

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

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| <b>Complaint No.:</b>                               | 06-0205             |
| <b>COMPLAINANT:</b>                                 | COMPLAINANT         |
| <b>Subject Officer(s),<br/>Badge No., District:</b> | SUBJECT OFFICER     |
| <b>Allegation 1:</b>                                | Harassment          |
| <b>Allegation 2:</b>                                | Failure to Identify |
|   |                     |
| <b>Complaint Examiner:</b>                          | Arthur D. Sidney    |
| <b>Merits Determination Date:</b>                   | April 7, 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 of the complaint as provided by § 5-1111(e).

**I. SUMMARY OF COMPLAINT ALLEGATIONS**

COMPLAINANT filed a complaint with the Office of Police Complaints (OPC) on May 1, 2006. COMPLAINANT alleged that on April 21, 2006, Metropolitan Police Department (MPD) SUBJECT OFFICER, Special Operations Division, harassed her and some fellow demonstrators by telling them to stop using profanity and by asking them to leave the area. The COMPLAINANT also alleged that SUBJECT OFFICER failed to wear any identification or provide his name and badge number when requested to do so.

**II. EVIDENTIARY HEARING**

An evidentiary hearing was conducted regarding this complaint on March 3, 2010. The Complaint Examiner heard the testimony of COMPLAINANT, WITNESS #1, WITNESS #2, and SUBJECT OFFICER. No exhibits were introduced at the hearing.

### **III. FINDINGS OF FACT**

Based on a review of OPC's Report of Investigation (ROI), the objections submitted by SUBJECT OFFICER on December 8, 2009, the memorandum submitted by OPC to correct, clarify, or respond to the assertions contained in the December 8, 2009 objections filed by the SUBJECT OFFICER, and an evidentiary hearing conducted on March 3, 2010, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On April 21, 2006, COMPLAINANT was in Washington, D.C. to protest the practices of the International Monetary Fund (IMF) and the World Bank. As part of their protest, COMPLAINANT, WITNESS #1, and several fellow demonstrators stood on the sidewalk in front of the St. Regis Hotel, located at K and 16<sup>th</sup> Streets, N.W. and shouted anti-IMF and World Bank slogans.
2. COMPLAINANT and her fellow demonstrators stood single file on the sidewalk and were not blocking the sidewalk in front of the St. Regis Hotel. After watching people who were possibly affiliated with the IMF and the World Bank exit their vehicles and enter the St. Regis Hotel, the group began chanting, "Disease and starvation will not be tolerated by corporations! That's bullshit! Get off it! The enemy is profit!" The group would stop chanting once the individuals entered the hotel.
3. SUBJECT OFFICER approached the group. SUBJECT OFFICER was wearing a blue shirt and jacket, blue cap, and dark blue motorcycle pants.
4. SUBJECT OFFICER told COMPLAINANT and the other members of the group that they should stop cursing.
5. COMPLAINANT changed the chant to remove the word "bullshit." COMPLAINANT and the group then asked SUBJECT OFFICER for his name and badge number.
6. SUBJECT OFFICER responded, "SUBJECT OFFICER. That's all you need to know." COMPLAINANT and various members of the group continued to ask SUBJECT OFFICER for his name and badge number.
7. WITNESS #2, a legal observer, was called by one of the demonstrators to witness the protest. WITNESS #2 requested that SUBJECT OFFICER provide his name and badge number. SUBJECT OFFICER responded "SUBJECT OFFICER. That's all you need to know."
8. COMPLAINANT and WITNESS #2 took pictures of SUBJECT OFFICER.
9. SUBJECT OFFICER left the area near the group and shortly thereafter the COMPLAINANT and the other members of the group ended their demonstration and left the area.

#### IV. DISCUSSION

##### A. Harrassment

COMPLAINANT alleges that SUBJECT OFFICER harassed her when he requested that the group refrain from using curse words in their chants during the demonstration. As discussed below, the Complaint Explainer does not find that SUBJECT OFFICER denied or impeded COMPLAINANT's exercise or enjoyment of her right to protest.

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; (5) retaliation against a person for filing a complaint pursuant to [the Act]; or (6) failure to identify."

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.

On April 21, 2006, COMPLAINANT was with several fellow demonstrators standing on the sidewalk of the St. Regis Hotel, located at K and 16<sup>th</sup> Streets, N.W. in Washington, D.C. COMPLAINANT and her fellow demonstrators were shouting at people who were "possibly affiliated with the IMF and the World Bank." See ROI at 2; see also Hearing Transcript at 10 (lines 18-20); *id.* at 11 (lines 1-2). COMPLAINANT and the group were chanting "Disease and starvation will not be tolerated by corporations! That's bullshit! Get off it! The enemy is profit." See ROI at 2; Hearing Transcript at 10. During the demonstration, SUBJECT OFFICER approached the group and requested that its members refrain from cursing in their chants of protest. In response to SUBJECT OFFICER's concerns, the group substituted another word for "bullshit."

In its findings, OPC found there to be reasonable cause to believe that SUBJECT OFFICER harassed COMPLAINANT because he “purposefully, knowingly, or recklessly interfered” with COMPLAINANT’s right to engage in lawful protest activities by demanding that she and her group refrain from using curse words. See ROI at 13. However, the Complaint Examiner does not find that COMPLAINANT was harassed by the actions of SUBJECT OFFICER.

