

# Office of the Independent Police Auditor

## Monthly Report

January 2015



February 9, 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 January 1, 2015 through January 31, 2015.<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 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
January 2015	11	87	2	0	0

**Types of Cases Filed**

Citizen Complaints (Formal)	9
Informal Complaints <sup>7</sup>	1
Administrative Investigations	1
<b>TOTAL</b>	<b>11</b>

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

OIPA	2
BART Police Department	7
<b>TOTAL</b>	<b>9</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of January 2015, 2 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 #15-04) (IA2015-007)	<u>Officers #1-4</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force</li> <li>• Racial Profiling/Bias-Based Policing</li> </ul>	OIPA initiated an investigation and notified BPD, which also initiated an investigation.	11
2 (OIPA #15-06) (IA2015-003)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force</li> <li>• Racial Profiling/Bias-Based Policing</li> <li>• Search/Seizure</li> </ul>	OIPA initiated an investigation and notified BPD, which also initiated an investigation.	20

During the month of January 2015, 5 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 (IA2015-001)	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Policy/Procedure</li> </ul>	BPD initiated an investigation.	34
2 (IA2015-002)	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Arrest or Detention</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	25
3 (IA2015-004)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	21
4 (IA2015-006)	<u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	16
5 (IA2015-009)	<u>Officers #1-5</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	12

During the month of January 2015, 1 Informal Complaint was received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-005)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Courtesy</li> </ul>	BPD initiated an investigation.	20

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

Actions Taken/# of Days Elapsed

During the month of December 2014, 1 Citizen Complaint (Formal) was received by the BART Police Department (BPD):

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-166)	<u>Officers #1-3</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest or Detention</li> </ul>	BPD initiated an investigation.	53

During the month of September 2014, 1 Citizen Complaint (Formal) was received by the BART Police Department (BPD):

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-167)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Bias-Based Policing</li> </ul>	BPD initiated an investigation.	156

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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 (IA2014-165)	<u>Civilians #1-3</u> <ul style="list-style-type: none"> <li>• Policy/Procedure</li> <li>• Reporting Misconduct</li> </ul> <u>Civilians #4-5</u> <ul style="list-style-type: none"> <li>• Truthfulness</li> <li>• Conduct Unbecoming an Officer</li> <li>• Policy/Procedure</li> </ul>	BPD initiated an investigation.	42

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**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of January 2015, 2 Citizen Complaints were concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Allegations	Disposition <sup>11</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #14-16)	Officer drove past complainant in dangerous manner and did so because of complainant's race and clothing.	<u>Unidentified Officer</u> <ul style="list-style-type: none"> <li>• Racial Profiling – Not Sustained</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> </ul>	355	344
2 (OIPA #14-21)	Officers were involved in the death of an individual, obfuscated their involvement, and insufficiently investigated the death; one officer insufficiently supervised the investigation. Officers were dismissive in communicating with complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Supervision – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Suspicious Death (Obfuscation) – Unfounded</li> <li>• Performance of Duty – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul> <u>Officers #3-6</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Unfounded</li> </ul> <u>Unidentified Officer</u> <ul style="list-style-type: none"> <li>• Suspicious Death (Causation) – Unfounded</li> </ul>	340	329

During the month of January 2015, 3 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 (IA2014-079)	Officer used excessive force while detaining complainant without justification. Officer did not properly update dispatch of his status and did not record incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Arrest or Detention – Exonerated</li> <li>• Policy/Procedure (Counts 1-2) – Sustained</li> </ul>	223	198
2 (IA2014-096)	Officers used excessive force and acted unprofessionally when arresting complainant. Officer did not record incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Courtesy - Unfounded</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Courtesy – Unfounded</li> <li>• Policy/Procedure – Sustained</li> </ul>	186	151
3 (IA2014-118)	Employee was rude to complainant.	<u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Unprofessional Conduct – Not Sustained</li> </ul>	138	125

\*Additionally during the month of January 2015, BPD reclassified IA2014-071 from a Citizen Complaint to an Inquiry as it did not involve any BPD personnel. This case has therefore also been closed.

