

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	07-0028
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, DCHAPD
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Allegation 3:	Discriminatory Treatment
Complaint Examiner:	Kevin D. Judd
Merits Determination Date:	July 11, 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

In a complaint timely filed with the Office of Police Complaints (OPC) on October 23, 2006, the complainant, alleged that on October 8, 2006, the subject officer, District of Columbia Housing Authority Police Department (DCHAPD), SUBJECT OFFICER, harassed him, used language or engaged in conduct toward him that was insulting, demeaning or humiliating, and discriminated against him based on his sexual orientation when he called the complainant on the telephone.

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, and the objections submitted by SUBJECT OFFICER on May 25, 2007, the Complaint Examiner finds the material facts regarding this complaint to be:

1. The complainant is a 51-year-old retiree and is gay. He lives in the LOCATION #1, a complex that is run by the District of Columbia Housing Authority.
2. The complainant had gone through the proper and reasonable channels in contacting the building management to have the barring notice against his friend issued by SUBJECT OFFICER rescinded or lifted.
3. SUBJECT OFFICER was on duty and working at the building's security booth on October 8, 2006.
4. SUBJECT OFFICER telephoned complainant at his apartment telephone at approximately 10:30 p.m.
5. The telephone conversation consisted of the following:

SUBJECT OFFICER: "I heard you've been crying to management about WITNESS #1 getting barred. He's not going to come back to the unit. It's not going to be six months, it will be a year."

Complainant: "Why are you calling me ...? I am going to get a lawyer."

SUBJECT OFFICER: "A lawyer won't help you because [the] Housing [authority] is on my side."

Complainant: "Why are you harassing me?"

SUBJECT OFFICER: In a mocking tone, "Because I love you. I love you."

6. The complainant went to the apartment of his neighbor, WITNESS #2 and related to her the above-mentioned phone conversation he had with SUBJECT OFFICER. WITNESS #2 then provided the complainant with the number of WITNESS OFFICER #1 who is SUBJECT OFFICER's supervisor.

7. Immediately after receiving WITNESS OFFICER #1's phone number, the complainant called WITNESS OFFICER #1 and he arrived 15 minutes later. The complainant explained the situation to WITNESS OFFICER #1. They dialed *69 on the complainant's phone and saw that the last call came from the security booth of the apartment building.
8. WITNESS OFFICER #1 checked the outgoing call log on the security booth telephone, which indicated that an outgoing call was placed to the complainant's apartment at 10:29 p.m.
9. WITNESS OFFICER #1 questioned SUBJECT OFFICER about the incident. SUBJECT OFFICER told WITNESS OFFICER #1 that the barring notice is in effect for 12 months and cannot be lifted. In addition, SUBJECT OFFICER stated that "You have to put pressure on those faggots so you can weed out the bad ones from the good ones from the building."

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 or any other agency pursuant to subsection (j) ... 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

Harassment, as defined by DCHAPD General Order 402.1.4(c) (effective Dec. 1, 1998) states that DCHAPD officers "shall not threaten, fight with, intimidate, abuse, or coerce residents or other members of the public, or provoke such actions by them."

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 or the covered law enforcement agency 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 or the covered law enforcement

agency, their 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 case, the various interviews contained in the Report of Investigation provide sufficient evidence to prove that SUBJECT OFFICER harassed the complainant when he telephoned the complainant on October 8, 2006.

Based on the facts in this matter it can only be concluded that the intentions of SUBJECT OFFICER’s were to harass the complainant. In this instance, there was no specific law enforcement purpose for SUBJECT OFFICER to call the complainant at 10:30 p.m. to discuss the barring notice with the complainant. The complainant had the legal right to contact the building management to attempt to have the barring notice lifted or rescinded. SUBJECT OFFICER did not have the legal right to prevent the complainant from exercising his right, by contacting him well after business hours and stating that he heard the complainant had been “crying to management” and stating that the bar will not be lifted. This was uncalled for and abusive and inconsistent with the DCHAPD policy on harassment.

Based on the facts contained in the OPC Report of Investigation regarding SUBJECT OFFICER’s phone call to the complainant where he mocked, intimidated, and abused the complainant, the allegation that SUBJECT OFFICER purposely, knowingly, or recklessly harassed the complainant in violation of DCHAPD General Order 402.1.4(c) will be sustained.

