

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	10-0228
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, Third District
Allegation 1:	Harassment
Allegation 2:	Language or Conduct
Complaint Examiner:	Turna R. Lewis
Merits Determination Date:	June 21, 2012

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 MPD SUBJECT OFFICER (1) harassed him and (2) engaged in language or conduct that was insulting, demeaning, or humiliating. COMPLAINANT claims that on two occasions, on March 1 or 2, 2010, between 9:00 a.m. and 10:00 a.m. SUBJECT OFFICER walked into the basement of a rooming house where he resided and opened the door to his room; and on March 11, 2010 when SUBJECT OFFICER again directed COMPLAINANT to move. COMPLAINANT alleges SUBJECT OFFICER harassed him by telling him to leave the rooming house and threatening him with arrest and used inappropriate language when he used profanity in the conversation.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OPC's Request 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.¹ See D.C. Mun. Regs, tit. 6A, § 2116.3.

¹ Initially, the undersigned Complaint Examiner determined that an evidentiary hearing was required based upon the disputed facts about whether SUBJECT OFFICER entered COMPLAINANT'S room with permission and the lack of pictures of the rooming house and COMPLAINANT'S room in particular. Upon further determination, the

III. FINDINGS OF FACT

Based on a review of OPC's Report of Investigation and the objections submitted by SUBJECT OFFICER on October 12, 2011, the Complaint Examiner finds the material facts regarding this complaint to be:

1. COMPLAINANT filed a complaint with OPC on March 18, 2010 and an addendum to his complaint on March 23, 2010.
2. COMPLAINANT was a resident of a rooming house, located at ADDRESS, Washington, D.C., owned by WITNESS 1.
3. COMPLAINANT resided at the rooming house in a room located in the basement from November 3, 2009 until March 16, 2010.
4. COMPLAINANT filed a complaint with the District of Columbia Housing Authority alleging that the rooming house was not in compliance with applicable law and regulations.
5. WITNESS 1 filed complaints against COMPLAINANT.
6. WITNESS 1 told SUBJECT OFFICER sometime in early March 2010, about COMPLAINANT and that she wanted him to leave. Furthermore, COMPLAINANT was granted a "Stay Away Order" in March 2010, which required him to vacate the premises.
7. On March 1 or 2, 2010, SUBJECT OFFICER while off-duty and in full uniform, confronted COMPLAINANT about a landlord-tenant dispute on behalf of WITNESS 1, asking him when he would vacate the premises.
8. On March 1, or 2, 2010, SUBJECT OFFICER initiated a conversation with COMPLAINANT in which he threatened him with arrest.
9. On March 11, 2010, SUBJECT OFFICER, while off-duty and in full uniform, confronted COMPLAINANT about a landlord-tenant dispute on behalf of WITNESS 1.
10. On March 11, 2010, SUBJECT OFFICER initiated a conversation with COMPLAINANT in which he directed COMPLAINANT to vacate the premises of the rooming house by March 15, 2010 and threatened him with arrest or commitment to Saint Elizabeths Hospital, using profanity during the conversation.
11. COMPLAINANT reported the incident of March 11, 2010 to WITNESS OFFICER, who advised SUBJECT OFFICER to stay away from COMPLAINANT.

undersigned Complaint Examiner concluded that while these were disputed facts, they were not material to the determination of whether insulting, demeaning, or humiliating language or conduct occurred.

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 applicable District of Columbia 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 looks 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, tit. 6A, §2199.1.

MPD Circular “Landlord Self-help Evictions” prescribes the procedure to which a landlord must comply in order to effect a legal eviction. Specifically, MPD Circular CIR-01-03 requires a landlord to file an action in Landlord and Tenant Court and obtain a court order. U.S. Marshals are the only entity authorized to effect an eviction. MPD Circular mandates that MPD members not involve themselves in “...apparent landlord-tenant disputes, and are required ... when called to the scene ...to refer the parties to Landlord and Tenant Court (CIR-01-03, February 28, 2001) (Exhibit 12).

