

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	08-0107
<b>COMPLAINANT:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER #1 , SUBJECT OFFICER #2, SUBJECT OFFICER #3 , SUBJECT OFFICER #4, SUBJECT OFFICER #5
<b>Allegation 1:</b>	Harassment
<b>Complaint Examiner:</b>	Turna R. Lewis
<b>Merits Determination Date:</b>	June 9, 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**

COMPLAINANT alleges that SUBJECT OFFICERS #1, #2, #3, and #4 harassed her when they entered her house at approximately 9:30 p.m. on December 21, 2007 and allegedly searched her house without permission or legal justification to determine if a murder suspect was hiding in COMPLAINANT's home. COMPLAINANT also alleges that SUBJECT OFFICER #1 harassed her when he threatened to arrest her and her daughter. COMPLAINANT further alleges SUBJECT OFFICER #5 harassed her when she directed SUBJECT OFFICERS #1, #2, #3, and #4 to conduct a warrantless search of her home.

**II. EVIDENTIARY HEARING**

An evidentiary hearing was conducted regarding this complaint on February 5, 2010, and March 3, 2010. The Complaint Examiner heard the testimony of COMPLAINANT, SUBJECT OFFICERS #1, # 2, #3, #4 and #5. WITNESS OFFICER #3 also testified. The Report of Investigation and attached exhibits were introduced into the record.

**Attached Exhibits**

- Exhibit 1: OPC Formal Complaint, COMPLAINANT, dated December 28, 2007, received December 31, 2007
- Exhibit 2: OPC Dismissal, dated August 11, 2009
- Exhibit 3: Signed Statement of COMPLAINANT, dated January 8, 2008
- Exhibit 4: Signed Statement of SUBJECT OFFICER #1
- Exhibit 5: Signed Statement of SUBJECT OFFICER #2, dated April 10, 2008
- Exhibit 6: Signed Statement of SUBJECT OFFICER #3, dated May 1, 2008
- Exhibit 7: Signed Statement of SUBJECT OFFICER #4, dated April 30, 2008
- Exhibit 8: Signed Statement of SUBJECT OFFICER #5, dated May 29, 2008
- Exhibit 9: Signed Statement of WITNESS OFFICER #1, dated March 25, 2008
- Exhibit 10: Signed Statement of WITNESS OFFICER #2, dated April 9, 2008
- Exhibit 11: Transcript of 311 Call from December 21, 2007, transcribed on February 12, 2008
- Exhibit 12: Event Chronology for December 21, 2007
- Exhibit 13: Roll Call Sheet for homicide, dated December 21, 2007
- Exhibit 14: Roll Call Sheets for the Seventh District evening tour of duty, dted December 21, 2007
- Exhibit 15: Patrol Signal System (PSS) Book sheets for the Seventh District evening tour of duty, dated December 21, 2007
- Exhibit 16: Arrest History for PERSON OF INTEREST, dated January 14, 2008
- Exhibit 17: District of Columbia Superior Court Case Management System printouts and court documents for Case Nos. 2007 CFI 029405 and 2007 CFI 029459, accessed on April 9, 2008, and August 14, 2009

- Exhibit 18: Computer printout showing [www.whitepages.com](http://www.whitepages.com) reverse look-up for (202) 904-3249, printed on June 5, 2008
- Exhibit 19: Sprint cell phone records for 202-XXX-XXXX
- Exhibit 20: MOIA, WITNESS #1
- Exhibit 21: MPD Special Order 01-01 (effective Jan. 5, 2001) (Harassment)
- Exhibit 22: D.C. Mun. Regs. Tit. 6a, § 2199.1 (2002) Harassment)
- Joint Exhibit 1: Letter from Philip K. Eure, Executive Director, Office of Police Complaints (OPC), to Cathy L. Lanier, Chief of Police, Metropolitan Police Department (MPD), dated February 4, 2010
- Joint Exhibit 2: Letter from Chief of Police, MPD to Executive Director, OPC, dated February 12, 2010
- Joint Exhibit 3: Constitution of the United States

### **III. FINDINGS OF FACT**

Based on a review of OPC's Report of Investigation, all comments and objections submitted by Subject Officers, and the evidence presented at the evidentiary hearing conducted on February 5, 2010 and March 3, 2010, the Complaint Examiner finds the material facts regarding this complaint to be as follows:

