

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	06-0404
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Third District
Allegation 1:	Harassment
Allegation 2:	Language or Conduct
Allegation 3:	Use of Excessive or Unnecessary
Complaint Examiner:	Arthur D. Sidney
Merits Determination Date:	August 31, 2010

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 as provided by § 5-1111(e).

I. SUMMARY OF COMPLAINT ALLEGATIONS

COMPLAINANT (Complainant) filed a complaint with the Office of Police Complaints (OPC) on September 21, 2006. She alleged that on September 4, 2006, Metropolitan Police Department (MPD) SUBJECT OFFICER, Third District (Subject Officer), harassed an unidentified male taxicab driver by engaging in threatening behavior towards the cab driver while telling him to park his vehicle. Complainant also alleged that Subject Officer used unnecessary or excessive force against the cab driver when he pulled him out of his cab, and used language or engaged in conduct that was insulting, demeaning, or humiliating when he directed profanity toward the cab driver and Complainant.

Specifically, Complainant alleged that on Monday, September 4, 2006, at approximately 2:00 a.m., she and three friends, WITNESS #1(Witness), WITNESS #2, and WITNESS #3, hailed a cab on 18th Street, N.W. As the cab moved to the curb, Subject Officer motioned at the cab driver and said, "Don't you understand? Pull over, pull the fuck over, pull the fucking car over!" Subject Officer then got off his bike and approached and allegedly yelled into the window, "Get out, I'll do it myself!" Subject Officer then opened the driver's door, reached in,

grabbed the cab driver by his shirt, and pulled him out of the cab. Subject Officer then got into the cab and drove it from the travel lane.

After Subject Officer got out of the cab, he returned to the area where Complainant and her friends were standing and allegedly yelled, "What's the problem?!" Complainant responded, "You're the problem, you can't do that!" Subject Officer then allegedly replied, "Shut the fuck up, bitch, you don't know what you're talking about!" Subject Officer then got back on his bike and returned to directing traffic. Complainant and her friends then got into the cab and left the area.

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 15, 2010, and OPC's Memorandum to Correct, Clarify, or Respond to assertions contained in the June 15, 2010 objections, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On September 4, 2006, at approximately 2:00 a.m., Complainant and three friends, WITNESS #1, WITNESS #2, and WITNESS #3, hailed a cab on 18th Street, N.W. As the cab moved over to the curb, Subject Officer motioned at the cab driver and said, "Don't you understand? Pull over, pull the fuck over, pull the fucking car over!" Subject Officer then got off his bike and approached and allegedly yelled into the window, "Get out, I'll do it myself!"
2. Subject Officer then opened the driver's door, reached in, grabbed the cab driver by his shirt, and pulled him out of the cab. Subject Officer then got into the cab and drove it from the travel lane.
3. After Subject Officer got out of the cab, he returned to the area where Complainant and her friends were standing and yelled, "What's the problem?!" Complainant responded, "You're the problem, you can't do that!" Subject Officer then allegedly replied, "Shut the fuck up, bitch, you don't know what you're talking about!" Subject Officer then got back on his bike and returned to directing traffic. Complainant and her friends then got into the cab and left the area.

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].”

At the outset, the Complaint Examiner notes that Subject Officer concedes, “[i]n light of the allegations, it seems inefficient to continue any further investigation, and, [sic] therefore, I will accept any disciplinary action short of termination that is deemed appropriate for this kind of conduct.” See ROI at Ex 4. The Complaint Examiner finds this admission to be determinative of the allegations in this case. Nevertheless, for the sake of completeness, the Complaint Examiner analyzes each allegation. As demonstrated below, the overwhelming theme that is most pronounced in this case is: *just because you can do something, doing it does not make it right.*

1. Harassment

Complainant alleged that Subject Officer harassed an unidentified male taxicab driver by engaging in threatening behavior towards the cab driver while telling him to park his vehicle. As discussed further below, the Complaint Examiner determines that Subject Officer harassed the taxicab driver in violation of D.C. Code § 5-1107(a), D.C. Mun. Regs. tit. 6A, § 2199.1, MPD Special Order 01-01, and MPD General Order 120.21.

