

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	08-0099
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER
<b>Allegation 1:</b>	Harassment
<b>Allegation 2:</b>	Insulting, Demeaning, or Humiliating Language or Conduct
<b>Complaint Examiner:</b>	Sundeep Hora
<b>Merits Determination Date:</b>	October 20, 2009

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**

COMPLAINANT (“Complainant”) alleges that on December 18, 2007, Metropolitan Police Department (“MPD”) Officer SUBJECT OFFICER, First District (“Subject Officer”) harassed him and used language or engaged in conduct toward him that was insulting, demeaning, or humiliating following a near collision between Subject Officer and Complainant while SUBJECT OFFICER was off-duty and in his personal vehicle. After flagging down a marked MPD car and instructing the officers to stop Complainant, SUBJECT OFFICER issued Complainant two tickets.

**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 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 the Subject Officer on August 24, 2009, the Complaint Examiner finds the material facts regarding this complaint to be:

1. Complainant filed a complaint with OPC on December 19, 2007.
2. On December 18, 2007, at approximately 11:30 a.m., Complainant was driving his vehicle northbound on 19<sup>th</sup> Street, S.E. near the intersection of 19<sup>th</sup> Street and Independence Avenue, S.E. As he approached the intersection, he realized he was in the "right turn only" lane but wanted to proceed north on the 19<sup>th</sup> Street. In his attempt to merge left into the correct lane, Complainant nearly struck the vehicle next to him on the left, which was driven by SUBJECT OFFICER. SUBJECT OFFICER was permissibly making a right turn from his lane, which gave him the option to go straight or make a right hand turn.
3. There is a dispute as to whether SUBJECT OFFICER used his right-turn signal, however, had the vehicles struck each other, COMPLAINANT's attempt to merge left would likely have been the cause of the accident because he was in the wrong lane.
4. Both Complainant and Subject Officer agree that the two vehicles never came in contact. SUBJECT OFFICER states that Complainant's conduct "caused our vehicles to nearly collide...[h]owever, I was aware that there had been no contact between our vehicles."
5. After the near collision, COMPLAINANT and SUBJECT OFFICER, both voluntarily stopped their vehicles. SUBJECT OFFICER got out of his vehicle and approached the passenger side of COMPLAINANT's car. Complainant exited his vehicle as well. SUBJECT OFFICER, who was dressed in plain clothes, shouted and used profanity as he approached COMPLAINANT. Complainant admits that he cursed back at SUBJECT OFFICER.
6. SUBJECT OFFICER proceeded to pull out his MPD badge and state that he was an MPD officer.
7. COMPLAINANT and SUBJECT OFFICER's statements regarding the demeanor of both men after the near collision are inconsistent. COMPLAINANT claims SUBJECT OFFICER was shouting profanities, and admits to reciprocating. SUBJECT OFFICER states he never was boisterous, that neither he nor Complainant used profanity during the exchange, but that COMPLAINANT became "loud and dismissive." Complainant specifically recalls stating, "What the fuck does that mean?" after SUBJECT OFFICER showed him his badge. SUBJECT OFFICER recalled Complainant asking, "What's that all about" in a "loud and boisterous manner?"

8. COMPLAINANT told SUBJECT OFFICER they should get back in their respective cars, attempting to end the argument, but SUBJECT OFFICER wanted to continue the discussion. Complainant responded, "I didn't hit you, you didn't hit me. What is there to talk about?" SUBJECT OFFICER states that he asked Complainant for his driver's license and registration. Complainant ignored his request and proceeded to get into his vehicle and leave the scene.
9. SUBJECT OFFICER explains that in asking for Complainant's license and registration, his intent was not to issue COMPLAINANT a ticket or take any other police action at that time. He explains that he asked for his ID because Complainant "became loud and boisterous."
10. Complainant states that as he drove away, SUBJECT OFFICER began to follow him. COMPLAINANT alleges that he drove for approximately eight to ten miles with SUBJECT OFFICER behind him. SUBJECT OFFICER states in his statement that he followed COMPLAINANT for approximately 3-5 minutes; however, according to the transcript of his call to dispatch (which was contemporaneous with his pursuit of Complainant), SUBJECT OFFICER states that he had been following Complainant for 15 minutes. At one point, COMPLAINANT passed a marked MPD SUV travelling in the opposite direction on H Street, N.W. Complainant observed, through his rear-view mirror, SUBJECT OFFICER indicate to the officer to stop COMPLAINANT.
11. SUBJECT OFFICER admits that he followed COMPLAINANT from the scene of the near-collision and that he radioed a dispatcher that he was following a vehicle in reference to a "10-50," a code for a motor vehicle accident.
12. The marked MPD cruiser, driven by WITNESS OFFICER #1, made a U-turn and flashed its emergency lights and pulled COMPLAINANT over. SUBJECT OFFICER stopped behind him and got out. WITNESS OFFICER #1 approached COMPLAINANT and asked for his license and registration. When Complainant asked WITNESS OFFICER #1 why he was pulled over, the officer responded that SUBJECT OFFICER instructed him to make the stop. WITNESS OFFICER #1 admitted that he did not know what happened but that he would let COMPLAINANT know as soon as he found out.
13. WITNESS OFFICER #1 testified that SUBJECT OFFICER appeared "angry" and that COMPLAINANT's demeanor was "angry and verbally aggressive" from the beginning of the stop.
14. After refusing to provide his license or registration, Complainant requested to speak to a supervisor.
15. Shortly thereafter, supervisor WITNESS OFFICER #2 and several other officers were also present. WITNESS OFFICER #2 first spoke with Subject SUBJECT OFFICER and WITNESS OFFICER #1. SUBJECT OFFICER told WITNESS OFFICER #2 that "while