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

**Dispositions/# of Days Elapsed**

During the month of December 2014, 2 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 (IA2014-111)	Officer was disrespectful toward complainant during a custody exchange.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Unfounded	154	109
2 (IA2014-066)	Officers used excessive force and were prejudiced when arresting complainant.	<u>Officer #1</u> • Force (Counts 1-4) – Unfounded • Force (Count 5) – Exonerated • Bias-Based Policing – Unfounded  <u>Officer #2</u> • Force (Counts 1-3) – Unfounded • Force (Counts 4-5) – Exonerated • Bias-Based Policing – Unfounded  <u>Officers #3-4</u> • Force (Counts 1-3) – Unfounded • Force (Count 4) – Exonerated • Bias-Based Policing – Unfounded  <u>Officer #5</u> • Force – Unfounded • Bias-Based Policing – Unfounded	270	220

## Discipline Issued During Reporting Period

### Sustained Allegations/Resulting Action Taken by BPD

During the month of January 2015, 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 an incident.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
2	Officer did not report an equipment malfunction as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Oral 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	14
Investigations Reviewed During Current Month	19*

\*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.

<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.

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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> 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> 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.

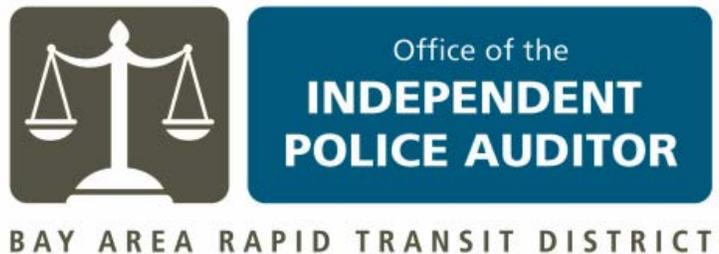
(c) Sustained – The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(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)

# Office of the Independent Police Auditor

Monthly Report

February 2015



March 9, 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 February 1, 2015 through February 28, 2015.<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 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
January 2015	11	87	2	0	0
February 2015	9*	78	3	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 (Formal)	4
Informal Complaints <sup>7</sup>	4
Administrative Investigations	1
<b>TOTAL</b>	<b>9</b>

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

OIPA	0
BART Police Department	4
<b>TOTAL</b>	<b>4</b>

### Complaints/Investigations Initiated During Reporting Period

#### Actions Taken/# of Days Elapsed

During the month of February 2015, 3 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 (IA2015-008)	<u>Officer #1</u> <ul style="list-style-type: none"><li>• Conduct Unbecoming an Officer</li></ul>	BPD initiated an investigation.	34
2 (IA2015-011)	<u>BART Police Department</u> <ul style="list-style-type: none"><li>• Policy/Procedure</li></ul>	BPD initiated an investigation.	31
3 (IA2015-015)	<u>Civilian #1</u> <ul style="list-style-type: none"><li>• Conduct Unbecoming an Officer</li></ul>	BPD initiated an investigation.	18

During the month of February 2015, 4 Informal 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 (IA2015-010)	<u>Officer #1</u> <ul style="list-style-type: none"><li>• Conduct Unbecoming an Officer</li></ul>	BPD initiated an investigation.	24
2 (IA2015-012)	<u>Civilian #1</u> <ul style="list-style-type: none"><li>• Performance of Duty</li><li>• Courtesy</li></ul>	BPD initiated an investigation.	33
3 (IA2015-013)	<u>Officer #1</u> <ul style="list-style-type: none"><li>• Performance of Duty</li></ul>	BPD initiated an investigation.	24
4 (IA2015-016)	<u>Officer #1</u> <ul style="list-style-type: none"><li>• Conduct Unbecoming an Officer</li></ul>	BPD initiated an investigation.	14

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

**Actions Taken/# of Days Elapsed**

During the month of January 2015, 1 Citizen Complaint (Formal) was received by the BART Police Department (BPD):

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-014)	<u>Officer #1</u> • Bias-Based Policing	BPD initiated an investigation.	41

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 (IA2014-168)	<u>Officer #1</u> • Racial Animus • Conduct Unbecoming an Officer	BPD initiated an investigation.	68

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of February 2015, 3 Citizen Complaints were concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Allegations	Disposition <sup>9</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #14-27)	Officer harassed complainant and did so based on race.	<u>Unidentified Officer</u> • Racial Profiling/Bias-Based Profiling – Not Sustained • Conduct Unbecoming an Officer – Not Sustained	355	341

