

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

FINDINGS OF FACT AND MERITS DETERMINATION

Complaint No.:	03-0202
Complainant:	COMPLAINANT
Officer (s), Badge No., District:	SUBJECT OFFICER, Third District
Allegation 1:	Use of Excessive or Unnecessary Force
Allegation 2:	Harassment
Allegation 3:	Insulting, Demeaning, or Humiliating Language or Conduct
Complaint Examiner:	Paula Xinis
Merits Determination Date:	March 2, 2007

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).

SUMMARY OF COMPLAINT ALLEGATIONS

COMPLAINANT alleges that SUBJECT OFFICER used excessive and unnecessary force when SUBJECT OFFICER entered COMPLAINANT's apartment uninvited, without a warrant, and at night while COMPLAINANT was not fully dressed. COMPLAINANT further alleges that SUBJECT OFFICER's conduct also constituted harassment and insulting and demeaning language or conduct.

EVIDENTIARY HEARING

An evidentiary hearing was conducted regarding this complaint on February 2, 2007. The Complaint Examiner heard the testimony of COMPLAINANT, WITNESS #1, WITNESS #2, SUBJECT OFFICER, and WITNESS OFFICER #1. All of the exhibits attached as part of the OPC Report of Investigation were made part of the record for the hearing. In addition, the following exhibits were introduced at the hearing:

Complainant Exhibit: Original photos of COMPLAINANT's home and injuries to her body taken the evening after the incident.

FINDINGS OF FACT

Based on a review of OPC's Report of Investigation and an evidentiary hearing conducted on February 2, 2007, the Complaint Examiner finds the material facts regarding this complaint to be:

1. On the evening of February 6, 2003, SUBJECT OFFICER responded to a noise complaint lodged by a neighbor of COMPLAINANT. COMPLAINANT was playing music on her stereo which allegedly was disturbing the neighbor.
2. When SUBJECT OFFICER arrived, he knocked on COMPLAINANT's door and announced his presence.
3. When the COMPLAINANT opened the door, SUBJECT OFFICER informed her of the noise complaint and asked COMPLAINANT to turn her music down.
4. COMPLAINANT was alone in her apartment and was dressed in only panties and a t-shirt.¹
5. COMPLAINANT opened the door enough to observe SUBJECT OFFICER at her door and to speak with him regarding the noise complaint. COMPLAINANT then tried to shut the door. Although the parties disagree vigorously as to exactly what happened next, they both agree that SUBJECT OFFICER entered COMPLAINANT's apartment, turned down the music, and remained in the apartment, all without COMPLAINANT's permission.
6. SUBJECT OFFICER testified that the only reason he entered the apartment was to turn down the COMPLAINANT's music. Yet SUBJECT OFFICER also conceded that he remained in the apartment after the music had been turned down.
7. While SUBJECT OFFICER was in the apartment, COMPLAINANT made several phone calls to report SUBJECT OFFICER's uninvited and ongoing presence in her home. Specifically, COMPLAINANT called her brother to seek advice regarding the situation and 911 to report SUBJECT OFFICER's remaining in her apartment against her wishes and "disrespecting" her "in [her] house."
8. Specifically, COMPLAINANT reported to 911 that SUBJECT OFFICER "bust in" to her house when he "had no right to be there" while she was in her "tee shirt and bloomers." Clearly agitated and upset, COMPLAINANT's voice was captured on the 911 tape recording telling SUBJECT OFFICER to "get out of my house."
9. While SUBJECT OFFICER was in COMPLAINANT's apartment, COMPLAINANT's niece, WITNESS #2, knocked on the apartment door. WITNESS #2 lives down the

¹ Various witnesses testified as to the type and length of COMPLAINANT's t-shirt (sleeveless versus short-sleeved; long versus short). However, all witnesses were in agreement on the most salient points: that COMPLAINANT was dressed only in a t-shirt and underpants.

hallway from COMPLAINANT and had observed SUBJECT OFFICER enter into COMPLAINANT's apartment. She then knocked on COMPLAINANT's door while SUBJECT OFFICER was inside.

