

# Office of the Independent Police Auditor

## Monthly Report

January 2014



February 10, 2014

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 January 1, 2014 through January 31, 2014.<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
January 2013	6	49	0	1	0
February 2013	9	46	0	0	0
March 2013	10	46	1	0	0
April 2013	11	47	1	1	0
May 2013	7	42	0	2	0
June 2013	8	38	0	0	0
July 2013	15	44	1	1	0
August 2013	17	43	3	0	0
September 2013	14	44	0	0	0
October 2013	16	50	1	0	0
November 2013	18	58	0	0	0
December 2013	14	62	0	0	0
January 2014	9	53	0	0	0

**Types of Cases Filed**

Citizen Complaints	6
Administrative Investigations	3
Comments of Non-Complaint	0
<b>TOTAL</b>	<b>9</b>

**Citizen Complaints Received per Department**

OIPA	2
BART Police Department	4
<b>TOTAL</b>	<b>6</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of January 2014, 2 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations <sup>7</sup>	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>8</sup>
1 (OIPA #14-02) (IA2014-004)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force</li> <li>• Arrest or Detention</li> </ul>	OIPA initiated an investigation and informed BART PD, which also initiated an investigation.	25
2 (OIPA #14-07) (IA2014-007)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Conduct Unbecoming an Officer</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Conduct Unbecoming an Officer</li> </ul> <u>Unspecified Officer(s)</u> <ul style="list-style-type: none"> <li>• Service Review<sup>9</sup></li> </ul>	BART PD initiated an investigation.	11

During the month of January 2014, 4 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-001)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BART PD initiated an investigation.	40
2 (IA2014-002)	<u>Unspecified Officer(s)</u> <ul style="list-style-type: none"> <li>• Service Review</li> </ul>	BART PD initiated an investigation.	34
3 (IA2014-003)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Policy/Procedure</li> </ul>	BART PD initiated an investigation.	26

4 (IA2014-009)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	11
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During the month of January 2014, 3 Administrative Investigations were initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2014-005)	<u>Officer #1</u> • Force	BART PD initiated an investigation.	20
2 (IA2014-006)	<u>Officer #1</u> • Force	BART PD initiated an investigation.	40
3 (IA2014-008)	<u>Officer #1</u> • Force	BART PD initiated an investigation.	11

### Complaints/Investigations Concluded During Reporting Period

#### Dispositions/# of Days Elapsed

During the month of January 2014, 13 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition <sup>10</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-052)	Officers belittled complainant and one officer was rude to complainant.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Unfounded • Courtesy – Unfounded  <u>Officer #2</u> • Conduct Unbecoming an Officer – Unfounded	220	185
2 (IA2013-068)	Unidentified officer indicated he did not believe complainant and failed to take a report when she notified him of a crime.	<u>Unidentified Officer #1</u> • Performance of Duty – Unfounded • Conduct Unbecoming an Officer – Unfounded • Policy/Procedure – Unfounded	220	185

3 (IA2013-056)	Officers were illegally parking their police cars in a particular location.	<u>BART Police Department</u> • Policy/Procedure – Service Review	213	192
4 (IA2013-054)	Officer racially profiled complainant and improperly detained him for selling items without a permit.	<u>Officer #1</u> • Bias-Based Policing – Not Sustained • Arrest/Detention – Exonerated	209	181
5 (IA2013-062)	Officer improperly detained complainant for fare evasion.	<u>Officer #1</u> • Arrest/Detention – Exonerated	196	175
6 (IA2013-070)	Officers slammed complainant down while taking him into custody.	<u>Officer #1</u> • Force – Exonerated  <u>Officer #2</u> • Force – Exonerated	184	152
7 (IA2013-077)	Complainant fell asleep on train and unknown employee who awoke him was rude. Complainant later indicated he did not desire to pursue complaint.	Administratively Closed <sup>11</sup>	175	140
8 (IA2013-081)	Officer used excessive force during arrest of complainant.	<u>Officer #1</u> • Force – Exonerated	164	132
9 (IA2013-084)	Officer was rude and unprofessional toward complainant, who asked to use a BART restroom.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Unfounded	161	135
10 (IA2013-089)	Complainant was threatened by another individual with a knife and officers nearby took no action.	<u>Unknown Officer</u> • Performance of Duty – Unfounded	145	119

11 (IA2013-093)	Based on complainant's ethnicity, employee was rude when complainant greeted him.	<u>Civilian #1</u> • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Not Sustained	136	110
12 (IA2013-127)	Employee was untruthful regarding timing noted on Complainant's parking citation. Complainant did not wish to pursue complaint further.	Administratively Closed	77	42
13 (IA2013-128)	Employee improperly issued complainant a parking citation.	Administratively Closed	80	41

During the month of January 2014, 1 Administrative Investigation was completed by the BART Police Department:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2012-103)	Officer improperly released information without notifying the Department.	Administratively Closed	460	425*

\*The investigation into this complaint was suspended for a period of time due to an associated matter that was pending arbitration.

During the month of January 2014, 2 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2013-131)	Officer did not issue a citation based on complainant's report of another individual urinating in public.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral <sup>12</sup>	66	32

2 (IA2013-134)	Officer did not assist complainant's grandson who was stranded at a BART station.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	55	21
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Also during the month of January 2014, the BART Police Department reclassified IA2013-132 from a Citizen Complaint to an Inquiry after the citizen who raised the issue in that case clarified that he did not have a complaint but rather wished to make an inquiry about his property. As such, this case was removed from the pending total of open cases. The BART Police Department also re-closed IA2012-117 during the month of January 2014 after having reopened it for further investigation at the request of OIPA. No findings changed as a result of the further investigation, and this case too was removed from the pending total of open cases.

### **Discipline Issued During Reporting Period**

#### **Sustained Allegations/Resulting Action Taken by BART PD**

No discipline was issued by BART PD during the month of January 2014.

### **Additional Notes**

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

Investigations Being Conducted	6
Complainant-Initiated Appeals	0
Investigations Being Monitored	16
Investigations Reviewed During Current Month	25*

\*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.

<sup>1</sup> 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 OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

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<sup>2</sup> 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)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

<sup>3</sup> 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.

<sup>4</sup> 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 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.

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

<sup>8</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

<sup>9</sup> A service review refers to an instance when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.

<sup>10</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>11</sup> 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.



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<sup>12</sup> A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

# Office of the Independent Police Auditor

Monthly Report

February 2014



March 10, 2014

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 February 1, 2014 through February 28, 2014.<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
February 2013	9	46	0	0	0
March 2013	10	46	1	0	0
April 2013	11	47	1	1	0
May 2013	7	42	0	2	0
June 2013	8	38	0	0	0
July 2013	15	44	1	1	0
August 2013	17	43	3	0	0
September 2013	14	44	0	0	0
October 2013	16	50	1	0	0
November 2013	18	58	0	0	0
December 2013	14	62	0	0	0
January 2014	9	53	0	0	0
February 2014	11	55	0	0	0

**Types of Cases Filed**

Citizen Complaints	8
Administrative Investigations	2
Comments of Non-Complaint	1
<b>TOTAL</b>	<b>11</b>

**Citizen Complaints Received per Department**

OIPA	3
BART Police Department	5
<b>TOTAL</b>	<b>8</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of February 2014, 3 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations <sup>7</sup>	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>8</sup>
1 (OIPA #14-09) (IA2014-015)	<u>Unspecified Officer(s)</u> • Policy/Procedure	OIPA notified BART PD, which initiated an investigation.	32
2 (OIPA #14-16) (IA2014-016)	<u>Officer #1</u> • Bias-based Policing • Conduct Unbecoming an Officer	OIPA initiated an investigation and informed BART PD, which also initiated an investigation.	19
3 (OIPA #14-19) (IA2014-020)	<u>Officer #1</u> • Discourtesy  <u>Officer #2</u> • Discourtesy	OIPA notified BART PD, which initiated an investigation.	10

During the month of February 2014, 5 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-013)	<u>Officer #1</u> • Force	BART PD initiated an investigation.	35
2 (IA2014-010)	<u>Officer #1</u> • Courtesy	BART PD initiated an investigation.	28
3 (IA2014-011)	<u>Officer #1</u> • Bias-based Policing	BART PD initiated an investigation.	28
4 (IA2014-014)	<u>Employee #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	28
5 (IA2014-018)	<u>Officer #1</u> • Performance of Duty	BART PD initiated an investigation.	11

During the month of February 2014, 2 Administrative Investigations were initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2014-019)	<u>Officer #1</u> • Truthfulness	BART PD initiated an investigation.	33
2 (IA2014-012)	<u>Officer #1</u> • Policy/Procedure	BART PD initiated an investigation.	33

During the month of February 2014, 1 Comment of Non-Complaint was received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2014-017)	<u>Employee #1</u> • Conduct Unbecoming an Officer • Policy/Procedure	BART PD initiated an investigation.	13

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of February 2014, 4 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition <sup>9</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-067)	Though complainant properly paid a fare, officer detained him for fare evasion, indicated he would receive a citation based on what he said to officer, and continued to accuse him of fare evasion.	<u>Officer #1</u> • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer (Count 1) – Unfounded • Conduct Unbecoming an Officer (Count 2) – Not Sustained	216	204

2 (IA2013-069)	Unidentified officer did not assist complainant after she reported being the victim of a crime.	<u>Unidentified Officer #1</u> • Performance of Duty – Unfounded	212	187
3 (IA2013-094)	Officer did not explain to complainant why he contacted her, and he used excessive force in taking her into custody.	<u>Officer #1</u> • Force – Exonerated • Performance of Duty – Unfounded	165	153
4 (IA2013-113)	Officer violated traffic laws while driving a patrol car without emergency equipment activated.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Not Sustained	129	97

During the month of February 2014, 2 Administrative Investigations were completed by the BART Police Department:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2013-112)	Officer used excessive force by grabbing and choking complainant during arrest.	<u>Officer #1</u> • Force (Count 1) – Exonerated • Force (Count 2) – Not Sustained	222	204
2 (IA2013-076)	Officers did not take an intoxicated individual into custody, document their contact with the individual, or activate their mobile video recorders during the encounter.	<u>Officer #1</u> • Performance of Duty – Not Sustained • Policy/Procedure (Count 1) – Not Sustained • Policy/Procedure (Count 2) – Exonerated	203	186

		<u>Officer #2</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Not Sustained</li> <li>• Policy/Procedure (Count 1) – Not Sustained</li> <li>• Policy/Procedure (Count 2) – Not Sustained</li> </ul>		
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During the month of February 2014, 3 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2014-003)	Officer completed reports for one party involved in a custody exchange, but not for the complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Supervisory Referral<sup>10</sup></li> <li>• Policy/Procedure – Supervisory Referral</li> </ul>	54	31
2 (IA2014-010)	Officer implied complainant intended to steal items from a store.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Courtesy – Supervisory Referral</li> </ul>	28	5
3 (IA2014-017)	Employee was unsympathetic to complainant who parked illegally due to an emergency; employee did not self-identify upon request.	<u>Employee #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Supervisory Referral</li> </ul>	13	2

**Discipline Issued During Reporting Period**

**Sustained Allegations/Resulting Action Taken by BART PD**

No discipline was issued by BART PD during the month of February 2014.

## **Additional Notes**

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

Investigations Being Conducted	7
Complainant-Initiated Appeals	0
Investigations Being Monitored	11
Investigations Reviewed During Current Month	24*

\*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.

