

GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF POLICE COMPLAINTS

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	08-0048
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, 2 nd District
Allegation 1:	Harassment
Allegation 2:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Eleanor Nace
Merits Determination Date:	July 9, 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 November 6, 2007. COMPLAINANT alleged that on November 6, 2007, the subject officer, Metropolitan Police Department (MPD) SUBJECT OFFICER, Second District, harassed her and used language or engaged in conduct toward her that was insulting, demeaning, or humiliating when the subject officer stopped beside the complainant in her police car and later pulled the complainant over.

Specifically, COMPLAINANT alleged that at approximately 5:40 a.m., she was driving from her friend's house in Southwest D.C. to her home in Northwest D.C. The complainant was driving on Ohio Drive, S.W., toward Rock Creek Parkway when she came to a stop at an intersection. The subject officer pulled beside her, activated the police car's emergency lights and sirens, and allegedly yelled, "What the hell are you doing? What the fuck are you doing?" The subject officer then drove off without any explanation or further interaction.

The complainant continued driving and happened to travel the same route as the subject officer: north on Rock Creek Parkway to the Massachusetts Avenue exit. Once on Massachusetts Avenue, the complainant traveled in the right lane and the subject officer traveled

in the left lane. The complainant looked over at the subject officer's car to confirm that it was the same officer who had previously yelled at her. The lane that the complainant was traveling in became a parking lane, so the complainant merged into the left lane behind the subject officer. The subject officer then "jerkily" pulled over to the right, allowed the complainant to pass, activated her emergency lights, and pulled the complainant over.

As SUBJECT OFFICER approached the complainant, the complainant noticed that the subject officer was not in police uniform and did not have a badge displayed. COMPLAINANT also noticed that the subject officer was wearing a track jacket that was fully zipped up. SUBJECT OFFICER allegedly yelled, "Roll down your window! Roll down your window!" and repeatedly asked the complainant, "Why are you stalking me?" SUBJECT OFFICER also told the complainant that she could have arrested her and given her a ticket for almost "driving [her] off the road" on Ohio Drive. The complainant tried to explain that she did not know what the officer was talking about and that she was just driving home. The subject officer kept insisting that the complainant was stalking her and stated that if the complainant continued to stalk her, the complainant could "stalk her back to the police station." The subject officer went back to her car without further explanation and drove away. A copy of the complaint, which was submitted in a timely manner and in the proper form, is attached as **Exhibit 1**.

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. To the extent that the parties differed on factual issues, credibility determinations were made in favor of the complainant. No witnesses to the incidents were identified by either of the parties nor located by the OPC.

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on May 21, 2008, and the Memorandum from Thomas Sharp, Deputy Director, OPC, on May 21, 2008, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On November 6, 2007, at approximately 5:40 a.m., both the complainant and SUBJECT OFFICER were driving on Ohio Drive toward Rock Creek Parkway.
2. The complainant came to a stop at an intersection where no stop was required.

3. SUBJECT OFFICER pulled beside her, activated the police car's emergency lights and sirens, and yelled at the Complainant: "What the hell are you doing? What the fuck are you doing?" SUBJECT OFFICER drove off without explanation.
4. COMPLAINANT continued on her way home, north on Rock Creek Parkway to the Massachusetts Avenue exit. While traveling on Massachusetts Avenue in the right she noticed that the same officer was traveling beside her in the left lane.
5. SUBJECT OFFICER confirmed that the person driving beside her was the same individual who had stopped at the intersection earlier.
6. With no cause, SUBJECT OFFICER activated her lights and made the complainant stop.
7. SUBJECT OFFICER was not in uniform and was not displaying a badge.
8. SUBJECT OFFICER yelled at the complainant, "Roll down your window!" "Why are you stalking me?" The officer said she could have arrested her earlier and if she continued stalk her she could stalk her back to the police station.
9. COMPLAINANT filed a complaint later that day.

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

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

The COMPLAINANT alleged that subject officer harassed her by pulling her over on Massachusetts Avenue without a legitimate law enforcement purpose. According to the complainant, when she stopped at an intersection on Ohio Drive, the subject officer pulled up beside her and yelled at her before driving off. When the subject officer saw the complainant a second time on Massachusetts Avenue, SUBJECT OFFICER pulled the complainant over and accused the complainant of stalking her. The subject officer left without specifically explaining to COMPLAINANT why she believed the complainant was stalking her.

SUBJECT OFFICER denied that she conducted a traffic stop for the purpose of accusing the complainant of stalking her. The subject officer further stated that the complainant “did not commit any traffic violations,” and that the officer had not conducted a traffic stop. Instead, SUBJECT OFFICER claimed that she pulled the complainant over to “check on [the complainant’s] well being.” But complainant was not driving erratically or showing any signs of distress to warrant this attention. Therefore, this explanation is simply not credible.