10. SUBJECT OFFICER refused to allow WITNESS #2 into COMPLAINANT's apartment even though COMPLAINANT clearly expressed her desire that WITNESS #2 be present.
11. SUBJECT OFFICER admitted that when he first entered into the apartment, he had no intention of arresting COMPLAINANT. However, as the situation became more heated, SUBJECT OFFICER arrested COMPLAINANT for disorderly conduct. This charge against COMPLAINANT was ultimately dropped.
12. Prior to COMPLAINANT's arrest, WITNESS OFFICER #1 arrived at the scene to find SUBJECT OFFICER and COMPLAINANT yelling at each other. A brief tussle ensued between COMPLAINANT and SUBJECT OFFICER that left parts of COMPLAINANT's apartment in disarray and COMPLAINANT injured with superficial cuts and scrapes.
13. One of the officers then allowed WITNESS #2 into the apartment to retrieve COMPLAINANT's clothes from the back bedroom.
14. WITNESS #1 encountered COMPLAINANT walking home from the police station the next morning. WITNESS #1 routinely sees COMPLAINANT, as they are neighbors and serve on their tenants' association together. WITNESS #1 observed COMPLAINANT's injuries and the state of disarray at COMPLAINANT's apartment. That evening, WITNESS #1 took photos of COMPLAINANT's apartment. The photos depict a lamp, flower pot and other items that were knocked askew.

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]."

I. Allegation # 1: Use of Excessive or Unnecessary Force

MPD General Order 901.07 Part II makes clear that "the officers of the Metropolitan Police Department shall use *the minimum amount of force* that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control." MPD General Order 901.07 Part II (emphasis added). Similarly, MPD General Order 901.07 Part

V, Section B, No. 1 sets forth the Department's "use of force continuum," that guides officers in implementing escalating options of force to meet the minimum use of force requirement. The officers are directed that the use of force must be based on "the totality of circumstances, which an officer reasonably believes to exist at the time of the confrontation." MPD General Order 901.07 Part V, Section B, No. 1.

Here, SUBJECT OFFICER's unauthorized entry and extended presence in COMPLAINANT's home constituted excessive and unnecessary use of force. SUBJECT OFFICER entered COMPLAINANT's apartment clearly uninvited, without a warrant, and without a valid exception to the warrant requirement on which to justify his entry. Nor could SUBJECT OFFICER articulate any exigent circumstances justifying a warrantless entry. Indeed, at the evidentiary hearing, SUBJECT OFFICER testified that he was responding only to a noise complaint at the time he crossed the threshold of COMPLAINANT's apartment and remained in her apartment for some time, even though he had no intention of arresting COMPLAINANT. *See* Hearing Transcript (hereinafter HT), pp. 184,192.

Further, even if SUBJECT OFFICER were going to arrest COMPLAINANT in her home, the officer was required under the United States Supreme Court's decision in *Payton v. New York* to obtain an arrest warrant prior to his entry into her home. *See Payton v. New York*, 445 U.S. 573 (1980) (warrantless entry into home to effect felony arrest violated defendant's Fourth Amendment rights to be free from illegal seizures). This SUBJECT OFFICER did not do. Rather, he entered into the home without any lawful basis.

To make matters worse, SUBJECT OFFICER then remained in COMPLAINANT's apartment long after he resolved the noise problem. Even if SUBJECT OFFICER's brief warrantless entry to turn the music down was somehow justified, his subsequent conduct clearly amounted to unnecessary and excessive use of force. After SUBJECT OFFICER turned down the music, he stayed in COMPLAINANT's home with the front door closed for a lengthy period of time, even after COMPLAINANT made clear he was not welcome, and while COMPLAINANT called family and 911 to protest his presence. (HT pp. 160, 184). In fact, SUBJECT OFFICER testified that to "make it easy on [him]self" (HT p.193), he stood in front of COMPLAINANT's closed front door (the only point of entry or exit), faced inward to her apartment while COMPLAINANT was alone and barely clothed, and did not allow a family member to enter. (HT pp. 23, 160, 192). A citizen – who, dressed for bed, confronts an armed, uniformed officer entering her home uninvited, blocking her only entry/exit from her home, and refusing to let in anyone else – would undoubtedly become agitated and panicked, and respond accordingly. As a result, SUBJECT OFFICER's conduct sparked a confrontation between he and COMPLAINANT. This led to an unnecessary arrest that left COMPLAINANT with minor injuries and her apartment in disarray,² rather than a peaceable resolution of a relatively minor noise complaint.

² WITNESS #1 credibly testified to meeting COMPLAINANT on the street as COMPLAINANT walked home from the District 3 police station, and to observing red scrapes and scratches on WITNESS #1's arm, shoulder and neck that were not present prior to the arrest. (HT p. 82). WITNESS #1 also authenticated photographs that she took of COMPLAINANT's apartment depicting a lamp knocked off-balance and other items askew, and testified

Nor could SUBJECT OFFICER provide a credible justification for his persistent police presence after resolving the noise issue. When questioned by the Complaint Examiner, SUBJECT OFFICER first testified that he remained in the apartment because he knew that COMPLAINANT was “going to complain,” and wanted to obtain COMPLAINANT’s identification to document the incident (HT p. 187). Yet even after obtaining COMPLAINANT’s identification, SUBJECT OFFICER nonetheless remained in the apartment. (HT p. 189). When pressed on this point, SUBJECT OFFICER then stated that he stayed to wait for backup witness officers to arrive, yet could not articulate why he needed to wait *inside* COMPLAINANT’s apartment where he clearly was neither welcome nor lawfully permitted to remain. (HT p. 190).

