

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	07-0239
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, First District
Allegation 1:	Harassment
Complaint Examiner:	Laurie S. Kohn
Merits Determination Date:	June 2, 2008

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

The COMPLAINANT filed a complaint with the Office of Police Complaints (OPC) on April 25, 2007. COMPLAINANT alleged that on April 21, 2007, the subject officer, Metropolitan Police Department (MPD) SUBJECT OFFICER, First District, harassed the complainant when the subject officer detained the complainant, took her photograph, and took approximately \$60 from her.¹

¹ The complainant also alleged that a second subject officer, WITNESS OFFICER #1, Asian Liaison Unit, used unnecessary and excessive force against her, and that SUBJECT OFFICER discriminated against her on the basis of her national origin by failing to provide her with a Chinese-speaking translator during her detention. COMPLAINANT further alleged that SUBJECT OFFICER used unnecessary and excessive force against her and used language or engaged in conduct toward her that was insulting, demeaning, or humiliating. Pursuant to D.C. Code § 5-1108(1), on January 10, 2008, a member of the Police Complaints Board dismissed the complainant's allegation against WITNESS OFFICER #1, concurring in the determination made by OPC's executive director. After the January 10 dismissal was signed by the PCB member, and following further review and investigation of COMPLAINANT's complaint, OPC determined that the discrimination, language or conduct, and unnecessary or excessive force allegations against SUBJECT OFFICER should be dismissed as well. Accordingly, OPC prepared a second, separate dismissal for the Board's review. On April 9, 2008, a member of the Police Complaints Board dismissed the complainant's discrimination, force, and language or conduct allegations against SUBJECT OFFICER, concurring in the determination made by OPC's executive director. Accordingly, only the harassment allegation against SUBJECT OFFICER is at issue in this Report of Investigation (ROI).

Specifically, COMPLAINANT alleged that at approximately 2:00 a.m., she was walking home from work when the subject officer stopped her in Chinatown along the 600 block of H Street, N.W. SUBJECT OFFICER identified himself as a police officer and showed the complainant his badge. Without saying anything or providing an explanation, SUBJECT OFFICER reportedly took the complainant across the street to the MPD Asian Liaison Unit substation located at 616 H Street, N.W. SUBJECT OFFICER handcuffed the complainant, and within one to two minutes, two female officers, later identified as WITNESS OFFICER #1 and WITNESS OFFICER #2, arrived.

The complainant was then driven by the female officers to the nearby Red Roof Inn and escorted inside to an office where she was detained while SUBJECT OFFICER spoke to her. SUBJECT OFFICER took a photograph of the complainant and allegedly searched the complainant's front pockets, removing \$60 from one of them. The complainant asked for a receipt. After the subject officer gave the \$60 to a cashier who was behind the lobby desk, he removed the complainant's handcuffs and told her to get out.

The complainant alleged that "other Chinese" people witnessed SUBJECT OFFICER stop her on the street and handcuff her. The complainant believes that her reputation in the community has been ruined as a result of SUBJECT OFFICER's actions.

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

1. During the early morning hours of April 21, 2007, HOTEL NIGHT AUDITOR, the night auditor at the Red Roof Inn, noticed Room 721, on the 7th floor of the hotel, had an outstanding balance of approximately \$60.00. When HOTEL NIGHT AUDITOR called the room, which was registered only to a man, a woman with an Asian-sounding accent answered the phone. He told the woman that there was an outstanding balance to be paid. He believed the woman would be right down to pay the bill.
2. Moments later, an Asian woman emerged from an elevator coming from the 7th floor. HOTEL NIGHT AUDITOR informed SUBJECT OFFICER about the situation and directed him toward this woman, who was now walking down the street away from the

Red Roof Inn. SUBJECT OFFICER confirmed that this was the woman associated with the unpaid balance.

