

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	07-0250
COMPLAINANT:	COMPLAINANT
SUBJECT OFFICER(s), Badge No., District:	SUBJECT OFFICER #1, SUBJECT OFFICER #2,
Allegation 1:	Harassment
Allegation 2:	Use of Excessive or Unnecessary Force
Complaint Examiner:	Arthur D. Sidney
Merits Determination Date:	June 1, 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

On May 3, 2007, COMPLAINANT filed a complaint with the Office of Police Complaints (OPC). The COMPLAINANT alleged that on April 24, 2007, the two SUBJECT OFFICERS, Metropolitan Police Department (MPD) SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed her when they demanded that she allow her former tenant to come into her home, helped the tenant break into her home, and then entered her home against her will.

The COMPLAINANT also alleged that SUBJECT OFFICER #1 harassed her when he threatened to call the U.S. Marshals Service to arrest and evict the COMPLAINANT if she did not open the door, and threatened to take away her day care license. Finally, the COMPLAINANT alleged that SUBJECT OFFICER #1 used unnecessary or excessive force against her by pushing open her back door so forcefully that it flew open and hit the left side of her face.¹

¹ On September 19, 2008, OPC issued a Report of Investigation (“ROI”) with respect to these allegations, concluding that there was reasonable cause to believe that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed the COMPLAINANT and used unnecessary or excessive force against her. This matter was originally referred to this complaint examiner where I sustained the harassment and force allegations against the SUBJECT OFFICERS. Shortly thereafter, OPC learned that the SUBJECT OFFICERS’ objections to the ROI, dated October 3,

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation and the attached exhibits, the Objections to the ROI dated March 29, 2010, and the Memorandum to correct, clarify, or respond to those objections dated April 7, 2010, the Complaint Examiner determined that there were 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

The Complaint Examiner based his determination upon the Report of Investigation and the attached exhibits, the objections to the ROI, and the Memorandum to correct, clarify, or respond to those objections. Based upon a review of these documents, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On April 24, 2007, at approximately 11:00p.m., COMPLAINANT's tenant, WITNESS #1, began knocking on the front door to her house. COMPLAINANT did not respond to WITNESS #1's knocking. WITNESS #1 had previously rented a room in COMPLAINANT's house and had stopped living in COMPLAINANT's home approximately one month prior.
2. After a few minutes, the knocking became louder. WITNESS #1 telephoned that Metropolitan Police Department and indicated that he had been locked out of COMPLAINANT's house and that COMPLAINANT had changed the locks on the doors to her house.
3. Shortly thereafter, COMPLAINANT saw that a police officer, later identified as SUBJECT OFFICER #1, was with WITNESS #1 at the door. While continuing to knock, SUBJECT OFFICER #1 yelled at COMPLAINANT. COMPLAINANT did not respond to the continued knocking.
4. The COMPLAINANT called her sister, WITNESS #2. After the COMPLAINANT placed her sister on hold, she called WITNESS OFFICER #1. COMPLAINANT, WITNESS #2, and WITNESS OFFICER #1 all were connected on the phone line and engaged in a three-way telephone conversation. The COMPLAINANT informed them of the situation and asked WITNESS OFFICER #1 for advice on what COMPLAINANT should do. WITNESS OFFICER #1 told her that she could open the door, but that she was not obligated to do so if she was not so inclined.

2008, had not been forwarded to me. As a result, on February 2, 2009, the complaint examiner withdrew his November 15, 2008 determination. OPC has since supplemented its investigation in this case and produced a revised ROI, dated March 15, 2010.