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<sup>1</sup> 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 OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> 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)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

<sup>3</sup> 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.

<sup>4</sup> 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 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.

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.



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<sup>8</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

<sup>9</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>10</sup> A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

# Office of the Independent Police Auditor

## Monthly Report

March 2014



April 14, 2014

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 March 1, 2014 through March 31, 2014.<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
March 2013	10	46	1	0	0
April 2013	11	47	1	1	0
May 2013	7	42	0	2	0
June 2013	8	38	0	0	0
July 2013	15	44	1	1	0
August 2013	17	43	3	0	0
September 2013	14	44	0	0	0
October 2013	16	50	1	0	0
November 2013	18	58	0	0	0
December 2013	14	62	0	0	0
January 2014	9	53	0	0	0
February 2014	11	55	0	0	0
March 2014	19*	65	0	0	0

\*This number includes two cases that were initiated in a prior reporting period but not previously reported on. They are therefore included in this report.

**Types of Cases Filed**

Citizen Complaints	11
Administrative Investigations	2
Comments of Non-Complaint	6
<b>TOTAL</b>	<b>19</b>

**Citizen Complaints Received per Department**

OIPA	6
BART Police Department	5
<b>TOTAL</b>	<b>11</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of March 2014, 6 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations <sup>7</sup>	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>8</sup>
1 (OIPA #14-20) (IA2014-022)	<u>Officer #1</u> • Conduct Unbecoming an Officer	OIPA notified BART PD, which determined the matter did not involve any BART PD employees and reclassified it as an Inquiry.	40
2 (OIPA #14-21) (IA2014-024)	<u>Officer #1</u> • Suspicious Death • Performance of Duty  <u>Officer #2</u> • Suspicious Death • Performance of Duty	OIPA initiated an investigation and informed BART PD, which forwarded the matter to the BART General Manager.	39
3 (OIPA #14-23) (IA2014-029)	<u>Employee #1</u> • Policy/Procedure	OIPA notified BART PD, which determined the matter was a parking citation dispute and would be handled by the established citation dispute process. The matter was reclassified as an Inquiry.	32
4 (OIPA #14-27) (IA2014-028)	<u>Officer #1</u> • Racial Profiling	OIPA initiated an investigation and informed BART PD, which also initiated an investigation.	26
5 (OIPA #14-28) (IA2014-025)	<u>Officer #1</u> • Racial Profiling • Arrest or Detention • Conduct Unbecoming an Officer	OIPA initiated an investigation and informed BART PD, which also initiated an investigation.	26
6 (OIPA #14-31) (IA2014-039)	<u>Officer #1</u> • Policy/Procedure	OIPA notified BART PD, which forwarded the matter to the BART General Manager.	17

During the month of March 2014, 4 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-031)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest or Detention</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Arrest or Detention</li> </ul>	BART PD initiated an investigation.	31
2 (IA2014-033)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	BART PD initiated an investigation.	30
3 (IA2014-026)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Force</li> </ul>	BART PD initiated an investigation.	24
4 (IA2014-041)	<u>Undetermined Officers</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BART PD initiated an investigation.	24

During the month of March 2014, 1 Administrative Investigation was initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2014-036)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force</li> </ul>	BART PD initiated an investigation.	28

During the month of March 2014, 6 Comments of Non-Complaint were received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2014-023)	<u>Employee #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	40
2 (IA2014-027)	<u>Employee #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	25
3 (IA2014-032)	<u>Employee #1</u> • Performance of Duty	BART PD initiated an investigation.	37
4 (IA2014-030)	<u>Officer #1</u> • Courtesy	BART PD initiated an investigation.	37
5 (IA2014-035)	<u>Officer #1</u> • Policy/Procedure	BART PD initiated an investigation.	16
6 (IA2014-044)	<u>Employee #1</u> • Policy/Procedure	BART PD initiated an investigation.	42

**Complaints/Investigations Initiated During a Previous Reporting Period**

Actions Taken/# of Days Elapsed

During the month of February 2014, 1 previously unreported Citizen Complaint was received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-021)	<u>Officer #1</u> • Conduct Unbecoming an Officer  <u>Officer #2</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	46

During the month of January 2014, 1 previously unreported Administrative Investigation was initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2014-034)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	89

**Complaints/Investigations Concluded During Reporting Period**

Dispositions/# of Days Elapsed

During the month of March 2014, 7 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition <sup>9</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-041)	Officers did not detain complainant during initial encounter. Complainant was later improperly arrested for public intoxication and battery on a peace officer.	<u>Officer #1</u> • Arrest or Detention (Count 1) – Exonerated • Arrest or Detention (Count 2) – Unfounded • Performance of Duty – Sustained  <u>Officer #2</u> • Performance of Duty – Sustained	325	291
2 (IA2013-091)	Officers made inappropriate comments during complainant’s arrest, and one officer used excessive force.	<u>Officer #1</u> • Force – Exonerated • Conduct Unbecoming an Officer – Unfounded  <u>Officer #2</u> • Conduct Unbecoming an Officer – Unfounded	203	183

3 (IA2013-096)	Officer used excessive force in during an arrest and did not activate the mobile video recorder as required.	<u>Officer #1</u> • Force – Exonerated • Policy/Procedure – Exonerated	203	186
4 (IA2013-097)	Officer improperly advised complainant that a citation could be issued based on where complainant parked his car.	<u>Officer #1</u> • Policy/Procedure – Service Review <sup>10</sup>	193	179
5 (IA2013-099)	Officer used excessive force during complainant’s arrest.	<u>Officer #1</u> • Force (Count 1) – Exonerated • Force (Count 2) – Unfounded	186	155
6 (IA2013-133)	Complainant indicated there is insufficient signage in BART station to notify patrons that bicycles parked there are not being monitored.	<u>BART Police Department</u> • Service Review	118	104
7 (IA2014-015)	Complainant indicated that an officer parked a police vehicle in a bus zone, preventing access to arriving buses.	<u>Unidentified Officer</u> • Policy/Procedure – Supervisory Referral <sup>11</sup>	67	27



During the month of March 2014, 1 Administrative Investigation was completed by the BART Police Department:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2013-080)	A former employee indicated that unnamed officers had consumed alcohol while on duty.	<u>Unidentified Officers</u> • Conduct Unbecoming an Officer – Administrative Closure <sup>12</sup>	256	242*

\*The investigation into this complaint was suspended for a period of time due to an associated matter that was pending arbitration.

During the month of March 2014, 1 Comment of Non-Complaint was addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2014-032)	Officer cited Complainant for a violation, but did not cite another individual who committed a violation.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral	37	23

**Discipline Issued During Reporting Period**

**Sustained Allegations/Resulting Action Taken by BART PD**

No discipline was issued by BART PD during the month of March 2014.

**Additional Notes**

In accordance with the BART Citizen Oversight Model, OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department’s Internal Affairs

investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	10
Complainant-Initiated Appeals	0
Investigations Being Monitored	16
Investigations Reviewed During Current Month	28*

\*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.

<sup>1</sup> 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 OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> 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)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

<sup>3</sup> 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.

<sup>4</sup> 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 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.

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

<sup>8</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

<sup>9</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

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(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>10</sup> A service review refers to an instance when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.

<sup>11</sup> A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

<sup>12</sup> 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.

# Office of the Independent Police Auditor

## Monthly Report

April 2014



May 12, 2014

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 April 1, 2014 through April 30, 2014.<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
April 2013	11	47	1	1	0
May 2013	7	42	0	2	0
June 2013	8	38	0	0	0
July 2013	15	44	1	1	0
August 2013	17	43	3	0	0
September 2013	14	44	0	0	0
October 2013	16	50	1	0	0
November 2013	18	58	0	0	0
December 2013	14	62	0	0	0
January 2014	9	53	0	0	0
February 2014	11	55	0	0	0
March 2014	19	65	0	0	0
April 2014	18*	68	1	0	0

\*This number includes one case that was initiated in a prior reporting period but not previously reported on. It is therefore included in this report.

**Types of Cases Filed**

Citizen Complaints	10
Administrative Investigations	2
Comments of Non-Complaint	6
<b>TOTAL</b>	<b>18</b>

**Citizen Complaints Received per Department**

OIPA	5*
BART Police Department	5
<b>TOTAL</b>	<b>10</b>

\*Two of these cases appear to have been received, independently, by both OIPA and the BART Police Department. They are included only in OIPA's total, however, in order to avoid being double-counted.

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of April 2014, 5 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations <sup>7</sup>	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>8</sup>
1 (OIPA #14-32) (IA2014-037)	<u>Employee #1</u> • Policy/Procedure	OIPA notified BPD, which initiated an investigation.	40
2 (OIPA #14-33) (IA2014-038)	<u>Officer #1</u> • Conduct Unbecoming an Officer	OIPA notified BPD, which initiated an investigation.	39
3 (OIPA #14-35) (IA2014-051)	<u>Employee #1</u> • Policy/Procedure	OIPA notified BPD, which initiated an investigation.	24
4 (OIPA #14-37) (IA2014-059)	<u>Officer #1</u> • Unnecessary or Excessive Use of Force • Arrest or Detention • Search/Seizure • Conduct Unbecoming an Officer  <u>Officer #2</u> • Arrest or Detention • Search/Seizure • Conduct Unbecoming an Officer  <u>Officer #3</u> • Arrest or Detention • Conduct Unbecoming an Officer	OIPA initiated an investigation and informed BPD. It was subsequently determined that the matter did not appear to involve any BPD employees, which led BPD to reclassify the incident as an Inquiry.	19
5 (OIPA #14-38) (IA2014-055)	<u>Officer #1</u> • Performance of Duty	OIPA notified BPD, which initiated an investigation.	12

During the month of April 2014, 5 Citizen Complaints were received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-040)	<u>Officer #1</u> • Courtesy	BPD initiated an investigation.	39
2 (IA2014-047)	<u>Officer #1</u> • Force  <u>Officer #2</u> • Force  <u>Officer #3</u> • Policy/Procedure  <u>Employee #1</u> • Policy/Procedure	BPD initiated an investigation.	33
3 (IA2014-053)	<u>Officer #1</u> • Force	BPD initiated an investigation.	26
4 (IA2014-050)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	22
5 (IA2014-052)	<u>Officer #1</u> • Bias-Based Policing • Arrest or Detention  <u>Officer #2</u> • Bias-Based Policing • Arrest or Detention  <u>Officer #3</u> • Bias-Based Policing • Arrest or Detention	BPD initiated an investigation.	17

During the month of April 2014, 1 Administrative Investigation was initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2014-057)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Truthfulness</li> <li>• Performance of Duty</li> <li>• Conduct Unbecoming an Officer</li> <li>• Supervision</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Truthfulness</li> </ul> <u>Officer #3</u> <ul style="list-style-type: none"> <li>• Truthfulness</li> </ul> <u>Officer #4</u> <ul style="list-style-type: none"> <li>• Truthfulness</li> </ul> <u>Officer #5</u> <ul style="list-style-type: none"> <li>• Truthfulness</li> </ul>	BART PD initiated an investigation.	12

During the month of April 2014, 6 Comments of Non-Complaint were received by BPD:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2014-042)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul>	BPD initiated an investigation.	34
2 (IA2014-043)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Performance of Duty</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	34
3 (IA2014-045)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Courtesy</li> </ul>	BPD initiated an investigation.	33
4 (IA2014-046)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Courtesy</li> </ul>	BPD initiated an investigation.	33



5 (IA2014-049)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	27
6 (IA2014-048)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	26