3. SUBJECT OFFICER entered his truck, which was parked in front of the hotel, and pursued this woman to the 600 block of H Street, NW. He located the woman he believed to be the person that HOTEL NIGHT AUDITOR had pointed out to him at the hotel and approached her.
4. SUBJECT OFFICER identified himself as an officer, showed his badge, and tried to explain the situation. The woman that he stopped, COMPLAINANT, initially communicated with SUBJECT OFFICER in English. She refused to identify herself or to provide any identification.
5. COMPLAINANT was agitated at this point and was acting erratically. SUBJECT OFFICER handcuffed her, believing it was necessary for safety, and walked her approximately four building lengths to two female officers from the Asian Liaison Office. The two female officers, WITNESS OFFICER #2 and WITNESS OFFICER #1, directed COMPLAINANT to enter their vehicle and she did so without resistance.
6. WITNESS OFFICER #2 and WITNESS OFFICER #1 drove COMPLAINANT one block to the Red Roof Inn, where she was directed to go into a small office. SUBJECT OFFICER confirmed with HOTEL NIGHT AUDITOR that COMPLAINANT was the woman that HOTEL NIGHT AUDITOR believed had left the hotel without paying her bill. HOTEL NIGHT AUDITOR was convinced COMPLAINANT was the right individual.
7. Once in the office, SUBJECT OFFICER removed COMPLAINANT's handcuffs and spoke with her. She was unresponsive. SUBJECT OFFICER asked her to stand up and he took a picture of her for identification. At some point during this time, WITNESS OFFICER #2 and WITNESS OFFICER #1 conducted a pat down of COMPLAINANT.
8. SUBJECT OFFICER noticed that COMPLAINANT had a large amount of cash in her pocket. SUBJECT OFFICER pointed to the money and explained that he needed approximately \$60 to settle the hotel bill. COMPLAINANT looked at the money. SUBJECT OFFICER then took \$60 from the wad of cash and took it to HOTEL NIGHT AUDITOR to pay off the balance of \$59.20.
9. When SUBJECT OFFICER brought COMPLAINANT the change, she asked for receipt. SUBJECT OFFICER gave her the receipt and then directed her to leave the hotel. COMPLAINANT insisted that she had not stayed in the hotel and therefore did not owe the money. SUBJECT OFFICER informed COMPLAINANT that she could come back later in the day and talk with the manager to sort out any error that had been made.

10. Outside the hotel, COMPLAINANT asked WITNESS OFFICER #1 for an interpreter. Before WITNESS OFFICER #1 could ascertain what dialect she needed, COMPLAINANT left the area.
11. The entire detention was limited to approximately 10 minutes.
12. SUBJECT OFFICER visited COMPLAINANT later that day and spoke with her with the help of WITNESS #1, who translated. COMPLAINANT was very angry and refused to take back her \$60.

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

COMPLAINANT alleges that SUBJECT OFFICER harassed her on April 21, 2007 by 1) improperly detaining her; 2) taking her photograph; and 3) taking \$59.20 from her. Although SUBJECT OFFICER detained COMPLAINANT and later realized that he had detained the wrong person, the detention was not improper given the facts. SUBJECT OFFICER’s actions in detaining COMPLAINANT complied fully with MPD guidelines. Pursuant to MPD General Order 304.10, Police-Citizen Contacts, Stops and Frisks, SUBJECT OFFICER was entitled to stop COMPLAINANT to determine whether probable cause existed for arrest because he

reasonably suspected that she had committed a crime. MPD General Order 304.10, Police-Citizen Contacts, Stops and Frisks (effective July 1, 1973). HOTEL NIGHT AUDITOR directed SUBJECT OFFICER to pursue an Asian woman who had refused to pay an outstanding bill and was fleeing from the hotel. HOTEL NIGHT AUDITOR pointed this woman out to SUBJECT OFFICER. SUBJECT OFFICER was careful to confirm twice with HOTEL NIGHT AUDITOR that he was pursuing the right woman. Based on HOTEL NIGHT AUDITOR's allegation and his identification of the suspect, SUBJECT OFFICER had a reasonable belief that he was arresting the correct person. Further, upon his return to the Red Roof Inn, SUBJECT OFFICER received confirmation from HOTEL NIGHT AUDITOR that he had pursued the right person since HOTEL NIGHT AUDITOR was certain that COMPLAINANT was the woman he saw fleeing the hotel.

SUBJECT OFFICER complied with MPD guidelines in initiating the detention as well. Though accounts vary as to whether he was wearing his uniform, both SUBJECT OFFICER and COMPLAINANT agree that the officer identified himself as a police officer and showed his badge in compliance with MPD General Order 304.10. MPD General Order 304.10, Police-Citizen Contacts, Stops and Frisks (effective July 1, 1973).

Further, SUBJECT OFFICER acted reasonably when he handcuffed COMPLAINANT. Several accounts suggest that COMPLAINANT, who was suspected of theft, was very agitated and acting irrationally. SUBJECT OFFICER reasonably determined that he must handcuff COMPLAINANT for his safety and his decision complied with MPD guidelines.

Though there is some discrepancy between HOTEL NIGHT AUDITOR's recollection, and the recollection of the three officers, it appears that the duration of the detention did not exceed MPD guidelines. Under MPD General Order 304.10, a person may not be detained more than ten minutes. MPD General Order 304.10, Police-Citizen Contacts, Stops and Frisks (effective July 1, 1973). Ten minutes was required for SUBJECT OFFICER to ascertain that he had detained the right person and to determine whether he should make an arrest.