5. The COMPLAINANT saw that a second police officer, later identified as SUBJECT OFFICER #2, arrived. SUBJECT OFFICER #1 continued to shout and both officers knocked upon COMPLAINANT's door.
6. SUBJECT OFFICER #2 asked WITNESS #1 for the COMPLAINANT's telephone number, which WITNESS #1 provided. SUBJECT OFFICER #2 then proceeded to telephone the COMPLAINANT, but the COMPLAINANT did not answer. COMPLAINANT retrieved the voice message left by SUBJECT OFFICER #2 in which he stated that he was advising WITNESS #1 to take the matter to landlord-tenant court. COMPLAINANT relayed this information to WITNESS OFFICER #1 who advised her that the matter should be over and that she should go to bed.
7. Shortly thereafter, WITNESS #1 began knocking upon the back door of COMPLAINANT's house. In an attempt to open the COMPLAINANT's back door, WITNESS #1 broke the doorframe. When the door opened, the COMPLAINANT pushed her body against the door to keep the door closed and told WITNESS #1 that he was not going to enter the house. WITNESS #1 then went around to the front of the house and returned to the back of the house with the two SUBJECT OFFICERS.
8. SUBJECT OFFICER #1 tried to push the back door open as the COMPLAINANT continued to hold the door closed with her body. SUBJECT OFFICER #2 placed his foot in the doorway and both SUBJECT OFFICERS continued to push the door while COMPLAINANT pushed her body against the door to keep it closed.
9. At some point during the struggle, COMPLAINANT stepped away from the door. SUBJECT OFFICER #2 pushed the door open with such force that it hit the left side of COMPLAINANT's face about her left eye area and continued to hit and damage the wall.
10. The SUBJECT OFFICERS and WITNESS #1 entered the COMPLAINANT's home. COMPLAINANT telephoned the Metropolitan Police Department to request that another police officer arrive at the scene.
11. WITNESS OFFICER #2 was told by the dispatcher that he was responding to a landlord tenant dispute. When WITNESS OFFICER #2 arrived, the COMPLAINANT explained what had transpired. WITNESS OFFICER #2 requested that COMPLAINANT provide him with a copy of her lease with WITNESS #1. COMPLAINANT complied.
12. WITNESS OFFICER #2 looked at the lease and explained that it was against the law for COMPLAINANT to change her locks on the doors and that she had to allow the WITNESS #1 to spend the night in her house because WITNESS #1 had belongings in the house. COMPLAINANT refused. COMPLAINANT told WITNESS OFFICER #2 that she wanted to press charges against the SUBJECT OFFICERS.

13. SUBJECT OFFICER #1 escorted WITNESS #1 upstairs in the house to retrieve his belongings. After WITNESS #1 gathered his belongings, he left COMPLAINANT's home with the police officers.
14. The police officers on the scene called for an ambulance. When the ambulance arrived, the medics gave COMPLAINANT an ice pack for her eye. The COMPLAINANT did not go to the hospital until the following day because she was concerned about the safety of her house and because her daughter was present in the house.
15. The following day, COMPLAINANT sought medical treatment where she was diagnosed with having a "bruise" and a "contusion."
16. During the entire incident, the COMPLAINANT had a guest, WITNESS #3 and her daughter, WITNESS #4, in her house. Additionally, the COMPLAINANT's neighbor, WITNESS #5, witnessed part of the incident from her property. All witnessed the incident.

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]."

A. 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

“[O]fficers are instructed that they are not to become involved in apparent landlord-tenant disputes. Rather, when called to the scene, the officers are to maintain the peace and refer the parties to Landlord and Tenant Court.” MPD Circular 00-01, effective June 15, 2000.

1. The Entry into the Premises

The evidence reviewed in this matter supports the finding that SUBJECT OFFICER #1 and SUBJECT OFFICER #2 harassed COMPLAINANT. The SUBJECT OFFICERS’ actions of pushing the COMPLAINANT’s door open and allowing WITNESS #1 to enter and retrieve his belongings bothered and interfered with COMPLAINANT’s use of her home and the SUBJECT OFFICERS’ actions were in violation of internal MPD directives.

Paramount in this case is the credibility of each person’s recitation of the events that transpired. The SUBJECT OFFICERS have varying accounts as to the facts. For example, the SUBJECT OFFICERS disagree regarding the simple fact as to which of the SUBJECT OFFICERS first arrived on the scene. SUBJECT OFFICER #1 claims that he responded as the “secondary unit” and according to his account, SUBJECT OFFICER #2 arrived first. Exhibit 15. SUBJECT OFFICER #2 claims that he responded to a call between 1:00 a.m. and 2:00 a.m. and indicated that he responded at the same time as SUBJECT OFFICER #1. Exhibit 17.