COMPLAINANT was a resident of a rooming house owned by SUBJECT OFFICER’S friend, WITNESS 1, who is 71 years old. COMPLAINANT alleged that SUBJECT OFFICER harassed him on two occasions: on March 1 or 2, 2010, by opening the door to his room and threatening him with arrest for assaulting WITNESS 1’S blind cousin if he did not move out of the rooming house; and again on March 11, 2010, when SUBJECT OFFICER again went to COMPLAINANT’S room, entering and threatened him with arrest about an alleged assault of WITNESS 1’S blind cousin and threatened to have him committed to Saint Elizabeths Hospital.

COMPLAINANT stated in his statement to OPC, dated March 23, 2010, that he resided in a rooming house, that WITNESS 1 was the landlord, and that each had filed complaints against each other (Exhibit 2).

Regarding the first incident, COMPLAINANT stated in his statement that SUBJECT OFFICER entered his room without permission by opening his door and walking into the room. COMPLAINANT states that SUBJECT OFFICER stated he was speaking to him on behalf of the family, and using profanity throughout his conversation, questioned him about his failure to pay the full rent, an alleged assault and threatened to issue an arrest warrant for assaulting a blind man (Exhibit 2).

Regarding the second incident which occurred on March 11, 2010, COMPLAINANT stated that SUBJECT OFFICER came directly into his room and asked when he was going to vacate, directing him to leave by March 15, 2010, or face arrest or commitment to Saint Elizabeths Hospital. COMPLAINANT stated that SUBJECT OFFICER used profanity throughout the conversation with him and that he was scared. COMPLAINANT reported the incident on March 11, 2010, to WITNESS OFFICER 2 at the Third District substation. COMPLAINANT stated that WITNESS OFFICER 2 told him she would radio SUBJECT OFFICER to stay away from his residence. COMPLAINANT stated that on March 11, 2010, he experienced an anxiety attack and was taken by ambulance to Providence Hospital emergency room and diagnosed with aggravated "clinical acute anxiety" (Exhibit 2).

SUBJECT OFFICER described himself as WITNESS 1'S friend of twenty years and that she is like a "god mother." In his statement given to OPC on May 25, 2010 (approximately two months after the incidents) SUBJECT OFFICER stated that on March 1 or 2, 2010, he was in full uniform, and while off-duty, visited WITNESS 1, who informed him of the problems she was having with COMPLAINANT. Specifically, SUBJECT OFFICER states that WITNESS 1 informed him that COMPLAINANT had filed complaints against her, which provided him a basis for nonpayment of rent, had not paid rent for approximately five months, and that she wanted him to vacate the property (Exhibit 4).

SUBJECT OFFICER stated he decided to speak with COMPLAINANT as a favor for WITNESS 1. SUBJECT OFFICER states he knocked on COMPLAINANT'S door engaging in "a nice conversation" with COMPLAINANT in which he asked him when he would pay his rent and asked him to identify when he would vacate the premises. SUBJECT OFFICER states COMPLAINANT told him he would leave by March 15, 2010, and SUBJECT OFFICER informed WITNESS 1. SUBJECT OFFICER denied using profanity and denied being in COMPLAINANT'S room (Exhibit 4).

SUBJECT OFFICER stated that he spoke with COMPLAINANT on March 11, 2010, when he was off duty and in full uniform. SUBJECT OFFICER stated that WITNESS 1 informed him that COMPLAINANT had assaulted her blind cousin who also resided in the rooming house. By his own admission, SUBJECT OFFICER stated that he went to COMPLAINANT'S room to confront him about the assault. SUBJECT OFFICER stated that the door to COMPLAINANT'S room was open and that he walked into his room and began to question him about when he was leaving and the alleged assault on WITNESS 1'S cousin. SUBJECT OFFICER admitted asking COMPLAINANT if he had "mental issues" and if he was

“from Saint Elizabeths Hospital.” SUBJECT OFFICER admitted that the conversation became heated and he used profanity, including telling COMPLAINANT “You’re getting the hell out of here.” SUBJECT OFFICER stated that he then went upstairs and informed WITNESS 1 of the process for obtaining a “Stay Away Order” against COMPLAINANT and, further advised her to report MPD service calls regarding any complaints that she or COMPLAINANT had towards each other (Exhibit 4).