2 (OIPA #14-28)	Officer stopped complainant based on ethnicity and improperly issued a citation. Officer was also intimidating and discourteous.	<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> <li>• Courtesy – Sustained</li> </ul>	355	345
3 (OIPA #14-37)	Officers unjustifiably detained complainant, were intimidating and discourteous, used unnecessary force, and mistreated complainant based on a perceived mental health condition.	<i>Complaint did not involve BPD.</i>	320	303

During the month of February 2015, 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 (IA2013-123)*	BART personnel failed to properly respond to a crime report made by complainant and inappropriately dismissed complainant.	<u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul> <u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Exonerated</li> </ul> <u>Officer #3</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Exonerated</li> </ul>	472	444

<p>2 (IA2014-062)</p>	<p>Officers improperly requested complainant's charges against an individual be dropped, improperly dismissed a citation against the individual, and improperly identified the violation alleged by complainant.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Exonerated</li> <li>• Policy/Procedure – Sustained</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Policy/Procedure – Not Sustained</li> </ul>	<p>301</p>	<p>270</p>
<p>3 (IA2014-075)<sup>†</sup></p>	<p>Officers used excessive force when arresting complainant, insulted complainant, and did not report the use of force as required.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force (Count 1) – Not Sustained</li> <li>• Force (Count 2) – Unfounded</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Force (Count 1) – Exonerated</li> <li>• Force (Count 2) – Unfounded</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul>	<p>270</p>	<p>239</p>
<p>4 (IA2014-081)</p>	<p>Officer used excessive force against an individual and unnecessarily pointed a gun at the individual's canine.</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>258</p>	<p>227</p>
<p>5 (IA2014-101)</p>	<p>Employee improperly issued parking citations and was discourteous to complainant.</p>	<p><u>Employee #1</u></p> <ul style="list-style-type: none"> <li>• Courtesy – Sustained</li> <li>• Procedure – Not Sustained</li> </ul>	<p>207</p>	<p>176</p>

6 (IA2014-157)	Officer improperly targeted and detained individuals on various occasions.	<i>Complaint was administratively closed by BPD.</i> <sup>10</sup>	98	71
7 (IA2014-099)	Officer improperly confiscated complainant's property.	<u>BART Police Department</u> • Search/Seizure – Service Review <sup>11</sup>	205	178

\*Due to a subject officer in this case being on extended leave, the investigation was tolled from July 12, 2014 to October 28, 2014.

†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 February 2015, 3 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 (IA2014-067)	Officer used excessive force to take an individual into custody.	<u>Officer #1</u> • Force – Exonerated	290	270
2 (IA2014-100)	Officer made inappropriate statements to a detainee. Another officer failed to take appropriate action in response to the statements.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Sustained  <u>Officer #2</u> • Supervision – Sustained	201	174
3 (IA2014-105)	Officer improperly detained an individual and did so based on race. Officers used unnecessary force against the individual.	<u>Officer #1</u> • Force – Exonerated • Bias-Based Policing – Not Sustained • Arrest or Detention – Exonerated  <u>Officers #2-3</u> • Force – Exonerated	204	192

During the month of February 2015, 4 Informal Complaints were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2014-159)	Officers did not take action in response to complaints about homeless individuals.	<u>Unidentified Officers</u> • Performance of Duty – Supervisory Referral <sup>12</sup>	84	59
2 (IA2015-005)	Officer was discourteous in responding to complaint about illegal parking.	<u>Officer #1</u> • Courtesy – Supervisory Referral	48	16
3 (IA2015-010)	Officer was speeding while driving patrol vehicle.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	24	13
4 (IA2015-012)	Employee was rude and did not follow up on complaint about access to a restroom.	<u>Employee #1</u> • Performance of Duty – Supervisory Referral • Courtesy – Supervisory Referral	33	22

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

Dispositions/# of Days Elapsed

During the month of January 2015, 1 Administrative Investigation was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2014-005)	Officer used excessive force. Officers did not record incident as required.	<u>Officer #1</u> • Force – Exonerated  <u>Officers #2-3</u> • Policy – Sustained	412	364

During the month of September 2014, 1 Informal Complaint was addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2014-107)*	Employee was impolite in giving parking instructions to complainant. Also, parking rules in place are inefficient.	<u>Employee #1</u> • Courtesy – Supervisory Referral	193	18

\*Although this case was completed in September 2014, further action was taken to review the parking rules at issue to determine any areas for improvement. The additional time needed to conduct this review led to the delay in reporting this case as complete.