SUBJECT OFFICER #2 claimed that after he showed up on the scene, found WITNESS #1, and knocked upon COMPLAINANT’s house, he realized that if the COMPLAINANT would not allow WITNESS #1 to enter her home, there was nothing more that he could do. SUBJECT OFFICER #2 came to this realization because he contacted WITNESS OFFICER #2 who informed him that SUBJECT OFFICER #2 could not do anything because it was a landlord tenant matter. Exhibit 17. According to SUBJECT OFFICER #2, both SUBJECT OFFICERS began to walk back to their vehicles until they heard WITNESS yelling, “She’s trying to hit me!” Exhibit 14. Both SUBJECT OFFICERS ran back to WITNESS #1.

SUBJECT OFFICER #1 claimed that when he showed up, he was not aware whether the COMPLAINANT was inside the house or not. According to SUBJECT OFFICER #1, he indicated to WITNESS #1 that he needed to take the matter to landlord tenant court. Exhibit 12. According to SUBJECT OFFICER #1, WITNESS #1 went to the back of COMPLAINANT’s home to see whether he could get access to the tenant’s home. Shortly afterward, WITNESS #1 screamed “She slammed the door on me!” Thereafter, both SUBJECT OFFICERS ran back to WITNESS #1.

Later, WITNESS OFFICER #2 showed up later in response to a dispatch concerning a landlord-tenant issue. WITNESS OFFICER #2 asked the COMPLAINANT for a copy of the lease and reviewed it. All MPD officers present determined that WITNESS #1 had a legal right

to be in the property. The problem with this determination by all of the MPD officers on the scene is that their determination was beyond the scope of their authority.

The SUBJECT OFFICERS harassed COMPLAINANT when they entered the COMPLAINANT's home and allowed WITNESS #1 to do the same. After the SUBJECT OFFICERS arrived on the scene and determined that the issue involved a landlord tenant issue, the SUBJECT OFFICERS should have escorted WITNESS #1 off of COMPLAINANT's property rather than engage in legal determinations regarding the validity of a rental agreement or whether WITNESS #1 had a legal right to be on the COMPLAINANT's property. The MPD Circular states that "[O]fficers are instructed that they are not to become involved in apparent landlord-tenant disputes. Rather, when called to the scene, the officers are to maintain the peace and refer the parties to Landlord and Tenant Court." MPD Circular 00-01, effective June 15, 2000. Because the exercise of such judgment is beyond the expertise of MPD officers, all MPD officers are advised to inform the public to take the matter up at landlord tenant court, are advised to not get involved, and are admonished to keep the peace. The SUBJECT OFFICERS' decision to allow WITNESS#1 to attempt to gain access to the COMPLAINANT's home through the rear door was not a reasonable attempt to maintain the peace. Moreover, once WITNESS #1 began to push the door open and tussle with COMPLAINANT, SUBJECT OFFICERS should have escorted WITNESS #1 away from the property. Rather, the SUBJECT OFFICERS helped to escalate the situation which resulted in WITNESS #1 exclaiming that he was being hit or that COMPLAINANT was closing the door upon him. After this, the SUBJECT OFFICERS allowed WITNESS #1 to enter the COMPLAINANT's home and demanded to review a lease. Both SUBJECT OFFICERS failed to maintain the peace. Thus, the SUBJECT OFFICER's decision to enter COMPLAINANT's house and their decision to allow WITNESS #1 to enter the COMPLAINANT's house constituted harassment.

2. Threats for the Intervention of the U.S. Marshals or Threats to Take Away Day Care License

COMPLAINANT also alleged that SUBJECT OFFICER #1 harassed her by threatening to call the U.S. Marshals Service to arrest and evict the COMPLAINANT if she did not open the door and by threatening to take away her day care license. The Complaint Examiner does not find that SUBJECT OFFICER #1 harassed COMPLAINANT by threatening to have the U.S. Marshals evict or arrest her or have her daycare license removed. Both SUBJECT OFFICERS deny making such a statement; SUBJECT OFFICER #1 claims that he might have told the COMPLAINANT to call the U.S. Marshals Service if she wanted WITNESS #1 evicted. COMPLAINANT, WITNESS#3, and WITNESS #4 claim the contrary.