off-duty and driving his personal vehicle near RFK Stadium, he believed that another citizen had hit his vehicle and fled the scene, so he made several radio transmissions, while following the vehicle and eventually had the vehicle stopped by on-duty police officers.”

16. After speaking with SUBJECT OFFICER, WITNESS OFFICER #2 approached COMPLAINANT and said it was reported to him “that you were involved in a hit and run accident.” According to WITNESS OFFICER #2, Complainant appeared angry and was uncooperative. Complainant asked WITNESS OFFICER #2 who told him that there had been a “hit and run.” WITNESS OFFICER #2 then asked, “Were you involved in an accident?” COMPLAINANT told the WITNESS OFFICER #2 he had not been involved in an accident and provided the WITNESS OFFICER #2 with his license. Because Complainant appeared very upset and spoke about having the officers’ jobs and that the officers were making a career decision, WITNESS OFFICER #2 gave Complainant a copy of the citizen complaint pamphlet regarding how to file a complaint of police misconduct.
17. WITNESS OFFICER #2 testified that while on the scene he did not see any evidence that the vehicles collided or damage that was consistent with SUBJECT OFFICER’s account of the incident.
18. SUBJECT OFFICER obtained a ticket book and began writing Complainant a ticket. SUBJECT OFFICER and Complainant got into a verbal exchange in which both were yelling at each other and accusing each other of being at fault. WITNESS OFFICER #2 told SUBJECT OFFICER that if he was going to issue COMPLAINANT tickets, he should do so and let COMPLAINANT leave the scene.
19. SUBJECT OFFICER issued Complainant two tickets: a \$20.00 ticket for failure to maintain a proper lane and a \$50.00 ticket for not having a license plate on the front of his vehicle.
20. In the transcript of SUBJECT OFFICER’s call to dispatch, he first asks for assistance in stopping Complainant’s vehicle so that he could “identify the subject inside the car.” He then states that the Complainant “almost tried to ram my car, and later he states that he needs a couple of units to come because “this guy just took off...” During his call to dispatch, he stated at least twice that he was about to “let this car go” when it appeared that no units were responding to his request for assistance.

#### **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 language or conduct that is insulting, demeaning, or humiliating...”

### 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

COMPLAINANT alleged that SUBJECT OFFICER subjected him to harassment by following him, causing him to be stopped and detained by on-duty MPD officers, and by issuing him two traffic tickets. Complainant asserts that SUBJECT OFFICER lacked a legitimate law enforcement purpose for these actions because SUBJECT OFFICER was merely angry that he was involved in a near collision, because Complainant was dismissive when he learned that SUBJECT OFFICER was a police officer, and because Complainant chose to leave the scene.

It is undisputed that SUBJECT OFFICER was off-duty, wearing plain clothes, and driving his personal car. It is also undisputed that his car and Complainant’s car never made contact and that he was at all times aware of this fact when he spoke with Complainant at the incident site, followed Complainant in his car, and had Complainant stopped by MPD officers. Because SUBJECT OFFICER acknowledges that the two vehicles never made contact, the question becomes whether SUBJECT OFFICER was justified in pursuing Complainant, causing him to be stopped and detained by on-duty officers, and issuing him two tickets based on this “near collision” and COMPLAINANT’s behavior during the initial encounter. MPD Special Order 00-11 (effective May 30, 2000), which adds to MPD General Order 303.1 provides that, “Members who are not in uniform and/or are in unmarked vehicles...may take enforcement action **only in case of a violation that is so grave as to pose an immediate threat to the safety of others.** When taking action in these instances, members shall request the assistance as soon as practical.” (emphasis in original). There is no evidence in the record to support a finding that Complainant’s conduct or actions posed an immediate threat to the safety of others as to warrant an enforcement action by SUBJECT OFFICER. The evidence is, in fact, to the contrary. SUBJECT OFFICER’s intention in initially requesting COMPLAINANT’s ID at the scene of the near-collision was because he “became loud and boisterous.” There is no evidence in the record

