

Office of the Independent Police Auditor

Monthly Report

June 27, 2011 – October 31, 2011¹



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

November 14, 2011

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period June 27, 2011 through October 31, 2011. It is the intention of the OIPA to make this report and all subsequent reports in this series available at www.bart.gov/policeauditor.^{2,3}

Quantitative Report

	Number of Cases Filed ⁴	Number of Open Cases ⁵	Number of OIPA Investigations Concluded	Number of Cases Appealed to OIPA ⁶	Number of Cases Appealed by CRB ⁷
June 27, 2011 - October 31, 2011	27	20	0	0	0

Types of Cases Filed

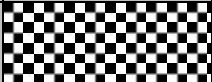
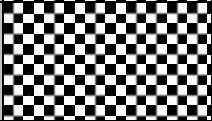

Citizen Complaints	17
Comments of Non-Complaint	10
TOTAL	27

Citizen Complaints Received per Department


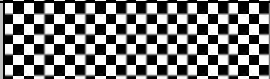
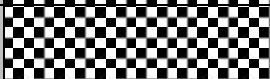

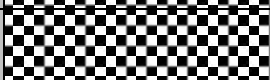

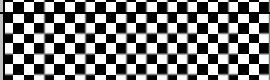
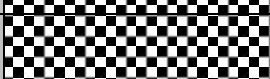




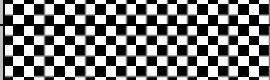
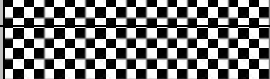
OIPA	3
BART Police Department	14
TOTAL	17

Dispositions/Actions Taken/Recommendations for Corrective Action/# of Days Elapsed⁸

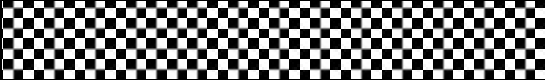

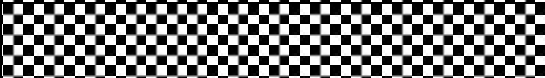


From June 27, 2011 through October 31, 2011, 3 Citizen Complaints were received by the OIPA:

Complaint #	Nature of Complaint	Action Taken	# of Days Elapsed Since Complaint Filed
1		Complaint was referred to the BART Police Department.	124
2		Complaint was referred to the President of the BART Board of Directors and the BART General Counsel.	69
3		Complaint was referred to the BART Police Department.	59

From June 27, 2011 through October 31, 2011, 14 Citizen Complaints were received by the BART Police Department:

Complaint #	Nature of Complaint	Action Taken	# of Days Elapsed Since Complaint Filed
1		The investigation is pending.	89
2		The investigation is pending.	82
3		The investigation is pending.	77
4		The investigation is pending.	72
5		The investigation is pending.	62
6		The investigation is pending.	56
7		The investigation is pending.	49
8		The investigation is pending.	49
9		The investigation is pending.	46
10		The investigation is pending.	43
11		The investigation is pending.	41
12		The investigation is pending.	33
13		The investigation is pending.	17
14		The investigation is pending.	14

From June 27, 2011 through October 31, 2011, 10 Comments of Non-Complaint were received by the BART Police Department:

Complaint #	Nature of Comment	Action Taken	# of Days Elapsed Since Complaint Filed
1	Officer indicated, without cause, that a citation might be issued for failing to yield seat to elderly/disabled.	Supervisor addressed comment with involved officer.	135
2	Officer acted in intimidating manner for no reason.	Supervisor addressed comment with involved officer.	119
3	Community Service Officer abused authority by threatening to have citation issued for placing flyers on cars.	Supervisor addressed comment with involved officer.	110
4	Officer did not sufficiently follow up on report of gambling activity on a train.	Supervisor addressed comment with involved officer.	105
5		The response is pending.	84
6		The response is pending.	69
7		The response is pending.	52
8	Officer was rude during a contact for suspected fare evasion.	Supervisor addressed comment with involved officer.	52
9		The response is pending.	32
10		The response is pending.	17

¹ This is the first in a series of reports to be produced by the Office of the Independent Police Auditor, in accordance with the Citizen Oversight Model. Therefore, the data in this report covers the period from the employment start date of the current Independent Police Auditor through the month of October. Future reports in this series will include data covering the period specified in the Citizen Oversight Model.

² In some instances, this report requires combining data from the OIPA with data from the BART Police Department's Internal Affairs unit. As updates are made to the respective data of each entity, the possibility exists that future revisions to the combined data being reported here will be required.

³ 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 Citizen Board are customarily directed to the OIPA for

further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints received by the Office of the District Secretary or other District departments.

⁴ This number includes all Citizen Complaints filed against members of the BART Police Department. It also includes what the BART Police Department manual defines as “Comments of Non-Complaint”; these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1). This number does not include Administrative Complaints brought internally by BART Police Department members; the OIPA is presently working with the BART Police Department to obtain access to that data for inclusion in future reports.

⁵ This number considers the universe of all complaints initiated within the reporting period (June 27, 2011 – October 31, 2011) and includes all on-going investigations in that universe being conducted by the OIPA or the BART Police Department as of the end of the period.