Subject Officer, upon questioning by WITNESS OFFICER 1, who was contacted by COMPLAINANT, denied threatening to physically assault COMPLAINANT. SUBJECT OFFICER stated in his statement that Sgt. Harris did not ask him how the encounter occurred between him and COMPLAINANT, and that he was advised to stay away from COMPLAINANT (Exhibit 4).

Whether harassment has occurred is based on the totality of the circumstances. 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 (D.C. Mun. Regs, tit. 6A, § 2199.1). By his own admission, SUBJECT OFFICER knew that WITNESS 1 and COMPLAINANT were involved in a landlord-tenant dispute. He had not been assigned in his capacity as a sworn officer to investigate this matter and was off-duty when he confronted COMPLAINANT on both occasions and asked him to vacate.

SUBJECT OFFICER is responsible for knowing about MPD regulations and acting accordingly. Therefore, SUBJECT OFFICER is presumed to be aware of MPD CIR-01-03 and his actions in advocating on behalf of WITNESS 1 violated MPD CIR 01-03, which prohibited MPD participation in self-help evictions. Based upon the totality of circumstances, I find that SUBJECT OFFICER did threaten to arrest COMPLAINANT if he did not vacate by March 15, 2010, and the threat was not supported by a legitimate law enforcement purpose and violated MPD CIR-01-03. Accordingly, I find that SUBJECT OFFICER’S initiation of the conversations with COMPLAINANT on March 1 or 2, 2010 and on March 11, 2010, about the landlord-tenant dispute was not supported by a legitimate law enforcement purpose and, therefore constituted harassment.

SUBJECT OFFICER’S statements that the OPC investigator did not ask him how the encounter between him and COMPLAINANT occurred is not relevant to a determination of whether SUBJECT OFFICER harassed COMPLAINANT. It is undisputed that SUBJECT OFFICER was off duty, in full uniform, when he knowingly or recklessly intervened in a landlord-tenant dispute in violation of MPD CIR-01-03 and interfered with COMPLAINANT’S ability to go about lawful business normally.

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 SUBJECT OFFICER used language or engaged in conduct towards him on or about March 11, 2010, that was insulting, demeaning or humiliating. The evidence reviewed in this matter supports the finding that SUBJECT OFFICER used language and conduct towards COMPLAINANT that was insulting, humiliating or demeaning and that he failed to “...remain calm regardless of provocation to do otherwise.”

In SUBJECT OFFICER’S May 25, 2010, statement to the OPC investigator (approximately two months after the incident occurred), he acknowledged asking COMPLAINANT if he [had] “any mental issues,” and “whether he was from St. Elizabeths.” He also acknowledged that the conversation became “heated,” and that he could not recall all of the language used, but admitted he “may have” used “damn,” “s---t,” or “f---k.” SUBJECT OFFICER also admitted telling COMPLAINANT: “You’re getting the hell out of here,” (Exhibit 4). SUBJECT OFFICER further stated in the May 25, 2010, statement that after his conversation with COMPLAINANT, he advised WITNESS 1 that she should obtain a “Stay Away Order” against COMPLAINANT and have him removed from the property through Landlord and Tenant Court. SUBJECT OFFICER stated he also informed WITNESS 1 she should report the MPD Service Calls regarding any complaints that she or COMPLAINANT had towards each other.

SUBJECT OFFICER’S questions were personally intrusive, unrelated to any legitimate law enforcement purpose and were demeaning and offensive. SUBJECT OFFICER’S admission that he used profanity and that the conversation with COMPLAINANT became “heated” violated MPD General Order 201.20 Part 1, Section C which mandates that MPD members act in a courteous and orderly manner with the public. Therefore I find based on the evidence of record that SUBJECT OFFICER engaged in language or conduct that violated MPD Special Order 01-01, Part III. Section C.

The Complaint Examiner finds, based on a preponderance of the evidence of record that the allegations of harassment and insulting, demeaning, or humiliating language or conduct are sustained.

SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1:	Sustained
Allegation 2:	Sustained

Submitted on June 21, 2012

Turna R. Lewis
Complaint Examiner