

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	05-0461
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Third District
Allegation 1:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Sundeep Hora
Merits Determination Date:	March 28, 2008

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 (the “Complainant”) alleges that on July 10, 2005, the Subject Officer, Metropolitan Police Department (MPD) SUBJECT OFFICER, Third District, used language and engaged in conduct toward her daughter, WITNESS #1, that was insulting, demeaning or humiliating. The conduct at issue occurred at the Third District station after the arrest of COMPLAINANT’s son.

In the early morning hours of July 10, 2005, COMPLAINANT received a phone call from WITNESS OFFICER #1 who informed her that her son, WITNESS #2, had been arrested. COMPLAINANT and WITNESS #1, accompanied by her son’s friend WITNESS #3, went to the Third District station, where WITNESS #2 was being held. While at the station COMPLAINANT and WITNESS #1 spoke with her son’s arresting officers, SUBJECT OFFICER and WITNESS #3, Third District. The conversation became heated after COMPLAINANT and WITNESS #1 questioned SUBJECT OFFICER and WITNESS OFFICER #3 about the arrest of her son and their motive for making the arrest. During this conversation, WITNESS #1 alleged that SUBJECT OFFICER and WITNESS OFFICER #2 engaged in racial profiling, and made a comment to the effect of, “Is it because my brother is wearing dreadlocks that you are doing this to him?” According to COMPLAINANT, SUBJECT OFFICER responded by stating, “I got a black girlfriend. Is that racial profiling?” He then allegedly said “Fuck you!” to WITNESS #1. The Complainant stated that another, unidentified officer then pulled SUBJECT OFFICER to the back of the station away from the scene.

II. EVIDENTIARY HEARING

An evidentiary hearing was conducted regarding this complaint on February 7, 2008. The Complaint Examiner heard the testimony of COMPLAINANT, WITNESS #1, WITNESS OFFICER #1, WITNESS OFFICER #2 and SUBJECT OFFICER. There were no exhibits introduced at the hearing.

III. FINDINGS OF FACT

Based on a review of: (1) OPC's Report of Investigation; (2) the objections to the report filed by the Subject Officer; (3) OPC's response to those objections; (4) witness proffer for Investigator Felicia Day; (5) OPC's response to the proffer; (6) the testimony elicited during the evidentiary hearing; and (7) the parties' stipulations of fact, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On July 10, 2005, at approximately 2:00 a.m., COMPLAINANT received a phone call from WITNESS OFFICER #1 informing her of the arrest of her son, WITNESS #2, and instructing her to come to the Third District police station to pick up his belongings.
2. Complainant's daughter, WITNESS #1, was home at the time and accompanied her mother to the Third District station.
3. While walking to the station, COMPLAINANT and WITNESS #1 encountered WITNESS #3, WITNESS #2's friend who was with him at the time of his arrest. WITNESS #3 joined COMPLAINANT and WITNESS #1 on their way to the police station.
4. Upon arriving at the station, COMPLAINANT, WITNESS #1 and WITNESS #3 were escorted by WITNESS OFFICER #1 to a table in the main lobby.
5. COMPLAINANT and WITNESS #1 were visibly upset and irate, speaking so loudly they could be heard across the station.
6. WITNESS OFFICER #1 had a brief discussion with COMPLAINANT and WITNESS #1 about WITNESS #2's arrest.
7. WITNESS OFFICER #1 then retrieved arresting officers, SUBJECT OFFICER and WITNESS #3, to speak with COMPLAINANT about her son's arrest.
8. WITNESS OFFICER #1 went into the back processing room, where both SUBJECT OFFICER and WITNESS #3 were located, and advised them that WITNESS #2's mother and daughter were at the station.