Indeed, very few of SUBJECT OFFICER’S assertions appear credible when viewed in light of the circumstances surrounding the incident. SUBJECT OFFICER claimed that when she pulled over the complainant, she first asked her, “Are you OK?” If that were true, it seems unlikely that the driver would have filed a complaint in the first place. The subject officer also could not recall how the complainant responded to that question or any of her other questions – even though she was reportedly concerned about the complainant’s well being – nor could she articulate how she determined that the complainant was safe enough to drive. Given SUBJECT OFFICER’S intricate recollection of numerous other details of the incident, such as where the complainant initially stopped on Rock Creek Parkway, the location of the subject officer’s second interaction with the complainant, and the complainant’s “disheveled” appearance at the time of the traffic stop, it further strains credulity that SUBJECT OFFICER could not recall the substance of her conversation with COMPLAINANT about the complainant’s health.

Although SUBJECT OFFICER stated in her OPC interview that she stopped the complainant to check on her well being, the subject officer also stated that at the time of the stop, she believed that COMPLAINANT was following her and was possibly about to engage in “road rage.” SUBJECT OFFICER admitted that she made comments to COMPLAINANT about the complainant following her and even asked the complainant where she lived to find out if the complainant was following her. SUBJECT OFFICER also stated that she told the complainant

that “road rage” was an arrestable offense. Based on these statements, it does not appear that SUBJECT OFFICER pulled the complainant over because she was concerned about the complainant’s well being. Indeed, these explanations make no sense and are not credible, under the facts. SUBJECT OFFICER had no legitimate reason to pull the complainant over, particularly since the subject officer did not provide OPC with any objective information demonstrating that COMPLAINANT had previously engaged or was about to engage in “road rage.”

Even though SUBJECT OFFICER told OPC that she did not conduct a traffic stop of the complainant, it is clear that activating the patrol car’s emergency equipment while she was behind COMPLAINANT was an indication to the complainant that she was legally required to stop. Thus, pursuant to MPD General Order 304.10, SUBJECT OFFICER’S encounter with the complainant would be classified as a stop, regardless of whether it was specifically a traffic stop. MPD General Order 304.10 states that a “stop” occurs whenever an officer uses his or her authority to compel a person to halt, remain in a certain place, or perform some act. If a person is under a reasonable impression that he or she is not free to leave the officer’s presence, a “stop” has occurred. Furthermore, consistent with well-established Fourth Amendment law, *see, e.g., Terry v. Ohio*, 392 U.S. 1 (1968), General Order 304.10 authorizes an officer to stop a citizen only if the officer “reasonably suspects that a person has committed, is committing, or is about to commit any crime.”

There is no evidence here that COMPLAINANT was involved in a crime, and the subject officer did not articulate any behavior on the part of the complainant that would cause an officer to reasonably suspect that COMPLAINANT was stalking SUBJECT OFFICER or otherwise about to engage in criminal activity. Indeed, COMPLAINANT throughout her statement said that she did not know SUBJECT OFFICER, did not know why the officer yelled at her, and did not know specifically why she was pulled over. The complainant’s account is consistent with the detailed complaint filed with OPC almost immediately after the alleged incident. Although SUBJECT OFFICER stated that she believed that the complainant was about to engage in “road rage” because she was following her, Rock Creek Parkway and Massachusetts Avenue are two main roadways in the District. It was perfectly reasonable for the complainant to be traveling the same route as the subject officer because it was the route to her home, and a main thoroughfare. Furthermore, it is not unusual that the complainant pulled into the empty lane beside the subject officer at the Massachusetts Avenue traffic light, particularly given the complainant’s assertion that she did so in an attempt to identify the subject officer -- a perfectly valid goal -- for the purposes of filing a citizen complaint against her, based on the earlier incident.

By stopping the complainant when she had not committed a traffic violation and without a legitimate reasonable suspicion that the complainant had engaged in or was about to engage in a crime, SUBJECT OFFICER interfered with the complainant’s ability to go about her lawful business normally, in the absence of a specific law enforcement purpose. Therefore, SUBJECT

OFFICER purposefully, knowingly, or recklessly harassed the complainant in violation of MPD Special Order 01-01.

Language or Conduct

Language or conduct that is insulting, humiliating, or demeaning, as defined by MPD Special Order 01-01, Part III, Section H “includes, but is not limited to acts, words, phrases, slang, slurs, epithets, ‘street’ talk or other language which would be likely to demean the person to whom it is directed or to offend a citizen overhearing the language; demeaning language includes language of such kind that its use by a member tends to create disrespect for law enforcement whether or not it is directed at a specific individual.”

