



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

January 2021

Issue date: February 8, 2021

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **January 1, 2021 through January 31, 2021**.¹

(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
January 2020	8	53	13	2	0	0
February 2020	15	56	10	0	0	0
March 2020	9	54	11	1	0	0
April 2020	6	44	18	1	1	0
May 2020	4	40	6	1	0	0
June 2020	7	44	4	0	0	0
July 2020	1	41	3	1	0	0
August 2020	9	43	5	1	0	0
September 2020	10	45	8	1	0	0
October 2020	10	48	9	2	0	0
November 2020	11	51	7	2	0	0
December 2020	7	55	4	1	0	0
January 2021	8	61*	5	2	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	8
Informal Complaints ⁷	0
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	8

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	2
BART Police Department	6
TOTAL	8

* The number of open cases reported here reflects the addition of cases that had not been added to the reporting database prior to the preparation of the December 2020 report.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During January 2021, **2 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #21-02) (IA2021-007)	Officers #1-2: <ul style="list-style-type: none"> • Force • Arrest/Detention • Conduct Unbecoming an Officer 	OIPA notified BPD which initiated an investigation.	13
2 (OIPA #21-01) (IA2021-008)	Officers #1-3: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Performance of Duty 	OIPA notified BPD which initiated an investigation.	28

During January 2021, **6 Citizen Complaints (Formal)** were received by BPD:

(IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-001)	Officers #1-2: <ul style="list-style-type: none"> • Arrest/Detention 	BPD initiated an investigation.	37
2 (IA2021-002)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing • Conduct Unbecoming an Officer 	BPD initiated an investigation.	35
3 (IA2021-003)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	32
4 (IA2021-004)	Officers #1-4: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	34
5 (IA2021-005)	Officer #1: <ul style="list-style-type: none"> • Performance of Duty 	BPD initiated an investigation.	17
6 (IA2021-006)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	19

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During December 2020, **2 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-095)	Employee #1: <ul style="list-style-type: none"> • Performance of Duty • Conduct Unbecoming 	BPD initiated an investigation.	41
1 (IA2020-096)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	41

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During January 2021, **2 Citizen Complaints** were concluded by OIPA†:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #20-07)	Officer improperly detained and cited subject based on subject's race and used excessive force during the detention.	Officers #1-2: <ul style="list-style-type: none"> • Arrest/Detention – Sustained • Arrest/Detention (Citation) – Unfounded • Force – Sustained • Bias-Based Policing – Unfounded 	361	328
2 (OIPA #20-11)	Officer improperly detained and cited subject based on subject's race and used excessive force during the detention.	Officer #1: <ul style="list-style-type: none"> • Arrest/Detention – Exonerated • Arrest/Detention (Citation) – Sustained • Force – Exonerated • Bias-Based Policing – Not Sustained 	353	317

During January 2021, **3 Citizen Complaints (Formal)** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-024)	Officer aggressively confronted complainant, issued conflicting commands, used excessive force during the contact, threatened complainant and witness with a Taser, and improperly threatened to charge the complainant with assaulting the officer.	Officer #1: <ul style="list-style-type: none"> • Force – Exonerated • Arrest/Detention – Exonerated • Conduct Unbecoming an Officer (Deploy Taser) – Exonerated • Conduct Unbecoming an Officer (Ineffective Communication) – Unfounded 	339	310

† Both OIPA #20-07 and OIPA #20-11 were completed in January 2021 and presented to the BPCRB at their regular meeting during the same month. Memoranda documenting the results of the investigation, the recommended discipline, and the results of the BPCRB vote supporting those findings and recommendations were transmitted to the BPD Chief of Police on January 12, 2021. OIPA was notified on January 21, 2021 that the Chief of Police intends to appeal OIPA's findings to the BART General Manager (GM) pursuant to the appeal process provided by the BART Citizen Oversight Model. The required appeal meeting and decision memorandum from the GM remain pending as of this publication.

2 (IA2020-031)	Officer directed profanities toward complainant.	Officer #1: • Conduct Unbecoming an Officer – Sustained	331	306
3 (IA2020-038)	Officer did not take appropriate law enforcement action.	Officer #1: • Performance of Duty – Administratively Closed ¹⁰ • Arrest/Detention – Exonerated • Conduct Unbecoming an Officer (Deploy Taser) – Exonerated Conduct Unbecoming an Officer (Ineffective Communication) – Unfounded	339	310

DISCIPLINE ISSUED DURING REPORTING PERIOD

During January 2021, BPD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s) ‡	Classification of Sustained Allegation(s)	Action Taken
1	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion ¹¹
2	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion
3	Officer did not properly document a law enforcement contact.	Officer #1: • Conduct Unbecoming an Officer	Officer #1: • Oral Counseling ¹²
4	Officer used excessive force during an unlawful detention and citation and did not properly supervise a trainee during the contact.	Officer #1: • Force • Supervision • Arrest/Detention	Officer #1: • Letter of Discussion

ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to

‡Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	9
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	2
Investigations Being Monitored	60
Investigations Reviewed During Current Month	11†

†This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is addressed by BPD. The OIPA Monthly Report will reflect information regarding monitored or reviewed cases with detail not to exceed that which is allowable under state law.

The BPD Internal Affairs investigations, Supervisor Use of Force Reports (SUFRs), officer contacts, and body-worn camera recordings reviewed by OIPA during the period generated recommendations for policy/practice revisions and requests for additional action.¹³

BPD Supervisor Use of Force Reports

OIPA review of SUFRs during this reporting period, which are generated as required by BPD Policy 300 (Use of Force), prompted OIPA to recommend review by BPD Command Staff and the Office of Internal Affairs in some instances.

These referrals were related to:

- Excessive force
- Late or failed AXON camera activations
- Incomplete supervisory reviews
- Improper application and enforcement of the BART Proof of Payment (PoP) Ordinance

In response to OIPA's concerns related to the actual and potential policy violations listed above, BPD continues to examine the quality and scope of training for new supervisors while concurrently reviewing specific contacts flagged by OIPA.

As previously reported here, BPD command staff have committed to improve data collection efforts to better document the underlying reason for a contact that results in an arrest. Improved data collection is expected to facilitate more effective analysis of contact outcomes related to low level criminal activity and the manner in which enforcement contributes to racially disparate outcomes.

I will continue to identify areas for improvement and to flag conduct that warrants further action or review and I will determine whether the frequency of these lapses declines.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the "Citizen Board, Office of the District Secretary, and other District departments." As complaints received by the BART Police Citizen Review Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is also made aware of additional complaints about the BART Police Department by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both) and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA's findings are required by the BART Citizen Oversight Model to be submitted to the BART Police Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA's investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department's internal investigation into their complaint regarding on-duty incidents. OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the BART Police Citizen Review Board after receiving and reviewing the findings issued by OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ The BART Police Department defines an Informal Complaint as, "A comment on the actions of a Department employee, where the reporting party expressly states that he or she does not feel that the matter should be formally investigated with the understanding that an Informal Complaint does not hold the potential to result in disciplinary action against the employee." (BART Police Department Policy Manual, Policy 1020.1.1(d)).

⁸ BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

⁹ It is important to note that OIPA does not separate citizen complaints it receives into "Formal" and "Informal" classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰Administrative Closure is defined as follows in the BPD Policy Manual: Allegations that are received and documented; however, the Chief of Police or his/her designee determines, based on a preliminary investigation, that further investigation is not warranted. Under these circumstances, the complaint will be Administratively Closed and documented in a summary memorandum to the case file. Employees will be documented as witnesses only, not as subjects to the complaint. Internal Affairs will send a letter to the complainant notifying them that the case was closed following a preliminary investigation.

¹¹ Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

¹² Oral Counseling (third level of pre-discipline): An oral counseling may be the next step of the informal process. It is documented in a memorandum to the employee entitled "Oral Counseling." Prior to issuance, the supervisor should discuss the performance or infraction in detail with the employee. The purpose of the discussion is for the employee to be made aware of the unacceptable behavior. An employee who is covered by a collective bargaining agreement and who may be issued an Oral Counseling is entitled to appropriate association representation. An Oral Counseling is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to progressive discipline.

¹³ OIPA may submit recommendations to IAB regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



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MONTHLY REPORT

February 2021

Issue date: March 8, 2021

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(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
February 2020	15	56	10	0	0	0
March 2020	9	54	11	1	0	0
April 2020	6	44	18	1	1	0
May 2020	4	40	6	1	0	0
June 2020	7	44	4	0	0	0
July 2020	1	41	3	1	0	0
August 2020	9	43	5	1	0	0
September 2020	10	45	8	1	0	0
October 2020	10	48	9	2	0	0
November 2020	11	51	7	2	0	0
December 2020	7	55	4	1	0	0
January 2021	8	61	5	2	0	0
February 2021	5	61	4	0	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	5
Informal Complaints ⁷	0
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	5

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	0
BART Police Department	5
TOTAL	5

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During February 2021, **5 Citizen Complaints (Formal)** were received by BPD:

(IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-009)	Officers #1-2: <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer 	BPD initiated an investigation.	32
2 (IA2021-010)	Officers #1-2: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	20
3 (IA2021-011)	Unknown # of Officers/Employees: <ul style="list-style-type: none"> • Performance of Duty 	BPD initiated an investigation.	22
4 (IA2021-012)	Officer #1: <ul style="list-style-type: none"> • Force • Bias-Based Policing 	BPD initiated an investigation.	19
5 (IA2021-013)	Officers #1-3: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	20

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During February 2021, **3 Citizen Complaints (Formal)** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-020)	Officers used excessive force during an arrest.	Officers #1-3: <ul style="list-style-type: none"> • Force – Exonerated 	383	365
2 (IA2020-027)	Two officers failed to properly secure a detainee, one employee used inappropriate language and injured complainant while using force on the detainee, and a supervisor failed to properly manage the scene and did not take appropriate disciplinary action against the involved officers for generating inaccurate reports.	Officers #1-2: <ul style="list-style-type: none"> • Performance of Duty – Exonerated Officer #3: <ul style="list-style-type: none"> • Force – Exonerated • Conduct Unbecoming – Unfounded Officer #2: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) – Sustained Officer #4: <ul style="list-style-type: none"> • Supervision – Unfounded 	361	337
3 (IA2020-028)	Officers used excessive force during a detention.	Officers #1-2: <ul style="list-style-type: none"> • Force – Exonerated 	361	350

OIPA FINDINGS OVERTURNED BY THE BART GENERAL MANAGER AFTER APPEAL BY THE CHIEF OF POLICE*

During February 2021, the Chief of Police and the BART General Manager took the following action in a case where one allegation of misconduct was sustained by OIPA and approved unanimously by the BPCRB:

Complaint #	Nature of Complaint	REVISED Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1	Officer improperly cited subject for fare evasion.	Officer #1: • Arrest/Detention (Citation) – Not Sustained †	389	329

DISCIPLINE ISSUED DURING REPORTING PERIOD

During February 2021, BPD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s) ‡	Classification of Sustained Allegation(s)	Action Taken
1	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion ¹⁰
2	Officers initiated an improper detention and used excessive force during the detention.	Officers #1-2: • Force • Arrest/Detention	Officer #1: • Informal Counseling (Not Documented) ¹¹ Officer #2: • Written Reprimand ¹²

* Details regarding the appeal process that was finalized during this reporting period are included in the narrative section below.

† OIPA reached a finding of **Sustained** for this allegation.