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.

Subject Officer yelled into the taxicab driver's window, removed him from the cab, and proceeded to park the car. The Complaint Examiner finds it credible that the taxicab driver was shaken by the event. ROI at 3; *id.* at Exhibit (Ex) 1; *id.* at Ex 2 at 1; *id.* at Ex 3 at 2. The Complaint Examiner finds that Subject Officer had a legitimate law enforcement purpose. See D.C. Mun. Regs. Tit. 21, § 822.16 (“No taxi cab operator shall stop to load or unload passengers on the traffic side of the street, while occupying any intersection or crosswalk, or in such a manner as to unduly interfere with the orderly flow of traffic. All taxicab drivers shall pull as close to the curb or edge of the roadway as possible to take on or discharge passengers.”). However, the Complaint Examiner finds that Subject Officer's actions in handling the situation were inappropriate and threatening to the cab driver.

Subject Officer could not recall this incident, but concedes that he removed drivers from their cars on “hundreds of occasions.” ROI at 6; *id.* at Ex 4. Subject Officer indicated that responding to the “pandemonium” in that area “is often difficult and requires assertiveness.” ROI at 6; *id.* at Ex 4. Although Subject Officer had a legitimate law enforcement purpose for ordering the taxicab driver to move his vehicle, there was no such purpose for removing the cab driver from his vehicle, taking control of his vehicle, and driving it from the travel lane. These actions prevented the cab driver from doing precisely what he was getting paid to do — drive his taxicab. Instead of calmly directing the taxicab driver or using any other lawful means at his disposal, Subject Officer engaged in threatening behavior towards him and subjected him to mistreatment as well. Thus, the Complaint Examiner determines that Subject Officer harassed the cab driver in violation of D.C. Code § 5-1107(a), D.C. Mun. Regs. tit. 6A, § 2199.1; MPD Special Order 01-01, and MPD General Order 120.21.

2. Language or Conduct

Complainant alleged that Subject Officer said to the cab driver, "Don't you understand? Pull over, pull the fuck over, pull the fucking car over!" Subject Officer then got off his bike and approached and allegedly yelled into the window, "Get out, I'll do it myself!" Complainant alleged that Subject Officer yelled at her, "Shut the fuck up, bitch, you don't know what you're talking about!" As discussed further below, the Complainant Examiner determines that Subject Officer engaged in language to both the taxicab driver and Complainant that is insulting, demeaning and offensive in violation of D.C. Code § 5-1107(a) and MPD General Order 201.26.

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 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.”

Subject Officer did not recall the specifics of this case; however, he did indicate, “[i]t is not outside the realm of possibility that I confronted a cab driver in a less than congenial manner.” ROI at 8; *id.* at Ex 4. Moreover, Subject Officer acknowledged that he uses profanity on a regular basis. *Id.* However, he explained “it would be highly unusual for him to direct that profanity at a particular individual.” *Id.* Both the statements of Complainant and Witness indicate that profanity was used and directed at the Complainant and the taxicab driver. ROI at 8-9; *id.* at Ex 1; *id.* at Ex 2 at 2; *id.* at Ex 3 at 2. The Complaint Examiner finds these statements to be credible.

Subject Officer claims that Complainant and Witness’s statement should not be considered because they were intoxicated. Objections to the ROI at 5 (citing Exs 2 and 3). The Complaint Examiner does not find this persuasive because Complainant observed the events that transpired that evening and filed a complaint with OPC where the majority of counts in the complaint were on behalf of someone else (*i.e.*, the cab driver) . Thus, there is little reason to exaggerate when there’s no self-interest.

