

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	05-0290
Complainant:	COMPLAINANT
Subject Officer:	SUBJECT OFFICER, Third District
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Allegation 3:	Unnecessary or Excessive Force
Complaint Examiner:	Irene N. Pantelis
Merits Determination Date:	April 27, 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 on May 8, 2005, MPD SUBJECT OFFICER harassed her, used unnecessary or excessive force against her, and used language or engaged in conduct toward her that was insulting, demeaning, or humiliating. In particular, Complainant alleges that while arresting her for disorderly conduct SUBJECT OFFICER grabbed her by the neck or hair, pulled her left arm behind her back, slammed her body or face against his police car, searched her pockets, and took out all her personal belongings. Complainant further maintains that SUBJECT OFFICER never told her why she was being arrested and that he used profanity and other inappropriate language throughout the incident. She also asserts that SUBJECT OFFICER failed to return some of her personal belongings after releasing her on the spot.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, the objections to the report filed by SUBJECT OFFICER, and the OPC response to those objections, 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 the OPC's report of investigation, the objections to the report filed by SUBJECT OFFICER, and the OPC response to those objections, the Complaint Examiner finds that the material facts pertaining to this complaint are as follows:

1. On May 8, 2005, at approximately 1:45 a.m., SUBJECT OFFICER and his partner, WITNESS OFFICER #1, were summoned to the 600 block of Morton Street, NW, Washington, DC.
2. At that location, the officers found a crowd of 10-20 youngsters leaving a party. Because they perceived the youngsters to be loud and boisterous, they ordered the crowd to "move on." The crowd began to disperse. Complainant, her sister, and a handful of their friends stood by a car and began to slowly walk toward a nearby bus station.
3. SUBJECT OFFICER approached Complainant and her group, asking them again to move on. While he was talking to them, Complainant's cell phone rung and she answered the call, looking at SUBJECT OFFICER in the eye. SUBJECT OFFICER grabbed Complainant by the arm or shoulder and reiterated his request that she and the others leave the area. Complainant did not comply. Complainant stated that SUBJECT OFFICER's grabbing her was uncalled for. Upon hearing this altercation, the crowd began to re-form. SUBJECT OFFICER stopped Complainant, placed her against his police car, handcuffed her, searched the contents of her pockets, and placed her in the car. Complainant did not physically resist the arrest, but was vocal.
4. Complainant was issued a citation for disorderly conduct and was released on the spot, with her personal belongings. Complainant later realized that she was missing a dental retainer that had been among her belongings.
5. SUBJECT OFFICER did not use profanity or inappropriate language during the incident.
6. Complainant did not complain of any injuries during the incident. Complainant later felt soreness in her wrists from the handcuffs.

IV. DISCUSSION

D.C. Code Section 5-1107(a) provides that OPC has authority to receive and adjudicate citizen complaints against MPD members alleging abuse or misuse of police powers, such as harassment, use of unnecessary or excessive force, and use of language or conduct that is insulting, demeaning or humiliating.

SUBJECT OFFICER did not harass Complainant, as she alleges. Harassment “includes, but is not limited to 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.” MPD Special Order 01-01, Part III, Section G. SUBJECT OFFICER arrested Complainant, interfering with her right to go about her normal business, because she was engaging in conduct he reasonably determined to be disorderly. Disorderly conduct occurs when an individual “with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby;..(2) congregates with others on a public street and refuses to move on when ordered by the police.” D.C. Code Section 22-1321. Language or conduct that either creates a substantial risk of provoking violence or is so grossly offensive to members of the public that it amounts to a nuisance amount to a breach of the peace. Washington Mobilization Committee v. Cullinane, 566 F.2d 107, 116 (D.C. Cir. 1977). A breach of the peace does not have to actually occur for a violation to be found; it is enough that it be threatened or intended. Chemalali v. District of Columbia, 655 A.2d 1226, 1228 (D.C. 1995). Complainant was congregating with a loud crowd and refused to move on when requested to do so. She was also argumentative, causing the crowd to re-form after beginning to disperse. SUBJECT OFFICER could have reasonably viewed these actions as an actual or potential breach of the peace. Thus, the arrest was for an appropriate law enforcement purpose rather than to harass Complainant.

Likewise, SUBJECT OFFICER did not use unnecessary or excessive force against Complainant. General Order 901.7 sets forth the MPD’s policies regarding the use of force and incorporates the constitutional standards applicable to such use. See Graham v. O’Connor, 490 U.S. 386, 396 (1989). In general, the MPD’s policy “is that an officer shall use only that force that is reasonably necessary to effectively bring an incident under control, while protecting the lives of the officer and others.” MPD General Order 901.7, Part II. The use of non-deadly force is permissible only to protect the officers or others from physical harm, to restrain or subdue a resistant individual, or to bring an unlawful situation safely and effectively under control. Id. at Part IV(C)(1). The decision to use force must be based on the danger posed by a subject confronted by the police and is based on the circumstances that the officer reasonably believes to exist. Id. at Part II. Officers are responsible for “weighing all other reasonable means of apprehension or defense before resorting to the use of force.” Id.

If force is necessary, officers must adhere to a continuum, employing escalating levels of force in response to resistant or dangerous individuals. MPD General Order 901.7, Part IV(A)(1). The levels include: (a) verbal persuasion, (b) hand control procedures, such as firm grip, escort or pain/pressure compliance holds, (c) protective weapons, including OC Spray or impact weapons such as tactical baton; and (d) deadly force. Id. While officers are not required to start at the lowest level, they are required to select “the appropriate level of force required by the circumstances.” Id. at Part II.

SUBJECT OFFICER adhered to the general principles of these guidelines. At first, he asked Complainant to move on. When this proved unsuccessful, he reiterated his request, while grabbing her by the arm or shoulder. When this further effort proved unsuccessful, he stopped

her, placed her against his police car, handcuffed her, searched her, and placed her in the car. While vocal, Complainant did not resist and no force was necessary. The fact that Complainant did not suffer any injuries during the arrest further corroborates the conclusion that SUBJECT OFFICER did not use unnecessary or excessive force.

Finally, SUBJECT OFFICER did not use language or engage in conduct that was insulting, demeaning, or humiliating to Complainant. MPD members must be “courteous and orderly in their dealings with the public,” remaining calm regardless of provocation by the public. MPD General Order 201.26, Part I, Section C, No. 1 & 3. They must “refrain from harsh, violent, profane, sarcastic or insolent language” and must not “use terms or resort to name calling which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person.” Id. While the Complainant alleges that SUBJECT OFFICER cursed and threatened her, the preponderance of the evidence indicates otherwise. SUBJECT OFFICER was likely stern given the tense, heated nature of the situation, but he did not insult, demean or humiliate the Complainant.

V. SUMMARY OF MERITS DETERMINATION

Allegation 1: Harassment	Exonerated
Allegation 2: Unnecessary or excessive force	Exonerated
Allegation 3: Insulting, Demeaning, or Humiliating Language or Conduct	Exonerated

Submitted on May 1, 2007.

Irene N. Pantelis
Complaint Examiner