The Complaint Examiner does not find it credible that SUBJECT OFFICER #1 threatened to call the U.S. Marshals Service to arrest and evict the COMPLAINANT and that SUBJECT OFFICER #1 threatened to take away her day care license. Instead, the Complaint Examiner finds it reasonable that SUBJECT OFFICER #1 informed COMPLAINANT of her right to involve the U.S. Marshals Service if she wanted WITNESS #1 evicted. It appears illogical that the police officers would threaten that another law enforcement agency would

intervene, arrest, evict, and remove the COMPLAINANT's day care license. The COMPLAINANT Examiner finds that if these threats were made, the SUBJECT OFFICER would have threatened that the MPD officers themselves would have taken these actions. Given the commotion and heightened emotions at the scene, the Complaint Examiner finds it reasonable that the COMPLAINANT misunderstood SUBJECT OFFICER #1's statement and interpreted it as a threat. Therefore, the Complaint Examiner finds that the COMPLAINANT's allegation regarding SUBJECT OFFICER #1 to be unfounded.

Accordingly, both SUBJECT OFFICERS in failing to keep the peace and in permitting WITNESS #1 and themselves to enter COMPLAINANT's home, engaged in conduct that constituted harassment. The SUBJECT OFFICERS did not comply with the law, improperly involved themselves in a landlord tenant issue, and interfered with COMPLAINANT's use and enjoyment of her property without a lawful purpose, in violation of MPD Special Order 01-01.

B. USE OF UNNECESSARY FORCE

Use of unnecessary or excessive force, as defined by MPD Special Order 01-01, Part III, Section N includes "the use of force that is improper in the context of the incident giving rise to the use of force."

The regulations governing OPC define excessive or unnecessary force as "[u]nreasonable use of power, violence, or pressure under the particular circumstances. Factors to be considered when determining the 'reasonableness' of a use of force include the following: (1) the severity of the crime at issue; (2) whether the suspect posed an immediate threat to the safety of officer or others; (3) whether the subject was actively resisting arrest or attempting to evade arrest by flight; (4) the fact that officers are often required to make split second decisions regarding the use of force in a particular circumstance; (5) whether the officer adhered to the general orders, policies, procedures, practices and training of the MPD ... and (6) the extent to which the officer attempted to use only the minimum level of force necessary to accomplish the objective." D.C. Mun. Regs., title 6A, § 2199.1.

The Complaint Examiner finds that excessive force was used in this circumstance when SUBJECT OFFICER #2 opened the door with such force that it hit COMPLAINANT's head and the door slammed into the wall. COMPLAINANT alleged that SUBJECT OFFICER #2 used unnecessary or excessive force against her by pushing open her back door so forcefully that it flew open and hit the left side of her face. According to COMPLAINANT, SUBJECT OFFICER #1 pushed against the door while SUBJECT OFFICER #2 stuck his foot in the doorway. The COMPLAINANT pushed her body against the door to keep both officers out. By SUBJECT OFFICER #2's own admission, his "reaction to the pain from the door hitting [his]

foot was to immediately push the door open.” Exhibit 14 at 2. SUBJECT OFFICER #2 acknowledged that the door hit COMPLAINANT.² Id.

The Complaint Examiner finds credible the accounts by COMPLAINANT, WITNESS #3, and WITNESS #4, indicating that SUBJECT OFFICER #2 flung open the door with such force that it damaged COMPLAINANT’s face and the wall to her house.³ See Exhibit 26n. SUBJECT OFFICER #2 acknowledges that the door hit COMPLAINANT’s face. Exhibit 14 at 2; Exhibits 6a and 6b. Following the event, COMPLAINANT went to the hospital where she was diagnosed as having bruises and a contusion. Exhibits 3-5. Moreover, the pictures are evidence of the damage to the wall. Exhibit 26n. Thus, the Complaint Examiner finds that SUBJECT OFFICER #2 opened the COMPLAINANT’s door so forcefully that it hit her in the head and caused damage to her wall.

The Complaint Examiner also finds that SUBJECT OFFICER #1 also used excessive force under the circumstances. SUBJECT OFFICER #1 attempted to push the back door open as the COMPLAINANT continued to hold the door closed with her back. Thus, a struggle ensued between the SUBJECT OFFICERS and COMPLAINANT. During the struggle, SUBJECT OFFICER #2 placed his foot between the door and the frame. SUBJECT OFFICER #2 forcefully threw open the door and the Complaint Examiner finds that the door was opened with greater force because SUBJECT OFFICER #1 was also pushing against the door. The COMPLAINANT Examiner finds that the force that SUBJECT OFFICER #1 used was a contributing cause to the injury suffered by the COMPLAINANT.