The Complaint Examiner is similarly not persuaded that Witness was sufficiently intoxicated that she could not accurately recount what transpired. *Id.* at 5. Witness’s observations corroborate Complainant’s. Despite Subject Officer’s statement that “you fucking bitch is something I would not say,” the Complaint Examiner is not persuaded that he did not direct his profanity at Complainant.

Given the “pandemonium,” the chaotic traffic and passerbys on and off the streets, the Complaint Examiner finds that Subject Officer made the statement toward Complainant. The language used by Subject Officer was profane, discourteous, impatient, and disrespectful. Thus, the Complaint Examiner determines that Subject Officer used language or engaged in conduct toward Complainant and the cab driver that was insulting, demeaning, or humiliating, in violation of D.C. Code § 5-1107(a) and MPD General Order 201.26.

3. Use of Unnecessary or Excessive Force

Complainant alleges that Subject Officer opened the cab driver's door, reached in, grabbed the cab driver by his shirt, and pulled him out of the cab. Subject Officer then got into the cab and drove it from the travel lane. As discussed further below, the Complainant Examiner determines that Subject Officer used unnecessary force by opening the cab driver’s car, removing him from vehicle, and driving it to the curb in violation of D.C. Code § 5-1107(a) and MPD General Order 901.07.

Use of unnecessary or excessive force, as defined by MPD Special Order 01-01, Part III, Section N includes “the use of force that is improper in the context of the incident giving rise to the use of force.”

The regulations governing OPC define excessive or unnecessary force as “[u]nreasonable use of power, violence, or pressure under the particular circumstances. Factors to be considered

when determining the ‘reasonableness’ of a use of force include the following: (1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of officer or others; (3) whether the subject was actively resisting arrest or attempting to evade arrest by flight; (4) the fact that officers are often required to make split second decisions regarding the use of force in a particular circumstance; (5) whether the officer adhered to the general orders, policies, procedures, practices and training of the MPD ... and (6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective.” D.C. Mun. Regs., title 6A, § 2199.1.

Subject Officer acknowledges, “I can think of hundreds of occasions during which I have physically removed a driver from a vehicle and then moved the vehicle to where I wanted it.” ROI at Ex 4 at 2. As discussed above in subsection 1, Subject Officer did have a legally valid reason for ordering the cab to move; however, Subject Officer was not justified in his use of force toward the cab driver under these circumstances. Subject Officer had other tools at his disposal apart from using force (*e.g.*, warning the cab driver, issuing a citation, and possible arrest if the circumstances warranted). The cab driver was not resisting or failing to comply with Subject Officer’s order. Yet Subject Officer did what he had on “hundreds of occasions,” he removed the driver and moved the car to where he wanted. These actions were unnecessary and excessive. Thus, the Complaint Examiner determines that Subject Officer used unnecessary or excessive force against the cab driver by pulling him out of his cab and driving the vehicle, in violation of D.C. Code § 5-1107(a) and MPD General Order 901.07.

As demonstrated above, Subject Officer harassed an unidentified male taxicab driver by engaging in threatening behavior towards the cab driver, while telling him to park his vehicle in violation of D.C. Code § 5-1107(a), D.C. Mun. Regs. tit. 6A, § 2199.1, MPD Special Order 01-01, and MPD General Order 120.21. Subject Officer engaged in language to both the taxicab driver and Complainant that is insulting, demeaning and offensive by using profanity in violation of D.C. Code § 5-1107(a) and MPD General Order 201.26. Lastly, Subject Officer used unnecessary force in opening the cab driver’s car, removing him, and driving his car to the curb in violation of D.C. Code § 5-1107(a) and MPD General Order 901.07.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER, Third District

Allegation 1: Harassment	Sustained
Allegation 2: Language or Conduct	Sustained
Allegation 3: Use of Excessive or Unnecessary	Sustained

Submitted on _____, 2010.

ARTHUR D. SIDNEY
Complaint Examiner