9. Although officers are not required to meet with parents or family members after an individual is arrested, SUBJECT OFFICER and WITNESS OFFICER #2 carried WITNESS #2's backpack to the table in the lobby where COMPLAINANT, WITNESS #1 and WITNESS #3 were seated.¹
10. At this point, WITNESS #1 and SUBJECT OFFICER began arguing with each other. WITNESS #1 began accusing the arresting officers of racial profiling in a loud and provocative manner. WITNESS #1 stated in a loud voice, "Is it because my brother is wearing dreadlocks that you are doing this to him? This is racial profiling."
11. SUBJECT OFFICER responded to WITNESS #1's comments defensively, stating, "I have a black girlfriend! Is that racial profiling?"
12. The argument between SUBJECT OFFICER and WITNESS #1 was loud and disruptive, causing WITNESS OFFICER #1 to step away to explain the situation to the officers at the front desk of the Third District station.
13. During the time that WITNESS OFFICER #1 stepped away, the Complainant claims that SUBJECT OFFICER used profanity, specifically the words "fuck you," directed at WITNESS #1.
14. WITNESS OFFICER #1 testified that when he returned to the area, Complainant and her daughter were "standing up [and] yelling at SUBJECT OFFICER." SUBJECT OFFICER appeared upset and left with WITNESS #3 to continue processing the arrest in a back room.
15. The Complainant and WITNESS #1 explained to WITNESS OFFICER #1 that SUBJECT OFFICER approached WITNESS #1 and yelled "fuck you" to her. In response, WITNESS OFFICER #1 left the lobby and entered the back room to which SUBJECT OFFICER had returned to ask him whether he used the word "fuck" while in the presence of Complainant or her daughter. SUBJECT OFFICER denied using any profanity.
16. At the hearing, WITNESS #3, who was present during the exchange between the parties, testified that SUBJECT OFFICER did not say "fuck you" while in his presence. In his statement to the investigator, however, WITNESS #3 stated, "I do not recall if SUBJECT OFFICER used profanity towards the Complainant."

IV. DISCUSSION

¹ There is conflicting testimony as to when SUBJECT OFFICER and WITNESS OFFICER #2 entered the main lobby, as well as who entered the lobby first. See Hearing Transcript pg. 19 – 20, 42- 43, 59 – 60,

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.”

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 and insolent language.” MPD General Order 201.26, Part I, Section C(3).

The evidence reviewed in this matter supports the finding that SUBJECT OFFICER used language and conduct toward Complainant that was insulting, humiliating or demeaning and that he failed to “remain calm regardless of provocation to do otherwise.” SUBJECT OFFICER utterance of the phrase “fuck you” to WITNESS #1 constitutes a violation of MPD General Order 201.26, Part I, Section C(1).

Although SUBJECT OFFICER denies having used the phrase “fuck you” toward WITNESS #1, the totality of the evidence demonstrates otherwise. Immediately after the statement was made, Complainant and WITNESS #1 told WITNESS OFFICER #1 about it, and WITNESS OFFICER #1 immediately questioned SUBJECT OFFICER about the statement. The timing of the Complainant’s assertion to WITNESS OFFICER #1 supports the conclusion that the allegation was accurate. Moreover, the fact that the parties were engaged in a loud and heated exchange makes it more plausible that SUBJECT OFFICER became frustrated at WITNESS #1’s accusation and said “fuck you.” Further, WITNESS #3, the only other person present during the exchange, testimony at the hearing was inconsistent on the issue of whether the phrase was uttered in comparison with his statement to the investigator. In WITNESS #3’s October 10, 2005, statement to the investigator (two months after the incident took place), he stated, “I do not recall if an argument took place between SUBJECT OFFICER and the complainant during this incident...I do not recall SUBJECT OFFICER stating that he had a black girlfriend or that they have a child during this incident...I do not recall if SUBJECT OFFICER used profanity toward

the complainant.” At the hearing, however, WITNESS #3 testified unequivocally that SUBJECT OFFICER did not say “fuck you” in his presence. Tr. 83, 85, 87, 88.

It was improper for Complainant or her daughter to accuse SUBJECT OFFICER of racial profiling, and while such an accusation would trigger anyone to become defensive, General Order 201.26, Part I, Section C(1) does not list provocation as an exception. In sum, this Complaint Examiner concludes that SUBJECT OFFICER’s use of demeaning language and failure to remain calm, regardless of provocation, violates MPD General Order 201.26.

IV. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER, Third District

Allegation 1:	Sustained
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Submitted on March 28, 2008.

Sundeep Hora
Complaint Examiner