

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	06-0156
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:	June 1, 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 (the “Complainant”) alleges that on March 21, 2006, the subject officer, Metropolitan Police Department (MPD) SUBJECT OFFICER, used language and engaged in conduct toward her that was insulting, demeaning or humiliating during a phone conversation in which the Complainant requested a supplemental police report that another MPD officer told her would be available for pick-up at the police station.

Complainant alleges that she called the Third District Station on March 21, 2006 to obtain a copy of a supplemental stolen property report. SUBJECT OFFICER answered COMPLAINANT’s call and in response to her request for the supplemental report, he reportedly told her that she could not obtain the document because it was on a form known as a PD 252 (also known as a Supplemental Report), and that a PD 252 was not a public record. Complainant explained that another MPD officer told her that she could obtain a copy of the report. SUBJECT OFFICER spoke to her in a “mean” tone and told her that he did not know why another officer advised her of this because the document was not a public record. When Complainant asked SUBJECT OFFICER again as to why she could not get a copy of the Supplemental report, SUBJECT OFFICER allegedly yelled, “If you would have listened to me the first five times, we wouldn’t be having this conversation.”

Complainant then asked SUBJECT OFFICER for his name. The subject officer gave Complainant his name, but before doing so, he allegedly responded, "What are you going to do? Complain that I was rude, that I didn't explain it thoroughly?"

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,¹ the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant is an office coordinator at a legal staffing and placement agency. In December 2005, Complainant's office was burglarized. On or about March 14, 2006, Complainant spoke to WITNESS OFFICER #1 to report an additional loss of property from the December 2005 break-in. WITNESS OFFICER #1 told Complainant that a supplemental stolen property report, reflecting the additional items she had reported, would be available by Monday, March 20, 2006 for pick-up, but that Complainant should call the station to confirm.
2. On March 21, 2006, the Complainant called the Third District police station at approximately 4:15 p.m. to inquire if the supplemental report was available for her to pick up. SUBJECT OFFICER answered Complainant's call. SUBJECT OFFICER informed Complainant that the supplemental information she reported was entered onto a form PD 252, which was not a public document.
3. Complainant explained that she needed the supplemental report for insurance purposes and that WITNESS OFFICER #1 informed her that she could pick it up from the police station. SUBJECT OFFICER, in a mean and unpleasant tone, told Complainant that he did not know why another officer would have told her that she could obtain the document because it was not a public document.
4. Complainant then questioned SUBJECT OFFICER as to why she was told by WITNESS OFFICER #1 and the other officers to whom she spoke, that she could obtain a report that was not available to the public. SUBJECT OFFICER yelled, "I have told you five times

¹ The Subject Officer was given the opportunity to submit written objections to the factual record, but declined to do so.

that you can't get the PD 252. If you would have listened to me the first five times, we wouldn't be having this conversation."