‡Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	9
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	60
Investigations Reviewed During Current Month	8†

†This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is addressed by BPD. The OIPA Monthly Report will reflect information regarding monitored or reviewed cases with detail not to exceed that which is allowable under state law.

The BPD Internal Affairs investigations, Supervisor Use of Force Reports (SUFRs), officer contacts, and body-worn camera recordings reviewed by OIPA during this reporting period generated recommendations for policy/practice revisions and requests for additional action.¹³

BPD Supervisor Use of Force Reports

OIPA's review of SUFRs during this reporting period, which are generated as required by BPD Policy 300 (Use of Force), prompted OIPA to recommend review by BPD Command Staff and the Office of Internal Affairs in some instances.

These referrals were related to:

- Late or failed AXON body-worn camera activations
 - Including late activations reported as "timely" by officers and reviewing supervisors
 - In one instance, discipline has yet to be issued in connection with this policy violation despite clear written instructions to the officer's supervising Lieutenant
- Discipline not properly recorded as required for an AXON body-worn camera policy violation
 - The progressive discipline system under which the Department operates requires proper documentation of issued discipline so that subsequent violations may be appropriately addressed
- Incomplete supervisory reviews
 - Including a use of force involving multiple baton strikes and a TASER activation

- A supervisor determined the force to be within policy without viewing available station video.
- Improper application and enforcement of the BART Proof of Payment (PoP) Ordinance
 - Some sworn BPD officers have initiated detentions by asking riders for proof of payment absent reasonable suspicion in violation of Constitutional protections from such detentions
 - This application of the PoP Ordinance does not reflect the systematic approach to enforcement that was proposed by BPD when the BART Board of Directors voted to approve the Ordinance
 - This practice may exacerbate existing racially disparate outcomes by allowing officers to decide whom to detain based solely on the officer's perceptions about who may be using the system without carrying valid proof of payment
- Mis-categorization of a use of force in BPD Blue Team
 - A supervisor described a use of force as "Handgun Draw" despite video evidence showing that the weapon was pointed at the subject.
 - There is a category for "Handgun Point"
- Officer's use of a face covering bearing graphics despite the Chief's prohibition
 - According to BPD Bulletin 20-269, officers may only wear a solid white, navy blue, light blue (surgical), or solid black mask with the word "Police" in white lettering.
 - The officer was wearing a face covering identifiable as a "flag design," though there is no clear indication that it was a "Thin Blue Line" flag design.
- Mis-categorization of body-worn camera video
 - After an internal BPD audit, an adjustment to video retention times to facilitate that audit, and updated instructions transmitted to all personnel via a Bulletin from the Chief, OIPA detected instances in which a Field Training Officer labeled his recordings as a required daily test of the equipment when they were, in fact, recordings of law enforcement contacts
 - These violations raise concerns about the efficacy of the training related to body-worn camera use

In response to OIPA's concerns related to the actual and potential policy violations listed above, BPD continues to examine the quality and scope of training for new supervisors while concurrently reviewing specific contacts flagged by OIPA.

As previously reported here, BPD command staff have committed to improving data collection efforts to better document the underlying reason for a contact that results in an arrest.

Improved data collection is expected to facilitate more effective analysis of contact outcomes related to low level criminal activity and the manner in which enforcement contributes to racially disparate outcomes.

I will continue to monitor the efforts of the department as they endeavor to make improvements.

BPD Appeals of OIPA Findings and Recommendations

In 2017 the BART Board of Directors approved an independent examination of the BART Citizen Oversight System to determine whether the need existed to make improvements to the system. This review was performed by the OIR Group and their final report, including 54 recommendations, was submitted to the Board of Directors in early 2018. The Board of Directors approved implementation of 50 OIR recommendations and rejected adoption of 4 recommendations.

The Model has always included a mechanism by which the BPD Chief of Police may appeal OIPA findings and recommendations after approval by a majority of the BPCRB. Prior to the 2018 Model revision, this process required only that the Chief communicate to the BART General Manager (GM) a desire to overturn the findings and the GM could then make a final determination absent any discussion with either the Independent Police Auditor (IPA) or the BART Police Citizen Review Board (BPCRB). Further, the GM was historically permitted to overturn the independent findings and recommendations without any explanation for the reversal or any factual or evidentiary analysis.

The revised Model still provides that the Chief may appeal OIPA findings and recommendations to the GM. Under the existing Model, however, the Chief must convey his intention to appeal to the GM who must then convene a confidential meeting including the IPA, the Chief of Police, and a representative of the BPCRB. The Chief is also now required to put forth the reasons and arguments for the appeal in writing, setting forth his disagreements and his own recommended findings.

OIPA received two citizen complaints on February 12 and February 21, 2020, respectively. After a thorough investigation, OIPA reached findings including sustained allegations and disciplinary recommendations for subject officers in each of the two cases.

Both investigative reports were presented to the BPCRB in closed session on January 11, 2021. The BPCRB approved OIPA's findings in both cases and a memo documenting the outcome was transmitted to the Chief on January 12, 2021.

State law requires that any discipline must be issued within one year of receipt of the associated complaint or the launch of an administrative investigation by the Department. At the time of OIPA's transmittal of the investigative findings, there was one month remaining within which discipline could be issued pursuant to state law. The transmittal email included an additional notification advising the Chief of the relatively small window of time within which to issue the discipline or appeal the findings.

The GM received one appeal memorandum from the Chief on February 5, 2021. This memo was forwarded to OIPA and to the Chair of the BPCRB on February 9, 2021. The GM also received a second appeal memorandum from the Chief on February 5, 2021 related to the second OIPA investigation. This memorandum was forwarded to OIPA and to the Chair of the BPCRB on February 8, 2021.

The GM convened a meeting on February 11, 2021. This meeting, described in the Model as a confidential meeting to include the GM, the Chief, the IPA, and a representative of the BPCRB, also included the BART Deputy General Manager.

On February 12, 2021, the GM issued a memo documenting his rejection of the Chief's appeal of one of the cases and leaving intact the findings of OIPA as approved by the BPCRB.

On February 16, 2021, the GM issued a second memo in which he overruled OIPA's finding related to one sustained allegation and a related recommendation for discipline. This memo documented the GM's imposition of a new disposition of Not Sustained.[§]

OIPA maintains that the factual analysis on which we relied warranted a Sustained finding and that sufficient facts were established and analyzed to reach that conclusion. It is my opinion that OIPA's findings were fully supported by the existing applicable BPD policy language that was not effectively refuted by the arguments put forth by the Chief. The Chief's appeal memo for this case included a recommendation for a finding of Exonerated, which was also rejected by the GM.

The OIR Group's appeal process revision recommendation was intended to allow the GM to make a "better-informed determination" based on input from the parties and to provide for a public accounting of the process and the outcomes. The language of the approved OIR recommendation related to this issue requires that the GM "set out her/his findings in writing." While the GM's memos of February 12 and February 16 are informative as to the outcome, the memos did not provide OIPA with any insight into the analysis or reasoning for the findings.

Mere disagreement with the outcome should not be considered sufficient to undermine the independence of the Citizen Oversight System, which includes checks and balances to ensure that OIPA's findings are supported by sound analysis and objective investigative processes.

This appeal process has reached its end and the GM's decision is final. The Model requires reporting on the outcome by OIPA. This Model provides, specifically, that where a final determination rescinds or modifies the initial disposition, OIPA is required to identify any systemic issues and/or the potential for the serious erosion of accountability related to such modifications.

Erosion of accountability and community trust are both of concern in light of these events. OIPA is prohibited by state law from revealing confidential information related to personnel matters, but it is important to identify that both the initiation of the appeal and the final determination necessarily implicate the Department's approach to enforcing fare evasion violations.

Communities served by BPD may reasonably bristle at an approach to enforcement that eliminates officers' responsibility to evaluate mitigating factors and evidence by treating fare evasion as a general intent crime for which intent to evade fare payment is not required.

This reversal empowers BPD officers to disregard evidence of accidental or mitigated entry/exit via fare gates, elevators, and emergency exits. That is, officers may determine that the criminal act of fare evasion is completed, and a citation may be issued based solely

[§] It is the practice of both OIPA and IA to apply a finding of Not Sustained where an investigation reveals that insufficient information or evidence was available to reach a reasoned finding of Sustained or Exonerated.

on the mere appearance of fare evasion, regardless of any mitigating factors or explanation provided by the rider (e.g. broken ticketing machine, malfunctioning fare gate, absent station agent, lost wallet, lost Clipper Card, medical emergency, etc.).

OIPA agrees that the Chief of Police should be provided an avenue to appeal OIPA outcomes that have been approved by the BPCRB. However, OIPA believes that the appeal should be centered firmly on an alternative and objective analysis of existing facts, and that officers must be consistently held to the requirements of the policy language in effect at the time of the contact at issue.

To maintain officer accountability and community trust in BART's system of civilian oversight of the police department, the GM should avoid changing findings reached via the independent police oversight system unless the Chief can provide a clear and reasoned argument as to the inaccuracy of OIPA's findings.

Unfortunately, absent additional transparency requirements related to the issuance of the GM's decision memo, it remains unclear how the GM analyzed the available evidence to reach a finding of Not Sustained.

Fare Evasion Enforcement Policy (#419)

Separate from consideration of the Chief's appeal, the GM has directed the Chief to revise BPD Policy #419 to exclude existing examples of fare evasion that contain the requirement of an intent element. The revised policy will include language instructing officers that the appearance of fare evasion, i.e. moving from the paid to free or free to paid area of a station, represents a completion of the criminal act fare evasion for which officers may issue a citation.

The existing policy language provides little guidance as to interpretation of an intent requirement in Penal Code Section (§640(C)(1)) and whether officers should or must consider available evidence and information which would allow them to make an evidence-based determination about whether the subject intended to evade payment.

It is my opinion that systematic and authorized disregard for available mitigating information and evidence dehumanizes these contacts and may undermine the Department's efforts to generate and maintain community trust.

The new policy language will allow officers to issue a citation to apparent fare evaders, at their discretion, regardless of any available evidence indicating an intent to pay. This approach may result in the issuance of citations to riders who intended to pay the District and is likely to raise concerns about the equitable application of that discretion.

Importantly, the application of discretion by officers has historically resulted in racially disparate outcomes at BART, including a significantly higher likelihood that Black people will be contacted, cited, detained, arrested, issued prohibition orders, and subjected to more use of force than any other racial group. Eliminating a requirement that officers minimally inquire or clarify available evidence to determine criminal intent undermines efforts to mitigate those racial disparities, which stands in contrast to the District's and the Department's commitment to racial equity and progressive policing.

OIPA disagrees with the propriety of this policy revision and will continue to illuminate areas where the Department and the District might do more to increase the trust of the communities we serve.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the BART Police Citizen Review Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is also made aware of additional complaints about the BART Police Department by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both) and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA’s findings are required by the BART Citizen Oversight Model to be submitted to the BART Police Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA’s investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the BART Police Citizen Review Board after receiving and reviewing the findings issued by OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ The BART Police Department defines an Informal Complaint as, “A comment on the actions of a Department employee, where the reporting party expressly states that he or she does not feel that the matter should be formally investigated with the understanding that an Informal Complaint does not hold the potential to result in disciplinary action against the employee.” (BART Police Department Policy Manual, Policy 1020.1.1(d)).

⁸ BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

⁹ It is important to note that OIPA does not separate citizen complaints it receives into “Formal” and “Informal” classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

¹¹ Informal Counseling (first level of pre-discipline): When warranted, an informal counseling may be the first step of the process. It is an informal discussion between a supervisor and an employee about conduct, attendance, or work performance. It is not documented and is pre-disciplinary.