Insulting, Demeaning, or Humiliating Language or Conduct

DCHAPD General Order 402.1.4(a) and (b) (effective Dec. 1, 1998) provides that:

[DCHAPD officers] shall be shall be courteous and respectful toward residents and the general public. During the normal course of business, they shall approach people calmly and in a business like manner, and remain so despite provocation. They shall refrain from rude or demeaning behavior.

[DCHAPD officers] shall not use language that:

- (1) Is harsh or disrespectful;
- (2) Is demeaning;
- (3) Contains words or phrases that can readily be interpreted as offensive by people, such as racial slurs; and
- (4) Is widely considered inappropriate or socially unacceptable.

SUBJECT OFFICER used language that was insulting, demeaning and humiliating during the telephone call to the complainant October 8, 2006, in violation of DCHAPD General Order 402.1.4(a) and (b). As indicated in the statements by the witnesses, although hearsay, except for the complainant’s, the repeated use of the words “I love you” by SUBJECT OFFICER to the complainant amounted to insulting, demeaning, and humiliating language when SUBJECT

OFFICER utilized them in a mocking manner in response to the complainant's question, "Why are you harassing me?"

Based on the facts regarding SUBJECT OFFICER's phone call to the complainant where he mocked, intimidated, and verbally abused the complainant, the allegations that SUBJECT OFFICER verbally and by conduct, insulted, demeaned and humiliated the complainant in violation of DCHAPD General Order 402.1.4(a) and (b) will be sustained.

Discriminatory Treatment

DCHAPD General Order 402.1.6 (effective Dec. 1, 1998) states, "Members shall not discriminate because of race, age, creed, color, language, sex, socio-economical/cultural background, political affiliation, marital status, national origin, religion, sexual orientation or disability."

The regulations governing OPC define discriminatory treatment as "[c]onduct by a member of the MPD or an officer of a covered law enforcement agency that results in the disparate treatment of persons because of their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, place of residence or business or any other ground of discrimination prohibited under the statutory and the common law of the District of Columbia." D.C. Mun. Regs., title 6A, § 2199.1.

In this instance, the evidence suggests that SUBJECT OFFICER discriminated against the complainant based on sexual orientation when he harassed the complainant and refused to rescind the barring the notice. Under existing case law, in order to prove intentional discrimination by direct, as opposed to circumstantial, evidence, a plaintiff must demonstrate that discrimination was the motivating factor behind the defendant's alleged conduct. *See Village of Arlington Heights v. Metro. House. Dev. Corp.*, 429 U.S. 252 (1977); *Community Housing Trust v. Dep't of Consumer and Regulatory Affairs*, 257 F. Supp.2d 208 (D.D.C. 2003); *Hollins v. Federal Nat'l Mortgage Ass'n*, 760 A.2d 563 (D.C. 2000). Language that reflects a discriminatory attitude and that can be linked to the alleged conduct can serve as direct evidence of unlawful discrimination. *See Hollins*, 760 A.2d at 574-75. Once a prima facie case of discrimination has been established, "the burden shifts to the defendant to prove by a preponderance of the evidence that it would have made the same decision even if it had not taken the illegal factor into consideration." *Feemster v. BSA Ltd. P'ship*, 471 F.Supp.2d 87, 101 (D.D.C. 2007).

Here, a discriminatory attitude was established when SUBJECT OFFICER stated to WITNESS OFFICER #1 that "you have to put pressure on those faggots so you can weed out the bad ones from the good ones from the building." This discriminatory attitude coupled with SUBJECT OFFICER's harassing phone call and refusal to rescind the barring notice established direct evidence of unlawful discrimination.

Based on the facts contained in the OPC Report of Investigation regarding SUBJECT OFFICER's phone call to the complainant, in which he harassed and refused to rescind the barring notice, the allegation of discriminatory conduct by SUBJECT OFFICER in violation of DCHAPD General Order 402.1.6 will be sustained.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Harassment	Sustained
Allegation 2: Insulting, demeaning or humiliating language or conduct	Sustained
Allegation 3: Discrimination	Sustained

Submitted on July 11, 2007

Kevin D. Judd
Complaint Examiner