1. On December 21, 2007, at approximately 9:30 p.m. COMPLAINANT was taking a shower when her children notified her that two men were at the front door of her home. COMPLAINANT exited the shower and went to her window, where she observed two men dressed in plainclothes, who informed her they were MPD detectives.
2. COMPLAINANT contacted the Metropolitan Police Department via "911" to confirm the detectives' identities. MPD confirmed that the two men at her door were SUBJECT OFFICERS #1 & #2. When a marked MPD car arrived with uniformed officers, COMPLAINANT opened her door.
3. VICTIM was murdered on December 14, 2007 and MURDER SUSPECT #1 and MURDER SUSPECT #2 were identified suspects. MURDER SUSPECT #1 was arrested on December 14, 2007, and the search for MURDER SUSPECT #2 was ongoing.
4. When the warrantless search of COMPLAINANT's home occurred, SUBJECT OFFICERS had not obtained an arrest warrant for MURDER SUSPECT #2.

5. COMPLAINANT allowed SUBJECT OFFICERS #1 & #2 into the foyer and they asked her if she knew "PERSON OF INTEREST" or "MURDER SUSPECT #2." COMPLAINANT responded she did not know PERSON OF INTEREST or MURDER SUSPECT #2, but that WITNESS #1 was her daughter. As COMPLAINANT identified herself to SUBJECT OFFICERS #1 & #2, WITNESS OFFICERS #1, #2, and SUBJECT OFFICERS #3 & #4 entered her home in the foyer area.
6. The detectives asked COMPLAINANT if she was familiar with the telephone number, 202-XXX-XXXX, and she responded that "the number does not belong to me."
7. SUBJECT OFFICER #1 asked COMPLAINANT if the officers could search her home for MURDER SUSPECT #2, explaining that SUBJECT OFFICERS were looking for a person, not things. COMPLAINANT said, "no," and that she would feel more comfortable if the officers obtained a search warrant.
8. After Complaint denied permission for the officers to search her home, SUBJECT OFFICER #1 contacted via cell phone, his supervisor SUBJECT OFFICER #5. SUBJECT OFFICER #5 directed the officers to search COMPLAINANT's home.
9. SUBJECT OFFICER #1 informed COMPLAINANT that SUBJECT OFFICER #5 wanted SUBJECT OFFICERS to search the home for MURDER SUSPECT #2. COMPLAINANT initially sought to block the officers from conducting a search and blocked the staircase with her body and arms. SUBJECT OFFICER #1 and other detectives brushed past her and initiated a search of her three-level home.
10. SUBJECT OFFICERS conducted a search of COMPLAINANT's home on each level, including looking in closets, looking under beds, and looking behind shower curtains, but did not find MURDER SUSPECT #2 or any weapon.
11. The basis of the search of COMPLAINANT's home was based on the cell telephone number "given to SUBJECT OFFICER #5 by WITNESS OFFICER #3, MURDER SUSPECT #2's mother."
12. MURDER SUSPECT #2 telephoned his mother from a cell phone number, 202-XXX-XXXX, on December 21, 2007. SUBJECT OFFICER #5 conducted an online white pages search and, based upon her investigation, concluded the cell telephone number belonged to WITNESS #1, who lived with her mother at 2010 Tremont Street, Washington, D.C.
13. The only evidence linking COMPLAINANT's home with the homicide investigation of MURDER SUSPECT #2 was the cell phone number.

14. On December 22, 2007, MURDER SUSPECT #2 voluntarily turned himself in to the police, at his mother's urging, and is currently serving a prison sentence for the murder of VICTIM.
15. There was no evidence that MURDER SUSPECT #2 lived or had ever visited COMPLAINANT's home prior to or after the incident of December 21, 2007.
16. After the search of COMPLAINANT's home, an investigation determined that the cell telephone number relied upon by the SUBJECT OFFICERS to search COMPLAINANT's home was assigned to WITNESS #1 from February 10, 2007 to August 22, 2007, and disconnected for nonpayment. The same cell telephone number was assigned to PERSON OF INTEREST on December 6, 2007 and disconnected for nonpayment on August 26, 2008.

#### **IV. DISCUSSION**

Pursuant to D.C. Official Code § 5-1107(a), "The Office [of Citizen Complaint Review] 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]."

