

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

**FINDINGS OF FACT AND MERITS DETERMINATION**

<b>Complaint No.:</b>	08-0123
<b>Complainant:</b>	COMPLAINANT
<b>Subject Officer(s), Badge No., District:</b>	SUBJECT OFFICER, Latino Liaison Unit
<b>Allegation 1:</b>	Insulting, Demeaning, or Humiliating Language or Conduct
<b>Allegation 2:</b>	Harassment
<b>Complaint Examiner:</b>	Paula Xinis
<b>Merits Determination Date:</b>	October 16, 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 alleged that on December 21, 2007, MPD SUBJECT OFFICER(1) engaged in language or conduct that was insulting, demeaning or humiliating to him and to a delivery truck driver, WITNESS #1; and (2) that SUBJECT OFFICER harassed COMPLAINANT. Specifically, COMPLAINANT claims that SUBJECT OFFICER used profane language repeatedly at the scene of an accident involving SUBJECT OFFICER's personal vehicle and the truck that WITNESS #1 was driving. Further, COMPLAINANT alleges that SUBJECT OFFICER harassed him by threatening to do bodily harm and arrest COMPLAINANT without any lawful authority.

**II. EVIDENTIARY HEARING**

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Report of Investigation, the Complaint Examiner determined that the Report of Investigation presented no genuine issues of material fact in dispute that required a hearing. *See* D.C. Mun. Regs., title 6A, § 2116.3.

**III. FINDINGS OF FACT**

Based on a review of OPC's Report of Investigation, the objections submitted by SUBJECT OFFICER on September 14, 2009, and all witness statements submitted in connection with the Report of Investigation, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On December 21, 2007, at the loading dock of the Reeves Municipal Building (Reeves Building) located in Northwest Washington, D.C., SUBJECT OFFICER believed he had been involved in a car accident with WITNESS #1, the driver of a delivery truck. SUBJECT OFFICER was in full uniform but driving his personal vehicle.

2. The Complainant, COMPLAINANT, was inside the Reeves Building preparing for an event that was to take place on the same day. COMPLAINANT's organization had hired the company which employed WITNESS #1 to deliver tables and chairs for the event.
3. SUBJECT OFFICER and WITNESS #1 were observed exchanging heated words about what had happened, and SUBJECT OFFICER accused WITNESS #1 of hitting his vehicle.
4. COMPLAINANT was then summoned to the scene. When he arrived with his friend WITNESS #2, SUBJECT OFFICER was yelling at WITNESS #1, "you hit my motherfucking truck!"
5. When COMPLAINANT inquired as to what happened, SUBJECT OFFICER yelled, "he hit my fucking truck."
6. When COMPLAINANT further inquired as to what happened, SUBJECT OFFICER began to fuss and yell, and, according to COMPLAINANT's friend, WITNESS #2, SUBJECT OFFICER "went off" on COMPLAINANT. Specifically, WITNESS #2 heard SUBJECT OFFICER yelling, "Motherfucker who are you?"
7. WITNESS #3, a witness on sight, also heard SUBJECT OFFICER yell to WITNESS #1, "you hit my motherfucking truck and you can't move your truck until I see your license and insurance."
8. WITNESS #3 then summoned COMPLAINANT to the scene. When COMPLAINANT arrived and asked what was going on, WITNESS #3 witnessed SUBJECT OFFICER respond angrily, "none of your damn business." SUBJECT OFFICER went on to say to COMPLAINANT, "you don't know who you are fucking with," and threatened COMPLAINANT with arrest. SUBJECT OFFICER yelled, "I have a lot of friends and I can get you locked up." As COMPLAINANT began to return to the Reeves Building, WITNESS #3 also heard SUBJECT OFFICER say, "If I wasn't in this uniform, I would fuck you up."
9. WITNESS #4, a Special Police Officer, also overheard SUBJECT OFFICER tell COMPLAINANT, "If I wasn't on duty, I would kick your ass."

#### **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]."

##### **1. 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.”

“Members,” shall also “be courteous, civil and respectful to their superiors, associates, and other persons, whether on, or off duty. They shall be quiet, orderly and attentive and shall exercise patience and discretion in the performance of their duties . . . Members shall refrain from harsh, violent, coarse, profane, sarcastic, or insolent language.”

Although SUBJECT OFFICER vehemently denies using profane language<sup>1</sup>, numerous other witnesses amply support COMPLAINANT’s allegations. COMPLAINANT, his friend WITNESS #2, WITNESS #3 and SPO WITNESS #4 all heard SUBJECT OFFICER use the word “fuck” in some form throughout the Officer’s dealings with COMPLAINANT and WITNESS #1. WITNESS #3 recalls SUBJECT OFFICER say “you hit my motherfucking truck,” to WITNESS #1, and yell to COMPLAINANT that, “you don’t know who you are fucking with.” Similarly, WITNESS #2 and COMPLAINANT both recall SUBJECT OFFICER angrily asking COMPLAINANT, “Motherfucker who are you?” Finally, SPO WITNESS #4 also heard SUBJECT OFFICER threaten to “kick [COMPLAINANT’s] ass” and “lock [his] ass up.”

Based on the witness accounts, SUBJECT OFFICER’s demeanor was far from quiet, orderly, or patient. Rather, his words and conduct could have potentially incited unrest rather than order to the scene. SUBJECT OFFICER repeatedly used profanity while yelling and fussing rather than assuming a controlled, even demeanor. Accordingly, SUBJECT OFFICER violated MPD Order MPD General Order 201.26, Part I, Section C.

## 2. 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

Here, SUBJECT OFFICER threatened to arrest and “lock up” COMPLAINANT without any probable cause to believe that COMPLAINANT had committed any crime. Rather, COMPLAINANT simply showed up at the scene of an accident involving SUBJECT OFFICER and one of the individuals assisting COMPLAINANT at the Reeves Building. Nonetheless, SUBJECT OFFICER - in response to COMPLAINANT asking basic, reasonable questions of the officer - threatened to arrest COMPLAINANT.

SUBJECT OFFICER contends that his threats of detention and arrest were warranted because COMPLAINANT had swung his cane at the officer. Yet no evidence corroborates SUBJECT OFFICER’s allegation. By contrast, SUBJECT OFFICER was characterized as the angry aggressor, not COMPLAINANT.

Further, two neutral bystanders – WITNESS #3 and SPO WITNESS #4 - establish that SUBJECT OFFICER threatened do bodily harm to COMPLAINANT simply for showing up and asking reasonably appropriate questions. WITNESS #3 heard the Officer claim he would “fuck [COMPLAINANT] up.” And SPO WITNESS #4 heard SUBJECT OFFICER threaten to “kick [COMPLAINANT’s] ass.”

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<sup>1</sup> SUBJECT OFFICER only admits to possibly using profanity when he said to WITNESS #1, “Shit man, you hit my car.”

Accordingly, because SUBJECT OFFICER did not have probable cause to arrest the complainant for committing any crime, the Officer's threats of locking up COMPLAINANT clearly interfered with COMPLAINANT's ability to go about his business normally. To make matters worse, SUBJECT OFFICER then threatened to physically mistreat COMPLAINANT. As such, SUBJECT OFFICER harassed COMPLAINANT, in violation of MPD Special Order 01-01.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

<b>Allegation 1:</b>	Sustained
<b>Allegation 2:</b>	Sustained

Submitted on October 16, 2009.

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PAULA XINIS

Complaint Examiner