that Complainant's behavior (as described by the Subject Officer) met the high threshold standard of MPD 303.1 for a non-uniformed officer who is driving his personal vehicle. Moreover, the transcript of SUBJECT OFFICER's call to dispatch reveals the he himself was unsure of his actions and whether he should continue to pursue Complainant. He said at least two times that he was "just going to let this car go" when it appeared that no uniformed units were available to stop Complainant. It is unlikely that SUBJECT OFFICER would contemplate abandoning his pursuit of Complainant if his conduct posed an immediate threat to the safety of others.

SUBJECT OFFICER's actions must also be viewed in light of the fact that he was directly involved with his personal vehicle in the near-collision. Whether his actions were subjective and affected by the fact he was involved in a near-collision with Complainant is revealed both in the initial verbal exchange with Complainant at the scene of the near-collision and when Subject Officer issued Complainant the two tickets. This is because both his decision to have Complainant stopped and to issue him citations was against MPD policy. WITNESS OFFICER #2 testified in his statement that if SUBJECT OFFICER knew that there was no contact between the vehicles, it would be against MPD policy for the officer to have COMPLAINANT pulled over unless there was any other criminal activity that COMPLAINANT was alleged to have engaged in. WITNESS OFFICER #2 also testified that if Subject Officer knew that the vehicles had not collided prior to the stop, he would likewise not be justified in writing the tickets.

The Complaint Examiner finds that SUBJECT OFFICER's conduct meets the definition of Harassment under MPD Special Order 01-01 and OPC regulation § 2199.1. SUBJECT OFFICER used his professional authority as a police officer to summon assistance from his fellow police officers to stop and detain Complainant based solely on his outrage at Complainant for the near collision and the personal indignity he suffered when Complainant dismissed his show of authority when he revealed himself to be a police officer. Subject Officer knowingly violated MPD policy because he had no specific law enforcement purpose in having Complainant stopped or issuing him two tickets. To make matters worse, SUBJECT OFFICER misrepresented facts to the WITNESS OFFICER #2 on duty (SUBJECT OFFICER told the WITNESS OFFICER #2 that Complainant had collided with his vehicle) in order to improperly gain the participation of other officers. The act of following COMPLAINANT, causing him to be stopped and requiring him to wait while traffic tickets were issued, prevented Complainant from normally going about his lawful business.

#### 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.”

Complainant alleges that the Subject Officer used language or engaged in conduct toward him that was insulting, demeaning, or humiliating during the encounter that occurred immediately after the near collision and during the subsequent traffic stop.

With respect to the initial encounter, the parties dispute whether profanity was used. SUBJECT OFFICER states that neither he nor Complainant used profanity, while Complainant alleges that both parties used profanity. Whether or not profanity was used is of no import as the record is replete with evidence that the Subject Officer’s *conduct* of yelling and acting aggressively toward Complainant was insulting, humiliating or demeaning. Subject Officer claims that he exited his vehicle in a calm manner and showed his badge to assure the Complainant that everything was all right, and that Complainant was acting loud and boisterous. The evidence shows that it was Complainant who attempted to end the verbal exchange by getting into his car and driving away. The fact that the Subject Officer chose to follow the Complainant in the car for 15 minutes or more indicates that he was in an angry state. Moreover, COMPLAINANT’s testimony regarding SUBJECT OFFICER’s behavior and demeanor after exiting his vehicle is more credible because Complainant admitted to his own inappropriate behavior of using profanity and being aggressive and argumentative.

Both WITNESS OFFICER #1 and WITNESS OFFICER #2 corroborate Complainant’s depiction of the Subject Officer as yelling and being angry during the ensuing traffic stop. WITNESS OFFICER #2 also reported that he witnessed SUBJECT OFFICER and Complainant engage in a heated verbal exchange during which they yelled at and accused each other of being at fault in the matter.

The Complaint Examiner finds that the evidence reviewed in this matter supports the finding that SUBJECT OFFICER used language and conduct toward Complainant that was insulting, humiliating, or demeaning.

## V. SUMMARY OF MERITS DETERMINATION

### SUBJECT OFFICER

<b>Allegation 1: Harrassment</b>	<b>Sustained</b>
<b>Allegation 2: Insulting, Demeaning, or Humiliating</b>	<b>Sustained</b>

<b>Language or Conduct</b>	
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Submitted on October 20, 2009.

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Sundeep Hora  
Complaint Examiner