COMPLAINANT alleges that she was harassed when: the SUBJECT OFFICERS conducted a warrantless search of her home without her consent. 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." A warrantless search is considered harassment. COMPLAINANT admitted she directed her daughter not to answer SUBJECT OFFICER #1's questions.

There is an apparent disagreement as to the applicability of MPD Special Order 01-01 (Office of Citizen Complaint review and the Citizen Complaint Review Board, effective January 5, 2001) (hereinafter referred to as MPD Special Order 01-01). MPD Special Order implements D.C. Law 12-208, which established the Office of Citizen Complaint review and the Citizens Complaint Review Board for the purpose of independently and effectively reviewing complaints against police officers filed by citizens. D.C. Law 12-208 was codified as §§ 4-411 through 4-

925 of the D.C. Code (Chapter 9A, Office of Citizen Complaint Review). MPD Special Order notifies MPD officers of OPC's purpose, provides detailed information about OPC's oversight responsibilities and investigation procedures.

In a letter dated February 4, 2010, Philip Eure, Director, OPC, expressed concern about MPD's position that MPD Special Order 01-01 expired on January 5, 2003 pursuant to the MPD Operational Handbook. (Joint Exhibit 1). The Operational Handbook specifies that "special orders which are of indefinite duration shall automatically receive a two-year expiration date. OPC's position is that since the Operational Handbook states that "special orders shall be rescinded by the expiration date or through the issuance of a subsequent directive" that the special order was not intended to expire after two years. (Joint Exhibit 1). OPC's position is that MPD Special Order 01-01 remained in effect until publication of General Order 120.25 "Processing Citizen Complaints," which is a permanent order and effectively replaces MPD Special Order 01-01.

Chief Cathy Lanier responded in correspondence dated February 12, 2010. Chief Lanier disagrees with OPC's position, pointing out that MPD Special Order 01-01 contained no expiration date in its signature block and because MPD Special Order 01-01 was not rescinded through the issuance of a general order within two years of its publication date, it expired pursuant to the Operational Handbook on January 5, 2003.

This apparent dispute between the OPC and MPD over the applicability of MPD Special Order 01-01 does not affect my ability to render a decision on the merits of this complaint. The Constitution of the District of Columbia, contained in D.C. Official Code, Article I. Bill of Rights (2001 ed.), the OPC regulations contained at Chapter 21 of the D.C. Municipal Regulations (DCMR), and MPD regulations provide guidance.

The Bill of Rights of the District of Columbia states with respect to searches and seizures:

Privacy is a fundamental right. Therefore the people shall be free from unreasonable searches and seizures of their persons, homes, businesses, vehicles, papers, and effects. This right extends to all places and for all circumstances in which the individual has a reasonable expectation of privacy...

No search will ensue except under the valid warrant issued by a judicial officer, such warrant shall be issued only upon probable cause and must be supported by oath or affirmation describing with particularity the place to be searched and the persons or items to be seized. This Section does not preclude warrantless searches or seizures in the following circumstances: searches incident to a valid arrest; exigent circumstances under which officials conducting the search or seizure have no time to secure a warrant; inadvertent discovery of illegal material pursuant to the execution of a valid search warrant; searches and seizures conducted at international borders or their functional equivalent; administrative searches upon the consent of the individual who is the subject of the search or seizure, provided that the individual had been

fully informed of the right to withhold consent, and no other exception to this Section is present. The official conducting the search bears the burden of proving fully informed consent. ...Evidence obtained in violation of this paragraph shall not be admissible in any court against any person. (D.C. Official Code, Article I. Bill of Rights, Section 6 (2001 ed.).

The OPC regulations define harassment as follows:

Words, 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, 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, the 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, the frequency of the alleged conduct, its severity, and whether it is physically threatening or humiliating. (D.C. Mun. Regs. Tit. 6A, § 2199.1 (2002)).

The MPD regulations require MPD sworn officers to familiarize themselves with the "...statutes, laws, and regulations in force in the District of Columbia..." and states that "...failure to do so, or to take action respecting violations of those statutes, laws, and regulations coming to their attention or about which they have knowledge shall be deemed neglect of duty. (Title 6 A § 200.13 (D.C.M.R.)).

