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## POLICE CONDUCT OVERSIGHT COMMISSION

Case Summary Data #2

March 2017

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### OVERVIEW OF THE COMPLAINT

Complainant contends that he was waiting to take an Uber home when he and his partner were subjected to tear gas, which especially impacted him as he wears special contact lenses. As a result of this, Complainant alleges that his, "eyes were burning for...several minutes without reprieve." After confronting an officer about the situation, the officer insisted that it wasn't his or her doing, and Complainant admits that he was "irritated" when he approached the officer. However, Complainant also alleges that the officer told him, "watch out for traffic motherf\*\*\*\*er/puffy eyes" and also "flippantly" stated that "[officers] avoid hazardous conditions based on a temporary or permanent disability [reference to Complainant's eyes]."

### ALLEGED VIOLATIONS

1. OPCR Ord. § 172.20(1) – EXCESSIVE FORCE
2. OPCR Ord. § 172.20(2) - INAPPROPRIATE LANGUAGE OR ATTITUDE
3. MPD P&P § 5-313 – USE OF CHEMICAL AGENTS: The MPD approved chemical agent is considered a non-lethal use of force. The use of chemical agents shall be consistent with current MPD training and MPD policies governing the use of force (Policy and Procedure Manual, Sections 5-300 Use of Force).

Chemical agents, regardless of canister size, shall only be used against subjects under the following circumstances:

- On subjects who are exhibiting Active Aggression, or;
- For life saving purposes, or;
- On subjects who are exhibiting active resistance in order to gain control of a subject and if lesser attempts at control have been or would likely be ineffective, or;
- During crowd control situations if authorized by a supervisor. (See 5-312 Civil Disturbances)

Chemical agents shall not be used against persons who are only displaying Passive Resistance as defined by policy.

Sworn MPD employees shall exercise due care to ensure that only intended persons are exposed to the chemical agents.

4. MPD P&P § 5-105 (A)(5) – PROFESSIONAL CODE OF CONDUCT: Employees shall be decorous in their language and conduct. They shall refrain from actions or words that bring discredit to the Department.

### COMPLAINT PROCESSING

The complaint was forwarded to the Office of Police Conduct Review by Internal Affairs, who had received the complaint by email. Upon receipt of the complaint, an intake investigation was conducted and the matter was subsequently brought before the Joint Supervisors for intake review. Upon review of the complaint, the Joint Supervisors sent the matter to preliminary investigation. At the conclusion of the investigation, the matter was dismissed for "No basis."

### EVIDENCE

1. Complaint
2. CAPRS

## SUMMARY OF EVIDENCE

*Complaint:* Complainant asserts that he was waiting for an Uber ride when, unexpectedly, he was “subjected to tear gas.” After being maced, Complainant claims that he “confronted an officer and asked him to explain the situation.” Complainant states that his approach was not “kind.”

In response, Complainant claims that the officers were “rude” and actions “[,] frankly, appalling.” Complainant contends that an officer told him they were not responsible for the chemical irritant. Additionally, Complainant asserts that the officer referred to him as a “motherf\*\*\*\*er,” such as telling Complainant to “watch out for traffic motherf\*\*\*\*er/puffy eyes”. Complainant also contends that an officer “flippantly” stated that “[officers] avoid hazardous conditions based on a temporary or permanent disability [reference to Complainant’s eyes].”

Complainant claims that he has a condition that requires him to wear special contact lenses, which only exacerbated the effect of the chemical irritant.

*CAPRS:* In the Public Data section, it is stated that officers noticed a “physical altercation between a group of about 6-9 individuals,” and the officers “deployed” mace on two in the crowd when they refused to follow the officers commands.

*Supplement 1:* Officer 1 asserts that he noticed a “physical altercation” between a large group of individuals,” and approached the crowd of males. Officer 1 contends that two individuals kept yelling at another group as he was separating the crowd. During this, Officer 1 claims that he told the two individuals to “move away at least three times.” Despite these warnings, Officer 1 states, the individuals again attempted to confront the other group, leading Officer 1 to warn the individuals again “2-3 times to walk away.”

According to Officer 1, after the aforementioned warnings, one of the individuals moved around the officer—who was trying to separate the groups—and got, “within inches of the other [m]ale he was trying to fight earlier and start[ed] yelling in his face.” In response, Officer 1 contends that he pushed the individual with his arm while simultaneously telling him to walk away. Nonetheless, Officer 1 claims that the individuals ignored his commands. Resultantly, Officer 1 claims he deployed his mace on the two individuals.

Next, Officer 1 claims that the two individuals walked away with another group. According to Officer 1, members of the group accused the officers of doing something “wrong.” Officer 1 further asserts that he was unable to provide medical assistance as the two individuals began walking away with the other crowd and he had received a call for a “Person with a Gun” nearby.

## INVESTIGATION

The investigator conducted a search for a similar incident to the one specified in the complaint and found a report which occurred on the same date and around the same time. However, the investigator attempted to contact Complainant by email—Complainant’s only contact information in the complaint—but Complainant failed to respond. During intake investigation, the intake investigator also sent an email to Complainant requesting further information that Complainant did not reply to.

Therefore, with the lack of participation from Complainant an impeding factor, the investigation was stopped and sent to the Joint Supervisors for review.