SUBJECT OFFICER then testified that he stayed because he “had this feeling” that if he left, COMPLAINANT would turn her music back up or fight with the neighbor. (HT pp. 191-92). SUBJECT OFFICER’s “feeling,” however, was belied by COMPLAINANT’s actions - at no point did she try to turn the music back on or attempt to assault the neighbor in the officer’s presence. In short, none of SUBJECT OFFICER’s varied rationales provide a satisfactory justification for his continued police presence. Accordingly, SUBJECT OFFICER’s unlawful entry into and intimidating, protracted presence in COMPLAINANT’s apartment while she was dressed only in a t-shirt and underpants, coupled with his restricting COMPLAINANT’s family member from entering the home, constituted excessive and unnecessary use of force.

II. Allegation #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.” Harassment is further defined in the OPC regulations as “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 . . . 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.” D.C. Mun. Regs. Title 6A, § 2199.1. 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.” *Id.*

SUBJECT OFFICER entered and remained in COMPLAINANT’s apartment without any lawful authority. During this time, COMPLAINANT was alone, dressed only in a t-shirt and underpants. SUBJECT OFFICER then remained in relatively close proximity to COMPLAINANT and limited her movements by blocking her doorway and restricting access into her apartment. In this way, SUBJECT OFFICER clearly “interfered with a citizen’s ability to go about lawful business normally,” and unlawfully impeded the COMPLAINANT’s

that the photos represented a fair and accurate depiction of COMPLAINANT’s apartment as it was when WITNESS #1 returned with COMPLAINANT to the apartment in the morning.

movement in her own home. *Id.* All of this undoubtedly humiliated COMPLAINANT, especially considering her state of partial undress. Thus, the harassment allegation must be sustained.

III. Allegation # 3: Insulting, Demeaning, or Humiliating 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, slangs, slurs, epithets or ‘street’ talk or other language that would be likely to demean the person to whom it is directed or to offend a citizen overhearing the language.” MPD General Order 201.26, Part I, Section C provides that “all members of the department shall be courteous in their dealings with the public. They shall perform their duties quietly, remaining calm regardless of provocation to do otherwise.”

SUBJECT OFFICER entered COMPLAINANT’s apartment without lawful authority and while she was dressed only in a t-shirt and panties. SUBJECT OFFICER then stayed in COMPLAINANT’s apartment long after the reported noise problem had abated. Rather than quell the situation, SUBJECT OFFICER’s continued presence evidently provoked heated controversy between he and COMPLAINANT. As WITNESS OFFICER #1 testified, when he first arrived at the scene, both COMPLAINANT and SUBJECT OFFICER were yelling at each other. (HT p. 145).

Although SUBJECT OFFICER testified that COMPLAINANT raised her voice and pointed her finger in his face, COMPLAINANT’s purported agitation does not excuse SUBJECT OFFICER’s behavior. First, SUBJECT OFFICER’s warrantless entry into COMPLAINANT’s apartment, his unjustified, prolonged presence, and his refusal to allow COMPLAINANT to let her family members into her own home, alone constituted insulting and demeaning conduct.

Second, even if COMPLAINANT yelled and pointed her finger in his face (an account which, incidentally, was not corroborated by any of the other witnesses), SUBJECT OFFICER cannot simply respond by yelling back. He is required to “remain calm regardless of provocation to do otherwise.” MPD General Order 201.26, Part I, Section C. But based on SUBJECT OFFICER’s own witness, WITNESS OFFICER #1, SUBJECT OFFICER did not remain calm and instead raised his voice to COMPLAINANT, further contributing to the already highly charged atmosphere. Thus, based on the totality of the circumstances in this case, SUBJECT OFFICER engaged in insulting and demeaning language and conduct, in violation of MPD General Order 201.26, Part I, Section C.

V. SUMMARY OF MERITS DETERMINATION

SUBJECT OFFICER

Allegation 1: Excessive or Unnecessary Force	Sustained
Allegation 2: Harassment	Sustained
Allegation 3: Insulting or Demeaning Language or Conduct	Sustained

Submitted on March 2, 2007.

Paula Xinis
Complaint Examiner