### **Complaints/Investigations Initiated During a Previous Reporting Period**

#### **Actions Taken/# of Days Elapsed**

During the month of March 2014, 1 previously unreported Administrative Investigation was initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2014-060)	<u>Officer #1</u> • Policy/Procedure	BART PD initiated an investigation.	48

### **Complaints/Investigations Concluded During Reporting Period**

#### **Dispositions/# of Days Elapsed**

During the month of April 2014, 1 Citizen Complaint was concluded by OIPA:

Complaint # (IA Case #)	Nature of Allegations	Disposition and Recommended Corrective Action <sup>9</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #13-49)*	Officers used unnecessary force by pointing a weapon and pulling complainant down the stairs. Officers also unjustifiably searched a residence, mishandled complainant's property, were rude, and did not activate their recording devices.	<u>Officer #1</u> • Unnecessary or Excessive Use of Force – Unfounded • Search or Seizure – Exonerated • Conduct Unbecoming an Officer – Unfounded • Courtesy – Unfounded	237	209

		<p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force (Counts 1 and 2) – Unfounded</li> <li>• Search or Seizure – Exonerated</li> <li>• Courtesy – Unfounded</li> </ul> <p><u>Officer #3</u></p> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force – Unfounded</li> <li>• Search or Seizure – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Not Sustained</li> <li>• Policy/Procedure – Sustained (Oral Counseling)</li> </ul> <p><u>Officer #4</u></p> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force (Count 1) – Unfounded</li> <li>• Unnecessary or Excessive Use of Force (Count 2) – Not Sustained</li> <li>• Search or Seizure – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Not Sustained</li> <li>• Policy/Procedure – Not Sustained</li> </ul>		
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		<u>Officer #5</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force – Not Sustained</li> <li>• Search or Seizure – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Unfounded</li> <li>• Policy/Procedure – Sustained (Oral Counseling)</li> </ul>		
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\*As BPD is also investigating this case, it will not be taken out of the “Number of Open Cases” column in the Quantitative Report on Page 2 until their findings have also been finalized.

During the month of April 2014, 5 Citizen Complaints were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition <sup>10</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-115)	Officers pushed complainant and racially profiled him during a contact for fare evasion.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> </ul>	232	192
2 (IA2013-098)	Officer did not take enforcement action against complainant, who potentially fare-evaded, did not follow a BART station agent’s request to issue a citation, did not document the contact with complainant, and did not activate his recording device.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty (Counts 1 and 2) – Sustained</li> <li>• Performance of Duty (Count 3) – Not Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul>	217	195

3 (IA2013-129)	Officer used excessive force during a contact for fare evasion.	<u>Officer #1</u> • Force – Administrative Closure <sup>11</sup>	167	147
4 (IA2014-009)	Officer made inappropriate comments to complainant.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Administrative Closure	102	67
5 (IA2013-111)	Officer did not allow complainant to correct a fare evasion by adding funds to his ticket and gave incorrect information regarding a court date.	<u>Officer #1</u> • Arrest/Detention – Exonerated • Policy/Procedure – Sustained	199	171

During the month of April 2014, 1 Administrative Investigation was completed by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2014-020)	Officers were rude when telling complainant he needed to move his car.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral <sup>12</sup>  <u>Officer #2</u> • Conduct Unbecoming an Officer – Supervisory Referral	73	33

During the month of April 2014, 9 Comments of Non-Complaint were addressed by BPD:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2014-023)	Officer drove in an unsafe manner.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	68	33

2 (IA2014-030)	Officer was rude to complainant during an arrest.	<u>Officer #1</u> • Courtesy – Supervisory Referral	65	35
3 (IA2014-027)	Officer pressured complainant not to press charges against another person.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	53	20
4 (IA2014-038)	Officer was abrasive to complainant during a detention.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	39	6
5 (IA2014-042)	Employee drove in an unsafe manner and violated a traffic law.	<u>Employee #1</u> • Policy/Procedure – Supervisory Referral	34	16
6 (IA2014-043)	Officers did not take action against another party in a dispute with the complainant and were laughing with the other party.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral • Conduct Unbecoming an Officer – Supervisory Referral  <u>Officer #2</u> • Performance of Duty – Supervisory Referral • Conduct Unbecoming an Officer – Supervisory Referral	34	21
7 (IA2014-045)	Officer had an aggressive attitude toward a detainee.	<u>Officer #1</u> • Courtesy – Supervisory Referral	33	7
8 (IA2014-046)	Officer was aggressive and did not listen to complainant's explanation regarding an instance of possible fare evasion.	<u>Officer #1</u> • Courtesy – Supervisory Referral	33	13
9 (IA2014-049)	Officer did not explain why complainant was being handcuffed or arrested.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	27	3

## Discipline Issued During Reporting Period

### Sustained Allegations/Resulting Action Taken by BPD

During the month of April 2014, BART PD 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 did not detain an individual for further investigation as they should have.	<u>Officer #1</u> • Performance of Duty  <u>Officer #2</u> • Performance of Duty	<u>Officer #1</u> Letter of Discussion  <u>Officer #2</u> Informal Counseling

### Additional Notes

In accordance with the BART Citizen Oversight 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 conversation with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	10
Complainant-Initiated Appeals	0
Investigations Being Monitored	16
Investigations Reviewed During Current Month	34*

\*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.

<sup>1</sup> 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 OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> 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)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

<sup>3</sup> 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.

<sup>4</sup> 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 Citizen Review Board. It therefore includes

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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.

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

<sup>8</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

<sup>9</sup> OIPA defines its investigative findings as follows:

(a) Unfounded – It was determined to be more likely than not that the misconduct alleged by the complainant did not occur.

(b) Exonerated – It was determined to be more likely than not that the conduct alleged by the complainant did occur, but that such conduct did not violate any applicable law or policy.

(c) Sustained – It was determined to be more likely than not that the misconduct alleged by the complainant did occur.

(d) Not-Sustained – Based on the available evidence, it could not be determined whether the misconduct alleged by the complainant did or did not occur.

<sup>10</sup> In defining the "Disposition of Internal Investigations," the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded – The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated – The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained – The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained – The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>11</sup> 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.

<sup>12</sup> A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

# Office of the Independent Police Auditor

## Monthly Report

May 2014



June 9, 2014



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 May 1, 2014 through May 31, 2014.<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
May 2013	7	42	0	2	0
June 2013	8	38	0	0	0
July 2013	15	44	1	1	0
August 2013	17	43	3	0	0
September 2013	14	44	0	0	0
October 2013	16	50	1	0	0
November 2013	18	58	0	0	0
December 2013	14	62	0	0	0
January 2014	9	53	0	0	0
February 2014	11	55	0	0	0
March 2014	19	65	0	0	0
April 2014	18	68	1	0	0
May 2014	12*	57	0	0	0

\*This number includes two cases that were initiated in a prior reporting period but not previously reported on. They are therefore included in this report. In order to avoid double-counting, it does not include a case received in May by OIPA that had already been received by the BART Police Department (BPD) during a previous month.

**Types of Cases Filed**

Citizen Complaints	5
Administrative Investigations	2
Comments of Non-Complaint	5
<b>TOTAL</b>	<b>12</b>

**Citizen Complaints Received per Department**

OIPA	2*
BART Police Department	3
<b>TOTAL</b>	<b>5</b>

\*These two cases appear to have been received, independently, by both OIPA and BPD. They are included only in OIPA's total, however, in order to avoid being double-counted.

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of May 2014, 2 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations <sup>7</sup>	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>8</sup>
1 (OIPA #14-39) (IA2014-062)	<u>Officer #1</u> • Performance of Duty	OIPA notified BPD, which initiated an investigation.	28
2 (OIPA #14-41) (IA2014-063)	<u>Officer #1</u> • Courtesy	OIPA notified BPD, which initiated an investigation.	21

During the month of May 2014, 2 Citizen Complaints were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-066)	<u>Officer #1</u> • Force • Conduct Unbecoming an Officer  <u>Officer #2</u> • Force • Conduct Unbecoming an Officer  <u>Officer #3</u> • Force • Conduct Unbecoming an Officer  <u>Officer #4</u> • Force • Conduct Unbecoming an Officer  <u>Officer #5</u> • Force • Conduct Unbecoming an Officer	BPD initiated an investigation.	25

2 (IA2014-069)	<u>Officer #1</u> • Force	BPD initiated an investigation.	14
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During the month of May 2014, 2 Administrative Investigations were initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2014-061)	<u>Officer #1</u> • Policy/Procedure  <u>Officer #2</u> • Policy/Procedure	BPD initiated an investigation.	33
2 (IA2014-067)	<u>Officer #1</u> • Force	BPD initiated an investigation.	17

During the month of May 2014, 4 Comments of Non-Complaint were received by BPD:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2014-054)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	39
2 (IA2014-056)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	38
3 (IA2014-058)	<u>Officer #1</u> • Courtesy	BPD initiated an investigation.	38
4 (IA2014-064)	<u>Employee #1</u> • Performance of Duty	BPD initiated an investigation.	22

### **Complaints/Investigations Initiated During a Previous Reporting Period**

#### **Actions Taken/# of Days Elapsed**

During the month of April 2014, 1 previously unreported Citizen Complaint was received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-068)	<u>Officer #1</u> • Policy/Procedure  <u>Employee #1</u> • Policy/Procedure	BPD initiated an investigation.	41

During the month of April 2014, 1 previously unreported Comment of Non-Complaint was received by BPD:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2014-065)	<u>Officer #1</u> • Courtesy	BPD initiated an investigation.	59

**Complaints/Investigations Concluded During Reporting Period**

Dispositions/# of Days Elapsed

During the month of May 2014, 12 Citizen Complaints were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition <sup>9</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-101)	Officer contacted complainant because of his race and improperly issued him a citation.	<u>Officer #1</u> • Bias-Based Policing – Unfounded • Arrest or Detention – Exonerated	245	210
2 (IA2013-103)	Officer used excessive force during arrest of complainant.	<u>Officer #1</u> • Force – Exonerated	247	216
3 (IA2013-105)	Officers were not properly supervised and were neglecting their duty during a local community event. They behaved inappropriately toward participants of the event, and one officer did not provide his identification to complainant.	<u>Officer #1</u> • Supervisor Responsibility – Exonerated • Performance of Duty – Exonerated • Conduct Unbecoming an Officer – Unfounded • Policy/Procedure – Unfounded  <u>Officer #2</u> • Performance of Duty – Exonerated • Conduct Unbecoming an Officer – Unfounded	230	212

		<u>Officer #3</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>		
4 (IA2013-106)	Officer improperly detained and arrested complainant, improperly touched complainant during a search, and did not provide his identification to complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest – Unfounded</li> <li>• Detention – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Policy/Procedure – Unfounded</li> </ul>	230	195
5 (IA2013-107)	Officer improperly cited complainant for fare evasion.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest/Detention – Exonerated</li> </ul>	230	195
6 (IA2013-109)	Officers improperly detained complainant based on his race and used excessive force. One officer did not record the incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Arrest/Detention – Exonerated</li> <li>• Policy/Procedure – Sustained</li> </ul>	237	213
7 (IA2013-114)	Officers improperly arrested complainant and her husband in front of their child.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> </ul>	216	185
8 (IA2013-121)	Officer improperly cited complainant for fare evasion and treated him aggressively due to his ethnicity. Officer did not record the incident	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	206	188

	as required.	<ul style="list-style-type: none"> <li>• Policy/Procedure – Sustained</li> </ul>		
9 (IA2013-124)	Officers improperly detained complainant for fare evasion and caused a loss of his property.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	201	189
10 (IA2013-130)*	While attempting to find a suspect on a train, officers improperly focused their attention on complainant due to her race.	<u>Unknown Officers</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Administratively Closed<sup>10</sup></li> </ul>	182	170
11 (IA2013-135)*	Officer detained complainant due to her ethnicity and improperly cited her for fare evasion. Officer was discourteous and unprofessional during detention.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Arrest or Detention – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Unfounded</li> </ul>	171	145
12 (IA2014-001)	Officers did not take a crime report from complainant because of his race.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Not Sustained</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Not Sustained</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	159	141

\*As OIPA is also investigating this case, it will not be taken out of the "Number of Open Cases" column in the Quantitative Report on Page 2 until OIPA's findings have also been finalized.

