

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	06-0204
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER, Office of Homeland Security and Counterterrorism
<b>Allegation 1:</b>	Harassment
<b>Complaint Examiner:</b>	Michael K. Lewis
<b>Merits Determination Date:</b>	March 30, 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. The allegation against the subject officer at issue here was originally dismissed by OPC's executive director, pending the concurrence of a Police Complaints Board (PCB) member, pursuant to D.C. Official Code §§ 5-1107(g) and 5-1108. Because the PCB member did not concur in the determination of OPC's executive director, the allegation was referred to this Complaint Examiner to determine the merits of the allegation as provided by D.C. Official Code § 5-1111(e). 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 essence of this complaint is that SUBJECT OFFICER allegedly harassed COMPLAINANT by delivering a speeding ticket to COMPLAINANT's supervisor rather than turning the ticket in for processing by the District's Bureau of Traffic Adjudication (BTA).

**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 (SUBJECT OFFICER having submitted no objections) the Complaint Examiner finds the material facts regarding this complaint to be:

1. On April 3, 2006, SUBJECT OFFICER made a traffic stop in Northeast Washington, DC, and issued a speeding ticket to COMPLAINANT.
2. On April 3, 2006, instead of depositing the ticket for processing by the District's Bureau of Traffic Adjudication (BTA), SUBJECT OFFICER delivered the ticket to United States Secret Service WITNESS OFFICER #1, COMPLAINANT's then-supervisor. According to WITNESS OFFICER #1, SUBJECT OFFICER acted professionally. SUBJECT OFFICER asked WITNESS OFFICER #1 to speak to COMPLAINANT about his driving and further asked that WITNESS OFFICER #1 inform COMPLAINANT that because the ticket had been given to WITNESS OFFICER #1, there would be no fine to pay.
3. On April 3, 2006, a U.S. Navy official complained to U.S. Secret Service WITNESS OFFICER #2 about COMPLAINANT's driving. When his supervisors met with him to discuss the Navy official's complaint, COMPLAINANT mentioned that he had received a speeding ticket. COMPLAINANT subsequently was disciplined for violating administrative rules on vehicle use.
4. On April 4, 2006, COMPLAINANT told his supervisor, WITNESS OFFICER #1, that he had received a speeding ticket the day before. COMPLAINANT did not contest the fact that he had been speeding.
5. Officer Timothy Dumantt, MPD Institute of Police Science instructor, who provides training on traffic stops to recruits and officers at the police training academy, confirmed that the academy instructs officers to use their discretion when issuing tickets to government employees operating government vehicles. Officer Dumantt also confirmed, however, that an officer's discretion must be exercised in a way designed to protect the officer (and, presumably, the MPD) from liability. The specific example cited by Officer Dumantt is one in which the officer does not issue a citation to a government employee in a situation otherwise demanding that one be issued. The MPD (and the city) might be held liable if the government employee later gets in an accident and it is discovered that the MPD officer had not reported an earlier traffic violation by the employee. Finally, Officer Dumantt stated that the officer in question must be able to justify why he did not turn in a ticket, if questioned.

### **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].”

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

In this instance, there is no question that COMPLAINANT was speeding in a government vehicle and received a ticket from SUBJECT OFFICER for that violation. The only possible act of harassment was SUBJECT OFFICER’s decision to deliver the ticket to COMPLAINANT’s supervisor, WITNESS OFFICER #1, rather than to turn the ticket in to the District’s BTA for processing.

The Complaint Examiner’s understanding of MPD’s policy as enunciated by training academy instructor Officer Dumantt, is that MPD officers have the discretion to issue, or not to issue, a ticket to those driving government vehicles. The policy also requires the officers to be protective of possible liability against the officer, the MPD and the District. By delivering COMPLAINANT’s ticket to WITNESS OFFICER #1, SUBJECT OFFICER exercised his discretion – the ticket delivered to WITNESS OFFICER #1 was essentially issuing no ticket at all – while at the same time protecting the city from liability for any vehicular mishap suffered by COMPLAINANT. By delivering the ticket to WITNESS OFFICER #1, SUBJECT OFFICER put on notice COMPLAINANT’s supervisory structure. Presumably, once that structure had received notice of COMPLAINANT’s driving habits, it would be held responsible should COMPLAINANT be involved in a traffic accident in the future.

**SUMMARY OF MERITS DETERMINATION**

**SUBJECT OFFICER**

<b>Allegation 1: Harassment</b>	Unfounded
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Submitted on March 30, 2007.

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Michael K. Lewis  
Complaint Examiner