

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	06-0359
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER
Allegation 1:	Harassment
Allegation 2:	Unnecessary/Excessive Force
Complaint Examiner:	Paula Xinis
Merits Determination Date:	May 20, 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

COMPLAINANT alleged that MPD SUBJECT OFFICER (1) harassed him and his friend, WITNESS, when SUBJECT OFFICER attempted to prevent WITNESS from videotaping him in public. COMPLAINANT also alleges that SUBJECT OFFICER (2) used unnecessary or excessive force when the SUBJECT OFFICER pushed WITNESS's arm to the ground while she was filming, and struck COMPLAINANT on the right shoulder.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, including the attached statements, report of interviews and videotape of the encounter itself, 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, all witness statements submitted in connection with the Report of Investigation, and the video of the incident recorded by WITNESS, the Complaint Examiner finds the material facts regarding this complaint to be:

1. At about 10:00 a.m. on August 3, 2006, Officer SUBJECT OFFICER was sitting in a marked police car near 820 South Capitol Street, S.W. off Interstate 295 near Randall Field. At that location, members of the Department of Public Works were removing the belongings of homeless persons who had been perched on the property. COMPLAINANT and his friend WITNESS, both advocates for the homeless, were there to observe and videotape this event.
2. As WITNESS was videotaping, SUBJECT OFFICER got out of his cruiser and approached her.
3. In an assertive, hostile manner, SUBJECT OFFICER queried WITNESS as to why she was videotaping him. She calmly responded that she is permitted to do so. SUBJECT OFFICER persisted erroneously that WITNESS “can’t just videotape somebody,” and that by doing so, she was “violating [SUBJECT OFFICER ’s] privacy.”
4. While SUBJECT OFFICER was insisting that WITNESS could not videotape him, COMPLAINANT approached and also began discussing with SUBJECT OFFICER that WITNESS is indeed permitted to videotape him.
5. SUBJECT OFFICER continued to insist incorrectly that he could not be videotaped. As he became more agitated, he began to grab at the video camera that WITNESS was holding and slap it down. SUBJECT OFFICER then held the video camera down.
6. SUBJECT OFFICER then began insisting that WITNESS and then COMPLAINANT identify themselves. When the two refused to tell SUBJECT OFFICER their names, SUBJECT OFFICER persisted in requesting their names. In an increasingly commanding tone, SUBJECT OFFICER demanded WITNESS and then COMPLAINANT to identify themselves no less than sixteen times throughout the incident.
7. At one point, SUBJECT OFFICER slapped the camera down and pushed COMPLAINANT. Because the videotape was still recording, it captures the camera being pushed down and COMPLAINANT stating that SUBJECT OFFICER pushed him. In response, SUBJECT OFFICER states, “that’s because I told you to step away.”

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].”

1. Harassment

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.

Finally, General Order 304.10, Part 1, Section 2(a) provides that persons “contacted” by law enforcement are not required to answer an officer’s questions or to respond in any way to an officer if they so choose. An officer may not use force or coercion to require citizens to stop or respond. If a citizen refuses to cooperate during contact with law enforcement, the officer must allow the citizen to go on his or her way.

Here, SUBJECT OFFICER clearly harassed WITNESS and COMPLAINANT. WITNESS and COMPLAINANT were lawfully observing an initiative to remove the personal property of homeless persons from the underpass at 820 South Capitol Street, S.W. Further, WITNESS had been lawfully videotaping the events, including SUBJECT OFFICER’s presence at the cleanup. Yet despite her completely lawful conduct, SUBJECT OFFICER insisted that WITNESS cease videotaping him. SUBJECT OFFICER also repeatedly slapped away the

videotape, held it down forcefully while it was in WITNESS's hands, and pushed COMPLAINANT as he tried to intervene. Indeed, from the beginning of the encounter, SUBJECT OFFICER's attitude and demeanor was one of aggression and hostility. He repeatedly demanded that two citizens who were behaving in a lawful manner identify themselves. Further, by holding down the camera and insisting erroneously that COMPLAINANT could not videotape him, SUBJECT OFFICER clearly and curtailed the lawful conduct of two citizens.

Accordingly, SUBJECT OFFICER, without reasonable suspicion or probable cause to believe that any crime had been committed, impeded COMPLAINANT's and WITNESS's right to go about their lawful business. And when it became clear that neither WITNESS nor COMPLAINANT would answer SUBJECT OFFICER's questions, he persisted rather than allow the two to go on their way, as MPD General Order 304.1 Part 1, Section 2(a) requires. For these reasons, SUBJECT OFFICER harassed both WITNESS and COMPLAINANT.

2. Unnecessary or Excessive Force

MPD General Order 901.07, Part II states, "[T]he policy of the Metropolitan Police Department is to preserve human life when using lawful authority to use force. Therefore, officers of the Metropolitan Police Department shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the members or others."

Of course, an officer's conduct is also circumscribed by the Fourth Amendment of the United States Constitution. The Fourth Amendment prohibits an officer from applying any physical force, no matter how slight, that would detain or inhibit a citizen's lawful movement, absent reasonable suspicion or probable cause to believe criminal activity is afoot. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968).

Here, SUBJECT OFFICER applied unnecessary and excessive force during his confronting WITNESS and COMPLAINANT. No evidence exists that COMPLAINANT or WITNESS were violating any laws or posing a threat to the physical safety of any person including themselves. Yet the videotape of the events depicts SUBJECT OFFICER repeatedly swatting at the camera that WITNESS was holding. At one point, SUBJECT OFFICER held down the camera for several minutes, applying enough force to prevent WITNESS from freely videotaping the events. SUBJECT OFFICER also pushed COMPLAINANT, and in response to COMPLAINANT's surprised declaration that SUBJECT OFFICER just pushed him, SUBJECT OFFICER implicitly acknowledged as much, stating "that's because I told you to step away." Accordingly, SUBJECT OFFICER's subsequent denial of laying hands on either COMPLAINANT or WITNESS is simply not credible. Indeed, the videotape does not lie.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER, Third District

Allegation 1:	Sustained
Allegation 2:	Sustained

Submitted on May 20, 2010

PAULA XINIS
Complaint Examiner