During the month of May 2014, 5 Comments of Non-Complaint were addressed by BPD:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2014-065)	Officer was rude to complainant on the phone.	<u>Officer #1</u> • Courtesy – Supervisory Referral <sup>11</sup>	59	48
2 (IA2014-048)	Officer required complainant to leave train station when complainant's tickets were deemed invalid.	<u>Officer #1</u> • Policy/Procedure – Supervisory Referral	54	43
3 (IA2014-054)	Employee did not respond when complainant attempted to discuss a parking citation issued by employee.	<u>Employee #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	39	11
4 (IA2014-056)	Officer drove a police vehicle unsafely.	<u>Officer #1</u> • Policy/Procedure – Supervisory Referral	38	17
5 (IA2014-058)	Officer was rude and did not let complainant explain herself when being cited for using a cell phone while driving.	<u>Officer #1</u> • Courtesy – Supervisory Referral	38	17

Also during the month of May 2014, the BART Police Department closed 5 cases as Inquiries. In IA2014-051, IA2014-029, and IA2014-037, the sole concern at issue was a disputed parking citation. In IA2014-022 and IA2014-040, it was determined that no BPD employees were involved. As such, these 5 cases were removed from the pending total of open cases.

**Complaints/Investigations Concluded During Previous Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of March 2014, 1 Citizen Complaint was concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2014-024)*	Officers did not properly investigate an incident that resulted in the death of complainant's brother.	Case referred to BART General Manager for further action.	95	21

\*As OIPA is also investigating this case, it will not be taken out of the "Number of Open Cases" column in the Quantitative Report on Page 2 until OIPA's findings have also been finalized.

During the month of April 2014, 1 Citizen Complaint was concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2014-039)	Officer improperly allowed an individual to park in a restricted location.	Case referred to BART General Manager for further action.	73	13

During the month of April 2014, 2 Comments of Non-Complaint were addressed by BPD:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2014-044)	Employee improperly issued a parking citation.	<u>Employee #1</u> • Policy/Procedure – Supervisory Referral	98	39
2 (IA2014-035)	Officer improperly directed complainant to move his bicycle from a particular train car.	<u>Officer #1</u> • Policy/Procedure – Supervisory Referral	72	13



## Discipline Issued During Reporting Period

### Sustained Allegations/Resulting Action Taken by BPD

During the month of May 2014, BART PD 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 take enforcement action against a person who potentially fare-evaded, did not document contact with the person, and did not activate his recording device.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty (2 counts)</li> <li>• Policy/Procedure</li> </ul>	<u>Officer #1</u> Letter of Discussion
2	Officer gave complainant incorrect information regarding a court date.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul>	<u>Officer #1</u> Informal Counseling

### Additional Notes

In accordance with the BART Citizen Oversight 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 conversation with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	11
Complainant-Initiated Appeals	0
Investigations Being Monitored	16
Investigations Reviewed During Current Month	36*

\*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.

<sup>1</sup> 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 OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> 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

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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)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

<sup>3</sup> 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.

<sup>4</sup> 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 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.

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

<sup>8</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

<sup>9</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded – The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated – The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained – The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained – The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>10</sup> 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.

<sup>11</sup> A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

# Office of the Independent Police Auditor

## Monthly Report

June 2014



July 14, 2014

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 1, 2014 through June 30, 2014.<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
June 2013	8	38	0	0	0
July 2013	15	44	1	1	0
August 2013	17	43	3	0	0
September 2013	14	44	0	0	0
October 2013	16	50	1	0	0
November 2013	18	58	0	0	0
December 2013	14	62	0	0	0
January 2014	9	53	0	0	0
February 2014	11	55	0	0	0
March 2014	19	65	0	0	0
April 2014	18	68	1	0	0
May 2014	12	57	0	0	0
June 2014	11*	60	0	0	0

\*This number includes one case that was initiated in a prior reporting period but not previously reported on. It is therefore included in this report.

**Types of Cases Filed**

Citizen Complaints	10
Administrative Investigations	0
Comments of Non-Complaint	1
<b>TOTAL</b>	<b>11</b>

**Citizen Complaints Received per Department**

OIPA	1
BART Police Department	9*
<b>TOTAL</b>	<b>10</b>

\*This number includes one complaint that was initially brought to OIPA. However, as the complaint was initiated by an individual who was neither a victim of, nor a witness to, the alleged misconduct, OIPA was required to refer it to BPD for proper intake processing.

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of June 2014, 1 Citizen Complaint was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations <sup>7</sup>	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>8</sup>
1 (OIPA #14-47) (IA2014-081)	<u>Unidentified Officer(s)</u> • Service Review	OIPA notified BPD, which initiated an investigation.	27

During the month of June 2014, 8 Citizen Complaints were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-070)	<u>Officer #1</u> • Force  <u>Officer #2</u> • Force	BPD initiated an investigation.	41
2 (IA2014-071)	<u>Officer #1</u> • Arrest or Detention • Performance of Duty • Conduct Unbecoming an Officer	BPD initiated an investigation.	41
3 (IA2014-072)	<u>Officer #1</u> • Arrest or Detention • Conduct Unbecoming an Officer • Policy/Procedure	BPD initiated an investigation.	35
4 (IA2014-075)	<u>Officer #1</u> • Force  <u>Officer #2</u> • Force	BPD initiated an investigation.	32
5 (IA2014-076)	<u>Officer #1</u> • Force • Performance of Duty	BPD initiated an investigation.	31
6 (IA2014-077)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	19

7 (IA2014-078)	<u>Officer #1</u> • Force • Search or Seizure	BPD initiated an investigation.	24
8 (IA2014-081)	<u>Officer #1</u> • Force	BPD initiated an investigation.	20

During the month of June 2014, 1 Comment of Non-Complaint was received by BPD:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2014-073)	<u>Officer #1</u> • Arrest or Detention • Conduct Unbecoming an Officer  <u>Officer #1</u> • Arrest or Detention • Conduct Unbecoming an Officer	BPD initiated an investigation.	33

### **Complaints/Investigations Initiated During a Previous Reporting Period**

#### **Actions Taken/# of Days Elapsed**

During the month of May 2014, 1 previously unreported Citizen Complaint was received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-074)	<u>Unidentified Employee #1</u> • Courtesy	BPD initiated an investigation.	49

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of June 2014, 3 Citizen Complaints were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition <sup>9</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-118)	Officer's demeanor toward complainant was rude. Officer did not document contact with complainant as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Policy/Procedure (Count 1) – Sustained</li> <li>• Policy/Procedure (Count 2) – Sustained</li> </ul>	244	210
2 (IA2013-126)	Officer harassed complainant, who had insufficient funds available for his travel on BART.	<u>Unidentified Officer</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Administratively Closed<sup>10</sup></li> </ul>	238	204
3 (IA2013-136)*	Officer removed complainant from a BART train without justification and used excessive force in doing so.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> <li>• Detention – Exonerated</li> </ul>	206	168

\*As OIPA is also investigating this case, it will not be taken out of the "Number of Open Cases" column in the Quantitative Report on Page 2 until OIPA's findings have also been finalized.

During the month of June 2014, 1 Administrative Investigation was completed by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2014-006)	Officer used excessive force during an arrest.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Administratively Closed</li> </ul>	194	155

During the month of June 2014, 4 Comments of Non-Complaint were addressed by BPD:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2014-018)	Officer unnecessarily issued complainant a citation.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral <sup>11</sup>	137	100
2 (IA2014-064)	Employee refused to provide complainant with information about a case.	<u>Employee #1</u> • Performance of Duty – Supervisory Referral	57	32
3 (IA2014-063)	Officer was rude while issuing a citation to complainant.	<u>Officer #1</u> • Courtesy – Supervisory Referral	56	15
4 (IA2014-073)	Officers targeted complainants and detained them without justification.	<u>Officer #1</u> • Arrest or Detention – Supervisory Referral • Conduct Unbecoming an Officer – Supervisory Referral  <u>Officer #2</u> • Arrest or Detention – Supervisory Referral • Conduct Unbecoming an Officer – Supervisory Referral	33	8

**Discipline Issued During Reporting Period**

**Sustained Allegations/Resulting Action Taken by BPD**

During the month of June 2014, BART PD 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 activate his recording device.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling



2	Officer did not activate his recording device.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
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**Additional Notes**

In accordance with the BART Citizen Oversight 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 conversation with BPD’s Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	11
Complainant-Initiated Appeals	0
Investigations Being Monitored	17
Investigations Reviewed During Current Month	20*

\*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.

<sup>1</sup> 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 OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> 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)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

<sup>3</sup> 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.

<sup>4</sup> 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 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.

<sup>5</sup> 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).

<sup>6</sup> 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).

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<sup>7</sup> In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

<sup>8</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

<sup>9</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded – The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated – The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained – The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained – The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>10</sup> 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.

<sup>11</sup> A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

# Office of the Independent Police Auditor

## Monthly Report

July 2014



August 11, 2014

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 July 1, 2014 through July 31, 2014.<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
July 2013	15	44	1	1	0
August 2013	17	43	3	0	0
September 2013	14	44	0	0	0
October 2013	16	50	1	0	0
November 2013	18	58	0	0	0
December 2013	14	62	0	0	0
January 2014	9	53	0	0	0
February 2014	11	55	0	0	0
March 2014	19	65	0	0	0
April 2014	18	68	1	0	0
May 2014	12	57	0	0	0
June 2014	11	61 <sup>†</sup>	0	0	0
July 2014	10 <sup>*</sup>	67	0	0	1

<sup>†</sup>Though correctly reported on in June 2014, this number inadvertently did not include one specific case. It has therefore been adjusted upward by 1.

<sup>\*</sup>This number includes one case that was initiated in a prior reporting period but not previously reported on. It is therefore included in this report.

