

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	06-0083
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Second District
Allegation 1:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Eleanor Nace
Merits Determination Date:	October 19, 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) on January 9, 2006. COMPLAINANT alleged that on December 19, 2005, the subject officer, Metropolitan Police Department (MPD) Officer SUBJECT OFFICER, Second District, used language or engaged in conduct toward her that was insulting, demeaning, or humiliating.

Specifically, COMPLAINANT, who is blind, alleged that SUBJECT OFFICER, responding to a call for service at COMPLAINANT's home, insisted that COMPLAINANT remove her Seeing Eye dog before the officers would enter the apartment. When COMPLAINANT questioned this command as unnecessary, SUBJECT OFFICER allegedly stated, "the last dog I encountered was shot," or words to that effect. COMPLAINANT felt that SUBJECT OFFICER's comment was "unprofessional, irresponsible, and unwarranted."

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 August 27, 2007, and the Memorandum of Thomas Sharp responding to SUBJECT OFFICER's objections dated August 28, 2007, the Complaint Examiner finds the material facts regarding this complaint to be:

1. The complainant is a blind woman, approximately 58 years old, with a Ph.D. She filed a complaint on January 9, 2006, concerning an incident that occurred on December 19, 2005, in her apartment in Northwest Washington, D.C.
2. Complainant alleged that a police officer threatened to shoot her Seeing Eye dog. She was incensed and insulted by the conduct of SUBJECT OFFICER and WITNESS OFFICER #1, who responded to a 911 call concerning harassment from Mormons.
3. When SUBJECT OFFICER and WITNESS OFFICER #1 arrived at COMPLAINANT's apartment building on December 19, 2005, they were met by COMPLAINANT's volunteer "reader," WITNESS #1, who escorted the officers up in the elevator and to COMPLAINANT's apartment.
4. COMPLAINANT was inside the apartment with her Seeing Eye Dog, Princeton, who was in his harness. Princeton barked one to three times when the officers and WITNESS #1 reached the apartment door.
5. The officers asked COMPLAINANT to put the dog up. COMPLAINANT declined.
6. The officers refused to enter the apartment unless the dog was removed. COMPLAINANT and WITNESS #1 explained the purpose of the dog and its training.
7. In response, the officers stated that for the safety of all the parties and the dog, they wanted the dog removed.
8. As a further explanation for their request, SUBJECT OFFICER stated, "the last dog got shot."
9. The officers obtained the necessary information from COMPLAINANT. They told the building doorman not to permit the individuals to enter the building in the future, and to contact the police if they attempted to do so.
10. The subject officer had received no training in dealing with Seeing Eye dogs.

IV. DISCUSSION

Pursuant to D.C. Official Code § 5-1107(a), “The Office [f 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 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.”

Although COMPLAINANT thought the officer was threatening to shoot her Seeing Eye dog, it's clear from the record that the officer was attempting to provide an explanation for her concern about safety. Since it was not SUBJECT OFFICER but WITNESS OFFICER #1 who had shot a dog some four months previously, SUBJECT OFFICER would not have said, “The last dog I encountered, I shot.” It's much more likely that she said, “the last dog got shot,” or words to that effect, as both she and WITNESS OFFICER #1 reported. WITNESS #1 reported that it was WITNESS OFFICER #1 who made the offensive statement, but the other three participants agree that it was SUBJECT OFFICER.

The witness statement of WITNESS #1, the volunteer reader, supports the conclusion that WITNESS OFFICER #1 is fearful of dogs. This fact, and her knowledge of the shooting, understandably made SUBJECT OFFICER concerned about entering the apartment.

The officers did not leave the scene; they completed their assignment, albeit from outside the apartment.

SUBJECT OFFICER has been charged with the use of language or conduct that is insulting, demeaning, or humiliating, in violation of MPD General Order 201.26 (effective Nov. 10, 1976), Part I, Section C, No. 1 and 3, which states as follows:

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. . . . Members shall refrain from harsh, violent, coarse, profane, sarcastic, or insolent language. Members shall not use terms or resort to name calling which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person.

There is no evidence in the record that SUBJECT OFFICER was not courteous or orderly; that she did not perform her duties quietly or remain calm. The words at issue were not harsh, violent, coarse, profane, sarcastic, or insolent. There was no name-calling or the use of terms that might be objectively interpreted as derogatory, disrespectful, or offensive to the dignity of COMPLAINANT.

Clearly COMPLAINANT was offended and felt the behavior of both officers was offensive and disrespectful. But the language itself does not fit within the proscriptions of the General Order, nor does the behavior. The officers lacked awareness of and sensitivity to a Seeing Eye dog's importance, but that was the fault of the Metropolitan Police Department. MPD was remiss in not providing training to its officers in how to encounter and deal with Seeing Eye dogs as part of a blind person's everyday life. COMPLAINANT understandably was offended by the officers' treatment of her because she had Princeton by her side, and she needs and relies on him. But her feelings do not necessarily warrant a disciplinary action. Although the officers' refusal to enter the apartment may not have been justified, the statement made by SUBJECT OFFICER was made in order to explain why she deemed it unsafe for them to enter while the dog remained. The record is devoid of evidence that SUBJECT OFFICER was intentionally offensive or insulting to the complainant in word or action, or that she failed to provide the service that was required.

Under the totality of the circumstances, the Complaint Examiner cannot find that SUBJECT OFFICER violated MPD General Order 201.26 when she said "The last dog got shot," at the end of a colloquy with the complainant as to why the Seeing Eye dog, Princeton, should be removed from the room that the officers were to enter.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	EXONERATED
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Submitted on October 19, 2007.

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Complaint Examiner – Eleanor Nace