJECT OFFICER became heated and red-faced while speaking with COMPLAINANT. SUBJECT OFFICER's rudeness ran unabated even after COMPLAINANT requested the detective's supervisor, the detective responding that *he* is the supervisor. Consequently, SUBJECT OFFICER failed to exhibit the courtesy and calm required in his position, and instead used insulting and demeaning words and acts when engaging with COMPLAINANT.

statement attesting to its truth. Because SUBJECT OFFICER was afforded the same process as any other witness, and he refused to participate, his statement is given little if any weight. Moreover, even if this Examiner were to fully credit the SUBJECT OFFICER's statement, in it he essentially claims to have no specific recollection of these events. In this way, his statement, even if believed, is unhelpful in resolving this case.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Sustained
Allegation 2: Insulting or Demeaning Language or Conduct	Sustained

Submitted on June 17, 2007.

Paula Xinis
Complaint Examiner