¹² Written Reprimand (first level of formal discipline): If there have been no re-occurrences at the end of the time frames as determined by the collective bargaining agreement (up to 3 years), the immediate supervisor shall meet with the employee and advise him/her that the progressive discipline has become inactive and has been removed from the employee’s personnel files.

¹³ OIPA may submit recommendations to IAB regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

March 2021

Issue date: April 12, 2021

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **March 1, 2021 through March 31, 2021**.¹

(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
March 2020	9	54	11	1	0	0
April 2020	6	44	18	1	1	0
May 2020	4	40	6	1	0	0
June 2020	7	44	4	0	0	0
July 2020	1	41	3	1	0	0
August 2020	9	43	5	1	0	0
September 2020	10	45	8	1	0	0
October 2020	10	48	9	2	0	0
November 2020	11	51	7	2	0	0
December 2020	7	55	4	1	0	0
January 2021	8	61	5	2	0	0
February 2021	5	61	4	1	0	0
March 2021	7	61	7	0	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	5
Informal Complaints ⁷	2
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	7

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	0
BART Police Department	5
TOTAL	5

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During March 2021, **5 Citizen Complaints (Formal)** were received by BPD:

(IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-014)	Officer #1: • Force	BPD initiated an investigation.	42
2 (IA2021-015)	Officers #1-3: • Bias-Based Policing	BPD initiated an investigation.	42
3 (IA2021-017)	Officer #1: • Force	BPD initiated an investigation.	29
4 (IA2021-018)	Officer #1: • Force	BPD initiated an investigation.	27
5 (IA2021-020)	Officer #1: • Force	BPD initiated an investigation.	13

During March 2021, **2 Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2021-016)	Officer #1: • Performance of Duty	BPD initiated a Supervisor Referral. ¹⁰	40
2 (IA2021-019)	Employee #1: • Conduct Unbecoming	BPD initiated an investigation.	24

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During March 2021, **4 Citizen Complaints (Formal)** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2018-043)	Officers improperly contacted complainant based on complainant's race and used excessive force during the detention and arrest.	Officers #1-2: <ul style="list-style-type: none"> Force – Exonerated Bias-Based Policing – Unfounded Officer #2: <ul style="list-style-type: none"> Conduct Unbecoming an Officer – Exonerated 	1041	281*
2 (IA2020-039)	Employee did not systematically enforce the BART Proof of Payment Ordinance.	Employee #1: <ul style="list-style-type: none"> Performance of Duty – Not Sustained 	333	300
3 (IA2020-050)	Officers improperly detained complainant and used excessive force during the detention and arrest.	Officers #1-2: <ul style="list-style-type: none"> Force – Exonerated Arrest/Detention – Exonerated Employee #1: <ul style="list-style-type: none"> Force – Exonerated Arrest/Detention – Exonerated 	238	220
4 (IA2020-095)	Employee did not properly route a call for service and was unfamiliar with BPD policy.	Employee #1: <ul style="list-style-type: none"> Performance of Duty – Supervisor Referral Conduct Unbecoming – Supervisor Referral 	104	84

During March 2021, **2 Informal Complaints** were concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2020-093)	Officer operated a BPD vehicle in an unsafe manner.	Officer #1: <ul style="list-style-type: none"> Conduct Unbecoming an Officer – Supervisor Referral 	115	96
2 (IA2021-016)	Officer requested unnecessary personal information from complainant.	Officer #1: <ul style="list-style-type: none"> Performance of Duty – Supervisor Referral 	40	12

* This investigation was tolled for 741 days due to litigation related to the contact.

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING PREVIOUS REPORTING PERIODS

During February 2019, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #20-14) (IA2020-026) [†]	Officer used excessive force during a contact and inappropriately threatened to use additional force. Two officers failed to properly document a law enforcement contact.	Officers #1-2: <ul style="list-style-type: none"> • Bias-Based Policing – Not Sustained • Arrest/Detention – Exonerated 	250	218

DISCIPLINE ISSUED DURING REPORTING PERIOD

During March 2021, BPD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s) ‡	Classification of Sustained Allegation(s)	Action Taken
1	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion¹¹
2	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion
3	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion
4	Officers did not properly document a law enforcement contact.	Officers #1-2: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officers #1-2: <ul style="list-style-type: none"> • Letter of Discussion

[†]This complaint remained on the list of open investigations in the IAB database pending presentation of the OIPA investigative report to the BART Police Citizen Review Board in closed session. The chart on page 2 of this report has been updated to reflect the February 2021 completion.

[‡]Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	5
Complainant-Initiated Appeals	1
BPD-Initiated Appeals	0
Investigations Being Monitored	62
Investigations Reviewed During Current Month	22†

†This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

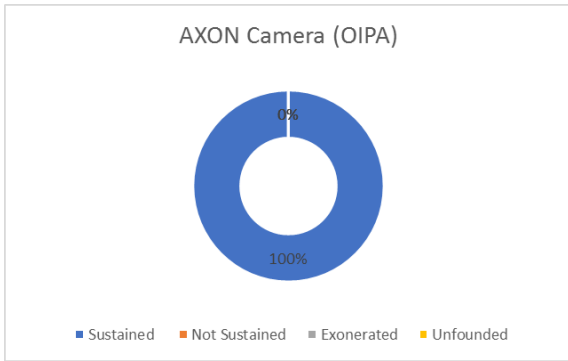
The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is addressed by BPD. The OIPA Monthly Report will reflect information regarding monitored or reviewed cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.¹²

Comparison of OIPA and BPD Internal Affairs Outcomes by Allegation

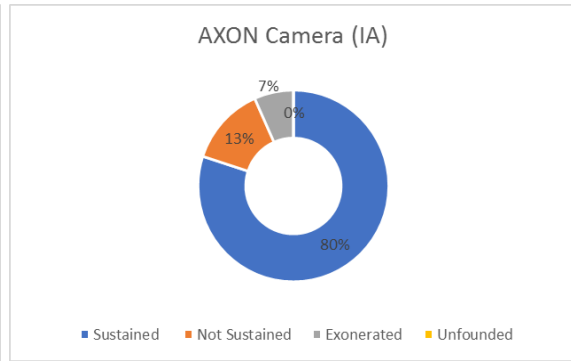
At the request of the BPCRB, OIPA will regularly include data comparisons in graphic form by reporting investigative outcomes for specific misconduct allegations and by displaying outcomes generated by both OIPA and the BPD Office of Internal Affairs.

(Complaints resolved between 1/1/20 and 12/31/20):

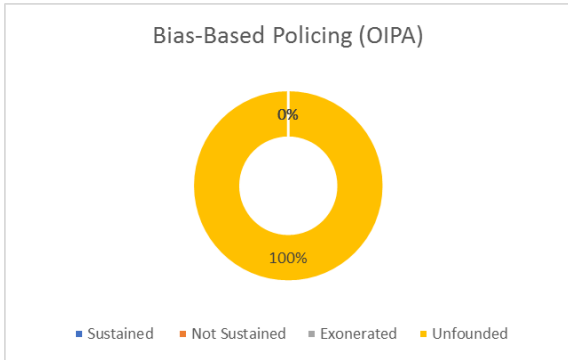




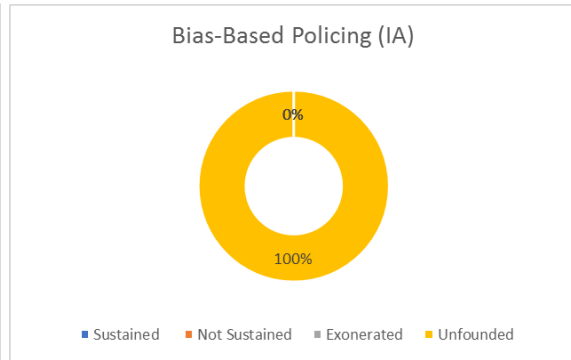
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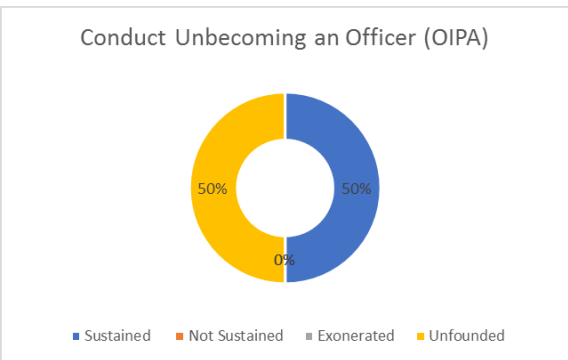
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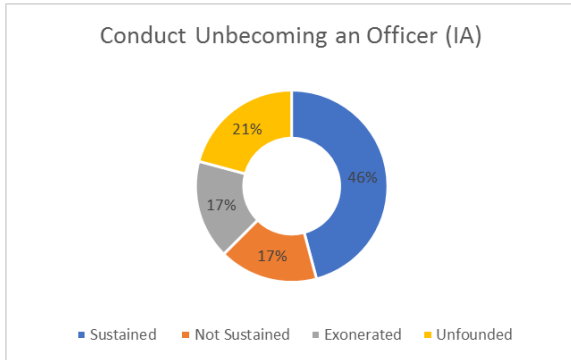
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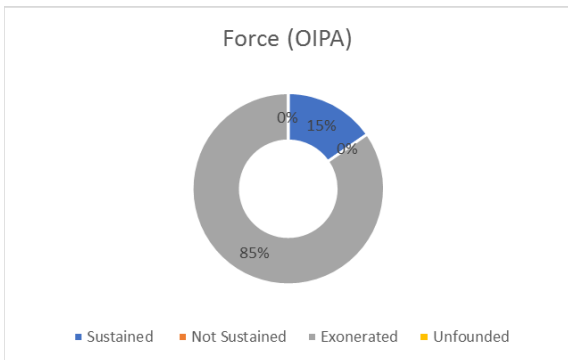
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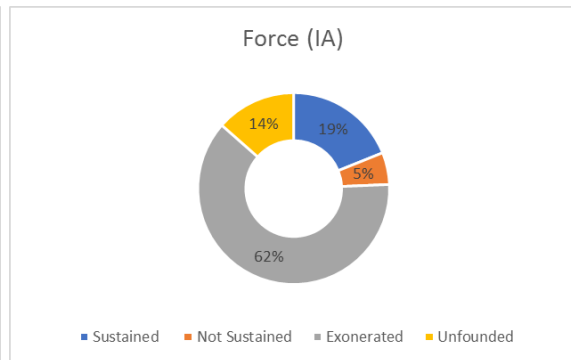
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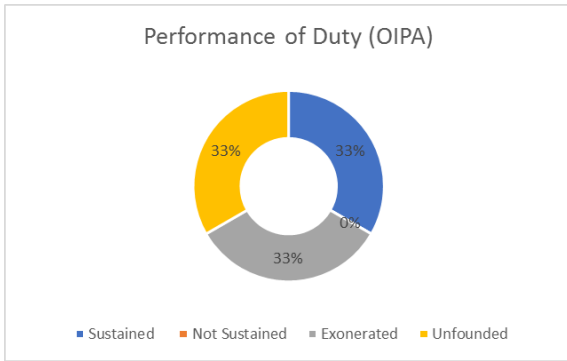
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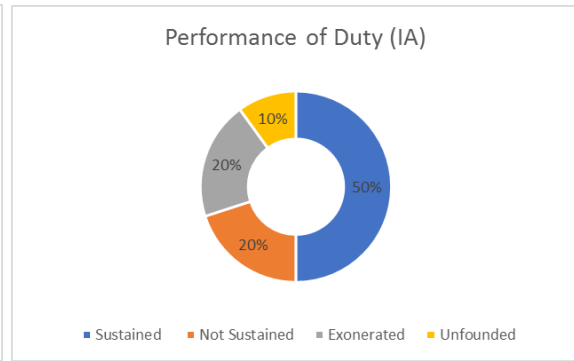
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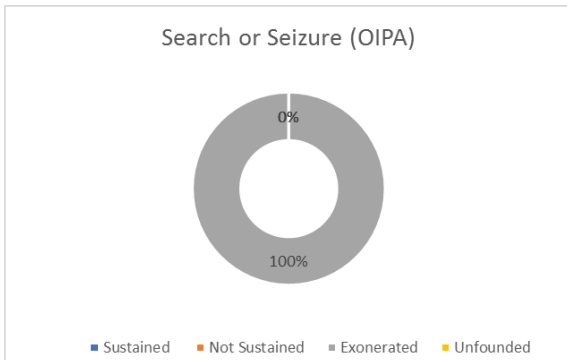
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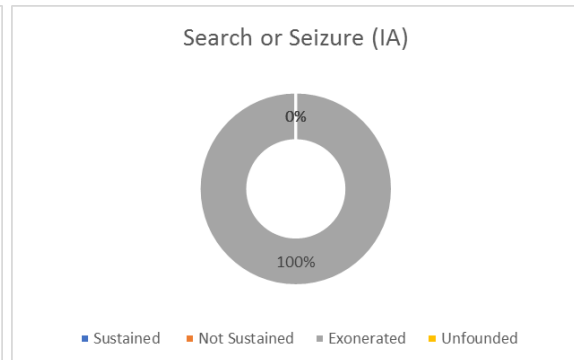
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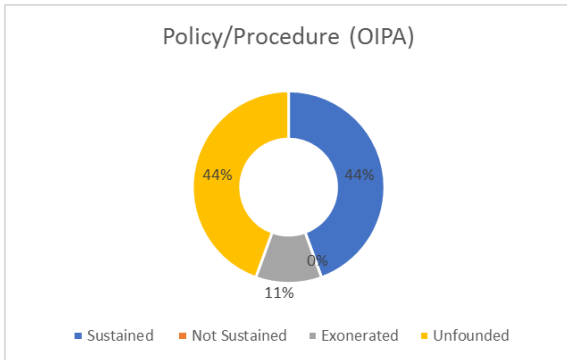
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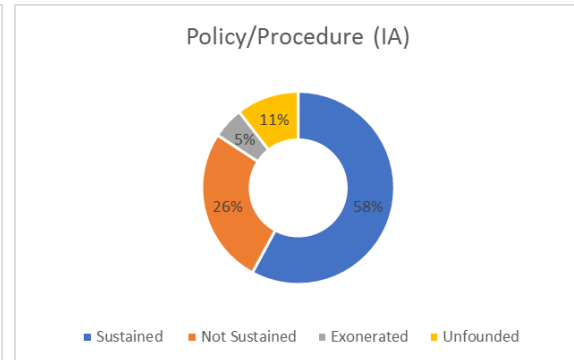
N=1