5. Complainant asked for SUBJECT OFFICER's name. SUBJECT OFFICER responded, "What are you going to do? Complain that I was rude, that I didn't explain it thoroughly?" Complainant explained that she wanted his name for her records, and SUBJECT OFFICER provided her with this name.
6. Complainant's co-worker, WITNESS #1, was seated approximately ten feet away from Complainant in an adjoining cubicle, and she overheard Complainant's conversation with SUBJECT OFFICER on the day of the incident. The Complainant held the phone away from her ear and WITNESS #1 heard what she believes to have been SUBJECT OFFICER speaking loudly. WITNESS #1 could not remember what Complainant said during the phone conversation, other than asking him not to "speak to her like that." Immediately after Complainant hung up the phone, WITNESS #1 saw COMPLAINANT write down the details of the event. Complainant maintains a notebook containing handwritten notes in which she contemporaneously records names, important information and events.
7. Complainant claims that the subject officer's "tone and words made [her] feel like [she] was stupid."
8. TECHNICIAN #1, was assigned to the Third District cellblock on the day of the incident. TECHNICIAN #1 stated that while she did not recall a specific conversation between SUBJECT OFFICER and the Complainant regarding a PD 252, she heard SUBJECT OFFICER "tell someone that if he/she had listened to him the first five times when he explained it, they wouldn't still be having the conversation." She stated that SUBJECT OFFICER's voice was raised when he made the comment and that he was "firm in his statement."
9. None of the other witnesses interviewed by OPC, who were present at the Third District Station during the subject incident, including WITNESS OFFICER #2, WITNESS OFFICER #3, WITNESS OFFICER #4, WITNESS OFFICER #5, and TECHNICIAN #2, recall hearing a conversation between SUBJECT OFFICER and a citizen regarding a PD 252.
10. The day after the subject incident with SUBJECT OFFICER, Complainant spoke to MPD WITNESS OFFICER #5 who informed her that she could obtain the PD 252 by making a Freedom of Information Act (FOIA) request and that this is a routine request made by the public to obtain a PD 252.
11. SUBJECT OFFICER provided an interview as part of OPC's investigation, however, he refused to provide a signed statement attesting that the information he provided in his statement was true and correct to the best of his knowledge and recollection.

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: (3) use of language or conduct that is insulting, demeaning, or humiliating;”

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 ... They shall be quiet, orderly, and attentive and shall exercise patience and discretion in the performance of their duties ... Members shall refrain from harsh, violent, coarse, profane, sarcastic, or insolent language...”

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 “exercise patience and discretion in the performance of [his] duties.” SUBJECT OFFICER admits in his unsigned statement that he said something to the effect of, “I have told you five times that you can’t get the PD 252. If you would have listened to me the first five times, we wouldn’t be on the phone for 20 minutes.” He claims, however, that he did not yell or raise his voice when he made this comment. SUBJECT OFFICER’s own statement describing the conversation, alone, constitutes an inappropriate response to Complainant’s legitimate query. The subject officer’s rude response becomes more egregious in light of the fact that the information he provided was partially incorrect. While Complainant could not simply pick up the PD 252 at the station, she could make a routine FOIA request to obtain a copy of the report.

SUBJECT OFFICER likewise denies making the statement, “What are you going to do? Complain that I was rude, that I didn’t explain it thoroughly?” He admits that he was frustrated that the Complainant would not accept “no” as an answer but asserts that he remained professional and courteous throughout the exchange.

Two witnesses, WITNESS #1 and MPD TECHNICIAN #1, corroborate Complainant’s version of the incident and the inappropriateness of SUBJECT OFFICER’s language and conduct. WITNESS #1 stated that the Complainant “held the phone away from her ear” and that she could hear SUBJECT OFFICER’s voice on the other end of the telephone from her seat that was approximately ten feet away from the Complainant. MPD TECHNICIAN #1 stated that

SUBJECT OFFICER's voice was raised during his conversation with Complainant. Complainant's contemporaneous notes of the incident buttress her account of the incident and her allegations that SUBJECT OFFICER was extremely rude to her during the subject incident.

SUBJECT OFFICER's credibility regarding what statements he did and did not make, his tone and the appropriateness of his conduct towards Complainant, are undermined by the fact that he refused to provide a signed statement attesting that the information he provided to the investigator was true and correct to the best of his knowledge and recollection. SUBJECT OFFICER's apparent justification for refusing to provide a signed statement because he believes that OPC is "one-sided" is completely without merit. Even if SUBJECT OFFICER does not trust the process, he must abide by it or work to change it, but an outright refusal to comply is not acceptable.

The Complaint Examiner concludes that SUBJECT OFFICER's use of sarcastic or insolent language and failure to respond to the Complainant in a calm and respectful manner, "regardless of provocation to do otherwise," violates MPD General Order 201.26.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER, Third District

Allegation 1:	Sustained
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Submitted on June 4, 2007.

Sundeep Hora
Complaint Examiner