

**Testimony of the
American Civil Liberties Union of the Nation's Capital**

by

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Before the
Committee on the Judiciary and Public Safety
of the
Council of the District of Columbia

Metropolitan Police Department Performance Oversight Hearing

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Thank you for the opportunity to present information on the performance of the Metropolitan Police Department (MPD).

The ACLU has a longstanding concern that the District have an effective system for handling citizen complaints. The current Office of Police Complaints (OPC) was the result of research and drafting assistance we provided to the Committee in 1998. Complaints now may be submitted to the OPC or to the MPD; but for this dual system to work, it is essential that the public can find out how to make a police complaint in the first place. Of course, there are a variety of ways in which members of the public can learn about how to make a complaint, including websites, police listservs, community forums, and special police units reaching certain populations. But police stations are still key sources of information; many people who have complaints about police conduct will simply visit their local police station and ask how to submit a complaint.

In December 2013¹ we tested the availability of information on filing police complaints at the ten MPD stations/substations.² Our study revealed what D.C. residents or visitors would encounter

¹ ACLU staff previously had visited stations in February 2002, January 2003, July 2005, June 2006, and June 2009. Many thanks to ACLU Advocacy Interns Sandra, Tamika, Jack, and Jonathan, and ACLU Volunteer Attorney Zach, for their commendable work during this round of our study.

² To our knowledge, there are a total of ten Metropolitan Police Department (MPD) stations/substations scattered throughout the District's quadrants: the First District Station (S.W.) and Substation (S.E.), Second District Station (N.W.), Third District Station (N.W.), Fourth District Station and Substation (N.W.), Fifth District Station (N.E.), Sixth District Station (N.E.) and Substation (S.E.), and Seventh District Station (S.E.). Source: <http://mpdc.dc.gov/page/police-districts-and-police-service-areas>.

when acting on the Police Chief's message (at a recent hearing) encouraging the public to complain to the MPD or the OPC about police misconduct.³

Unfortunately, we found a lot of missing information and some bad attitude, including:

- limited availability of complaint forms and brochures, particularly OPC materials;
- officers that knew of MPD's complaint process yet that were ignorant of OPC's process;
- two officers that discouraged complaints or refused to provide information when asked.

ACLU Testers Found Problems in Three Areas

The ACLU sent trained observers to the ten police stations/substations throughout the District.⁴ They went to the counter at each location and asked a set of standard questions to learn whether officers could explain the basics of the dual complaint system and furnish materials such as the complaint forms (OPC-1 and PD-99) and a brochure. We found:

1. Poor Officer Knowledge of OPC and its Complaint Process

Only four of ten officers who spoke with our testers knew of OPC (that is, mentioned OPC when asked where complaints could be submitted). Nine of ten knew that MPD accepted complaints; one refused to answer and, instead of offering information, in effect showed our tester the door.

Half of the officers knew how to submit a complaint to MPD. In stark contrast, only one officer knew how to submit a complaint to OPC; another seven did not know and the last two were wrong. Many officers erroneously stated that complaints could be made only in person.

2. Two Officers Prevented Testers from Obtaining Complaint Information

Officers at two locations (First District Substation and Fifth District Station) reacted to questions with hostility, responding in an aggressive or unhelpful way. At the First District Substation, the officer threatened that an MPD official would "interrogate" the complainant, possibly at her home, to check the complaint's facial validity. At the Fifth District Station, the officer flatly refused to provide any information about the complaint process unless the tester first explained

³ "Standards, Training, Investigation and Intervention Related to Police Officer Conduct," Public Oversight Hearing by this Committee, January 24, 2014. The Chief's comments are at 1:11:25–1:12:15 and 1:23:10. Video available at http://dc.granicus.com/MediaPlayer.php?view_id=28&clip_id=2034.

⁴ The ACLU has conducted such visits repeatedly in past years; we last testified in depth on the subject at this Committee's 2010 oversight hearing. In our field tests we look for what is required in the MPD general order on the subject, *Processing Citizen Complaints* (GO-PER-120.25, February 19, 2009). Staff in the December 2013 in-person visits posed as friends of a nervous potential complainant, visiting the station on her behalf to learn about how the process works, language access, the possibility of complaining anonymously, and the differences in MPD and OPC complaint systems. We checked for both OPC and MPD complaint forms that must be on display along with informational brochures and a required wall poster on filing complaints. We also called each station in February 2014 to check for differences in handling telephone inquiries. There were some variations in how calls and visits were handled, but we limit the reporting today to the more comprehensive observations from the visits.

the substance of the complaint. Both responses were incorrect according to MPD’s general order, which demands that MPD employees “NOT discourage any person from making a complaint.”⁵

3. Poor Availability of OPC Complaint Forms; Inconsistent Availability of Informational Material

Seven out of ten locations lacked the OPC complaint form and four lacked even the MPD form.