MPD General Order 201.26, Part I, Section C provides that “All members of the department shall be courteous and orderly in their dealings with the public. They shall perform their duties quietly, remaining calm regardless of provocation to do otherwise.”

The complainant alleged that the subject officer pulled beside her when she stopped on Ohio Drive, briefly activated her siren, and “yelled,” “What the hell are you doing? What the fuck are you doing?” The complainant also alleged that the subject officer was “rude” and “unprofessional” during the subsequent traffic stop on Massachusetts Avenue by “yelling” and speaking in an “aggressive” manner, by not identifying herself or explaining the purpose of the stop, by “talking over” the complainant and repeatedly accusing the complainant of stalking her, and by telling the complainant that if she continued stalking her, she could “stalk her back to the police station.”

SUBJECT OFFICER stated that she honked her horn at the complainant during their first interaction to get the complainant to begin driving. However, the subject officer denied cursing or saying anything to the complainant at all when she initially pulled beside her. OPC does not find SUBJECT OFFICER to be truthful about her conduct during the first interaction with the complainant, due to her statements regarding the second interaction. Specifically, SUBJECT OFFICER told OPC that she thought it was “a bit strange” when the complainant appeared next to her on Massachusetts Avenue after she had seen the complainant stopped on Rock Creek Parkway, and that she thought the complainant was going to engage in road rage. However, SUBJECT OFFICER could not provide a reasonable explanation as to why it was “strange” that the complainant was also traveling on Massachusetts Avenue or why she believed the complainant was going to engage in road rage. As stated earlier, Rock Creek Parkway and Massachusetts Avenue are two main roadways in the District. It is not unreasonable that the complainant was traveling the same route as the subject officer, for the reasons stated above. The Complaint Examiner finds it far more likely that SUBJECT OFFICER did in fact yell, “What the hell are you doing? What the fuck are you doing?” at the complainant during their first interaction. The likelihood that the subject officer yelled profanity at the complainant is the real reason SUBJECT OFFICER probably feared that the complainant might engage in road rage,

rather than harboring any legitimate concern that the complainant's driving conduct would lead to criminal behavior.

The subject officer's assertions that she did not yell or raise her voice, accuse the complainant of stalking her, or tell the complainant that she could "stalk her back to the police station" when she pulled over the complainant on Massachusetts Avenue also do not appear credible given SUBJECT OFFICER'S stated belief that COMPLAINANT was about to engage in road rage against her, and the subject officer's failure to recall many pertinent details of her interaction with the complainant. For example, although the complainant said that the subject officer failed to identify herself when she pulled her over, SUBJECT OFFICER stated that she could not even recall if she ever identified herself to the complainant when she pulled her over.

MPD General Order 304.10 outlines the conduct officers shall exhibit during a traffic stop. The general order states, in pertinent part, that "officers shall act with as much restraint and courtesy as possible." The general order also states that an officer conducting a traffic stop "shall identify himself/herself as a law enforcement officer as soon as practicable after making a stop." Moreover, at some point during the stop, "the officer shall, in every case, give the person an explanation of the purpose of the stop. The explanation need not be lengthy."

Although SUBJECT OFFICER claimed that she spoke to the complainant in a "conversational" tone and denied accusing the complainant of stalking or even raising her voice during her subsequent interaction with the complainant, this is not credible. In determining credibility in such situations, it is significant that COMPLAINANT has no history of contact with the subject officer, was not arrested or given a ticket or warning as a result of this encounter, and thus has no reason to retaliate against the officer. Furthermore, COMPLAINANT filed a detailed complaint with OPC about the incident the same day it occurred. There is no reasonable motivation for COMPLAINANT to make false allegations against an officer whose identity she did not know.

For these reasons, the Complaint Examiner credits the complainant's version of events where the facts differ, and finds that the subject officer pulled to the side of the complainant and yelled, "What the hell are you doing?" and "What the fuck are you doing?" when she first encountered her. Moreover the Complaint Examiner concludes that SUBJECT OFFICER was unprofessional with the complainant when she subsequently pulled her over and yelled at the complainant, talked over her, repeatedly accused the complainant of stalking her, failed to identify herself or give the specific reason for the stop, and told the complainant that she could "stalk [Officer Lancaster] all the way to the station."

Accordingly, the Complaint Examiner concludes that there is sufficient evidence to support the charges that SUBJECT OFFICER violated MPD Special Order 01-01 (Harassment) when she pulled the complainant over on Massachusetts Avenue, and violated MPD General

Order 201.26 (Language or Conduct) during her initial interaction with the complainant and her subsequent pulling over of the complainant on Massachusetts Avenue.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Sustained
Allegation 2:	Sustained

Submitted on July 17, 2008.

ELEANOR NACE
Complaint Examiner