After SUBJECT OFFICER requested that COMPLAINANT and fellow demonstrators refrain from using a single word, the group continued to chant and protest. See id. at 13. The group did not disburse. The only action that COMPLAINANT and the fellow demonstrators took was to change the word “bullshit” to another word. Id.

The Complaint Examiner does not find there was any evidence that SUBJECT OFFICER sought to “annoy, bother, or interfere” with COMPLAINANT’s right to protest. The protesters continued to chant after their interaction with SUBJECT OFFICER. Id. The Complaint Examiner determines that COMPLAINANT’s goal in protesting was not to use a particular word, in this case “bullshit”; instead, her goal was to protest the IMF and World Bank.

SUBJECT OFFICER was not required under any law to request that the COMPLAINANT refrain from using curse words in her chant. SUBJECT OFFICER made the request out of respect for the general public. While SUBJECT OFFICER may have been misguided in his request or demand that COMPLAINANT refrain from using curse words, the record is clear that COMPLAINANT did not cease to protest. Id.; Hearing Transcript at 16. Any claims that SUBJECT OFFICER requested that COMPLAINANT and her fellow demonstrators leave are not credible because the group did not disperse. Id. SUBJECT OFFICER did not call backup. COMPLAINANT’s statement that she thought the SUBJECT OFFICER “was going to call for backup and/or arrest” her is not credible because she never left the area. Id. at 14. Thus, the Complaint Examiner finds that COMPLAINANT was not prevented from or hindered in any way from protesting.

Accordingly, the Complaint Examiner determines that SUBJECT OFFICER did not purposefully, knowingly, or recklessly interfere with COMPLAINANT’s right to engage in lawful protests. SUBJECT OFFICER did not impede in the group’s exercise of their lawful rights and the Complaint Examiner determines that the SUBJECT OFFICER did not harass COMPLAINANT in accordance with MPD Special Order 01-01, D.C. Code § 5-1107(a)(1), and D.C. Mun. Regs. Tit. 6A, § 2199.1.

#### B. Failure to Identify

COMPLAINANT alleges that SUBJECT OFFICER failed to provide his badge number when she and her fellow protesters requested such information. As discussed below, the Complaint Examiner finds that SUBJECT OFFICER did fail to provide his name and badge number as required under the applicable MPD General Orders.

Failure to provide identification is described in MPD General Order 201.26 Part I, Section C, No. 2 (effective Nov. 10, 1976) as failure to identify oneself by name and badge number when requested to do so by a member of the public.

Specifically, MDP General Order 201.26 Part I, Section C, No. 2 states, “Members shall be courteous, civil and respectful to their superiors, associates, and other persons whether on, or off duty. They shall be quiet, orderly, and attentive and shall exercise patience and discretion in the performance of their duties. When requested to do so, they shall give their names and badge numbers in a respectful, polite manner.”

According to MPD General Order 201.26 Part II, Section D, No. 1, MPD officers are required to identify themselves by displaying their badge or picture identification before taking police action, unless their identity is obvious or it would be impractical or unfeasible to do so.

Additionally, MPD General Order 110.11, Part V, Section A.13 (effective July 22, 2002) requires MPD officers to visibly display their name plate on their uniform or jacket.

Finally, MPD General Order 110.11, Part V, Section B.3 (effective July 22, 2002) provides that non-uniformed officers, such as detectives, are required to have their picture identification attached to their outermost garment or hung from a chain or similar device. Members of the MPD are required to carry their badge and identification at all times.

When COMPLAINANT, WITNESS #1, and WITNESS #2 requested the name and badge number of SUBJECT OFFICER, he did not comply. SUBJECT OFFICER responded, “SUBJECT OFFICER. That’s all you need to know.” See Hearing Transcript at 98.

SUBJECT OFFICER was not wearing his identification, name plate or badge as required by the applicable MPD General Order. There is no dispute that the pictures included in the ROI were accurate photographs of SUBJECT OFFICER at the time of the protest. These pictures are worth a thousand words. See Attachment 3 to the ROI (containing pictures of SUBJECT OFFICER). None of the pictures show SUBJECT OFFICER wearing a badge. Moreover, the Complaint Examiner finds credible the testimony of the COMPLAINANT, WITNESS #1, and WITNESS #2, that SUBJECT OFFICER neither displayed his badge nor indicated his full name and badge number in accordance with the MPD General Orders. While COMPLAINANT and her fellow protesters did know that the SUBJECT OFFICER was an officer with the MPD, the Complaint Examiner finds that SUBJECT OFFICER did not comply with the MPD General Orders.

Accordingly, the Complaint Examiner determines that SUBJECT OFFICER failed to identify himself as a member of the MPD by his failure to provide his full name and badge number and/or the display of his required identification in violation of the MPD General Orders 201.26, MPD General Orders 110.11, and DC Code 35-1107(a)).

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

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| <b>Allegation 1: Harassment</b>          | Exonerated |
| <b>Allegation 2: Failure to Identify</b> | Sustained  |

Submitted on April 7, 2010.

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ARTHUR D. SIDNEY  
Complaint Examiner