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

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

During the month of February 2015, 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	Involved officers: did not properly conduct required inspections; did not accurately complete required documentation; did not properly supervise employees; made disparaging remarks toward other employees; did not cooperate with an investigation as required; acted insubordinately during an investigation.	<u>Officer #1</u> • Performance of Duty • Conduct Unbecoming an Officer • Policy/Procedure • Supervision  <u>Officer #2</u> • Policy/Procedure  <u>Officer #3</u> • Policy/Procedure  <u>Officer #4</u> • Policy/Procedure  <u>Officer #5</u> • Insubordination • Conduct Unbecoming an Officer • Policy/Procedure	<u>Officer #1</u> Demotion (in abeyance)  <u>Officer #2</u> 1-day Suspension (in abeyance)  <u>Officer #3</u> Written Reprimand  <u>Officer #4</u> Written Reprimand  <u>Officer #5</u> Pay-step Reduction

2	Officer did not properly update dispatch of his status and did not record incident as required.	<u>Officer #1</u> • Policy/Procedure (Counts 1-2)	<u>Officer #1</u> Oral Counseling
3	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Oral 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	13
Investigations Reviewed During Current Month	27*

\*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.

<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).

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<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 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> The BART Police Department Manual defines “Administrative Closure” as, “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.” (BART Police Department Policy Manual, Policy 1020.1.1(i))

<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 an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

# Office of the Independent Police Auditor

## Monthly Report

March 2015



April 13, 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 March 1, 2015 through March 31, 2015.<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 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
January 2015	11	87	2	0	0
February 2015	9	78	3	0	0
March 2015	11	67	0	0*	1

\*A previous version of this report mistakenly indicated 1 appeal received by OIPA in March 2015.

**Types of Cases Filed**

Citizen Complaints (Formal)	7
Informal Complaints <sup>7</sup>	3
Administrative Investigations	1
<b>TOTAL</b>	<b>11</b>

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

OIPA	2
BART Police Department	5
<b>TOTAL</b>	<b>7</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of March 2015, 2 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 #15-16) (IA2015-025)	<u>Officer #1</u> • Courtesy	OIPA notified BPD, which initiated an investigation.	20
2 (OIPA #15-17) (IA2015-022)	<u>Officer #1</u> • Racial Profiling/Bias-Based Policing • Courtesy	OIPA initiated an investigation and notified BPD, which also initiated an investigation.	20

During the month of March 2015, 5 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 (IA2015-017)	<u>Officers #1-2</u> • Force	BPD initiated an investigation.	32
2 (IA2015-019)	<u>Officer #1</u> • Force • Racial Profiling/Bias-Based Policing • Conduct Unbecoming an Officer	BPD initiated an investigation.	29
3 (IA2015-020)	<u>Officer #1</u> • Courtesy	BPD initiated an investigation.	20
4 (IA2015-021)	<u>Officer #1</u> • Search or Seizure	BPD initiated an investigation.	32
5 (IA2015-027)	<u>Officers #1-2</u> • Force	BPD initiated an investigation.	39

During the month of March 2015, 3 Informal 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 (IA2015-018)	<u>Officers #1-2</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	21
2 (IA2015-023)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	20
3 (IA2015-024)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	18

During the month of March 2015, 1 Administrative Investigation was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2015-026)	<u>Officer #1</u> • Workplace Discrimination/Harassment • Conduct Unbecoming an Officer • Courtesy	BPD initiated an investigation.	18

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of March 2015, 15 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 (IA2014-069)	Officers used excessive force in detaining complainant. One officer made inappropriate physical contact with complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force (Count 1) – Exonerated</li> <li>• Force (Count 2) – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> </ul>	322	290
2 (IA2014-076)	Officer used excessive force in detaining complainant, did not detain others involved in incident, and did not record incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> <li>• Performance of Duty – Exonerated</li> <li>• Policy/Procedure – Sustained</li> </ul>	304	264
3 (IA2014-088)	Officers did not report alleged misconduct and did not record incident as required. One officer improperly detained complainant, used excessive force, and did not document the use of force as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Sustained</li> <li>• Arrest or Detention – Exonerated</li> <li>• Policy/Procedure (Counts 1-3) – Sustained</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Policy/Procedure (Count 1) – Exonerated</li> <li>• Policy/Procedure (Count 2) – Not Sustained</li> </ul>	263	224