N=1

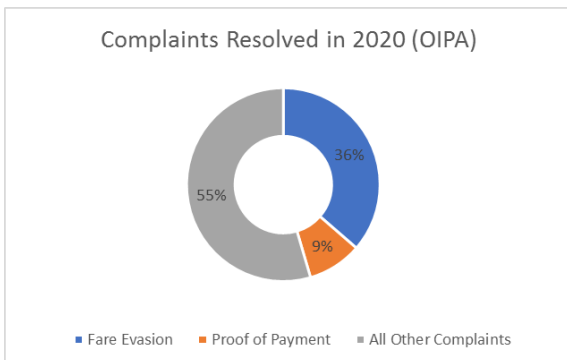


N=9

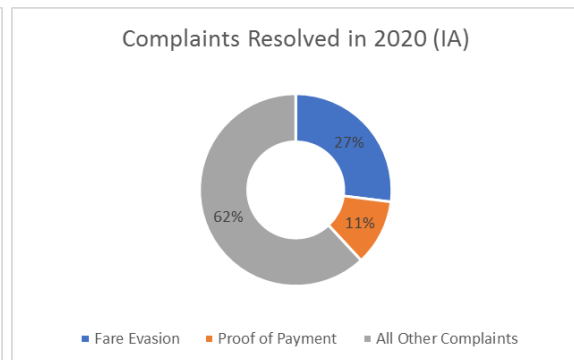


N=19

The following charts reflect the percentage of resolved allegations that were related to a contact for fare evasion or violation of the BART Proof of Payment Ordinance.



N=43



N=63

BPD Supervisor Use of Force Reports (SUFRRs) and OIPA Review of Contacts

OIPA's review of SUFRRs during this reporting period, which are generated as required by BPD Policy 300 (Use of Force), prompted OIPA to recommend review by BPD Command Staff and the Office of Internal Affairs in some instances. OIPA also generated recommendations based on review of contacts that did not include a use of force.

These referrals were related to:

- Improper application and enforcement of the BART Proof of Payment (PoP) Ordinance
 - Some sworn BPD officers have initiated detentions by asking riders for proof of payment absent reasonable suspicion in violation of Constitutional protections from such detentions
 - This application of the PoP Ordinance does not reflect the systematic approach to enforcement that was proposed by BPD when the BART Board of Directors voted to approve the Ordinance
 - This practice may exacerbate existing racially disparate outcomes by allowing officers to decide whom to detain based solely on the officer's perceptions about who may be using the system without carrying valid proof of payment
 - Assertions that the racially disparate outcomes of contacts related to PoP enforcement mirror those of fare evasion enforcement are undermined by the absence of data and documentation about the subjects of "sweeps" and ejections that do not result in the issuance of a civil citation
 - BPD command staff distributed a new bulletin via email to all BPD personnel advising them of key points and requirements for initiating a lawful detention based on suspected PoP violations
- Late or failed AXON body-worn camera activations
 - Including late activations reported as "timely" by officers and reviewing supervisors
 - In one instance, discipline has yet to be issued in connection with this policy violation despite clear written instructions to the officer's supervising Lieutenant
- Discipline not timely issued as required for an AXON body-worn camera policy violation
 - The progressive discipline system under which the Department operates requires the timely imposition of discipline so that subsequent violations may be appropriately addressed

In response to OIPA's concerns related to the actual and potential policy violations listed above, BPD has committed to examining the quality and scope of training for officers and supervisors while concurrently reviewing specific contacts flagged by OIPA.

OIPA will continue to monitor the efforts of the Department as they implement improvements.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the BART Police Citizen Review Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is also made aware of additional complaints about the BART Police Department by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both) and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA’s findings are required by the BART Citizen Oversight Model to be submitted to the BART Police Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA’s investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the BART Police Citizen Review Board after receiving and reviewing the findings issued by OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ The BART Police Department defines an Informal Complaint as, “A comment on the actions of a Department employee, where the reporting party expressly states that he or she does not feel that the matter should be formally investigated with the understanding that an Informal Complaint does not hold the potential to result in disciplinary action against the employee.” (BART Police Department Policy Manual, Policy 1020.1.1(d)).

⁸ BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

⁹ It is important to note that OIPA does not separate citizen complaints it receives into “Formal” and “Informal” classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ A Supervisor Referral refers to an instance involving an Inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IAB.

¹¹ Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

¹² OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

April 2021

Issue date: May 10, 2021

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **April 1, 2021 through April 30, 2021**.¹

(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
April 2020	6	44	18	1	1	0
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December 2020	7	55	4	1	0	0
January 2021	8	61	5	2	0	0
February 2021	5	61	4	1	0	0
March 2021	7	61	7	0	0	0
April 2021	13	65	9	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	11
Informal Complaints ⁷	0
Administrative Investigations	2
Inquiries ⁸	0
TOTAL	13

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	3
BART Police Department	8
TOTAL	11

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During April 2021, **3 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #21-04) (IA2021-027)	Officer #1: <ul style="list-style-type: none"> • Arrest or Detention • Performance of Duty 	OIPA initiated an investigation.	34
2 (OIPA #21-06) (IA2021-030)	Officers #1-4: <ul style="list-style-type: none"> • Bias-Based Policing • Arrest or Detention • Conduct Unbecoming an Officer • Performance of Duty 	OIPA initiated an investigation.	24
3 (OIPA #21-07) (IA2021-031)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing • Arrest or Detention • Conduct Unbecoming an Officer 	OIPA initiated an investigation.	21

During April 2021, **8 Citizen Complaints (Formal)** were received by BPD:

(IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-021)	Officer #1-2: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	39
2 (IA2021-022)	Officer #1: <ul style="list-style-type: none"> • Performance of Duty 	BPD initiated an investigation.	38
3 (IA2021-023)	Officer #1: <ul style="list-style-type: none"> • Courtesy 	BPD initiated a Supervisor Referral. ¹⁰	39
4 (IA2021-024)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing 	BPD initiated an investigation.	37
5 (IA2021-025)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated a Supervisor Referral.	33
6 (IA2021-026)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing • Performance of Duty 	BPD initiated an investigation.	32
7 (IA2021-028)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	27
8 (IA2021-029)	Officer #1: <ul style="list-style-type: none"> • Performance of Duty 	BPD initiated an investigation.	25

During April 2021, **2 Administrative Investigations** were initiated by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2021-032)	Officer #1: • Performance of Duty	BPD initiated an investigation.	21
2 (IA2021-033)	Unknown Officer(s): • Performance of Duty (Evidence Handling)	BPD initiated a Service Review.	19

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During April 2021, **2 Citizen Complaints** were concluded by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #19-42) (IA2020-044)	Officer rudely and improperly required complainant to wear face covering and harassed complainant in retaliation for filing a misconduct complaint.	Officer #1: • Policy/Procedure – Exonerated • Courtesy – Exonerated • Conduct Unbecoming an Officer – Unfounded	339	307
1 (OIPA #20-23)* (IA2020-058)	One officer improperly detained complainant and did not de-escalate to avoid using force. Two officers used excessive force and improperly searched complainant's property and both officers' conduct was based on complainant's race. One supervisor failed to conduct a required review of the use of force and arrived at the scene displaying an offensive image on a facemask.	Officer #1: • Policy/Procedure (De-escalation) – Sustained • Arrest or Detention – Exonerated Officers #1-2: • Force – Exonerated • Search/Seizure – Exonerated • Bias-Based Policing – Not Sustained Officer #3: • Performance of Duty – Sustained • Conduct Unbecoming an Officer – Exonerated	249	217

* This case was presented to the BPCRB as required on April 12, 2021. Though the BPCRB voted to agree with OIPA's findings and recommendations, the case remains on Internal Affairs' list of open investigations pending database entry by BPD or resolution of any appeal that may be lodged by the Chief of Police. The Chief is allowed up to 45 days after approval by the BPCRB to decide whether to appeal OIPA findings.