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 member or others.”

MPD General Order 901.07, Part V, Section B, No. 1 states, “[t]he Department recognizes and employs the Use of Force Continuum. Members in response to resistant or

² In the Objections to the ROI, SUBJECT OFFICERS argue that WITNESS #5’s account should have been considered. See Objections to the ROI at 5. WITNESS #5 simply stated “the woman opened the door and the police officer went inside.” Exhibit 12. However, this evidence was considered and this Complaint Examiner does not find it persuasive because WITNESS#5 observed the incident from her own property and could not see the manner in which the door was opened and whether there was any injury to COMPLAINANT or her property.

³ In the Objections to the ROI at 5, SUBJECT OFFICERS argue that the hole in the wall was tampered with during April 24, before the picture was taken, and again on April 25, 2007, when additional pictures were taken. The Complaint Examiner finds that the picture of the wall from April 24, 2007 is the best evidence the wall’s appearance. Exhibit 26n. The Complaint Examiner does not find the pictures of the wall from the following day, April 25, 2007 (Exhibit 26e), to accurately reflect the damage done to the wall because there was tampering with the wall as the damage was exacerbated from the prior day. ROI at 18.

dangerous individuals may apply escalating options of force (see Use of Force Continuum Chart attached). The options include: a. Cooperative Controls, such as verbal persuasion; b. Contact Controls, such as hand control procedures, firm grip, escort and control holds; c. Compliance Techniques, such as Oleoresin Capsicum (OC) Spray (non-deadly); d. Defensive Tactics, such as less-than-lethal weapons, including impact weapons, such as a baton, or ASP, and including less-than-lethal projectiles used by the Emergency Response Team and during times of civil disobedience (e.g. 12 gauge shotgun, 27 mm gas guns, and rubber bullets), and canines; e. deadly Force (including deadly applications of less-than-lethal weapons).

Application of the Use of Force Continuum for the Metropolitan Police Department provides guidance to MPD officers on the appropriate use of force. This guidance states that “[t]he policy of the Metropolitan Police Department is that an officer shall use only that force that is reasonable necessary to effectively bring an incident under control, while protecting the lives of the officers and others.” The guidance also states, “...The officer’s response to a subject’s action must be based on the totality of [the] circumstances, which an officer reasonable believes to exist at the time of the confrontation.”

SUBJECT OFFICER #2 pushed the door open immediately when he felt the door close on his foot. It is reasonable that the force was strong because SUBJECT OFFICER #1 was pushing the door open against COMPLAINANT’s opposing force and at the same time SUBJECT OFFICER #2 reflexively swung open the door with such force that it hit the COMPLAINANT and the wall. The Complaint Examiner determines that this force was strong and reflexive and constitutes unnecessary or excessive force as both SUBJECT OFFICERS had no legal authority to take any action – physical or nonphysical – to enter the COMPLAINANT’s house. It was not necessary to exert force to control a person or incident to protect the lives of others. Indeed, SUBJECT OFFICERS own behavior in forcing their way into the apartment without justification created an environment that required force. Thus, rather than preventing or diffusing a confrontation, the SUBJECT OFFICER’s actions ignited a confrontation between the police and a citizen. Since it was not reasonably necessary for the SUBJECT OFFICERS to enter the house, it was not reasonably necessary for them to physically force their way inside the residence against the resistance of COMPLAINANT. Therefore, both SUBJECT OFFICER #1 and SUBJECT OFFICER #2’s use of force to gain entry into COMPLAINANT’s house was unnecessary or excessive under the circumstances, in violation of MPD General Order 901.07.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER #1

Allegation 1: Harassment	Sustained, in part (concerning entry into COMPLAINANT's home); Unfounded, in part (concerning U.S. Marshals comment)
Allegation 2: Unnecessary/Excessive Force	Sustained

SUBJECT OFFICER #2

Allegation 1: Harassment	Sustained
Allegation 2: Unnecessary/Excessive Force	Sustained

Submitted on June 1, 2010.

ARTHUR D. SIDNEY
Complaint Examiner