### **PROBABLE CAUSE FOR SEARCH OF COMPLAINANT'S HOME**

Probable cause is defined as "a set of facts and circumstances, or reliable information that would lead a reasonable, prudent, and cautious officer to believe that a crime has been committed and a certain person committed it." VICTIM was murdered on December 14, 2007 by shotgun. MURDER SUSPECT #2 was one of the murder suspects and a warrant was executed for his arrest on December 22, 2007, after COMPLAINANT's home was searched. (Ex. 17, Affidavit in Support of an Arrest Warrant for MURDER SUSPECT #2). WITNESS OFFICER #3, a twenty-seven year veteran of MPD, testified that her son is MURDER SUSPECT #2, who was eighteen years old at the time of the incident and did not live with her. She testified that MPD officers contacted her sometime after December 14, 2007, informed her that her son was a murder suspect. WITNESS OFFICER #3 informed the MPD officers that she did not know where her son lived (TR. 401-402).

SUBJECT OFFICER #5 testified that WITNESS OFFICER #3 called her on the evening of December 21, 2007 and told her MURDER SUSPECT #2 called her from number 202-XXX-

XXXX (TR 174). SUBJECT OFFICER #5 immediately ran the number in a public internet database. It is unclear whether from SUBJECT OFFICER #5's testimony the search of the public internet database included both white and yellow page telephone directories (TR. 175). SUBJECT OFFICER #5 stated the public internet database search produced the name of WITNESS #1. She then researched WITNESS #1's name in the WALES system, which resulted in the identification of COMPLAINANT's home address (TR 176). Under cross-examination, SUBJECT OFFICER #5 admitted the screen printout of the internet search conducted by OPC identified the telephone number as a cell telephone number. SUBJECT OFFICER #5 testified she could not recall whether the screen printout of her research conducted on December 21, 2007, indicated the number was a cell telephone number (TR 180-181, Ex. 18). She directed the SUBJECT OFFICERS to immediately go to COMPLAINANT's home to determine whether MURDER SUSPECT #2 was in COMPLAINANT's home (TR 179).

None of the SUBJECT OFFICERS who participated in the search of COMPLAINANT's home had conducted any preliminary investigation to establish a basis for searching COMPLAINANT's home. SUBJECT OFFICER #2 testified that he had no information related to MURDER SUSPECT #2's whereabouts except for the cell telephone number that, unknown to him at the time, previously was assigned to WITNESS #1 (TR. 158, Ex. 19). SUBJECT OFFICER #5 was unable to describe any other investigation she undertook to determine a nexus between MURDER SUSPECT #2 and COMPLAINANT's home or between MURDER SUSPECT #2 and anyone who resided at COMPLAINANT's home. SUBJECT OFFICER #5 stated that other than WITNESS OFFICER #3 notifying her of her son's call from the number, 202-XXX-XXXX, she had no other probable cause to conduct a search of COMPLAINANT's home (TR 185-187, 191).

SUBJECT OFFICER #1's testimony that COMPLAINANT's refusal to consent to the search was unnecessary was apparently based upon SUBJECT OFFICER #5's conclusion that MURDER SUSPECT #2 made the telephone call to his mother from COMPLAINANT's home. Based upon this information, it appears SUBJECT OFFICERS went to COMPLAINANT's home believing MURDER SUSPECT #2 made the telephone call from COMPLAINANT's home, and believed a search warrant was unnecessary because MURDER SUSPECT #2, who was believed to have a gun, was in her home and posed an immediate threat to those in the home, as well as to the community (TR. 127). If SUBJECT OFFICERS' conclusions were true, based upon the information provided by SUBJECT OFFICER #5, exigent circumstances justifying the warrantless search would have been established. However, SUBJECT OFFICER #5's cursory investigation did not produce any information upon which one could reasonably assume MURDER SUSPECT #2 had any connection with anyone in COMPLAINANT's home or to COMPLAINANT's home.

The MPD officers never established a link between COMPLAINANT's home and MURDER SUSPECT #2 beyond the cell telephone number and the inaccurate internet white pages search. COMPLAINANT denied knowing MURDER SUSPECT #2 and there were never any witness reports that MURDER SUSPECT #2 was seen entering or exiting



COMPLAINANT's house, that he lived at COMPLAINANT's house, or that he was at the house on December 21, 2007, during the search (TR 85-87, 96). The information SUBJECT OFFICER #5 relied upon to issue her directive was flimsy, at best. When SUBJECT OFFICER #5 directed the detectives to search COMPLAINANT's home for MURDER SUSPECT #2, she had not determined if the telephone number was a landline or cell telephone number. Based upon her testimony, it appears that in her haste to arrest MURDER SUSPECT #2, who was rightfully viewed as armed and dangerous, she assumed the telephone number was a landline, which established a nexus to COMPLAINANT's home. Based upon her assumption, SUBJECT OFFICER #5 ordered the detectives to immediately search the home. In accordance with MPD Orders and protocol, SUBJECT OFFICER's #1, #2, #4 and #3 responded, reasonably assuming SUBJECT OFFICER #5 had enough information justifying a probable cause search without a search warrant.