During April 2021, **6 Citizen Complaints (Formal)** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-036)	Officers improperly detained complainant based on a false report and officers refused to address the complainant's concerns about the false reporting. One officer did not properly document the contact.	<p>Officers #1-5:</p> <ul style="list-style-type: none"> • Performance of Duty (Response to False Report) – Unfounded • Performance of Duty (Intake – False Report) – Exonerated <p>Officers #1-4</p> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated <p>Officer #1:</p> <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) – Sustained 	375	357
2 (IA2020-035)	Officer was verbally aggressive and unprofessional, knocked complainant's items to the ground and used racial slurs and two officers did not properly document a law enforcement contact. Supervisor failed to intercede and address complaints of misconduct.	<p>Officer #1:</p> <ul style="list-style-type: none"> • Bias-Based Policing – Not Sustained • Conduct Unbecoming an Officer (Knocking Object) – Unfounded • Performance of Duty – Sustained • Conduct Unbecoming an Officer (Verbal) – Sustained • Policy/Procedure (AXON Camera) – Sustained • Policy/Procedure (AXON Camera) – Not Sustained <p>Officer #2:</p> <ul style="list-style-type: none"> • Performance of Duty – Sustained <p>Officer #3:</p> <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) – Not Sustained 	379	361
3 (IA2020-037)	Officers did not properly address complainant's request to make an arrest and did not review available information or collect a statement from complainant. One officer did not properly document a law enforcement contact.	<p>Officers #1-2:</p> <ul style="list-style-type: none"> • Performance of Duty – Exonerated <p>Officer #2:</p> <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) – Exonerated 	375	355

4 (IA2020-051)	Employee improperly contacted complainant based on complainant's race.	Employee #1: • Bias-Based Policing – Unfounded	262	242
5 (IA2021-023)	Officer was unprofessional during interaction with complainant.	Officer #1: • Courtesy – Supervisor Referral	34	21
6 (IA2021-025)	Officer was hostile and unprofessional during interaction with complainant.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	33	12

During April 2021, **2 Informal Complaints** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-071)	Officers did not properly address a reported crime.	Officers #1-2: • Conduct Unbecoming an Officer – Supervisor Referral Officer #3: • Conduct Unbecoming an Officer – Released from Duty Prior to Finding	206	188
2 (IA2020-090)	Officer was unprofessional during interaction with complainant.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	148	124

DISCIPLINE ISSUED DURING REPORTING PERIOD

During April 2021, BPD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s) †	Classification of Sustained Allegation(s)	Action Taken
1	Officer was verbally aggressive and unprofessional and did not properly document a law enforcement contact. Supervisor failed to intercede and address complaints of misconduct.	Officer #1: <ul style="list-style-type: none"> • Performance of Duty • Policy/Procedure (AXON Camera) Officer #2: <ul style="list-style-type: none"> • Performance of Duty 	Officer #1: <ul style="list-style-type: none"> • Oral Counseling¹¹ Officer #2: <ul style="list-style-type: none"> • Oral Counseling
2	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Oral Counseling
3	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion¹²
4	Officer was involved in preventable traffic collision.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion
5	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion
6	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion
7	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion

†Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	7
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	65
Investigations Reviewed During Current Month	15 [†]

[†]This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is addressed by BPD. The OIPA Monthly Report will reflect information regarding monitored or reviewed cases with detail not to exceed that which is allowable under state law.

The investigations reviewed by OIPA during the period generated one recommendation for additional investigation related to a use of force that is currently under review by BPD as part of the Department's Supervisor Use of Force review process. OIPA recommended that the contact be investigated by Internal Affairs to ensure a thorough and complete analysis of the force applications. Internal Affairs has now initiated an investigation.¹³

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the "Citizen Board, Office of the District Secretary, and other District departments." As complaints received by the BART Police Citizen Review Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is also made aware of additional complaints about the BART Police Department by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both) and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA's findings are required by the BART Citizen Oversight Model to be submitted to the BART Police Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA's investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department's internal investigation into their complaint regarding on-duty incidents. OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the BART Police Citizen Review Board after receiving and reviewing the findings issued by OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ The BART Police Department defines an Informal Complaint as, “A comment on the actions of a Department employee, where the reporting party expressly states that he or she does not feel that the matter should be formally investigated with the understanding that an Informal Complaint does not hold the potential to result in disciplinary action against the employee.” (BART Police Department Policy Manual, Policy 1020.1.1(d)).

⁸ BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

⁹ It is important to note that OIPA does not separate citizen complaints it receives into “Formal” and “Informal” classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ A Supervisor Referral refers to an instance involving an Inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IAB.

¹¹ Oral Counseling (third level of pre-discipline): An oral counseling may be the next step of the informal process. It is documented in a memorandum to the employee entitled "Oral Counseling." Prior to issuance, the supervisor should discuss the performance or infraction in detail with the employee. The purpose of the discussion is for the employee to be made aware of the unacceptable behavior. An employee who is covered by a collective bargaining agreement and who may be issued an Oral Counseling is entitled to appropriate association representation. An Oral Counseling is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to progressive discipline.

¹² Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

¹³ OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

May 2021

Issue date: July 12, 2021

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **May 1, 2021 through May 31, 2021**.¹ (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
May 2020	4	40	6	1	0	0
June 2020	7	44	4	0	0	0
July 2020	1	41	3	1	0	0
August 2020	9	43	5	1	0	0
September 2020	10	45	8	1	0	0
October 2020	10	48	9	2	0	0
November 2020	11	51	7	2	0	0
December 2020	7	55	4	1	0	0
January 2021	8	61	5	2	0	0
February 2021	5	61	4	1	0	0
March 2021	7	61	7	0	0	0
April 2021	13	65*	9	1	0	0
May 2021	9	69	4	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	6
Informal Complaints ⁷	0
Administrative Investigations	3
Inquiries ⁸	0
TOTAL	9

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	1
BART Police Department	6
TOTAL	7†

* This total included one investigation that was completed by OIPA in April 2021 and endorsed by majority vote of the BART Police Citizen Review Board on April 12, 2021. The Chief conveyed his decision not to appeal the findings on May 27, 2021 and the case was then removed from the list of open investigations.

† OIPA and BPD received multiple complaints about a single incident that was publicized on the internet. BPD deferred the investigation to OIPA resulting in a total of 6 investigations initiated during the reporting period.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During May 2021, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #21-10) (IA2021-043)	Officers #1-2: <ul style="list-style-type: none"> • Force • Arrest or Detention 	OIPA initiated an investigation.	46

During May 2021, **5 Citizen Complaints (Formal)** were received by BPD:

(IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-035)	Officers #1-4: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	67
2 (IA2021-038)	Officer #1: <ul style="list-style-type: none"> • Arrest or Detention • Conduct Unbecoming an Officer 	BPD initiated an investigation.	60
3 (IA2021-041)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing 	BPD initiated an investigation.	50
4 (IA2021-042)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	50
5 (IA2021-044)	Officers #1-3: <ul style="list-style-type: none"> • Bias-Based Policing 	BPD initiated a Supervisor Referral.	45

During May 2021, **1 Administrative Investigation** was initiated by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2021-037)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	62

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During April 2021, **2 Administrative Investigations** were initiated by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-039)	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) • Performance of Duty • Conduct Unbecoming an Officer 	BPD initiated an investigation.	82
2 (IA2021-034)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	81

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During May 2021, **1 Appeal** was concluded by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Appeal Filed	Days Taken to Complete Investigation
1 (OIPA #20-20) (IA2014-123)	Officer included false information in a written report.	Officer #1: <ul style="list-style-type: none"> • Truthfulness – Not Sustained 	387	319

During May 2021, **3 Citizen Complaints (Formal)** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-042)	Officers improperly detained complainant based on complainant's race, used excessive force during the detention, and were not appropriately sympathetic to complainant.	Officers #1-2: <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Force – Exonerated Officers #2-3: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded 	404	352
2 (IA2020-046)	Officer improperly contacted complainant based on complainant's race and was condescending during the contact.	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing – Not Sustained • Conduct Unbecoming an Officer – Not Sustained 	399	347

3 (IA2020-037)	Officer improperly contacted complainant based on complainant's race and harassed complainant.	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing – Administratively Closed • Conduct Unbecoming an Officer – Administratively Closed 	395	335
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During May 2021, **1 Informal Complaint** was concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-019)	Employee did not properly respond to complainant's request for service.‡	Employee #1: <ul style="list-style-type: none"> • Conduct Unbecoming – Supervisor Referral.¹⁰ 	115	46

DISCIPLINE ISSUED DURING REPORTING PERIOD

During May 2021, BPD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s) §	Classification of Sustained Allegation(s)	Action Taken
1	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion¹¹
2	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion
3	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Oral Counseling

‡ BPD documented that the complainant in this case "...wanted to make a complaint against [the BPD employee]" but also noted that the complainant did not want an investigation to ensue. Internal Affairs defined the communication as a "Comment of Non-Complaint," which is applicable when the reporting party expressly states that they do not want to make a complaint. In this instance, the reporting party requested that the matter be resolved via Supervisor Referral.

§Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	8
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	63
Investigations Reviewed During Current Month	11†

†This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is addressed by BPD. The OIPA Monthly Report will reflect information regarding monitored or reviewed cases with detail not to exceed that which is allowable under state law.

The investigations reviewed by OIPA during the period generated one recommendation for an adjustment to the IAPro database to more accurately reflect specific allegations lodged by a complainant.¹²

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the "Citizen Board, Office of the District Secretary, and other District departments." As complaints received by the BART Police Citizen Review Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is also made aware of additional complaints about the BART Police Department by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both) and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA's findings are required by the BART Citizen Oversight Model to be submitted to the BART Police Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA's investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department's internal investigation into their complaint regarding on-duty incidents. OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the BART Police Citizen Review Board after receiving and reviewing the findings issued by OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ The BART Police Department defines an Informal Complaint as, "A comment on the actions of a Department employee, where the reporting party expressly states that he or she does not feel that the matter should be formally investigated

with the understanding that an Informal Complaint does not hold the potential to result in disciplinary action against the employee.” (BART Police Department Policy Manual, Policy 1020.1.1(d)).

⁸ BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

⁹ It is important to note that OIPA does not separate citizen complaints it receives into “Formal” and “Informal” classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ A Supervisor Referral refers to an instance involving an Inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IAB.

¹¹ Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

¹² OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

June 2021

Issue date: July 12, 2021

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **June 1, 2021 through June 30, 2021**.¹ (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
June 2020	7	44	4	0	0	0
July 2020	1	41	3	1	0	0
August 2020	9	43	5	1	0	0
September 2020	10	45	8	1	0	0
October 2020	10	48	9	2	0	0
November 2020	11	51	7	2	0	0
December 2020	7	55	4	1	0	0
January 2021	8	61	5	2	0	0
February 2021	5	61	4	1	0	0
March 2021	7	61	7	0	0	0
April 2021	13	65	9	1	0	0
May 2021	9	69	4	1	0	0
June 2021	5	74	1	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	5
Informal Complaints ⁷	0
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	5

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	1
BART Police Department	5
TOTAL	5*

*Both OIPA and BPD received a complaint about a single incident. BPD deferred the investigation to OIPA resulting in a total of 5 investigations initiated during the reporting period.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During June 2021, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #21-15) (IA2021-046)	Officer #1: <ul style="list-style-type: none"> • Force • Bias-Based Policing • Arrest or Detention • Conduct Unbecoming an Officer 	OIPA initiated an investigation.	20

During June 2021, **5 Citizen Complaints (Formal)** were received by BPD:

(IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-046)	Officer #1: <ul style="list-style-type: none"> • Force • Bias-Based Policing • Arrest or Detention • Conduct Unbecoming an Officer 	BPD deferred the investigation to OIPA.	20
2 (IA2021-036)	Officers #1-2: <ul style="list-style-type: none"> • Performance of Duty 	BPD initiated an investigation.	38
3 (IA2021-040)	Officer #1: <ul style="list-style-type: none"> • Force Officer #2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	31
4 (IA2021-045)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	30
5 (IA2021-047)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Policy/Procedure 	BPD initiated an investigation.	20

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During June 2021, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #20-22) (IA2020-057)	Two officers used excessive force during a contact, one officer did so because of the complainant's race, and two officers engaged in unprofessional conversation during the contact.	Officers #1-2: • Force – Exonerated Officers #1-3 • Conduct Unbecoming an Officer – Exonerated Officer #1: • Bias-Based Policing – Exonerated	319	285

DISCIPLINE ISSUED DURING REPORTING PERIOD

During June 2021, no discipline was issued by BPD.

ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	8
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	61
Investigations Reviewed During Current Month	9†

† This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is addressed by BPD. The OIPA Monthly Report will reflect information regarding monitored or reviewed cases with detail not to exceed that which is allowable under state law.

The investigations reviewed by OIPA during the period generated one recommendation to adjust an entry in IAPro (the Internal Affairs complaint database) to more accurately reflect the details of an IA complaint investigation.¹⁰

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the BART Police Citizen Review Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is also made aware of additional complaints about the BART Police Department by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both) and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA’s findings are required by the BART Citizen Oversight Model to be submitted to the BART Police Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA’s investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the BART Police Citizen Review Board after receiving and reviewing the findings issued by OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ The BART Police Department defines an Informal Complaint as, “A comment on the actions of a Department employee, where the reporting party expressly states that he or she does not feel that the matter should be formally investigated with the understanding that an Informal Complaint does not hold the potential to result in disciplinary action against the employee.” (BART Police Department Policy Manual, Policy 1020.1.1(d)).

⁸ BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

⁹ It is important to note that OIPA does not separate citizen complaints it receives into “Formal” and “Informal” classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

July 2021

Issue date: August 9, 2021

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **July 1, 2021 through July 31, 2021**.¹ (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
July 2020	1	41	3	1	0	0
August 2020	9	43	5	1	0	0
September 2020	10	45	8	1	0	0
October 2020	10	48	9	2	0	0
November 2020	11	51	7	2	0	0
December 2020	7	55	4	1	0	0
January 2021	8	61	5	2	0	0
February 2021	5	61	4	1	0	0
March 2021	7	61	7	0	0	0
April 2021	13	65	9	1	0	0
May 2021	9	69	4	1	0	0
June 2021	5	74	1	1	0	0
July 2021	10	81	3	0	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	8
Informal Complaints ⁷	1
Administrative Investigations	1
Inquiries ⁸	0
TOTAL	10

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	0
BART Police Department	8
TOTAL	8

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During July 2021, **8 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-049)	Officers #1-2: • Force	BPD initiated an investigation.	35
2 (IA2021-050)	Officers #1-3: • Bias-Based Policing • Arrest/Detention Officer #3 • Policy/Procedure (AXON Camera)	BPD initiated an investigation.	35
3 (IA2021-052)	Officer #1: • Performance of Duty	BPD initiated a Supervisor Referral. ¹⁰	24
4 (IA2021-053)	Officers #1-5: • Force	BPD initiated an investigation.	24
5 (IA2021-054)	Officers #1-3: • Performance of Duty	BPD initiated an investigation.	21
6 (IA2021-055)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	19
7 (IA2021-056)	Officer #1: • Force • Arrest/Detention	BPD initiated an investigation.	13
8 (IA2021-057)	Employee #1: • Performance of Duty	BPD initiated an investigation.	12

During July 2021, **1 Informal Complaint** was received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2021-051)	Officer #1: • Courtesy	BPD initiated an investigation.	28
2 (IA2021-019)	Employee #1: • Conduct Unbecoming	BPD initiated an investigation.	24

During July 2021, **1 Administrative Investigation** was initiated by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2021-048)	Officers #1-2: <ul style="list-style-type: none"> • Arrest/Detention Officer #1: <ul style="list-style-type: none"> • Force Officer #3: <ul style="list-style-type: none"> • Performance of Duty 	BPD initiated an investigation.	39

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During July 2021, **3 Citizen Complaints** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-059)	Officer did not respond appropriately to a call for service and did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Performance of Duty – Sustained 	339	311
2 (IA2020-056)	Officer repeatedly harassed complainant.	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained 	343	329
3 (IA2020-048)	Officers used excessive force and refused to summon a supervisor upon complainant's request.	Officers #1-2: <ul style="list-style-type: none"> • Force – Exonerated • Performance of Duty – Not Sustained 	382	356

DISCIPLINE ISSUED DURING REPORTING PERIOD

During July 2021, BPD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s) *	Classification of Sustained Allegation(s)	Action Taken
1	Officer did not employ required de-escalation tactics during a law enforcement contact.	Officer #1: • Policy/Procedure (De-Escalation)	Officer #1: Oral Counseling ¹¹
2	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Oral Counseling

ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	8
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	61
Investigations Reviewed During Current Month	8†

†This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is addressed by BPD. The OIPA Monthly Report will reflect information regarding monitored or reviewed cases with detail not to exceed that which is allowable under state law.

The investigations reviewed by OIPA during the period did not generate any recommendations for adjustments or revisions.¹²

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the "Citizen Board, Office of the District Secretary, and other District departments." As complaints received by the BART Police Citizen Review Board are customarily directed to OIPA for further action, such

*Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

complaints are included in the Quantitative Report above; OIPA is also made aware of additional complaints about the BART Police Department by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both) and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA's findings are required by the BART Citizen Oversight Model to be submitted to the BART Police Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA's investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department's internal investigation into their complaint regarding on-duty incidents. OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the BART Police Citizen Review Board after receiving and reviewing the findings issued by OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ The BART Police Department defines an Informal Complaint as, "A comment on the actions of a Department employee, where the reporting party expressly states that he or she does not feel that the matter should be formally investigated with the understanding that an Informal Complaint does not hold the potential to result in disciplinary action against the employee." (BART Police Department Policy Manual, Policy 1020.1.1(d)).

⁸ BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

⁹ It is important to note that OIPA does not separate citizen complaints it receives into "Formal" and "Informal" classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ A Supervisor Referral refers to an instance involving an Inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IAB.

¹¹ Oral Counseling (third level of pre-discipline): An oral counseling may be the next step of the informal process. It is documented in a memorandum to the employee entitled "Oral Counseling." Prior to issuance, the supervisor should discuss the performance or infraction in detail with the employee. The purpose of the discussion is for the employee to be made aware of the unacceptable behavior. An employee who is covered by a collective bargaining agreement and who may be issued an Oral Counseling is entitled to appropriate association representation. An Oral Counseling is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to progressive discipline.

¹² OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

August 2021

Issue date: September 13, 2021

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **August 1, 2021 through August 31, 2021**.¹ (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
August 2020	9	43	5	1	0	0
September 2020	10	45	8	1	0	0
October 2020	10	48	9	2	0	0
November 2020	11	51	7	2	0	0
December 2020	7	55	4	1	0	0
January 2021	8	61	5	2	0	0
February 2021	5	61	4	1	0	0
March 2021	7	61	7	0	0	0
April 2021	13	65	9	1	0	0
May 2021	9	69	4	1	0	0
June 2021	5	74	1	1	0	0
July 2021	10	81	3	0	0	0
August 2021	4	78	7	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	4
Informal Complaints ⁷	0
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	4

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	0
BART Police Department	4
TOTAL	4

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During August 2021, **4 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-058)	Officers #1-2: <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer Officers #1-3 <ul style="list-style-type: none"> • Performance of Duty Officer #2: <ul style="list-style-type: none"> • Bias-Based Policing 	BPD initiated an investigation.	42
2 (IA2021-059)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	28
3 (IA2021-060)	Officer #1: <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer 	BPD initiated an investigation.	30
4 (IA2021-061)	Officer #1: <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer 	BPD initiated an investigation.	25

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During August 2021, **5 Citizen Complaints** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-062)	Officer detained complainant because of complainant's race and the officer was hostile during the contact.	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded 	361	327

2 (IA2020-063)	Officer unlawfully searched complainant's belongings and improperly handcuffed complainant. Officer also did not properly wear a facemask during the contact.	Officer #1: <ul style="list-style-type: none"> • Arrest or Detention – Exonerated • Search or Seizure – Unfounded* • Conduct Unbecoming an Officer – Exonerated 	360	320
3 (IA2020-082)	Employee acted aggressively toward complainant and did so because of complainant's race.	Employee #1: <ul style="list-style-type: none"> • Conduct Unbecoming – Sustained • Bias-Based Policing – Unfounded 	300	260
4 (IA2020-091)	Officer used excessive force during a search of complainant.	Officer #1: <ul style="list-style-type: none"> • Force – Exonerated 	288	256
5 (IA2021-001)	Officers unlawfully detained complainant and used excessive force during the contact.	Employee #1: <ul style="list-style-type: none"> • Force – Unfounded • Arrest/Detention – Exonerated 	254	260

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING PREVIOUS REPORTING PERIODS

During July 2021, **1 Citizen Complaint** was concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-052)	Officer improperly contacted and humiliated complainant and officer was not wearing a face mask as required during the contact.	Officer #1: <ul style="list-style-type: none"> • Performance of Duty – Supervisor Referral.¹⁰ 	59	14

*Pursuant to the authority provided to OIPA in the BART Citizen Oversight Model, Chapter 1-03(D)(ii), OIPA notified BPD that the Independent Police Auditor is requiring additional follow-up to determine whether a finding of Unfounded is appropriate in this instance. Because the IA investigation established that the act which provide the basis for the allegation did occur, but was justified, lawful, and proper, Exonerated is a more accurate finding than Unfounded, which provides that the allegation is “not true” or that the complaint was “frivolous.” A finding of Unfounded is typically and historically applied when it can be established, for example, that the subject officer was not present or when the complaint is not based in reality.

DISCIPLINE ISSUED DURING REPORTING PERIOD

During August 2021, BPD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s) †	Classification of Sustained Allegation(s)	Action Taken
1	Employee acted aggressively toward complainant.	Employee #1: • Conduct Unbecoming an Officer	Employee #1: • Non-Documented
2	Officer was involved in a preventable traffic collision.	Officer #1: • Policy/Procedure	Officer #1: • Supervisor Addressed Through Training
3	Officer was involved in a preventable traffic collision.	Officer #1: • Policy/Procedure	Officer #1: • Oral Counseling ¹¹
4	Officer was involved in a preventable traffic collision.	Officer #1: • Policy/Procedure	Officer #1: • Letter of Discussion ¹²

ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	8
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	65
Investigations Reviewed During Current Month	11†

†This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is addressed by BPD. The OIPA Monthly Report will reflect information regarding monitored or reviewed cases with detail not to exceed that which is allowable under state law.

One investigation reviewed by OIPA during the period generated a recommendation for an adjustment to an investigative determination in which BPD reached a finding of Unfounded where the facts and evidence appear to support a finding of Exonerated. OIPA

†Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

also requested review of an entry in the Iapro database to determine whether a Formal Complaint would be more appropriately categorized as an Administrative Investigation because there is no evidence clearly indicating that the subject lodged a complaint alleging misconduct by the responding officer and because the misconduct investigation was initiated by a supervisor.¹³

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the "Citizen Board, Office of the District Secretary, and other District departments." As complaints received by the BART Police Citizen Review Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is also made aware of additional complaints about the BART Police Department by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both) and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA's findings are required by the BART Citizen Oversight Model to be submitted to the BART Police Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA's investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department's internal investigation into their complaint regarding on-duty incidents. OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the BART Police Citizen Review Board after receiving and reviewing the findings issued by OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ The BART Police Department defines an Informal Complaint as, "A comment on the actions of a Department employee, where the reporting party expressly states that he or she does not feel that the matter should be formally investigated with the understanding that an Informal Complaint does not hold the potential to result in disciplinary action against the employee." (BART Police Department Policy Manual, Policy 1020.1.1(d)).