**Types of Cases Filed**

Citizen Complaints	9
Administrative Investigations	1
Comments of Non-Complaint	0
<b>TOTAL</b>	<b>10</b>

**Citizen Complaints Received per Department**

OIPA	4
BART Police Department	5
<b>TOTAL</b>	<b>9</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of July 2014, 4 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations <sup>7</sup>	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>8</sup>
1 (OIPA #14-49) (IA2014-083)	<u>Unidentified Officer(s)</u> • Service Review	OIPA notified BPD, which initiated an investigation.	35
2 (OIPA #14-50) (IA2014-086)	<u>Officer #1</u> • Conduct Unbecoming an Officer	OIPA notified BPD, which initiated an investigation.	25
3 (OIPA #14-51) (IA2014-087)	<u>Officer #1</u> • Conduct Unbecoming an Officer	OIPA notified BPD, which initiated an investigation.	21
4 (OIPA #14-53)	<u>Officer #1</u> • Excessive Use of Force  <u>Officer #2</u> • Excessive Use of Force	OIPA initiated an investigation and also notified BPD.	13

During the month of July 2014, 4 Citizen Complaints were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-079)	<u>Officer #1</u> • Force	BPD initiated an investigation.	41
2 (IA2014-084)	<u>Officer #1</u> • Force • Conduct Unbecoming an Officer  <u>Officer #2</u> • Force • Conduct Unbecoming an Officer	BPD initiated an investigation.	34
3 (IA2014-088)	<u>Officer #1</u> • Force	BPD initiated an investigation.	18
4 (IA2014-089)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	20

During the month of July 2014, 1 Administrative Investigation was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2014-082)	<u>Employee #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Policy/Procedure</li> </ul>	BPD initiated an investigation.	35

**Complaints/Investigations Initiated During a Previous Reporting Period**

Actions Taken/# of Days Elapsed

During the month of June 2014, 1 previously unreported Citizen Complaint was received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-085)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	42

**Complaints/Investigations Concluded During Reporting Period**

Dispositions/# of Days Elapsed

During the month of July 2014, 3 Citizen Complaints were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition <sup>9</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-116)	Officer's court testimony was dishonest, and officer was inappropriately unfamiliar with the case at issue when discussing it in court.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Truthfulness – Not Sustained</li> <li>• Performance of Duty – Sustained</li> </ul>	277	242

<p>2 (IA2013-143)</p>	<p>Officers unjustifiably detained complainant, used excessive force in taking complainant into custody, and embarrassed complainant by doing so. One officer did not record incident as required.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Detention/Arrest – Exonerated</li> <li>• Force – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Detention/Arrest – Exonerated</li> <li>• Force – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul> <p><u>Officer #3</u></p> <ul style="list-style-type: none"> <li>• Detention/Arrest – Exonerated</li> <li>• Force – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Policy (AXON Flex) – Sustained</li> </ul>	<p>225</p>	<p>190</p>
<p>3 (IA2014-004)*</p>	<p>Officers unjustifiably detained complainant and used excessive force in taking complainant into custody. One officer did not record incident as required.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Arrest/Detention – Exonerated</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Arrest/Detention – Exonerated</li> </ul> <p><u>Officer #3</u></p> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> <li>• AXON Flex Camera – Sustained</li> </ul>	<p>207</p>	<p>172</p>

\*As OIPA is also investigating this case, it will not be taken out of the "Number of Open Cases" column in the Quantitative Report on Page 2 until OIPA's findings have also been finalized.

During the month of July 2014, 1 Administrative Investigation was completed by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2013-141)	While off-duty, officer was intoxicated and became involved in an altercation.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Not Sustained	238	197

During the month of July 2014, 1 Comment of Non-Complaint was addressed by BPD:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2014-074)	Employee was discourteous when requesting that complainant verify disability status on one particular occasion.	<u>Employee #1</u> • Courtesy – Supervisory Referral <sup>10</sup>	77	46

**Discipline Issued During Reporting Period**

**Sustained Allegations/Resulting Action Taken by BPD**

During the month of July 2014, BART PD 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 document or record a law enforcement contact as required.	<u>Officer #1</u> • Policy/Procedure (2 counts)	<u>Officer #1</u> Letter of Discussion



## Additional Notes

In accordance with the BART Citizen Oversight 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 conversation with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	12
Complainant-Initiated Appeals	0
Investigations Being Monitored	18
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.

<sup>1</sup> 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 OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> 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)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

<sup>3</sup> 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.

<sup>4</sup> 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 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.

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

<sup>8</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

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<sup>9</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded – The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated – The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained – The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained – The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>10</sup> A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

# Office of the Independent Police Auditor

## Monthly Report

August 2014



September 8, 2014

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 August 1, 2014 through August 31, 2014.<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
August 2013	17	43	3	0	0
September 2013	14	44	0	0	0
October 2013	16	50	1	0	0
November 2013	18	58	0	0	0
December 2013	14	62	0	0	0
January 2014	9	53	0	0	0
February 2014	11	55	0	0	0
March 2014	19	65	0	0	0
April 2014	18	68	1	0	0
May 2014	12	57	0	0	0
June 2014	11	61	0	0	0
July 2014	10	67	0	0	1
August 2014	20*	75 <sup>†</sup>	2	0	0

\*This number includes three cases that were initiated in a prior reporting period but not previously reported on. They are therefore included in this report.

†This number has been adjusted down by 1 to account for a case that was previously reported on as completed by OIPA, but had not yet been finalized by BPD at that time; it has since been finalized, and has therefore been removed from this total.

**Types of Cases Filed**

Citizen Complaints	12
Administrative Investigations	3
Comments of Non-Complaint	5
<b>TOTAL</b>	<b>20</b>

**Citizen Complaints Received per Department**

OIPA	2
BART Police Department	10
<b>TOTAL</b>	<b>12</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of August 2014, 2 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations <sup>7</sup>	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>8</sup>
1 (OIPA #14-58) (IA2014-109)	<u>Officer #1</u> • Performance of Duty • Courtesy	OIPA notified BPD, which initiated an investigation.	11
2 (OIPA #14-59) (IA2014-108)	<u>Officer #1</u> • Performance of Duty	OIPA notified BPD, which initiated an investigation.	11

During the month of August 2014, 8 Citizen Complaints were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-090)	<u>Officer #1</u> • Bias-Based Policing • Conduct Unbecoming an Officer	BPD initiated an investigation.	34
2 (IA2014-091)	<u>Officer #1</u> • Force • Conduct Unbecoming an Officer	BPD initiated an investigation.	32
3 (IA2014-092)	<u>Officer #1</u> • Bias-Based Policing • Performance of Duty • Conduct Unbecoming an Officer	BPD initiated an investigation.	31
4 (IA2014-096)	<u>Officer #1</u> • Force  <u>Officer #2</u> • Force	BPD initiated an investigation.	32
5 (IA2014-099)	<u>Officer #1</u> • Bias-Based Policing	BPD initiated an investigation.	23
6 (IA2014-101)	<u>Employee #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	25
7 (IA2014-103)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	18

8 (IA2014-106)	<u>Officer #1</u> • Force	BPD initiated an investigation.	16
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During the month of August 2014, 2 Administrative Investigations were initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2014-100)	<u>Officer #1</u> • Arrest or Detention  <u>Officer #2</u> • Arrest or Detention	BPD initiated an investigation.	20
2 (IA2014-105)	<u>Officer #1</u> • Arrest or Detention	BPD initiated an investigation.	22

During the month of August 2014, 5 Comments of Non-Complaint were received by BPD:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2014-093)	<u>Officer #1</u> • Courtesy	BPD initiated an investigation.	35
2 (IA2014-098)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	23
3 (IA2014-102)	<u>Officer #1</u> • Courtesy  <u>Officer #2</u> • Courtesy	BPD initiated an investigation.	18
4 (IA2014-107)	<u>Employee #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	11
5 (IA2014-110)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	10

**Complaints/Investigations Initiated During a Previous Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of April 2014, 1 previously unreported Citizen Complaint was received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-104)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Arrest or Detention</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Arrest or Detention</li> </ul>	BPD initiated an investigation.	136

During the month of July 2014, 1 previously unreported Citizen Complaint was received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-094)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> </ul>	BPD initiated an investigation.	40

During the month of July 2014, 1 previously unreported Administrative Investigation was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2014-097)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	43

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of August 2014, 2 Citizen Complaints were concluded by OIPA:

Complaint # (IA Case #)	Nature of Allegations	Disposition and Recommended Corrective Action <sup>9</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #13-81)*	Officer improperly singled out African-Americans when searching for a subject and referred to complainant using the wrong gender.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Profiling – Unfounded</li> <li>• Conduct Unbecoming an Officer – Exonerated</li> </ul>	273	239
2 (OIPA #13-88)	Officer improperly issued a citation for fare evasion to complainant based on her ethnicity and made her feel like a criminal.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Profiling – Unfounded</li> <li>• Arrest or Detention – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	262	236

\*As BPD is also investigating this case, it will not be taken out of the “Number of Open Cases” column in the Quantitative Report on Page 2 until BPD’s findings have also been finalized.

During the month of August 2014, 7 Citizen Complaints were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition <sup>10</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-137)	Officers improperly detained complainant on the basis that he was a danger to himself or others.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> </ul>	261	249



<p>2 (IA2013-138)</p>	<p>Officer #1 did not sufficiently investigate a crime reported by complainant and did not record involvement in incident as required. Officer #2 did not provide sufficient instruction to Officer #1.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Unfounded</li> <li>• Policy/Procedure – Not Sustained</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Failure to Supervise – Unfounded</li> </ul>	<p>269</p>	<p>237</p>
<p>3 (IA2014-002)</p>	<p>Complainant was improperly issued a citation due to a problem with the parking verification system.</p>	<p><u>BART Police Department</u></p> <ul style="list-style-type: none"> <li>• Service Review<sup>11</sup></li> </ul>	<p>244</p>	<p>232</p>
<p>4 (IA2014-007)</p>	<p>Officers took too long to respond to complainant’s call for service, did not allow complainant to assist in the search for a subject, and did not make sufficient effort to locate the subject.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty (Count 1) – Exonerated</li> <li>• Performance of Duty (Count 2) – Exonerated</li> <li>• Performance of Duty (Count 3) – Unfounded</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty (Count 1) – Exonerated</li> <li>• Performance of Duty (Count 2) – Exonerated</li> <li>• Performance of Duty (Count 3) – Unfounded</li> </ul>	<p>221</p>	<p>208</p>
<p>5 (IA2014-014)</p>	<p>Employee was rude in directing complainant not to sit on an escalator rail inside a station.</p>	<p><u>Employee #1</u></p> <ul style="list-style-type: none"> <li>• Courtesy – Not Sustained</li> </ul>	<p>210</p>	<p>177</p>
<p>6 (IA2014-016)*</p>	<p>Officer drove quickly in front of complainant, a pedestrian, in a BART parking lot in a manner that forced complainant to stop walking.</p>	<p><u>Unknown Employee</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> </ul>	<p>201</p>	<p>187</p>

7 (IA2014-021)	Complainant, a pedestrian, was nearly struck by one officer's vehicle and was verbally threatened by another officer after yelling at the first officer.	<u>Unknown Employees</u> • Conduct Unbecoming an Officer – Not Sustained	193	161
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\*As OIPA is also investigating this case, it will not be taken out of the "Number of Open Cases" column in the Quantitative Report on Page 2 until OIPA's findings have also been finalized.

During the month of August 2014, 4 Comments of Non-Complaint were addressed by BPD:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2014-087)	Officer was rude in accusing complainant of wasting resources by requesting medical assistance.	<u>Officer #1</u> • Courtesy – Supervisory Referral <sup>12</sup>	49	31
2 (IA2014-089)	Officer was driving in excess of the speed limit.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	48	14
3 (IA2014-093)	Officer was insensitive in telling complainant he agreed with the issuance of a citation to complainant by another agency.	<u>Officer #1</u> • Courtesy – Supervisory Referral	35	12
4 (IA2014-098)	Officer was rude when complainant attempted to verify officer's admittance to a commercial facility.	<u>Officer #1</u> • Courtesy – Supervisory Referral	23	12

**Discipline Issued During Reporting Period**

**Sustained Allegations/Resulting Action Taken by BPD**

During the month of August 2014, BART PD 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 did not document or record a law enforcement contact as required.	<u>Officer #1</u> • Policy/Procedure  <u>Officer #2</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling  <u>Officer #2</u> Informal Counseling

**Additional Notes**

In accordance with the BART Citizen Oversight 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 conversation with BPD’s Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	10
Complainant-Initiated Appeals	0
Investigations Being Monitored	11
Investigations Reviewed During Current Month	33*

\*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.