COMPLAINANT alleges that SUBJECT OFFICER harassed her unlawfully by taking her picture. To the contrary, SUBJECT OFFICER's decision to photograph COMPLAINANT lawfully complied with MPD guidelines and did not constitute harassment. Photography during a detention is permitted in order to identify persons during criminal investigations if there is "reasonable suspicion that the individual has engaged in criminal activity." MPD General Order 304.13, The Use of Photographs in Criminal Investigations (effective Apr. 30, 2004). Because COMPLAINANT could not provide any identification, the only way SUBJECT OFFICER could identify her for future resolution of this investigation was to photograph her. As discussed above, based on HOTEL NIGHT AUDITOR's allegations and identification of COMPLAINANT, SUBJECT OFFICER had a reasonable suspicion that COMPLAINANT was involved in a theft.

Finally, COMPLAINANT alleges that SUBJECT OFFICER harassed her by taking money from her without her assent. Indeed, SUBJECT OFFICER and COMPLAINANT's

account of this aspect of the detention are consistent. SUBJECT OFFICER noticed that COMPLAINANT had some cash in her pocket. SUBJECT OFFICER directed her to use that cash to pay her outstanding balance to the Red Roof Inn. When, COMPLAINANT failed to respond to SUBJECT OFFICER's suggestion (SUBJECT OFFICER asserts COMPLAINANT's only reaction was to look at the money), SUBJECT OFFICER took the money and paid the Red Roof Inn bill. He returned her change and provided her with a receipt. SUBJECT OFFICER's actions in seizing the money constituted harassment.

SUBJECT OFFICER had no authority to force COMPLAINANT to pay restitution for the crime he suspected that she committed. First, COMPLAINANT was not under arrest. Thus, SUBJECT OFFICER was not authorized to seize her property for any purpose. Second, while he claimed that HOTEL NIGHT AUDITOR did not wish to pursue criminal charges, SUBJECT OFFICER's actions exceeded an appropriate mediation between parties. He lawfully could have urged COMPLAINANT to pay the bill. He could have acted as mediator between HOTEL NIGHT AUDITOR and COMPLAINANT in sorting out the conflict. However, by seizing COMPLAINANT's money and paying the bill himself, SUBJECT OFFICER unlawfully harassed COMPLAINANT.

Indeed, SUBJECT OFFICER exceeded his authority by short-circuiting the entire criminal justice system. He failed to investigate the facts, make an arrest, refer the case for criminal papering, and permit the justice system to determine if restitution was due. His investigation consisted only of talking with HOTEL NIGHT AUDITOR, of hearing the most superficial of allegations, and of trying to communicate with COMPLAINANT, but receiving no response. He never asked to see any documentation showing the outstanding balance. He never went to the hotel room in question to determine if COMPLAINANT was truly the occupant and to assist him in identification. Yet, SUBJECT OFFICER forced COMPLAINANT to pay restitution. Had SUBJECT OFFICER been convinced, even by the scant evidence, that COMPLAINANT had committed a crime, he should have arrested her and let the criminal justice system play its role in administering justice.

The impropriety of his actions is further underscored by his failure to generate the appropriate paperwork to document the detention. According to General Order 304.01, Part I, Section A.4, Operation and Management of Criminal Investigations (effective October 11, 1987), an officer who conducts an initial investigation into a crime shall complete a PD Form 251, Event Report, and PD Form 252, Supplement Report, "ensuring that each of the listed solvability factors are thoroughly and completely addressed and documented." Furthermore, pursuant to General Order 304.10, Part I, Section D.1, Police-Citizen Contacts, Stops and Frisks (effective July 1, 1973) a PD Form 251 must be completed any time a frisk or forcible stop is conducted. The PD Form 251 must contain "all the pertinent details of the incident, including all factors relied upon in determining that the stop or frisk was justified." Under General Order 201.17, Outside Employment, officers are required to write reports of all incidents and offenses even when the incidents occur while the officer is engaged in police-related outside employment.

However, there is no evidence that SUBJECT OFFICER completed this report or any of the others.

With his unreasonable seizure of the complainant's money, SUBJECT OFFICER dispossessed COMPLAINANT of her property and intentionally interfered with her ability to go about her lawful business, in the absence of a specific law enforcement purpose. As such, SUBJECT OFFICER harassed COMPLAINANT in violation of MPD Special Order 01-01.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Sustained
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Submitted on June 2, 2008.

Laurie S. Kohn
Complaint Examiner