Six locations lacked the OPC brochure and one lacked even the MPD brochure.

Complaint forms and brochures in foreign languages were inconsistently available, with some at each location—at some stations only brochures, at others complaint forms and brochures.

Three locations (the Second, Fourth, and Fifth District Stations) had MPD complaint forms only in foreign languages; these three locations did not have MPD complaint forms in English.

Recommendations

For the Chief’s vision to fully materialize—i.e., for residents to help the MPD uncover misconduct by filing complaints—visitors to MPD stations inquiring about the complaint process must be able to obtain complaint forms and receive accurate information without difficulty.

Unfortunately, as our results have shown there is still much room for improvement.⁶

Too many officers lack basic knowledge; too many stations lack essential materials; and OPC is relatively invisible. Worst of all, some officers prop up apocryphal barriers that would dissuade many residents from filing complaints. The District deserves better.

Accordingly, we recommend that the MPD:

- assign someone at each station the duty to restock the materials required to be on display (in particular, the MPD *and* OPC complaint forms) on a weekly basis or as needs arise;
- if the burden to train all officers to be knowledgeable and courteous is too great, assign to the most well-versed officers at each station and shift the task of speaking with potential complainants, and instruct other officers to refer complaint inquiries to those select few.

* * *

Thank you for the opportunity to provide this information for the hearing record. The ACLU would be pleased to work with the MPD and the OPC on addressing this issue.

⁵ GO-PER-120.25 at 5 (emphasis in original).

⁶ See, e.g., *Twenty-Second Quarterly Report of the Independent Monitor for the MPD*, Oct. 30, 2007, pp. 81-88 (reporting problems from a series of audits of public information availability). The Monitor was complimentary about improvement a year later in the Final Report (June 13, 2008, p. 73). But apparently the improvement hasn’t lasted.

Outline of standard protocol for ACLU visits to MPD stations

We used the following criteria (but note that not all our results were discussed in this testimony):

1. The MPD complaint form PD-99, the Office of Police Complaints complaint form OPC-1, and an informational brochure should be stocked at stations and substations and “on display.”⁷
2. The MPD employee at the front desk, when asked about the process for filing a citizen complaint, should be able to “explain the complaint process.”⁸
3. An informational poster on “Citizen Complaints Against Metropolitan Police Officers” should also be posted at the District or Unit “in an area accessible and frequented by the public.”⁹
4. Anonymous complaints and complaints by various means (phone, in person, etc.) should be allowed.¹⁰
5. Complaints by witnesses of misconduct (other than victims) should be allowed.¹¹
6. Assistance, as required by D.C. and federal law, must be available for those with limited or no English speaking or reading skills.¹²
7. Complainants’ immigration status should never be inquired about.
8. Preferably, an OPC brochure on filing complaints should be available, in addition to the MPD brochure.

Finally, we expected each MPD employee to be helpful and to respond to our questions reasonably and without hostility or intimidation, as required by the general order.¹³

⁷ The general order is GO-PER-120.25, available at <https://go.mpdconline.com/GO/GO-PER-120.25.pdf>. It specifies the brochure “Filing Citizen Complaints Against Metropolitan Police Officers, and the Complaint Review Process,” GO-PER-120.25, at 5. The display requirement is at 17.

⁸ *Id.* at 5.

⁹ *Id.*

¹⁰ *See id.* § II (statement of policy) (“The policy of the Metropolitan Police Department is to accept all citizen complaints, to include anonymous complaints, regardless of the manner in which the complaint is made (i.e., orally or in writing), to ensure that every citizen complaint is investigated in an effective, efficient, and impartial manner”); § IV.B.3 (officers shall “NOT require citizens to submit their complaint in writing, or on an official complaint form, in order to initiate an investigation.”).

¹¹ *See id.* § IIIA.1.b.

¹² As a recipient of federal funds the MPD is subject to Title VI of the Civil Rights Act of 1964 which prohibits national origin discrimination affecting limited English proficient persons. The MPD must also comply with the D.C. Language Access Act of 2004, D.C. Code § 2-1931-37. The requirements in each statute and the status of MPD compliance have been reviewed at least four times. The Office for Civil Rights, part of the Office of Justice Programs in the U.S. Department of Justice, did an on-site inspection in May 2007 and sent MPD Chief Cathy Lanier on October 14, 2008, its Compliance Review Report, 07-OCR-0118, available at D.C. Language Access Coalition, www.dclanguageaccess.org/cm. The Office of Police Complaints reviewed the same landscape in its report *MPD Provision of Police Service to Persons With Limited English Proficiency (LEP)*, issued July 16, 2009. The D.C. Office of Human Rights (OHR) reviews all DC agencies’ compliance with language access and issues an annual report. And in response to a specific complaint, the OHR in December 2008 also found the MPD violated the Language Access Act in its treatment of an arrested person.

¹³ *See* note 5 and accompanying text, *supra*.