

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	02-0116
Complainant:	COMPLAINANT
Subject Officer(s), Badge No., District:	SUBJECT OFFICER, 3rd District
Allegation:	Harassment
Complaint Examiner:	Linda R. Singer
Merits Determination Date:	August 22, 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) on January 7, 2002, COMPLAINANT alleged that SUBJECT OFFICER harassed him during the course of a traffic stop on January 6, 2002.

SUBJECT OFFICER stopped COMPLAINANT'S taxicab at LOCATION #1, N.W., allegedly for running a red light. According to COMPLAINANT, when he disputed the validity of the Notice of Infraction (NOI), SUBJECT OFFICER threatened him with further citations. When COMPLAINANT discontinued his protests, SUBJECT OFFICER returned to his MPD car and left the scene. As he was driving past COMPLAINANT'S car, COMPLAINANT said goodbye, at which point SUBJECT OFFICER stopped and issued COMPLAINANT a second NOI for blocking a crosswalk.

II. EVIDENTIARY HEARING

No evidentiary hearing was conducted regarding this complaint because, based on a review of OCCR's Report of Investigation, together with SUBJECT OFFICER'S letter of July 22, 2003, the Complaint Examiner determined that the documents 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 and the objections submitted by SUBJECT OFFICER on July 22, 2003, the Complaint Examiner finds the following material facts regarding this complaint:

1. On January 6, 2002, COMPLAINANT was driving his taxicab eastbound in N.W., Washington D.C. After passing a store, COMPLAINANT observed through his rearview mirror an MPD scout car driven by SUBJECT OFFICER, directly behind his car. COMPLAINANT continued on and stopped at a red light at LOCATION #1, N.W. While stopped at the red light, COMPLAINANT noticed a woman hailing his taxicab from across the intersection.
2. According to COMPLAINANT, the light had turned green when he proceeded through the intersection to pick up the woman. According to SUBJECT OFFICER, the light for traffic in the opposite direction had turned green but the light for traffic in COMPLAINANT'S direction had not turned green when he proceeded through the intersection. The Complaint Examiner finds that this factual dispute is not material to the resolution of the complaint, which does not involve the validity of the first NOI
3. Both before and after receiving the \$75 NOI for driving through a red light, COMPLAINANT argued that the light had been green when he proceeded across the intersection. After being given the first NOI, COMPLAINANT also told SUBJECT OFFICER, "Your name tag is slanted and you don't even have numbers on your badge." SUBJECT OFFICER replied, "Keep talking [and] I'm going to keep writing tickets."
4. As COMPLAINANT continued to argue, SUBJECT OFFICER returned to his vehicle and began to drive away. When SUBJECT OFFICER'S car passed COMPLAINANT'S car, COMPLAINANT turned to him and said, "Goodbye." SUBJECT OFFICER stopped his vehicle, got out of the car, and issued COMPLAINANT a second NOI – a \$50 citation for blocking a crosswalk. SUBJECT OFFICER told COMPLAINANT that if he kept talking, he (SUBJECT OFFICER) had "a whole book of tickets" and could keep writing them. COMPLAINANT did not argue any further, and SUBJECT OFFICER returned to his car and departed.
5. SUBJECT OFFICER acknowledged during his interview with OCCR that he issued the second NOI to COMPLAINANT because COMPLAINANT angrily contested the first ticket. SUBJECT OFFICER said that he does not usually issue many traffic citations and that, under ordinary circumstances, he would not issue a crosswalk citation to someone whom he pulled over in a crosswalk or to a taxicab driver who stopped briefly in a crosswalk to pick up a passenger.
6. In his objections to the Report of Investigation SUBJECT OFFICER emphasized that "COMPLAINANT was given the opportunity to leave after the first NOI was issued, and

decided to stay and aggressively contest the NOI, after he was free to leave, and continue to block the cross walk as citizens walked around his taxi.”

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].”

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.”¹

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.”

MPD General Order 201.26 Part 1, Section E, No. 3 provides that police officers must “observe, uphold, and enforce all laws without bias and without regard to individuals involved.”

A review of the statements of COMPLAINANT and SUBJECT OFFICER establishes that SUBJECT OFFICER abused or misused his police powers on January 6, 2002, by issuing the complainant a second NOI and threatening to issue additional NOIs if COMPLAINANT continued to argue with him. Because SUBJECT OFFICER allowed himself to be provoked by COMPLAINANT’S angry protests over the first NOI and his criticisms of the officer’s name tag and badge, he issued COMPLAINANT a second NOI for a crosswalk violation, something he admitted that he would not have done under normal circumstances. In so doing, SUBJECT OFFICER harassed COMPLAINANT and treated him unfairly, in violation of MPD Special Order 01-01, Part III, Section G and MPD General Order 201.26.

¹ The Citizen Complaint Review Board, which is OCCR’s governing body, promulgated regulations regarding OCCR on August 30, 2002. See 49 D.C. Reg. 8347. This Merits Determination does not rely on the definition of “harassment” contained in the regulations because the underlying conduct alleged in the complaint occurred before the regulations took effect on August 30, 2002.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation:	Sustained
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Submitted on August 22, 2003.

Linda R. Singer

Complaint Examiner