⁶ 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. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁷ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the 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).

⁸ All items in this section that have been closed include a brief description of the underlying concern giving rise to the Citizen Complaint and/or Comment of Non-Complaint. For all items that are not yet closed, such a description has been omitted to protect the integrity of an ongoing investigation.

Office of the Independent Police Auditor

Monthly Report

November 2011



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

December 12, 2011

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period November 1, 2011 through November 30, 2011. It is the intention of the OIPA to make this report and all subsequent reports in this series available at www.bart.gov/policeauditor.^{1,2}

Quantitative Report

	Number of Cases Filed ³	Number of Open Cases ⁴	Number of OIPA Investigations Concluded	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
June 27, 2011 - October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0

Types of Cases Filed

Citizen Complaints	8
Administrative Investigations	1
Comments of Non-Complaint	2
TOTAL	11

Citizen Complaints Received per Department

OIPA	3
BART Police Department	5
TOTAL	8

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed⁷

During the month of November 2011, 3 Citizen Complaints were received by the OIPA:

Complaint #	Nature of Complaint	Action Taken	# of Days Elapsed Since Complaint Filed
1	Racial Profiling	BART Police Department was notified and an investigation was initiated.	39
2	Courtesy; Procedure	Complaint was referred to the BART Police Department.	24
3	Courtesy; Conduct Unbecoming an Officer	Complaint was referred to the BART Police Department.	20

During the month of November 2011, 5 Citizen Complaints were received by the BART Police Department:

Complaint #	Nature of Complaint	Action Taken	# of Days Elapsed Since Complaint Filed
1	Conduct Unbecoming an Officer; Courtesy; Procedure	An investigation was initiated.	28
2	Arrest or Detention	An investigation was initiated.	28
3	Conduct Unbecoming an Officer; Courtesy	An investigation was initiated.	21
4	Force; Courtesy; Procedure	An investigation was initiated.	21
5	Force	An investigation was initiated.	14

During the month of November 2011, 1 Administrative Investigation was generated by the BART Police Department:

Complaint #	Nature of Complaint	Action Taken	# of Days Elapsed Since Complaint Filed
1	Criminal (Misdemeanor); Conduct Unbecoming an Officer	An investigation was initiated.	20

During the month of November 2011, 2 Comments of Non-Complaint were received by the BART Police Department:

Comment #	Nature of Comment	Action Taken	# of Days Elapsed Since Comment Filed
1	Procedure	An investigation was initiated.	31
2	Biased-based Policing	An investigation was initiated.	13

Complaints/Investigations Concluded During Reporting Period

Dispositions/Recommendations for Corrective Action/# of Days Elapsed

During the month of November 2011, 1 Administrative Investigation was concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Recommendation for Corrective Action	# of Days Elapsed Since Complaint Filed
1 (IA #2010-070)	Arrest or Detention; Search or Seizure	Supervisory Referral ⁸	N/A	424 ⁹

During the month of November 2011, 3 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	# of Days Elapsed Since Comment Filed
1 (IA #2011-050)	Courtesy; Procedure	Supervisory Referral	97
2 (IA #2011-059)	Courtesy	Supervisory Referral	80
3 (IA #2011-067)	Courtesy	Supervisory Referral	45

¹ In some instances, this report requires combining data from the OIPA with data from the BART Police Department's Internal Affairs unit. As updates are made to the respective data of each entity, the possibility exists that future revisions to the combined data being reported here will be required.

² 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 Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

³ 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 what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

⁴ 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), Comments of Non-Complaint, and Administrative Investigations.

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. The 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 Citizen Review Board after receiving and reviewing the findings issued by the 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 In all cases where it appears in this report, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

⁸ In defining a “Supervisory Referral,” the BART Police Department Manual indicates that an assigned supervisor will address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Section. (BART Police Department Policy Manual, Policy 1020.1.1(f)).

⁹ It was noted by the assigned investigator in this case that evidence collected within approximately 34 days after the allegations were received definitively showed that the allegations were based on faulty information. With concurrence by the investigator’s chain of command, the final completion of the investigative report was assigned a lower priority than other cases with approaching deadlines.

Office of the Independent Police Auditor

Monthly Report

December 2011



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

January 9, 2012

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period December 1, 2011 through December 31, 2011. It is the intention of the OIPA to make this report and all subsequent reports in this series available at www.bart.gov/policeauditor.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded	Number of Cases Appealed to OIPA ⁴	Number of Cases Appealed by CRB ⁵
June 27, 2011 - October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0

Types of Cases Filed

Citizen Complaints	2
Administrative Investigations	1
Comments of Non-Complaint	1
TOTAL	4

Citizen Complaints Received per Department

OIPA	1
BART Police Department	1
TOTAL	2

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed⁶

During the month of December 2011, 1 Citizen Complaint was received by the OIPA:

Complaint #	Nature of Complaint	Action Taken	# of Days Elapsed Since Complaint Filed
1	Courtesy	BART Police Department was notified and an investigation was initiated.	23