<sup>1</sup> 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 OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> 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)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

<sup>3</sup> 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.

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<sup>4</sup> 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 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.

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

<sup>8</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

<sup>9</sup> OIPA defines its investigative findings as follows:

(a) Unfounded – It was determined to be more likely than not that the misconduct alleged by the complainant did not occur.

(b) Exonerated – It was determined to be more likely than not that the conduct alleged by the complainant did occur, but that such conduct did not violate any applicable law or policy.

(c) Sustained – It was determined to be more likely than not that the misconduct alleged by the complainant did occur.

(d) Not-Sustained – Based on the available evidence, it could not be determined whether the misconduct alleged by the complainant did or did not occur.

<sup>10</sup> In defining the "Disposition of Internal Investigations," the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded – The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated – The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained – The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained – The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>11</sup> A service review refers to an instance when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.

<sup>12</sup> A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

# Office of the Independent Police Auditor

Monthly Report

September 2014



October 13, 2014

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 September 1, 2014 through September 30, 2014.<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
September 2013	14	44	0	0	0
October 2013	16	50	1	0	0
November 2013	18	58	0	0	0
December 2013	14	62	0	0	0
January 2014	9	53	0	0	0
February 2014	11	55	0	0	0
March 2014	19	65	0	0	0
April 2014	18	68	1	0	0
May 2014	12	57	0	0	0
June 2014	11	61	0	0	0
July 2014	10	67	0	0	1
August 2014	20	75	2	0	0
September 2014	12	72	0	0	0

**Types of Cases Filed**

Citizen Complaints	11
Administrative Investigations	0
Comments of Non-Complaint	1
<b>TOTAL</b>	<b>12</b>

**Citizen Complaints Received per Department**

OIPA	2
BART Police Department	9
<b>TOTAL</b>	<b>11</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of September 2014, 2 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations <sup>7</sup>	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>8</sup>
1 (OIPA #14-62)	<u>Unknown Employee</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Conduct Unbecoming an Officer</li> </ul>	OIPA notified BPD, which determined the matter involving BPD was limited to a parking or infraction citation.*	24
2 (OIPA #14-64) (IA2014-118)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Courtesy</li> </ul>	OIPA notified BPD, which initiated an investigation.	19

\*As BPD's action in this case has concluded, it is being counted amongst those closed during September. Notably, BPD determined that the allegation involving Conduct Unbecoming an Officer involved only non-BPD employees.

During the month of September 2014, 9 Citizen Complaints were received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-111)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul>	BPD initiated an investigation.	35
2 (IA2014-112)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Supervision</li> <li>• Performance of Duty</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	33
3 (IA2014-113)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Policy/Procedure</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	32

4 (IA2014-116)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Bias-Based Policing</li> <li>• Arrest or Detention</li> <li>• Search or Seizure</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Arrest or Detention</li> </ul>	BPD initiated an investigation.	29
5 (IA2014-114)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	28
6 (IA2014-115)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Policy/Procedure</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	28
7 (IA2014-117)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest or Detention</li> <li>• Courtesy</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Arrest or Detention</li> </ul>	BPD initiated an investigation.	18
8 (IA2014-120)	<u>Employee #1*</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	18
9 (IA2014-121)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	14

\*The involved member in this case is a volunteer with BPD.

During the month of September 2014, 1 Comment of Non-Complaint was received by BPD:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2014-119)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	13



**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of September 2014, 10 Citizen Complaints were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition <sup>9</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-142)	Officers unjustifiably detained complainant and used excessive force to do so.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Arrest or Detention – Exonerated</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Arrest or Detention – Exonerated</li> </ul>	350	321
2 (IA2013-130)*	Officer improperly singled out African-Americans when searching for a subject and referred to complainant using the wrong gender.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Conduct Unbecoming an Officer – Exonerated</li> </ul>	300	276
3 (IA2013-139)	Officer unjustifiably detained complainant and used excessive force to do so.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Arrest or Detention – Exonerated</li> </ul>	290	252
4 (IA2013-140)	Officer #1 unjustifiably detained complainant, made inappropriate physical contact with complainant, and discarded a complaint form. Officer #2 did not record incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Conduct Unbecoming an Officer (Count 1) – Unfounded</li> <li>• Conduct Unbecoming an Officer (Count 2) – Not Sustained</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Policy/Procedure – Sustained</li> </ul>	290	252

5 (IA2014-013)	Officer used excessive force to detain complainant and did not record incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Policy/Procedure – Sustained</li> </ul>	252	233
6 (IA2014-011)	Officer targeted complainant for issuance of a citation based on ethnicity.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> </ul>	245	204
7 (IA2014-025) <sup>+</sup>	Officer contacted complainant based on ethnicity, detained complainant without justification, was overly aggressive, made threatening gestures, did not provide a business card, and yelled at a bystander.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Not Sustained</li> <li>• Arrest or Detention – Exonerated</li> <li>• Conduct Unbecoming an Officer (Count 1) – Not Sustained</li> <li>• Conduct Unbecoming an Officer (Count 2) – Unfounded</li> <li>• Conduct Unbecoming an Officer (Count 3) – Unfounded</li> <li>• Conduct Unbecoming an Officer (Count 4) – Exonerated</li> </ul>	212	174
8 (IA2014-028) <sup>+</sup>	Officer harassed African-American females based on their race.	<u>Unknown Officer</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Not Sustained</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> </ul>	208	189
9 (IA2014-080)	Officers did not respond to a call involving an individual using multiple seats on a train, and officers are not present on trains sufficiently often.	<u>BART Police Department</u> <ul style="list-style-type: none"> <li>• Service Review<sup>10</sup></li> </ul>	117	88

10 (IA2014-083)	Officers are not sufficiently thorough in patrolling train stations at the end of revenue service.	<u>BART Police Department</u> • Service Review	98	69
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\*The allegations in this case were also investigated by OIPA and reported on in August under OIPA #13-81.

†As OIPA is also investigating this case, it will not be taken out of the "Number of Open Cases" column in the Quantitative Report on Page 2 until OIPA's findings have also been finalized.

During the month of September 2014, 2 Administrative Investigations were completed by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2014-008)	Officer used excessive force on two occasions to detain complainant and did not record incident as required.	<u>Officer #1</u> • Force (Count 1) – Exonerated • Force (Count 2) – Exonerated • Policy/Procedure – Not Sustained	256	227
2 (IA2014-012)	Officer did not notify supervisor of a traffic accident or that damage had occurred as a result.	<u>Officer #1</u> • Policy/Procedure (Count 1) – Unfounded • Policy/Procedure (Count 2) – Not Sustained	250	221

During the month of September 2014, 3 Comments of Non-Complaint were addressed by BPD:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2014-102)	Officers were rude and aggressive in interaction with patrons at the end of revenue service.	<u>Officer #1</u> • Courtesy – Supervisory Referral <sup>11</sup>  <u>Officer #2</u> • Courtesy – Supervisory Referral	53	14

2 (IA2014-108)	Officer did not take action to stop an individual from smoking in a prohibited area.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral	46	13
3 (IA2014-110)	Officer was rude to several witnesses when he responded to a report of a crime on a train.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral	45	19

Also during the month of September 2014, BPD closed IA2014-059 as an Inquiry after making the determination that the misconduct alleged did not involve any BPD employees. As OIPA is also investigating this case, it will not be taken out of the “Number of Open Cases” column in the Quantitative Report on Page 2 until OIPA’s findings have also been finalized. Additionally, BPD reclassified IA2014-085 from a Citizen Complaint to an Inquiry after making the determination that the misconduct alleged did not involve any BPD employees. As such, this case was removed from the “Number of Open Cases.”

### **Discipline Issued During Reporting Period**

#### **Sustained Allegations/Resulting Action Taken by BPD**

During the month of September 2014, BART PD 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 record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
2	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
3	Officer was inappropriately unfamiliar with the case at issue when discussing it in court.	<u>Officer #1</u> • Performance of Duty	<u>Officer #1</u> Written Reprimand

### **Additional Notes**

In accordance with the BART Citizen Oversight 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

conversation with BPD’s Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	10
Complainant-Initiated Appeals	0
Investigations Being Monitored	14
Investigations Reviewed During Current Month	29*

\*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.

<sup>1</sup> 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 OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> 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)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

<sup>3</sup> 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.

<sup>4</sup> 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 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.

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

<sup>8</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

<sup>9</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded – The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated – The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

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(c) Sustained – The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained – The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>10</sup> A service review refers to an instance when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.

<sup>11</sup> A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

# Office of the Independent Police Auditor

## Monthly Report

October 2014



November 10, 2014

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 October 1, 2014 through October 31, 2014.<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
October 2013	16	50	1	0	0
November 2013	18	58	0	0	0
December 2013	14	62	0	0	0
January 2014	9	53	0	0	0
February 2014	11	55	0	0	0
March 2014	19	65	0	0	0
April 2014	18	68	1	0	0
May 2014	12	57	0	0	0
June 2014	11	61	0	0	0
July 2014	10	67	0	0	1
August 2014	20	75	2	0	0
September 2014	12	72	0	0	0
October 2014	14*	78	0	0	0

\*This number includes one case that was initiated in a prior reporting period but not previously reported on. It is therefore included in this report.

**Types of Cases Filed**

Citizen Complaints	13
Administrative Investigations	0
Comments of Non-Complaint	1
<b>TOTAL</b>	<b>14</b>

**Citizen Complaints Received per Department**

OIPA	7
BART Police Department	6
<b>TOTAL</b>	<b>13</b>



**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of October 2014, 6 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations <sup>7</sup>	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>8</sup>
1 (OIPA #14-66) (IA2014-122)	<u>Officer #1</u> • Conduct Unbecoming an Officer	OIPA notified BPD, which initiated an investigation.	35
2 (OIPA #14-69) (IA2014-125)	<u>BART Police Department</u> • Service Review <sup>9</sup>	OIPA notified BPD, which initiated an investigation.	24
3 (OIPA #14-70) (IA2014-133)	<u>Employee #1</u> • Conduct Unbecoming an Officer	OIPA notified BPD, which initiated an investigation.	24
4 (OIPA #14-71) (IA2014-136)	<u>Employee #1</u> • Bias-Based Policing • Policy/Procedure	OIPA notified BPD, which initiated an investigation.	18
5 (OIPA #14-72) (IA2014-132)	<u>BART Police Department</u> • Policy/Procedure	OIPA notified BPD, which initiated an investigation.	17
6 (OIPA #14-73) (IA2014-138)	<u>Officer #1</u> • Bias-Based Policing	OIPA initiated an investigation and notified BPD, which also initiated an investigation.	14

OIPA received one additional complaint during October and initiated an investigation (OIPA #14-67). The same complaint had already been received by BPD in June 2014 and was reported on then (IA2014-075); therefore, it has not been included in this report in order to avoid double-counting it.

