

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF CITIZEN COMPLAINT REVIEW**

**FINDINGS OF FACT AND MERITS DETERMINATION**

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| <b>Complaint No.:</b>                               | 01-0242  |
| <b>Complainant:</b>                                 | COMPLAINANT  |
| <b>Subject Officer(s),<br/>Badge No., District:</b> | SUBJECT OFFICER, Major Narcotics Branch                  |
| <b>Allegation 1:</b>                                | Insulting, Demeaning, or Humiliating Language or Conduct |
| <b>Allegation 2:</b>                                | N/A  |
| <b>Allegation 3:</b>                                | N/A  |
| <b>Complaint Examiner:</b>                          | Shana L. Malinowski                                      |
| <b>Merits Determination Date:</b>                   | August 13, 2003  |

Pursuant to D.C. Official Code § 5-1107(a), 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**

In a complaint filed with the Office of Citizen Complaint Review (OCCR), COMPLAINANT alleged that on March 10, 2001, SUBJECT OFFICER ordered her to submit to a strip “squat” search<sup>1</sup> at LOCATION #1, N.W. SUBJECT OFFICER was the supervisor on the scene. COMPLAINANT alleged that by permitting the strip search to occur when COMPLAINANT had not been arrested, SUBJECT OFFICER’s conduct amounted to harassment. COMPLAINANT further alleged that this conduct also insulted, demeaned or humiliated her. On June 13, 2003, a member of the Citizen Complaint Review Board (CCRB) dismissed only the harassment allegation of the complaint, concurring with the determination made by OCCR’s executive director.<sup>2</sup>

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<sup>1</sup> A squat search is defined as “having a prisoner crouch or squat while their undergarments and outer clothing are removed, exposing the genital and anal area. This type of search permits contraband or other material concealed in the genital area to become visible or dislodged.” ROI, Ex. 16.

<sup>2</sup> Individual CCRB members are assigned to rotating two-week dismissal schedules.

## II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OCCR'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 OCCR's Report of Investigation, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On March 10, 2001, COMPLAINANT and her boyfriend, WITNESS #1, met at LOCATION #1 (hereinafter the "Shop"), located in NW, Washington, D.C.
2. While COMPLAINANT and WITNESS #1 were at the Shop, two MPD trucks arrived. Three to five plainclothes police officers jumped out of the trucks. ROI, Ex. 3.
3. At the time, the officers were acting on a tip from a reliable informant who had told MPD officers that WITNESS #1 and COMPLAINANT currently possessed narcotics, and that COMPLAINANT was "muling dope," a term which describes the transport of narcotics on or in a person's body. ROI, Ex. 12.
4. Two plainclothes officers ordered WITNESS #1 to place his hands against the wall and performed a pat-down search. ROI, Ex. 5.
5. COMPLAINANT was asked for her identification, which she produced. ROI, Ex. 3. She was also asked to look for WITNESS #1's identification; she looked in WITNESS #1's car for his identification, but was unable to find it. Id.
6. An officer asked COMPLAINANT if she had "anything [she] want[ed] to hide or not want [them] to find." ROI, Ex. 4. She responded that she did not. ROI, Ex. 3.
7. SUBJECT OFFICER arrived at the Shop after the other officers had detained WITNESS #1 and COMPLAINANT. ROI, Ex. 12.
8. SUBJECT OFFICER called for a female officer to come to the scene. ROI, Ex. 12. SUBJECT OFFICER believed that COMPLAINANT was hiding drugs on her person. Id.

9. WITNESS OFFICER #1, 3rd District, subsequently arrived at the Shop. SUBJECT OFFICER told WITNESS OFFICER #1 to “search [COMPLAINANT]” and to “check her good, check her undergarments, be polite, we don’t want to embarrass her.” ROI, Ex. 12. WITNESS OFFICER #1 understood from her previous work in the narcotics division that this meant that she was to conduct a squat search. ROI, Ex. 14.
10. While in the bathroom, WITNESS OFFICER #1 searched COMPLAINANT’s purse and wallet. WITNESS OFFICER #1 instructed COMPLAINANT to take off her top. When COMPLAINANT asked why, WITNESS OFFICER #1 told her to “just do what [she said].” WITNESS OFFICER #1 then told COMPLAINANT to “open [her] mouth, take [her] pants down and spread [her buttocks] cheeks.” ROI Ex. 4.
11. COMPLAINANT complied, and WITNESS OFFICER #1 examined COMPLAINANT’s mouth and her shoes. WITNESS OFFICER #1 told COMPLAINANT to “squat down and grunt” and that if she was “holding anything in there, it [would] fall out.” ROI, Ex. 3. COMPLAINANT turned around and “bent over and spread [her] cheeks.” Id.
12. COMPLAINANT asked WITNESS OFFICER #1 “what [she was] looking for” and was told that “someone [would] explain it to [her] when [she got] outside.” ROI, Ex. 3. No one explained the reason for the search to COMPLAINANT. Id.
13. After the examination, COMPLAINANT and WITNESS OFFICER #1 left the restroom, and WITNESS OFFICER #1 reported that “[COMPLAINANT was] clean.” ROI, Ex. 9. SUBJECT OFFICER asked WITNESS OFFICER #1 if she “check[ed] [COMPLAINANT] real well.” Id., Ex. 12. WITNESS OFFICER #1 responded that she did. Id. SUBJECT OFFICER confirmed this by asking “are you sure,” to which WITNESS OFFICER #1 replied, “yes.” Id.
14. The police officers subsequently left the Shop and later that day COMPLAINANT and WITNESS #1 went to the 4th District police station to file complaints. While COMPLAINANT and WITNESS #1 were at the 4th District, WITNESS OFFICER #2 (officer hearing COMPLAINANT and WITNESS #1’s complaint) contacted SUBJECT OFFICER and told SUBJECT OFFICER that COMPLAINANT and WITNESS #1 were present and making a complaint. SUBJECT OFFICER came to the 4th District and personally gave WITNESS #1 the names and badge numbers of the officers who were present during the incident.
15. SUBJECT OFFICER did not learn until reviewing MPD orders subsequent to the incident that he was to arrest COMPLAINANT and bring her to the station before conducting the squat search. ROI, Ex. 12. SUBJECT OFFICER explained that he did not arrest COMPLAINANT in order to “save her heartache and embarrassment.” Id., Exs. 11 and 12.