SUBJECT OFFICER #5's actions were neither prudent nor cautious. It does not follow that a "prudent and cautious officer" would conclude solely based on an online search of a cell telephone number at [www.whitepages.com](http://www.whitepages.com) that probable cause existed to conduct a search of a home. SUBJECT OFFICER #5's failure to use other more reliable databases, such as LEXISNEXIS, CJIS, etc., resulted in incorrect information used as the basis for a warrantless search of COMPLAINANT's home. Her failure to conduct even a rudimentary preliminary investigation resulted in SUBJECT OFFICER's #1, #2, #4 and #3 violating COMPLAINANT's fundamental privacy right. The right to be secure in one's home, free from unnecessary searches is inviolate and sacrosanct. Based upon the evidence of record and the totality of the circumstances, SUBJECT OFFICERS failed to demonstrate that probable cause existed to enter and search COMPLAINANT's home.

### **EXIGENT CIRCUMSTANCES**

Absent a search warrant, MPD police officers must demonstrate exigent circumstances to justify a warrantless search. The general test for exigent circumstances is whether "the police had an 'urgent need' or an 'immediate major crisis in the performance of duty which prevented neither time nor opportunity to apply to a magistrate.'" *United States v. (James) Johnson*, 802 F.2d 1459, 1461 (D.C. Cir. 1986). Examples of exigent circumstances include the need to protect or preserve life or avoid serious injury, the risk of danger to police or other persons inside or outside the dwelling, and prevention of destruction of evidence. *In re Sealed Case*, 96-167, 153 F.3d at 766.

Based upon the foregoing testimony provided by SUBJECT OFFICERS, and WITNESSES, COMPLAINANT and WITNESS OFFICER #3, there were no exigent circumstances which justified a warrantless search of COMPLAINANT's home. The only information that linked MURDER SUSPECT #2 to COMPLAINANT's home was a cell telephone number provided by MURDER SUSPECT #2's mother, and the subsequent search conducted by SUBJECT OFFICER #5 on a public internet database of telephone numbers

Based solely upon the internet search, SUBJECT OFFICER #5 ordered Detectives SUBJECT OFFICER's #1, #4, #3 and #2 to search COMPLAINANT's home to determine if MURDER SUSPECT #2 was present (TR. 179, 172, 202, 272). Based upon SUBJECT OFFICER #5's order, SUBJECT OFFICER's #1, #2, #3 and #4 believed exigent circumstances were present. (TR. 75, 97, 298-302, 324-325). SUBJECT OFFICERS #1 and #4 went to the front of COMPLAINANT's home; SUBJECT OFFICERS #3 and #2 secured the back perimeter of COMPLAINANT's home, and then entered her home through the front door. COMPLAINANT told SUBJECT OFFICERS she did not consent to a warrantless search of her home (TR 16). SUBJECT OFFICER #3 testified that the police believed that MURDER SUSPECT #2 was in COMPLAINANT's home, and because he was a murder suspect, the warrantless search met the test for exigent circumstances (TR. 285). SUBJECT OFFICER #3 admitted that he and the other SUBJECT OFFICERS were not in hot pursuit of MURDER SUSPECT #2 (TR. 303).