During the month of October 2014, 6 Citizen Complaints were received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-127)	<u>Officer #1</u> • Force • Arrest or Detention	BPD initiated an investigation.	27
2 (IA2014-123)	<u>Officer #1</u> • Force	BPD initiated an investigation.	26

3 (IA2014-126)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> <li>• Policy/Procedure</li> </ul>	BPD initiated an investigation.	26
4 (IA2014-128)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Bias-Based Policing</li> <li>• Arrest or Detention</li> <li>• Search or Seizure</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Bias-Based Policing</li> <li>• Arrest or Detention</li> </ul>	BPD initiated an investigation.	24
5 (IA2014-131)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Conduct Unbecoming an Officer</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Procedure</li> </ul>	BPD initiated an investigation.	21
6 (IA2014-134)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Search or Seizure</li> <li>• Performance of Duty</li> <li>• Conduct Unbecoming an Officer</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Supervision</li> </ul>	BPD initiated an investigation.	12

During the month of October 2014, 1 Comment of Non-Complaint was received by BPD:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2014-130)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	21

**Complaints/Investigations Initiated During a Previous Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of September 2014, 1 previously unreported Citizen Complaint was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (OIPA #14-61) (IA2014-129)	<u>Officer #1</u> • Courtesy	OIPA notified BPD, which initiated an investigation.	56

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of October 2014, 6 Citizen Complaints were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition <sup>10</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-102)	One officer threw complainant to ground, and then officers used excessive force to take complainant into custody. Officers did not record incident as required.	<u>Officer #1</u> • Force (Count 1) – Unfounded • Force (Count 2) – Exonerated • Policy/Procedure – Sustained  <u>Officer #2</u> • Force – Unfounded • Policy/Procedure – Exonerated	396	377
2 (IA2014-026)	Officers used excessive force to take complainant into custody and one officer struck complainant’s head.	<u>Officer #1</u> • Force – Exonerated  <u>Officer #2</u> • Force (Count 1) – Exonerated • Force (Count 2) – Unfounded	234	206

<p>3 (IA2014-053)</p>	<p>Officer struck a person on the head, referred to him using an offensive term, and was disrespectful to complainant who witnessed the incident.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	<p>208</p>	<p>194</p>
<p>4 (IA2014-052)</p>	<p>Officers improperly issued complainants a citation, targeted complainants on the basis of ethnicity, and were unnecessarily aggressive toward complainants.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> <li>• Courtesy – Unfounded</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> <li>• Courtesy – Unfounded</li> </ul>	<p>199</p>	<p>187</p>
<p>5 (IA2014-104)</p>	<p>Officers’ decision to issue complainants a citation was based on ethnicity.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> </ul>	<p>199</p>	<p>180</p>
<p>6 (IA2014-061)</p>	<p>Officers took complainant’s property subsequent to an arrest. One officer used offensive language toward complainant, did not record incident as required, and did not accurately document efforts to record the incident.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Not Sustained</li> <li>• Policy/Procedure (Count 1) – Not Sustained</li> <li>• Policy/Procedure (Count 2) – Sustained</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	<p>187</p>	<p>168</p>

During the month of October 2014, 2 Comments of Non-Complaint were addressed by BPD:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2014-119)	Officer harassed complainant and stated that he would inform complainant's employer about complainant's conduct.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral <sup>11</sup>	41	7
2 (IA2014-130)	Officer used the carpool lane while driving alone and also used a cellular phone while driving.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	21	0*

\*The Supervisory Referral in this case was issued the same day the complaint was received.

### **Discipline Issued During Reporting Period**

#### **Sustained Allegations/Resulting Action Taken by BPD**

During the month of October 2014, BART PD 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 record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
2	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling

### **Additional Notes**

In accordance with the BART Citizen Oversight 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 conversation with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	12
Complainant-Initiated Appeals	0
Investigations Being Monitored	12
Investigations Reviewed During Current Month	28*

\*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.

<sup>1</sup> 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 OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> 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)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

<sup>3</sup> 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.

<sup>4</sup> 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 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.

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

<sup>8</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

<sup>9</sup> A Service Review refers to an instance when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.

<sup>10</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded – The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated – The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

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(c) Sustained – The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained – The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>11</sup> A Supervisory Referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

# Office of the Independent Police Auditor

Monthly Report

November 2014



December 8, 2014



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, 2014 through November 30, 2014.<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
November 2013	18	58	0	0	0
December 2013	14	62	0	0	0
January 2014	9	53	0	0	0
February 2014	11	55	0	0	0
March 2014	19	65	0	0	0
April 2014	18	68	1	0	0
May 2014	12	57	0	0	0
June 2014	11	61	0	0	0
July 2014	10	67	0	0	1
August 2014	20	75	2	0	0
September 2014	12	72	0	0	0
October 2014	14	78	0	0	0
November 2014	17*	84	1	0	0

\*This number includes one case that was initiated in a prior reporting period but not previously reported on. It is therefore included in this report.

**Types of Cases Filed**

Citizen Complaints	14
Administrative Investigations	0
Comments of Non-Complaint	3
<b>TOTAL</b>	<b>17</b>

**Citizen Complaints Received per Department**

OIPA	4
BART Police Department	10
<b>TOTAL</b>	<b>14</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of November 2014, 4 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations <sup>7</sup>	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>8</sup>
1 (OIPA #14-74) (IA2014-149)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Racial Profiling</li> <li>• Performance of Duty</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Racial Profiling</li> <li>• Performance of Duty</li> </ul> <u>Officer #3</u> <ul style="list-style-type: none"> <li>• Racial Profiling</li> <li>• Performance of Duty</li> </ul> <u>BART Police Department</u> <ul style="list-style-type: none"> <li>• Policy Complaint</li> </ul>	OIPA initiated an investigation and notified BPD, which also initiated an investigation.	34
2 (OIPA #14-77) (IA2014-142)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Racial Profiling</li> <li>• Conduct Unbecoming an Officer</li> <li>• Performance of Duty</li> </ul>	OIPA initiated an investigation and notified BPD, which also initiated an investigation.	21
3 (OIPA #14-78) (IA2014-152)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Racial Profiling</li> <li>• Performance of Duty</li> <li>• Courtesy</li> </ul>	OIPA initiated an investigation and notified BPD, which also initiated an investigation.	14
4 (OIPA #14-79) (IA2014-153)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	OIPA notified BPD, which initiated an investigation.	12

During the month of November 2014, 9 Citizen Complaints were received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-135)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Courtesy</li> </ul>	BPD initiated an investigation.	35

2 (IA2014-137)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	34
3 (IA2014-139)	<u>Officer #1</u> • Truthfulness • Arrest or Detention • Conduct Unbecoming an Officer • Policy/Procedure	BPD initiated an investigation.	28
4 (IA2014-141)	<u>Officer #1</u> • Bias-Based Policing • Conduct Unbecoming an Officer • Courtesy	BPD initiated an investigation.	24
5 (IA2014-143)	<u>Officer #1</u> • Arrest or Detention	BPD initiated an investigation.	20
6 (IA2014-145)	<u>Officer #1</u> • Force • Arrest or Detention	BPD initiated an investigation.	18
7 (IA2014-148)	<u>Officer #1</u> • Search or Seizure  <u>Officer #2</u> • Search or Seizure	BPD initiated an investigation.	30
8 (IA2014-150)	<u>BART Police Department</u> • Service Review <sup>9</sup>	BPD initiated an investigation.	17
9 (IA2014-151)	<u>Officer #1</u> • Courtesy	BPD initiated an investigation.	35

During the month of November 2014, 3 Comments of Non-Complaint were received by BPD:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2014-140)	<u>Officer #1</u> • Courtesy	BPD initiated an investigation.	21
2 (IA2014-146)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	18

3 (IA2014-147)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	18
	<u>Officer #2</u> • Policy/Procedure		

**Complaints/Investigations Initiated During a Previous Reporting Period**

Actions Taken/# of Days Elapsed

During the month of October 2014, 1 previously unreported Citizen Complaint was received by BPD:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-144)	<u>Officer #1</u> • Conduct Unbecoming an Officer • Policy/Procedure	OIPA notified BPD, which initiated an investigation.	45

**Complaints/Investigations Concluded During Reporting Period**

Dispositions/# of Days Elapsed

During the month of November 2014, 1 Citizen Complaint was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Allegations	Disposition <sup>10</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #13-89)	Officers improperly detained complainant. One officer initiated the detention based on complainant's perceived economic status and used unnecessary physical force during contact.	<u>Officer #1</u> • Unnecessary or Excessive Use of Force – Exonerated • Racial Profiling – Not Sustained • Arrest or Detention – Exonerated  <u>Officer #2</u> • Arrest or Detention – Unfounded	353	341

During the month of November 2014, 7 Citizen Complaints were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2014-033)	Officers did not sufficiently investigate a reported crime, did not effectuate a citizen's arrest, and did not resolve the conflict that led to the reported crime fairly between two parties.	<u>Officer #1</u> • Performance of Duty – Sustained  <u>Officer #2</u> • Performance of Duty – Sustained  <u>Officer #3</u> • Performance of Duty – Exonerated  <u>Officer #4</u> • Performance of Duty – Exonerated	268	254
2 (IA2014-041)*	Officers improperly detained complainants, improperly arrested them, and used excessive force against them.	<u>Officer #1</u> • Force (Count 1) – Exonerated • Force (Count 2) – Exonerated • Force (Count 3) – Exonerated • Arrest – Exonerated • Detention – Exonerated  <u>Officer #2</u> • Force – Not Sustained • Arrest – Exonerated • Detention – Exonerated  <u>Officer #3</u> • Force – Exonerated • Arrest – Exonerated • Detention – Exonerated	262	245

		<u>Officer #4</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Arrest – Exonerated</li> <li>• Detention – Exonerated</li> </ul>		
3 (IA2014-047)	Officers used excessive force when arresting complainant and stole complainant's property.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> </ul> <u>Officer #3</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul> <u>Officer #4</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	243	222
4 (IA2014-055)	One officer did not notify complainant of a crime involving complainant's property. Another officer showed insufficient concern regarding the crime involving complainant's property.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Not Sustained</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	221	189
5 (IA2014-072)	Officers improperly arrested complainant and applied handcuffs too tightly. One officer lost complainant's property.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Policy/Procedure – Exonerated</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Policy/Procedure – Exonerated</li> </ul>	182	165

6 (IA2014-078)	Officer used excessive force against complainant and improperly detained and searched complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Arrest or Detention – Exonerated</li> <li>• Search or Seizure – Exonerated</li> </ul>	171	157
7 (IA2014-103)	Officer harassed individual who was suspected of fare evasion.	<u>Officer #1 (Unidentified)</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> </ul>	112	91

\*As OIPA is also investigating this case, it will not be taken out of the “Number of Open Cases” column in the Quantitative Report on Page 2 until OIPA’s findings have also been finalized.