⁸ BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

⁹ It is important to note that OIPA does not separate citizen complaints it receives into "Formal" and "Informal" classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ A Supervisor Referral refers to an instance involving an Inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IAB.

¹¹ Oral Counseling (third level of pre-discipline): An oral counseling may be the next step of the informal process. It is documented in a memorandum to the employee entitled "Oral Counseling." Prior to issuance, the supervisor should discuss the performance or infraction in detail with the employee. The purpose of the discussion is for the employee to be made aware of the unacceptable behavior. An employee who is covered by a collective bargaining agreement and who may be issued an Oral Counseling is entitled to appropriate association representation. An Oral Counseling is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to progressive discipline.

¹² Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

¹³ OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

October 2021

Issue date: December 13, 2021

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **October 1, 2021 through October 31, 2021**.¹ (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
October 2020	10	48	9	2	0	0
November 2020	11	51	7	2	0	0
December 2020	7	55	4	1	0	0
January 2021	8	61	5	2	0	0
February 2021	5	61	4	1	0	0
March 2021	7	61	7	0	0	0
April 2021	13	65	9	1	0	0
May 2021	9	69	4	1	0	0
June 2021	5	74	1	1	0	0
July 2021	10	81	3	0	0	0
August 2021	4	78	7	1	0	0
September 2021	10	81	8	2	0	0
October 2021	15	88	6	0	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	12
Informal Complaints ⁷	0
Administrative Investigations	2
Inquiries ⁸	1
TOTAL	15

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	1
BART Police Department	11
TOTAL	12

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During October 2021, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #21-19) (IA2021-074)	Officers #1-3: <ul style="list-style-type: none"> • Force • Arrest/Detention • Policy/Procedure 	OIPA initiated an investigation.	73

During October 2021, **11 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-072)	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	70
2 (IA2021-073)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	70
3 (IA2021-076)	Officers #1-2: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	61
4 (IA2021-077)	Officers #1-3: <ul style="list-style-type: none"> • Bias-Based Policing 	BPD initiated an investigation.	60
5 (IA2021-079)	Officer #1: <ul style="list-style-type: none"> • Force • Arrest/Detention 	BPD initiated an investigation.	61
6 (IA2021-080)	Officers #1-4: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	54
7 (IA2021-081)	Officers #1-3: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	61
8 (IA2021-083)	Officers #1-2: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	59
9 (IA2021-084)	Employees #1-2: <ul style="list-style-type: none"> • Performance of Duty 	BPD initiated an investigation.	53
10 (IA2021-085)	Employees #1-2: <ul style="list-style-type: none"> • Force • Bias-Based Policing • Arrest/Detention 	BPD initiated an investigation.	48
11 (IA2021-088)	Officer #1: <ul style="list-style-type: none"> • Force • Arrest/Detention 	BPD initiated an investigation.	43

During October 2021, **2 Administrative Investigations** were initiated by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2021-075)	Officers #1: <ul style="list-style-type: none"> • Racial Animus • Bias-Based Policing • Conduct Unbecoming an Officer 	BPD initiated an investigation.	62
2 (IA2021-078)	Employees #1-2: <ul style="list-style-type: none"> • Bias-Based Policing • Conduct Unbecoming an Officer 	BPD initiated an investigation.	46

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During October 2021, **3 Citizen Complaints** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-070)	Officer improperly detained complainant, all officers failed to maintain proper social distancing, one officer took complainant's phone and another officer damaged other property. One officer used excessive force and another officer improperly characterized complainant's citizenship status.	Officers #1-4: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (Count 1) – Exonerated Officer #2: <ul style="list-style-type: none"> • Arrest/Detention – Exonerated • Conduct Unbecoming an Officer (Count 2) – Exonerated Officer #3: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (Count 3) – Unfounded Officer #4: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (Count 4) – Unfounded • Force – Unfounded • Search or Seizure – Exonerated 	418	350
2 (IA2020-078)	Employees were rude and unprofessional and harassed complainant during Proof of Payment enforcement.	Employees #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming – Unfounded 	395	340

3 (IA2020-080)	Officers improperly detained complainant because of complainant's race.	Officers #1-4: • Bias-Based Policing – Unfounded • Arrest/Detention – Exonerated	399	351
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During October 2021, **3 Administrative Investigations** were concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2020-076)	Officer improperly extended a detention, argued with and shoulder-bumped the subject, and did not properly document the law enforcement contact. Another officer failed to properly document the contact and a supervisor did not properly address a misconduct allegation.	Officer #1: • Conduct Unbecoming an Officer – Sustained • Policy/Procedure (AXON Camera) – Sustained • Arrest/Detention – Not Sustained Officer #2: • Policy/Procedure (AXON Camera) – Sustained Officer #3: • Performance of Duty (Supervision) – Unfounded	410	352
2 (IA2020-081)	Officer fell asleep while on duty.	Officer #1: • Policy/Procedure – Sustained	390	342
3 (IA2020-039)	Officer's body-worn camera recorded a lengthy period of inactivity, and the recording was improperly categorized.	Officer #1: • Conduct Unbecoming an Officer – Unfounded • Policy/Procedure (AXON Camera) – Exonerated • Performance of Duty – Unfounded	236	188

Also, during the month of October 2021, BPD classified of the following complaint as an **Inquiry** and administratively closed the complaint: #IA2020-082 (after determining that no BPD personnel were involved).¹⁰

DISCIPLINE ISSUED DURING REPORTING PERIOD

During October 2021, BPD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s) *	Classification of Sustained Allegation(s)	Action Taken
1	Officers acted unprofessionally during a law enforcement contact. One officer failed to properly report a use of force.	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Policy/Procedure (Reporting) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion¹¹ Officer #2: <ul style="list-style-type: none"> • Written Reprimand¹²
2	Officer used unprofessional language and did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Performance of Duty (Documentation) • Conduct Unbecoming an Officer Policy/Procedure (AXON Camera)	Officer #1: <ul style="list-style-type: none"> • Written Reprimand
3	Officer did not properly document a law enforcement contact.	Officer #2: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Oral Counseling¹³
4	Officers did not properly document a law enforcement contact.	Officers #1-2: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officers #1-2: <ul style="list-style-type: none"> • Letter of Discussion
5	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion

ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	7
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	68

*Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

Investigations Reviewed During Current Month	17†
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† This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is handled by BPD. The OIPA Monthly Report will reflect information regarding monitored cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.¹⁴

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the BART Police Citizen Review Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is also made aware of additional complaints about the BART Police Department by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both) and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA’s findings are required by the BART Citizen Oversight Model to be submitted to the BART Police Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA’s investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the BART Police Citizen Review Board after receiving and reviewing the findings issued by OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ The BART Police Department defines an Informal Complaint as, “A comment on the actions of a Department employee, where the reporting party expressly states that he or she does not feel that the matter should be formally investigated with the understanding that an Informal Complaint does not hold the potential to result in disciplinary action against the employee.” (BART Police Department Policy Manual, Policy 1020.1.1(d)).

⁸ BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

⁹ It is important to note that OIPA does not separate citizen complaints it receives into “Formal” and “Informal” classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ Administrative Closure refers to allegations that are received and documented; however the Chief of Police or his/her designee determines, based on a preliminary investigation, that further investigation is not warranted. Under these circumstances, the complaint will be Administratively Closed and documented in a summary memorandum to the case file. Employees will be documented as witnesses only, not as subjects to the complaint. Internal Affairs will send a letter to the complainant notifying them that the case was closed following a preliminary investigation. (BPD Policy Manual)

¹¹ Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

¹² Written Reprimand (first level of formal discipline): If informal pre-discipline does not correct the conduct, attendance, work performance or the violation is of such a nature to warrant formal discipline, formal discipline may be warranted. This level of progressive discipline precedes a pay step reduction (up to 6 months), suspension without pay (up to 30 days), and demotion. Termination is the final level of progressive discipline. (BPD Policy Manual)

¹³ Oral Counseling (third level of pre-discipline): An oral counseling may be the next step of the informal process. It is documented in a memorandum to the employee entitled "Oral Counseling." Prior to issuance, the supervisor should discuss the performance or infraction in detail with the employee. The purpose of the discussion is for the employee to be made aware of the unacceptable behavior. An employee who is covered by a collective bargaining agreement and who may be issued an Oral Counseling is entitled to appropriate association representation. An Oral Counseling is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to progressive discipline.

¹⁴ OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

November 2021

Issue date: January 10, 2022

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **November 1, 2021 through November 30, 2021**.¹ (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
November 2020	11	51	7	2	0	0
December 2020	7	55	4	1	0	0
January 2021	8	61	5	2	0	0
February 2021	5	61	4	1	0	0
March 2021	7	61	7	0	0	0
April 2021	13	65	9	1	0	0
May 2021	9	69	4	1	0	0
June 2021	5	74	1	1	0	0
July 2021	10	81	3	0	0	0
August 2021	4	78	7	1	0	0
September 2021	10	81	8	2	0	0
October 2021	15	88	7	0	0	0
November 2021	8	87	11	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	7
Informal Complaints ⁷	0
Administrative Investigations	1
Inquiries ⁸	0
TOTAL	8

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	1
BART Police Department	6
TOTAL	7

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During November 2021, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #21-24) (IA2021-086)	Officers #1-4: • Force	OIPA initiated an investigation.	42

During November 2021, **6 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-089)	Officer #1: • Force	BPD initiated an investigation.	42
2 (IA2021-090)	Officer #1: • Force	BPD initiated an investigation.	35
3 (IA2021-091)	Officers #1-2: • Performance of Duty	BPD initiated an investigation.	31
4 (IA2021-092)	Officer #1: • Force • Arrest/Detention • Search/Seizure	BPD initiated an investigation.	27
5 (IA2021-093)	Officers #1-2: • Arrest/Detention	BPD initiated an investigation.	33
6 (IA2021-094)	Officer #1: • Courtesy	BPD initiated an investigation.	19

During November 2021, **1 Administrative Investigation** was initiated by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2021-087)	Officer #1: • Truthfulness • Performance of Duty • Conduct Unbecoming an Officer • Policy/Procedure	BPD initiated an investigation.	33

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During November 2021, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #21-04) (IA2021-027)	Officer improperly released detainee, interfered with an investigation being conducted by an outside law enforcement agency, misinterpreted a Penal Code section, and conveyed inaccurate information to a subordinate officer.	Officer #1: <ul style="list-style-type: none"> • Arrest/Detention – Exonerated • Performance of Duty (Penal Code) – Exonerated • Performance of Duty (Inaccurate Information) – Sustained • Performance of Duty (Interference) – Sustained 	251	212

During November 2021, **4 Citizen Complaints** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-083)	One officer used excessive force during a detention and two officers did not properly document a law enforcement contact.	Officers #1-2: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) – Not Sustained Officer #2: <ul style="list-style-type: none"> • Force – Exonerated 	417	348
2 (IA2020-089)	Officers used excessive force during a detention.	Officers #1-2: <ul style="list-style-type: none"> • Force – Exonerated 	391	325
3 (IA2020-096)	Officer used excessive force during a detention.	Officer #1: <ul style="list-style-type: none"> • Force – Exonerated 	377	311
4 (IA2021-002)	Officer detained complainant because of complainant's race, exhibited threatening body language and laughed at complainant.	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer (Count 1) – Not Sustained • Conduct Unbecoming an Officer (Count 2) – Unfounded 	371	305

During November 2021, **3 Administrative Investigations** were concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegations
1 (IA2020-065)	Officer used excessive force and unprofessional language because of arrestee's race. Officer also failed to properly document a TASER deployment and a supervisor did not properly review the use of force.	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Force – Not Sustained • Conduct Unbecoming an Officer – Sustained • Performance of Duty – Sustained Officer #2: <ul style="list-style-type: none"> • Performance of Duty – Not Sustained 	483	413*
2 (IA2020-085)	Officer acted unprofessionally and improperly labeled body-worn camera video.	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Administratively Closed • Policy/Procedure (AXON Camera) – Administratively Closed 	406	354
3 (IA2020-086)	Officer intentionally mislabeled body worn camera recordings to evade review. [†]	Officer #1: <ul style="list-style-type: none"> • Performance of Duty – Sustained • Policy/Procedure (AXON Camera) – Sustained • Conduct Unbecoming an Officer – Not Sustained 	411	348

*BPD determined that the investigative timeline was "...tolled on September 10, 2021 per 3303(E) of the Public Safety Officers Procedural Bill of Rights Act," adding that California Governor Gavin Newsom's March 19, 2020 Executive Order N-40-20 extended the Government Code §3304(d) deadline by an additional 60 days.