<p>4 (IA2014-090)</p>	<p>Officer contacted complainant due to his ethnicity, behaved aggressively, and did not record incident as required.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul>	<p>251</p>	<p>217</p>
<p>5 (IA2014-106)</p>	<p>Officer used excessive force during contact with complainants.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force (Counts 1-2) – Unfounded</li> </ul>	<p>233</p>	<p>193</p>
<p>6 (IA2014-115)</p>	<p>Officers used excessive force in detaining complainant and did not record incident as required.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force (Count 1) – Exonerated</li> <li>• Force (Count 2) – Not Sustained</li> <li>• Force (Counts 3-4) – Unfounded</li> <li>• Policy/Procedure – Sustained</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Force (Count 1) – Not Sustained</li> <li>• Force (Counts 2-3) – Unfounded</li> <li>• Policy/Procedure – Sustained</li> </ul>	<p>210</p>	<p>193</p>
<p>7 (IA2014-116)</p>	<p>Officer detained complainant based on complainant's race, used excessive force, and improperly searched complainant.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> <li>• Bias-Based Policing – Unfounded</li> <li>• Search or Seizure – Exonerated</li> </ul>	<p>211</p>	<p>191</p>

8 (IA2014-117)	Officer improperly searched and detained complainant, used excessive force, and exhibited unprofessional behavior.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Arrest or Detention – Exonerated</li> <li>• Search or Seizure – Unfounded</li> <li>• Conduct Unbecoming an Officer (Count 1) – Unfounded</li> <li>• Conduct Unbecoming an Officer (Count 2) – Sustained</li> </ul>	200	183
9 (IA2014-120)*	Employee exhibited unprofessional behavior, did not follow required standards of conduct, and gave false information.	<u>Employee #1</u> <ul style="list-style-type: none"> <li>• Truthfulness – Sustained</li> <li>• Conduct Unbecoming an Officer – Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul>	200	161
10 (IA2014-125)	Complainant was concerned about whether BPD would maintain awareness of a patron who harassed complainant.	<u>BART Police Department</u> <ul style="list-style-type: none"> <li>• Service Review<sup>11</sup></li> </ul>	178	139
11 (IA2014-129)	Unidentified officer was rude to complainant.	<u>Unidentified Officer #1</u> <ul style="list-style-type: none"> <li>• Courtesy – Not Sustained</li> </ul>	210	171
12 (IA2014-131)	Officers did not act in response to complainant's report of a crime and exhibited unprofessional behavior.	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	175	136
13 (IA2014-132)	Officer exhibited unprofessional behavior toward complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	168	129
14 (IA2014-133)	Complainant was concerned about BPD's method of parking enforcement.	<u>BART Police Department</u> <ul style="list-style-type: none"> <li>• Service Review</li> </ul>	178	139

15 (IA2015-011)	Complainant was concerned about BPD's treatment of homeless individuals.	<u>BART Police Department</u> • Service Review	66	26
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\*The involved member in this case is a volunteer with BPD.

During the month of March 2015, 5 Informal Complaints were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2015-004)	Officer exhibited unprofessional behavior toward complainant.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral <sup>12</sup>	84	51
2 (IA2015-013)	Officer's response to complainant's call for service was insufficient.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral	59	20
3 (IA2015-016)	Officer was disinterested in complainant's report of a crime.	<u>Officer #1</u> • Policy/Procedure – Supervisory Referral	49	21
4 (IA2015-018)	Officers exhibited unprofessional behavior toward complainant.	<u>Officers #1-2</u> • Conduct Unbecoming an Officer – Supervisory Referral	21	4
5 (IA2015-023)	Officer was driving patrol vehicle in an inappropriate manner.	<u>Officer #1</u> • Policy/Procedure – Supervisory Referral	20	1

During the month of March 2015, 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 (IA2014-019)*	Officer gave false information and completed an inaccurate report.	<u>Officer #1</u> • Truthfulness – Sustained • Policy/Procedure – Sustained	432	412
2 (IA2014-097)	Officer exhibited unprofessional behavior.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Sustained	260	240

\*The statute of limitations with regard to this investigation was tolled for a substantial amount of time because the subject officer was on extended leave during the course of the investigation. The subject officer subsequently retired prior to the completion of the investigation.