It is undisputed that MURDER SUSPECT #2 was connected to the murder of VICTIM and posed a danger to society. SUBJECT OFFICER #1 testified that although the police did not know whether it was MURDER SUSPECT #1 or MURDER SUSPECT #2 who pulled the trigger, that MURDER SUSPECT #2 was the last person who was seen with the murder weapon (TR. 123). Under these circumstances, SUBJECT OFFICER #1 testified, MURDER SUSPECT #2 was believed to be armed and dangerous (TR 123). However, these facts, alone did not fall within the exigent circumstances exception to obtaining a search warrant. SUBJECT OFFICER #5 had inadequate information to conclude that MURDER SUSPECT #2 was in COMPLAINANT's home. If SUBJECT OFFICER #5 or SUBJECT OFFICERS had conducted an investigation beyond the internet "white pages" search, they would have determined that the telephone number at issue was not assigned to WITNESS #1 and, and that there were no facts upon which a reasonable officer could conclude that MURDER SUSPECT #2 was in COMPLAINANT's home. The facts fail to meet the requirements to establish probable cause and the presence of exigent circumstances to justify entering COMPLAINANT's home and conducting a warrantless search.

Even assuming *arguendo* that SUBJECT OFFICERS had reliable information that MURDER SUSPECT #2 was present in the home, they failed to demonstrate why they could not first secure the premises from the outside and obtain a search warrant. While they may not have known at the time, SUBJECT OFFICERS #1 and #2 conceded that the only evidence that linked COMPLAINANT's address to the homicide investigation of MURDER SUSPECT #2 was the cell phone number (TR. 131, 153). Under these circumstances, they admitted a search warrant would not have been issued.

It is a basic principle of the U.S. Constitution's Fourth Amendment that searches and seizures inside a home without a warrant are presumptively unreasonable. *Payton v. New York*, 445 U.S. 574, 586 (1980). Courts have held that warrantless searches may be justified upon a showing of a "need to protect or preserve life or avoid serious injury," the need to prevent the escape of a suspected criminal, and the need to preserve evidence which may be destroyed, either

through deliberate action or natural forces. Even so, “a warrantless search must be strictly circumscribed by the exigencies which justify its initiation.” *Terry v. Ohio*, 392 U.S. 1. (1968) In this matter, the evidence of record fails to demonstrate the presence of exigent circumstances, which would justify the warrantless search.

### **THREAT TO ARREST COMPLAINANT**

COMPLAINANT alleged that SUBJECT OFFICER #1 harassed her when he threatened to arrest her because she directed her daughter, WITNESS #1 not to answer any questions. SUBJECT OFFICER #1 testified he attempted to question WITNESS #1 and that he informed COMPLAINANT that her actions impeded the police investigation. SUBJECT OFFICER #1 testified that despite the warning COMPLAINANT continued to direct WITNESS #1 not to answer any questions from the detectives and not to cooperate with the search.

As discussed above, SUBJECT OFFICERS relied upon inaccurate and flimsy information to justify entering and searching COMPLAINANT’s home. It was unreasonable for SUBJECT OFFICERS to rely solely on an internet search to conclude that MURDER SUSPECT #2 was in COMPLAINANT’s home. Under these circumstances, the search was unreasonable and COMPLAINANT’s refusal to consent to the search and directions to her daughter that she refuse to answer any questions was a valid exercise of her constitutional right. SUBJECT OFFICER #1’s threat to COMPLAINANT that he would arrest her constituted harassment because his threat of arrest was a reckless violation of COMPLAINANT’s right to be free from an unreasonable search (D.C. Mun. Regs., Tit. 6A, § 2199.1 (2002)). The apparent good faith belief of SUBJECT OFFICERS does not justify the infringement upon COMPLAINANT’s right to be free from an unreasonable search. SUBJECT OFFICERS had a duty to conduct an investigation to render a reasonable conclusion that MURDER SUSPECT #2 was in COMPLAINANT’s home before going to COMPLAINANT’s home. Here, if SUBJECT OFFICER #5 had done a more thorough investigation, she would have determined that reliance solely upon an internet “white pages” search was inadequate to a connection between MURDER SUSPECT #2 and COMPLAINANT’s home. Based upon the totality of the circumstances, the sacrosanct right to privacy in one’s home, MPD regulations, which provide clear standards required for establishing probable cause and exigent circumstances for a warrantless search, SUBJECT OFFICER #1’s threat to arrest COMPLAINANT constituted harassment (D.C. Mun. Regs. Tit. 6A, § 2199.1 (2002)).

### **MERIT DETERMINATION.**

SUBJECT OFFICERS #5, #1, #2, #3 and #4.

The Complaint Examiner finds, based on a preponderance of the evidence of record, that the allegation of harassment is sustained.

<b>Allegation 1: Harassment</b>	Sustained
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Submitted on June 9, 2010

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Turna R. Lewis  
Complaint Examiner