16. SUBJECT OFFICER acknowledged to WITNESS OFFICER #3 (officer conducting investigation of incident) that he did not get approval for the search of COMPLAINANT. ROI, Ex. 10. WITNESS OFFICER #3 indicated that the failure to get approval was a clear violation of the administrative policies of the MPD. Id.
17. OCCR referred COMPLAINANT's "illegal" strip search issue to the United States Attorney for the District of Columbia for possible criminal prosecution of SUBJECT OFFICER. The United States Attorney for the District of Columbia declined any criminal prosecution arising from the incident. ROI at 3.

#### 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]."

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." The Complaint Examiner finds that SUBJECT OFFICER used conduct that was insulting, demeaning or humiliating when he ordered, without justification and compliance with MPD policies and procedures, the squat search of COMPLAINANT.

MPD General Order 304.10, Part I, Section C, No. 6b states that "Officers shall at all times understand that the authority to 'frisk' does not constitute authority to 'search' and that full searches conducted without adequate probable cause to arrest are improper and prohibited." ROI, Ex. 15.

MPD General Order 502.01, Part VI, Section B, No. 2 states that "A 'strip' or 'squat' search shall be conducted only when the member has reason to suspect that weapons, contraband or evidence are concealed on the person or in the clothing in such a manner that employing a field search technique may not discover them. Suspicion may be formed on facts surrounding the crime or arrest, on the basis of information received about prisoner, or as a result of discoveries during the field search. These searches can be conducted only with the

authorization of the Assistant District Commander and in a secure area. A sworn member of the same sex as the prisoner shall conduct the search in a private and secure area.” ROI, Ex. 16.

In this case, while SUBJECT OFFICER may have had reason to believe that COMPLAINANT was secreting contraband on or in her person, SUBJECT OFFICER admitted to WITNESS OFFICER #3 that he did not contact the Assistant District Commander prior to requesting that WITNESS OFFICER #1 conduct the search. ROI, Ex. 10. The failure to obtain the requisite approval for the squat search is a violation of MPD’s administrative policies.

Moreover, MPD Special Order 85.51 only provides procedures for a strip or squat search of prisoners. There is no policy for a strip search of people that are not arrested, as such searches are not permitted. ROI at 3. MPD General Order 502.5, Part I, Section B, No. 2 provides that “[w]hensoever any person is arrested by a member of this department, he/she shall be transported to a police facility without unreasonable delay and the arrest shall be entered on the arrest book. The only exception shall be, if it is determined before transporting to a police facility that the arrested person is entitled to be released without being charged. In such cases an official shall ... d. Authorize the release of the arrested person at the scene; e. Be responsible for making an entry in the detention journal; and f. Have the arresting officer prepare a PD Form 728 (Detention Report), which shall be reviewed and signed by the official who authorized the release.” ROI, Ex. 17.

According to OCCR LIAISON, who headed MPD’s OCCR Liaison Unit when she was consulted by OCCR on this matter and on her understanding of MPD General Order 502.5, if COMPLAINANT had been “functionally arrested” at the detailing shop and was subsequently released, SUBJECT OFFICER should have made an entry in the detention journal. ROI at 6. No such entry was made. Therefore, the Complaint Examiner finds that COMPLAINANT was not actually or functionally arrested. The execution of a squat search without an arrest also violated MPD’s administrative policies.

The Complaint Examiner therefore finds that SUBJECT OFFICER ordered a squat search without proper approval from the watch commander on duty, and without an actual or functional arrest of the complainant. SUBJECT OFFICER’s actions therefore violated MPD’s policies and procedures and subjected COMPLAINANT to conduct that was insulting, demeaning or humiliating.

**V. SUMMARY OF MERITS DETERMINATION**

SUBJECT OFFICER

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| <b>Allegation 1:</b> | Sustained |
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Submitted on August 13, 2003.

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Shana L. Malinowski  
Complaint Examiner