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

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

During the month of March 2015, 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 improperly identified the violation alleged by complainant.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
2	Employee was discourteous to complainant.	<u>Employee #1</u> • Courtesy	<u>Employee #1</u> Oral Counseling
3	Officer did not report the use of force as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
4	Officer failed to take appropriate action in response to another officer's inappropriate statements made to a detainee.	<u>Officer #1</u> • Supervision	<u>Officer #1</u> Informal Counseling

5	Officer gave false information and completed an inaccurate report.	<u>Officer #1</u> • Truthfulness • Policy/Procedure	<u>Officer #1</u> <i>No action taken – Subject officer retired prior to issuance of discipline.</i>
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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	1
Investigations Being Monitored	12
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 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) 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

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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> 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 an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

# Office of the Independent Police Auditor

## Monthly Report

April 2015



May 11, 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 April 1, 2015 through April 30, 2015.<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 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
January 2015	11	87	2	0	0
February 2015	9	78	3	0	0
March 2015	11	67	0	0	1
April 2015	13	68	2	0	0

**Types of Cases Filed**

Citizen Complaints (Formal)	10
Informal Complaints <sup>7</sup>	3
Administrative Investigations	0
<b>TOTAL</b>	<b>13</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 April 2015, 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 #15-21) (IA2015-031)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Policing</li> <li>• Performance of Duty</li> <li>• Courtesy</li> </ul> <u>Employee #1</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Policing</li> <li>• Performance of Duty</li> </ul>	OIPA initiated an investigation and notified BPD, which also initiated an investigation.	21
2 (OIPA #15-23) (IA2015-033)	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	OIPA notified BPD, which initiated an investigation.	21
3 (OIPA #15-24) (IA2015-034)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	OIPA notified BPD, which initiated an investigation.	21
4 (OIPA #15-25) (IA2015-032)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	OIPA notified BPD, which initiated an investigation.	20

During the month of April 2015, 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 (IA2015-028)	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Arrest or Detention</li> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	38
2 (IA2015-035)	<u>Officers #1-4</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest or Detention</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	37

3 (IA2015-036)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Policy/Procedure</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul>	BPD initiated an investigation.	12
4 (IA2015-037)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	12
5 (IA2015-038)	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	12
6 (IA2015-039)	<u>Employee #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	11

During the month of April 2015, 3 **Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-029)	<u>Officers #1-3</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	25
2 (IA2015-030)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	25
3 (IA2015-041)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul>	BPD initiated an investigation.	13

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of April 2015, 2 **Citizen Complaints** were concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Allegations	Disposition <sup>11</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #14-36)	Officers detained complainant and others without justification, and did so because of complainant’s race. Officers did not account for information from witnesses at the scene. One officer used excessive force during detention of complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force – Exonerated</li> <li>• Racial Profiling/Bias-Based Policing – Unfounded</li> <li>• Arrest or Detention – Exonerated</li> <li>• Performance of Duty – Exonerated</li> </ul> <u>Officers #2-3</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Policing – Unfounded</li> <li>• Arrest or Detention – Exonerated</li> <li>• Performance of Duty – Exonerated</li> </ul>	364	329
2 (OIPA #14-53)*	Officers used excessive force while detaining an individual and did so based on the individual’s race.	<u>Officers #1-3</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force – Exonerated</li> <li>• Racial Profiling/Bias-Based Policing – Unfounded</li> </ul>	286	275

\* 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 April 2015, 8 **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 (IA2014-077)	Officer made multiple inappropriate threats to use force against complainant, made an inappropriate gesture, used inappropriate language, and did not record incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer (Counts 1-2) – Unfounded</li> <li>• Conduct Unbecoming an Officer (Counts 3-4) – Not Sustained</li> <li>• Conduct Unbecoming an Officer (Count 5) – Exonerated</li> <li>• Courtesy – Unfounded</li> <li>• Policy/Procedure – Sustained</li> </ul>	320	309
2 (IA2014-084)	Officers used excessive force while detaining complainant.	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> </ul>	307	275
3 (IA2014-092)	Officer failed to accept a citizen's arrest as required based on the race of the parties involved in a dispute and did not record incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Not Sustained</li> <li>• Performance of Duty – Unfounded</li> <li>• Policy/Procedure – Sustained</li> </ul>	276	237
4 (IA2014-114)	Officer made an inappropriate statement to complainant.	<u>Officer #1 (Unidentified)</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	238	206