During the month of November 2014, 1 Administrative Investigation was completed by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2014-057)	Involved officers: did not properly conduct required inspections; did not accurately complete required documentation; did not properly supervise employees; made false statements; made disparaging remarks toward other employees; did not cooperate with an investigation as required; acted insubordinately during an investigation.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Truthfulness – Not Sustained</li> <li>• Performance of Duty – Sustained</li> <li>• Conduct Unbecoming an Officer – Sustained</li> <li>• Policy/Procedure – Sustained</li> <li>• Supervision – Sustained</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Truthfulness – Not Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul> <u>Officer #3</u> <ul style="list-style-type: none"> <li>• Truthfulness – Not Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul>	222	202

		<u>Officer #4</u> <ul style="list-style-type: none"> <li>• Truthfulness – Not Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul> <u>Officer #5</u> <ul style="list-style-type: none"> <li>• Truthfulness – Not Sustained</li> <li>• Insubordination – Sustained</li> <li>• Conduct Unbecoming an Officer – Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul>		
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During the month of November 2014, 1 Comment of Non-Complaint was addressed by BPD:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2014-146)	Officer used a cellular phone while driving.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Supervisory Referral<sup>11</sup></li> </ul>	18	2

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**Complaints/Investigations Concluded During Previous Reporting Periods**

**Dispositions/# of Days Elapsed**

During the month of September 2014, 1 Citizen Complaint was concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2014-031)	Officers improperly arrested complainant and used excessive force.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> </ul>	269	184

During the month of October 2014, 1 Citizen Complaint was concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2011-055)	Involved officers: improperly arrested complainants; did not properly supervise employees; belittled complainants; did not properly account for a complainant's disability.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Supervision – Exonerated</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> </ul> <u>Officer #3</u> <ul style="list-style-type: none"> <li>• Courtesy/Conduct Unbecoming an Officer – Not Sustained</li> <li>• Discrimination – Not Sustained</li> </ul>	1179*	1133*

		<p><u>Officer #4</u></p> <ul style="list-style-type: none"> <li>• Courtesy/Conduct Unbecoming an Officer – Unfounded</li> <li>• Discrimination – Unfounded</li> </ul> <p><u>Officer #5</u></p> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> </ul> <p><u>Officer #6</u></p> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> </ul> <p><u>Officer #7</u></p> <ul style="list-style-type: none"> <li>• Courtesy/Conduct Unbecoming an Officer – Not Sustained</li> <li>• Discrimination – Not Sustained</li> </ul> <p><u>Officer #8</u></p> <ul style="list-style-type: none"> <li>• Courtesy/Conduct Unbecoming an Officer – Not Sustained</li> <li>• Discrimination – Not Sustained</li> </ul> <p><u>Officer #9</u></p> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Courtesy/Conduct Unbecoming an Officer – Unfounded</li> <li>• Discrimination – Unfounded</li> </ul>		
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\*The applicable temporal limitation affecting the potential issuance of discipline resulting from this complaint investigation was tolled for an extended period of time due to ongoing civil litigation related to the same matter that gave rise to the complaint.

## Discipline Issued During Reporting Period

### Sustained Allegations/Resulting Action Taken by BPD

During the month of November 2014, BART PD 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 accurately document efforts to record the incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling

### Additional Notes

In accordance with the BART Citizen Oversight 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 conversation with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	14
Complainant-Initiated Appeals	0
Investigations Being Monitored	13
Investigations Reviewed During Current Month	29*

\*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.

<sup>1</sup> 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 OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> 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)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

<sup>3</sup> 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.

<sup>4</sup> 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 Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via

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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.

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

<sup>8</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

<sup>9</sup> A Service Review refers to an instance when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.

<sup>10</sup> In defining the "Disposition of Internal Investigations," the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded – The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated – The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained – The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained – The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>11</sup> A Supervisory Referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

# Office of the Independent Police Auditor

Monthly Report

December 2014



January 12, 2015

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, 2014 through December 31, 2014.<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
December 2013	14	62	0	0	0
January 2014	9	53	0	0	0
February 2014	11	55	0	0	0
March 2014	19	65	0	0	0
April 2014	18	68	1	0	0
May 2014	12	57	0	0	0
June 2014	11	61	0	0	0
July 2014	10	67	0	0	1
August 2014	20	75	2	0	0
September 2014	12	72	0	0	0
October 2014	14	78	0	0	0
November 2014	17	84	1	0	0
December 2014	11	84	1	0	0

**Types of Cases Filed**

Citizen Complaints (Formal)	10
Informal Complaints <sup>7</sup>	0
Administrative Investigations	1
<b>TOTAL</b>	<b>11</b>

**Citizen Complaints Received per Department<sup>8</sup>**

OIPA	4
BART Police Department	6
<b>TOTAL</b>	<b>10</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of December 2014, 4 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations <sup>9</sup>	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>10</sup>
1 (OIPA #14-85) (IA2014-155)	<u>Officers #1-5</u> • Arrest or Detention • Performance of Duty • Policy/Procedure	OIPA notified BPD, which initiated an investigation.	33
2 (OIPA #14-87) (IA2014-159)	<u>Officers #1-2</u> • Performance of Duty	OIPA notified BPD, which initiated an investigation.	31
3 (OIPA #14-89) (IA2014-158)	<u>BART Police Department</u> • Service Review <sup>11</sup>	OIPA notified BPD, which initiated an investigation.	26
4 (OIPA #14-90) (IA2014-162)	<u>Officer #1</u> • Courtesy • Policy/Procedure	OIPA notified BPD, which initiated an investigation.	13

During the month of December 2014, 6 Citizen Complaints (Formal) were received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-154)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	39
2 (IA2014-156)	<u>Officer #1</u> • Performance of Duty • Policy/Procedure  <u>Employee #1</u> • Performance of Duty	BPD initiated an investigation.	28
3 (IA2014-157)	<u>Officer #1</u> • Force • Arrest or Detention • Performance of Duty • Conduct Unbecoming an Officer	BPD initiated an investigation.	42

	<u>Officer #2</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Bias-based Policing</li> <li>• Arrest or Detention</li> <li>• Conduct Unbecoming an Officer</li> </ul>		
4 (IA2014-160)	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	19
5 (IA2014-161)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Bias-based Policing</li> <li>• Arrest or Detention</li> </ul>	BPD initiated an investigation.	19
6 (IA2014-151)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	15

During the month of December 2014, 1 Administrative Investigation was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2014-163)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul> <u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	33



**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of December 2014, 1 Citizen Complaint was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Allegations	Disposition <sup>12</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #14-02)	Officers detained and searched complainant without proper justification, used excessive force, and did not record the incident as required.	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force – Exonerated</li> <li>• Arrest or Detention – Exonerated</li> <li>• Search or Seizure – Exonerated</li> </ul> <u>Officer #3</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force – Exonerated</li> <li>• Policy/Procedure – Sustained</li> </ul>	361	342

During the month of December 2014, 7 Citizen Complaints (Formal) were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2014-050)	Officer did not take sufficient action in response to a call for service.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> </ul>	267	234

<p>2 (IA2014-068)</p>	<p>Civilian improperly parked police vehicle in a restricted area and impeded pedestrian traffic. Officer did not take enforcement action in response to improperly parked vehicle.</p>	<p><u>Civilian #1</u>  <ul style="list-style-type: none"> <li>• Policy/Procedure (Counts 1-2) – Exonerated</li> </ul> <u>Officer #1</u>  <ul style="list-style-type: none"> <li>• Performance of Duty – Exonerated</li> </ul> </p>	<p>258</p>	<p>223</p>
<p>3 (IA2014-070)</p>	<p>Officers used excessive force when arresting complainant and did not record the incident as required.</p>	<p><u>Officer #1</u>  <ul style="list-style-type: none"> <li>• Force – Unfounded</li> <li>• Policy/Procedure – Exonerated</li> </ul> <u>Officer #2</u>  <ul style="list-style-type: none"> <li>• Force – Unfounded</li> </ul> </p>	<p>223</p>	<p>206</p>
<p>4 (IA2014-086)</p>	<p>Officer was rude to complainant.</p>	<p><u>Officer #1</u>  <ul style="list-style-type: none"> <li>• Courtesy - Unfounded</li> </ul> </p>	<p>179</p>	<p>159</p>
<p>5 (IA2014-094)</p>	<p>Officer engaged in stalking behavior toward complainant.</p>	<p><u>Officer #1</u>  <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul> </p>	<p>166</p>	<p>146</p>
<p>6 (IA2014-091)</p>	<p>Officer used excessive force when detaining complainant and mishandled the call for service that led to complainant's detention.</p>	<p><u>Officer #1</u>  <ul style="list-style-type: none"> <li>• Force – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul> </p>	<p>166</p>	<p>146</p>
<p>7 (IA2014-112)</p>	<p>Officers did not take sufficient action in response to a service call and did not record the incident as required. One officer did not rectify the other's insufficient action and did not report an equipment malfunction as required.</p>	<p><u>Officer #1</u>  <ul style="list-style-type: none"> <li>• Performance of Duty – Exonerated</li> <li>• Policy/Procedure – Unfounded</li> </ul> <u>Officer #2</u>  <ul style="list-style-type: none"> <li>• Performance of Duty – Exonerated</li> <li>• Supervision – Exonerated</li> <li>• Policy/Procedure (Count 1) – Not Sustained</li> <li>• Policy/Procedure (Count 2) – Sustained</li> </ul> </p>	<p>124</p>	<p>107</p>

During the month of December 2014, 2 Informal Complaints were addressed by BPD:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2014-140)	Officer was rude to complainant.	<u>Officer #1</u> • Courtesy – Supervisory Referral <sup>13</sup>	56	24
2 (IA2014-147)	Officers obtained verification of whether complainant had outstanding warrants without justification.	<u>Officers #1-2</u> • Policy/Procedure – Supervisory Referral	53	16

**Complaints/Investigations Concluded During Previous Reporting Periods**

Dispositions/# of Days Elapsed

During the month of November 2014, 1 Citizen Complaint (Formal) was concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2014-109)	Officer was rude to complainant, did not take sufficient action in response to a call for service, and did not provide complainant with requested information.	<u>Officer #1</u> • Performance of Duty – Exonerated • Courtesy – Unfounded • Policy/Procedure – Exonerated	137	88

## Discipline Issued During Reporting Period

### Sustained Allegations/Resulting Action Taken by BPD

During the month of December 2014, BART PD 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 record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
2	Officer did not take sufficient action in response to a call for service.	<u>Officer #1</u> • Performance of Duty	<u>Officer #1</u> Informal Counseling
3	Officers did not sufficiently investigate a reported crime and did not effectuate a citizen's arrest	<u>Officer #1</u> • Performance of Duty  <u>Officer #2</u> • Performance of Duty	<u>Officer #1</u> Letter of Discussion  <u>Officer #2</u> Informal Counseling

### Additional Notes

In accordance with the BART Citizen Oversight 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 conversation with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	13
Complainant-Initiated Appeals	0
Investigations Being Monitored	15
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.

<sup>1</sup> 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 OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> 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.

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<sup>3</sup> 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.

<sup>4</sup> 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 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.

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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))

<sup>8</sup> 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.

<sup>9</sup> In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

<sup>10</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

<sup>11</sup> The BART Police Department defines a Service Review as, "Service Review: When a citizen/customer raises a concern pertaining to a global practice throughout the Department such as Department policy, procedure and/or tactics. Depending on the circumstances, the concern may be evaluated and addressed through a Service Review conducted by Internal Affairs, a designated review committee, or a member of Command Staff. When appropriate, a Service Review could result in a change to Department policy, training and/or tactics." (BART Police Department Policy Manual, Policy 1020.1.1(h))

<sup>12</sup> In defining the "Disposition of Internal Investigations," the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded – The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated – The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained – The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained – The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>13</sup> The BART Police Department defines a Supervisory Referral as, "Supervisor Referral: For instances involving an Informal Complaint, the Internal Affairs Unit may address the issue through a Supervisor Referral. An assigned supervisor would then address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Unit." (BART Police Department Policy Manual, Policy 1020.1.1(e))