During the month of December 2011, 1 Citizen Complaint was received by the BART Police Department:

Complaint #	Nature of Complaint	Action Taken	# of Days Elapsed Since Complaint Filed
1	Bias-based Policing; Courtesy	An investigation was initiated.	31

During the month of December 2011, 1 Administrative Investigation was generated by the BART Police Department:

Investigation #	Nature of Investigation	Action Taken	# of Days Elapsed Since Investigation Initiated
1	Truthfulness; Procedure	An investigation was initiated.	27

During the month of December 2011, 1 Comment of Non-Complaint was received by the BART Police Department:

Comment #	Nature of Comment	Action Taken	# of Days Elapsed Since Comment Filed
1	Procedure	An investigation was initiated.	37

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of December 2011, 4 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition	# of Days Elapsed Since Complaint Filed
1 (IA #2011-02)*	<u>Police Officer #1:</u> <ul style="list-style-type: none"> • Force • Search or Seizure • Courtesy 	<u>Police Officer #1:</u> <ul style="list-style-type: none"> • Force – Not Sustained • Search or Seizure – Exonerated • Courtesy – Sustained 	362
2 (IA #2011-09)*	<u>Police Officer #1:</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (2 counts) • Courtesy (2 counts) • Procedure 	<u>Police Officer #1:</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (Count 1) – Unfounded • Conduct Unbecoming an Officer (Count 2) – Not Sustained • Courtesy (Count 1) – Unfounded • Courtesy (Count 2) – Not Sustained • Procedure – Not Sustained 	325
3 (IA #2011-011)	<u>Police Officer #1:</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Courtesy 	<u>Police Officer #1:</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained • Courtesy – Not Sustained 	313

*This case has a completion date from the previous month but the data was not available in time for that report; it has therefore been included in this report.

(Continued on next page)

4 (IA #2011-017)*	<u>Police Officer #1:</u> <ul style="list-style-type: none"> • Search or Seizure <u>Police Officer #2:</u> <ul style="list-style-type: none"> • Search or Seizure <u>Police Officer #3:</u> <ul style="list-style-type: none"> • Supervision <u>Civilian #1:</u> <ul style="list-style-type: none"> • Performance 	<u>Police Officer #1:</u> <ul style="list-style-type: none"> • Search or Seizure – Sustained <u>Police Officer #2:</u> <ul style="list-style-type: none"> • Search or Seizure – Not Sustained <u>Police Officer #3:</u> <ul style="list-style-type: none"> • Supervision – Sustained <u>Civilian #1:</u> <ul style="list-style-type: none"> • Performance – Sustained 	294
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*This case has a completion date from the previous month but the data was not available in time for that report; it has therefore been included in this report.

During the month of December 2011, 1 Administrative Investigation was concluded by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Disposition	# of Days Elapsed Since Investigation Initiated
1 (IA #2011-024)*	<u>Police Officer #1:</u> <ul style="list-style-type: none"> • Workplace Discrimination/Harassment • Conduct Unbecoming an Officer <u>Police Officer #2:</u> <ul style="list-style-type: none"> • Workplace Discrimination/Harassment • Conduct Unbecoming an Officer 	<u>Police Officer #1:</u> <ul style="list-style-type: none"> • Workplace Discrimination/Harassment – Sustained • Conduct Unbecoming an Officer – Sustained <u>Police Officer #2:</u> <ul style="list-style-type: none"> • Workplace Discrimination/Harassment – Not Sustained • Conduct Unbecoming an Officer – Not Sustained 	412

*This case has a completion date from the previous month but the data was not available in time for that report; it has therefore been included in this report.

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	<p><u>Police Officer #3:</u></p> <ul style="list-style-type: none"> • Workplace Discrimination/Harassment • Conduct Unbecoming an Officer <p><u>Police Officer #4:</u></p> <ul style="list-style-type: none"> • Workplace Discrimination/Harassment • Conduct Unbecoming an Officer <p><u>Police Officer #5:</u></p> <ul style="list-style-type: none"> • Workplace Discrimination/Harassment • Conduct Unbecoming an Officer 	<p><u>Police Officer #3:</u></p> <ul style="list-style-type: none"> • Workplace Discrimination/Harassment – Not Sustained • Conduct Unbecoming an Officer – Not Sustained <p><u>Police Officer #4:</u></p> <ul style="list-style-type: none"> • Workplace Discrimination/Harassment – Sustained • Conduct Unbecoming an Officer – Sustained <p><u>Police Officer #5:</u></p> <ul style="list-style-type: none"> • Workplace Discrimination/Harassment – Not Sustained • Conduct Unbecoming an Officer – Not Sustained 	
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During the month of December 2011, 3 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	# of Days Elapsed Since Comment Filed
1 (IA #2011-045)	Neglect of Duty; Procedure	Supervisory Referral ⁷	140
2 (IA #2011-071)	Procedure	Supervisory Referral	59
3 (IA #2011-084)	Procedure	Supervisory Referral	37

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