[†]This potential misconduct/policy violation was identified by OIPA. In addition to the initiation of an administrative investigation which resulted in discipline for the subject officer, the inquiry also resulted in an extension of body worn camera video retention periods from 30 days to 90 days, a mandate for all Sergeants to review 30 days of recorded video for all subordinate officers, an internal review of all videos labeled "Test" or "Accidental," a reissuance of the applicable policy with a requirement for acknowledgment from all BPD officers, and additional instruction to BPD personnel regarding labeling, categories, and required activations.

During November 2021, **2 Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-041)	Officer targeted complainant based on complainant's mental health status.	Officer #1: • Performance of Duty [‡] – Supervisor Referral. ¹⁰	232	167
2 (IA2021-051)	Officer aggressively smacked a seat on a train to wake a sleeping passenger.	Office #1: • Courtesy – Supervisor Referral	182	119

Also, during the month of November 2021, BPD classified the following complaint as an **Inquiry** and administratively closed the complaint: #IA2020-087 (after determining that there was no merit to the misconduct allegation).¹¹

DISCIPLINE ISSUED DURING REPORTING PERIOD

During November 2021, BPD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s) [§]	Classification of Sustained Allegation(s)	Action Taken
1	Officer used unprofessional language and failed to properly document a TASER deployment.	Officer #1: • Conduct Unbecoming an Officer • Performance of Duty	Officer #1: Written Reprimand ¹²
2	Officer did not properly document a law enforcement contact and a supervisor did not properly review a use of force.	Officer #1: • Performance of Duty (Reporting) Officer #2: • Policy/Procedure (AXON Camera)	Officer #1: • Non-Documented Officer #2: • Supervisor Referral
3	Officer was sleeping while on duty.	Officer #1: • Policy/Procedure (Conduct Unbecoming an Officer – Sleeping and Safety)	Officer #1: • Suspension (One Day)

[‡]OIPA has requested that BPD provide an explanation for the deletion of a Bias-Based Policing allegation which was replaced by a Performance of Duty allegation in the Internal Affairs database. BPD's response remains pending as of this reporting.

[§]Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

4	Officer miscategorized multiple body worn camera recordings causing premature auto-deletion of recordings.	Officer #1: • Policy/Procedure (AXON Camera) • Performance of Duty	Officer #1: • Suspension (One Day)
5	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Suspension (One Day)
6	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion ¹³
7	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion •
8	Officer was involved in a preventable vehicle collision.	Officer #1: • Policy/Procedure	Officer #1: • Letter of Discussion
9	Officer was involved in a preventable vehicle collision.	Officer #1: • Policy/Procedure	Officer #1: • Letter of Discussion

ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and monitors and/or reviews complaint investigations conducted by BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	8
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	68
Investigations Reviewed During Current Month	15†

†This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is handled by BPD. The OIPA Monthly Report will reflect information regarding monitored cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during the period generated the following recommendation in addition to that which was noted above re case #IA2021-041:¹⁴ OIPA identified that remedial use of force training (TASER) was prescribed for an officer by BPD but had not been administered. After OIPA inquired, the training was provided to the officer.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the "Citizen Board, Office of the District Secretary, and other District departments." As complaints received by the BART Police Citizen Review Board are customarily directed to OIPA for further action, such

complaints are included in the Quantitative Report above; OIPA is also made aware of additional complaints about the BART Police Department by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both) and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA's findings are required by the BART Citizen Oversight Model to be submitted to the BART Police Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA's investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department's internal investigation into their complaint regarding on-duty incidents. OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the BART Police Citizen Review Board after receiving and reviewing the findings issued by OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ The BART Police Department defines an Informal Complaint as, "A comment on the actions of a Department employee, where the reporting party expressly states that he or she does not feel that the matter should be formally investigated with the understanding that an Informal Complaint does not hold the potential to result in disciplinary action against the employee." (BART Police Department Policy Manual, Policy 1020.1.1(d)).

⁸ BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

⁹ It is important to note that OIPA does not separate citizen complaints it receives into "Formal" and "Informal" classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ A Supervisor Referral refers to an instance involving an Inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IAB.

¹¹ Administrative Closure refers to allegations that are received and documented; however, the Chief of Police or his/her designee determines, based on a preliminary investigation, that further investigation is not warranted. Under these circumstances, the complaint will be Administratively Closed and documented in a summary memorandum to the case file. Employees will be documented as witnesses only, not as subjects to the complaint. Internal Affairs will send a letter to the complainant notifying them that the case was closed following a preliminary investigation. (BPD Policy Manual)

¹² Written Reprimand (first level of formal discipline): If informal pre-discipline does not correct the conduct, attendance, work performance or the violation is of such a nature to warrant formal discipline, formal discipline may be warranted. This level of progressive discipline precedes a pay step reduction (up to 6 months), suspension without pay (up to 30 days), and demotion. Termination is the final level of progressive discipline. (BPD Policy Manual)

¹³ Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

¹⁴ OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

December 2021

Issue date: January 10, 2022

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **December 1, 2021 through December 31, 2021**.¹ (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
December 2020	7	55	4	1	0	0
January 2021	8	61	5	2	0	0
February 2021	5	61	4	1	0	0
March 2021	7	61	7	0	0	0
April 2021	13	65	9	1	0	0
May 2021	9	69	4	1	0	0
June 2021	5	74	1	1	0	0
July 2021	10	81	3	0	0	0
August 2021	4	78	7	1	0	0
September 2021	10	81	8	2	0	0
October 2021	15	88	7	0	0	0
November 2021	8	87	11	1	0	0
December 2021	6	87	6	0	1	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	6
Informal Complaints ⁷	0
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	6

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	1
BART Police Department	5
TOTAL	6

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During December 2021, **5 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-096)	Officer #1: • Force	BPD initiated an investigation.	33
2 (IA2021-097)	Officer #1: • Performance of Duty (Report Writing) • Policy/Procedure (AXON Camera) • Performance of Duty	BPD initiated an investigation.	24
3 (IA2021-098)	Officer #1: • Courtesy	BPD initiated an investigation.	18
4 (IA2021-100)	Officer #1: • Courtesy	BPD recategorized the complaint as an Informal Complaint and addressed via Supervisor Referral. ¹⁰	13
5 (IA2021-101)	Officers #1-2: • Courtesy	BPD initiated an investigation.	10

COMPLAINTS/INVESTIGATIONS INITIATED DURING PRIOR REPORTING PERIOD

During October 2021, **1 Citizen Complaint** was received by OIPA but was not previously reported:

Complaint # OIPA Case # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #21-22) (IA2021-096)	Officers #1-2: • Performance of Duty	OIPA notified BPD which initiated an investigation.	77

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During December 2021, **4 Citizen Complaints** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-003)	Officers used excessive force, grabbed detainee's breast, and covered their body-worn cameras during the contact.	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (Count 1) – Unfounded • 	368	348
2 (IA2021-004)	Officers used excessive force during a detention.	Officers #1-4: <ul style="list-style-type: none"> • Force – Exonerated 	370	332
3 (IA2021-007)	Officers used excessive force during an improper detention and did so because of complainant's race. Officers were not wearing facemasks as required.	Officers #1-2: <ul style="list-style-type: none"> • Force – Unfounded • Arrest/Detention – Exonerated • Bias-Based Policing – Unfounded 	349	311
4 (IA2021-072)	Officers were rude to complainant.	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Supervisor Referral 	98	79

During December 2021, **1 Administrative Investigation** was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegations
1 (IA2021-075)	Officer used racist language in an email to BART staff.	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing – Not Sustained • Conduct Unbecoming an Officer – Sustained • Racial Animus – Sustained 	89	51

During December 2021, **1 Informal Complaint** was addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-041)	Officer was rude to complainant.	Officer #1: • Performance of Duty – Supervisor Referral.	47	29

DISCIPLINE ISSUED DURING REPORTING PERIOD

During December 2021, BPD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s) *	Classification of Sustained Allegation(s)	Action Taken
1	Officer interfered with the processes of an outside law enforcement agency and conveyed inaccurate information to a subordinate officer.	Officer #1: • Performance of Duty (Counts 1-2)	Officer #1: • Letter of Discussion ¹¹
2	Officer was involved in a preventable vehicle collision.	Officer #1: • Policy/Procedure	Officer #1: • Letter of Discussion
3	Officers did not properly document a law enforcement contact.	Officers #1-2: • Policy/Procedure (AXON Camera)	Officers #1-2: • Letter of Discussion
4	Officer negligently discharged a TASER while testing the device.	Officer #1: • Policy/Procedure	Officer #1: • Letter of Discussion

*Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and monitors and/or reviews complaint investigations conducted by BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	7
Complainant-Initiated Appeals	1
BPD-Initiated Appeals	0
Investigations Being Monitored	68
Investigations Reviewed During Current Month	14†

†This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is handled by BPD. The OIPA Monthly Report will reflect information regarding monitored cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.¹²

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the "Citizen Board, Office of the District Secretary, and other District departments." As complaints received by the BART Police Citizen Review Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is also made aware of additional complaints about the BART Police Department by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both) and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA's findings are required by the BART Citizen Oversight Model to be submitted to the BART Police Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA's investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department's internal investigation into their complaint regarding on-duty incidents. OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the BART Police Citizen Review Board after receiving and reviewing the findings issued by OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ The BART Police Department defines an Informal Complaint as, "A comment on the actions of a Department employee, where the reporting party expressly states that he or she does not feel that the matter should be formally investigated with the understanding that an Informal Complaint does not hold the potential to result in disciplinary action against the employee." (BART Police Department Policy Manual, Policy 1020.1.1(d)).

⁸ BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

⁹ It is important to note that OIPA does not separate citizen complaints it receives into "Formal" and "Informal" classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ A Supervisor Referral refers to an instance involving an Inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IAB.

¹¹ Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

¹² OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.