<p>5 (IA2014-134)</p>	<p>One officer did not follow protocol in searching complainant, did not conduct search properly, and made inappropriate physical contact with complainant. Another officer did not provide appropriate supervision during the incident.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Policy/Procedure (Counts 1-2) – Sustained</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Supervisory Responsibility – Sustained</li> </ul>	<p>194</p>	<p>183</p>
<p>6 (IA2014-144)</p>	<p>Officer was unprofessional toward complainant, did not record incident as required, and did not correctly apply a policy regarding ridership on BART.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Policy/Procedure (Count 1) – Not Sustained</li> <li>• Policy/Procedure (Count 2) – Sustained</li> </ul>	<p>199</p>	<p>161</p>
<p>7 (IA2014-148)</p>	<p>Officers detained and searched an individual without proper justification.</p>	<p><u>Officers #1-2</u></p> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Search or Seizure – Exonerated</li> </ul>	<p>184</p>	<p>145</p>
<p>8 (IA2014-162)</p>	<p>Complainant was the victim of a crime and was concerned about the lack of video evidence available to document the incident.</p>	<p><u>BART Police Department</u></p> <ul style="list-style-type: none"> <li>• Service Review<sup>12</sup></li> </ul>	<p>131</p>	<p>93</p>

During the month of April 2015, 4 **Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2015-022)*	Officer was discourteous to complainant based on her appearance.	<u>Officer #1</u> • Bias-Based Policing – Supervisory Referral <sup>13</sup>	48	14
2 (IA2015-024)	Officer inappropriately circulated materials related to work.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	46	12
3 (IA2015-025)	Officer was discourteous to complainant.	<u>Officer #1</u> • Courtesy – Supervisory Referral	48	9
4 (IA2015-029)	Officers unnecessarily addressed individual harshly during a contact and did so because of the individual's appearance.	<u>Officers #1-3</u> • Bias-Based Policing – Supervisory Referral • Conduct Unbecoming an Officer – Supervisory Referral	25	14

\* 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.

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

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

During the month of April 2015, 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> Oral Counseling
2	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Oral 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	1
Investigations Being Monitored	12
Investigations Reviewed During Current Month	27*

\*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.

<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.

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<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> 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)

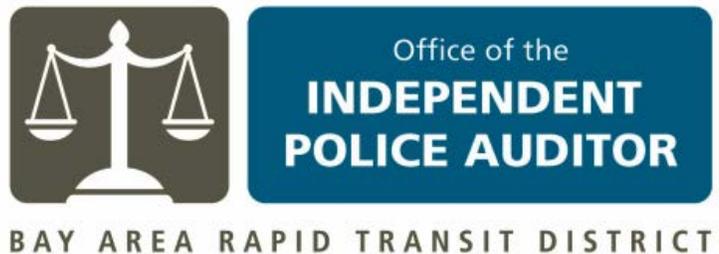
<sup>12</sup> A service review refers to an instance when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.

<sup>13</sup> A Supervisory Referral refers to an instance involving an inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

# Office of the Independent Police Auditor

## Monthly Report

May 2015



June 8, 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 May 1, 2015 through May 31, 2015.<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 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
January 2015	11	87	2	0	0
February 2015	9	78	3	0	0
March 2015	11	67	0	0	1
April 2015	13	68	2	0	0
May 2015	11*	70	3	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 (Formal)	7
Informal Complaints <sup>7</sup>	4
Administrative Investigations	0
<b>TOTAL</b>	<b>11</b>

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

OIPA	3
BART Police Department	4
<b>TOTAL</b>	<b>7</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of May 2015, 2 **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 #15-31) (IA2015-046)	<u>BART Police Department</u> • Service Review <sup>11</sup>	OIPA notified BPD, which initiated an investigation.	33
2 (OIPA #15-32) (IA2015-045)	<u>Officer #1</u> • Performance of Duty	OIPA notified BPD, which initiated an investigation.	32

During the month of May 2015, 4 **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 (IA2015-040)	<u>Employee #1</u> • Policy/Procedure	BPD initiated an investigation.	37
2 (IA2015-047)	<u>Officers #1-2</u> • Force	BPD initiated an investigation.	36
3 (IA2015-049)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	35
4 (IA2015-051)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	21

During the month of May 2015, 4 **Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-042)	<u>Officer #1</u> • Policy/Procedure • Conduct Unbecoming an Officer	BPD initiated an investigation.	32
2 (IA2015-043)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	32
3 (IA2015-044)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	34

4 (IA2015-050)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	13
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**Complaints/Investigations Initiated During a Previous Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of April 2015, 1 **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 #15-27) (IA2015-048)	<u>Employee #1</u> • Performance of Duty	OIPA notified BPD, which initiated an investigation.	40

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of May 2015, 3 **Citizen Complaints** were 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 #14-67)	Officers used excessive force when detaining complainant, did not report their use of force, and belittled complainant. One officer did not record incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force (Counts 1-2) – Unfounded</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force (Count 1) – Exonerated</li> <li>• Unnecessary or Excessive Use of Force (Count 2) – Unfounded</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Policy/Procedure (Counts 1-2) – Sustained</li> </ul>	243	208
2 (OIPA #14-73)	Officer initiated contact with complainant regarding BART fare solely because of complainant’s race.	<u>Officer #1 (Unidentified)</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Policing – Not Sustained</li> </ul>	226	194

3 (OIPA #14-74)*	Officers improperly facilitated a citizens' arrest against complainant and did so because of complainant's race.	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Policing – Unfounded</li> <li>• Policy/Procedure – Unfounded</li> </ul> <u>Officers #3-5</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Policing – Unfounded</li> <li>• Policy/Procedure – Exonerated</li> </ul>	216	203
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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 BPD's findings have also been finalized.

During the month of May 2015, 2 **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 (IA2014-126)	Officer was unprofessional toward complainant, did not properly investigate a crime in which complainant was victimized, and did not properly dispose of property.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Courtesy – Not Sustained</li> <li>• Performance of Duty – Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul>	236	215
2 (IA2014-138)*	Officer contacted complainant regarding payment of BART fare, but not other patrons, because of complainant's race.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Not Sustained</li> </ul>	224	203

\* As OIPA also closed this case during the reporting period, it has been removed from the "Number of Open Cases" column in the Quantitative Report on Page 2 only in order to avoid double-counting.

During the month of May 2015, 6 **Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2015-028)	Officer improperly detained complainant and did not address other parties who complainant reported as being involved in criminal activity.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Supervisory Referral<sup>13</sup></li> <li>• Performance of Duty – Supervisory Referral</li> </ul>	66	45
2 (IA2015-030)	Officer did not assist complainant as requested.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Supervisory Referral</li> </ul>	53	38
3 (IA2015-032)	Officer unnecessarily issued complainant a citation.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Supervisory Referral</li> </ul>	48	28
4 (IA2015-042)	Officer was using a cellular phone while driving a patrol car.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Policy/Procedure – Supervisory Referral</li> <li>• Conduct Unbecoming an Officer – Supervisory Referral</li> </ul>	32	21
5 (IA2015-043)	Officer did not take complainant seriously when complainant reported a crime.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Supervisory Referral</li> </ul>	32	7
6 (IA2015-044)	Officer was sarcastic toward complainant, who had called for police service.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Supervisory Referral</li> </ul>	34	10

## Discipline Issued During Reporting Period

### Sustained Allegations/Resulting Action Taken by BPD

During the month of May 2015, 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 exhibited unprofessional behavior.	<u>Officer #1</u> • Conduct Unbecoming an Officer	<u>Officer #1</u> Oral Counseling
2	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
3	Officer exhibited unprofessional behavior.	<u>Officer #1</u> • Conduct Unbecoming an Officer	<u>Officer #1</u> Letter of Discussion
4	Officer did not correctly apply a policy regarding ridership on BART.	<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	7
Complainant-Initiated Appeals	1
Investigations Being Monitored	10
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

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by a citizen). This number 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) 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> 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> 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.

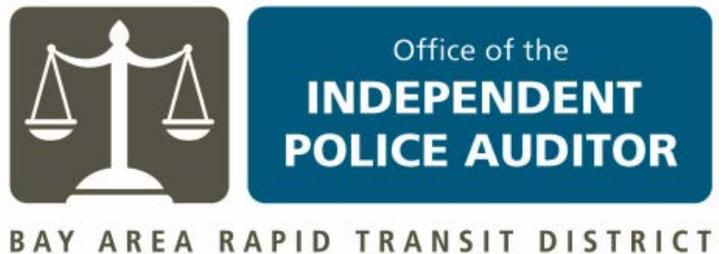
(d) Not-Sustained – The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation,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

<sup>13</sup> A Supervisory Referral refers to an instance involving an inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

# Office of the Independent Police Auditor

## Monthly Report

June 2015



July 13, 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 June 1, 2015 through June 30, 2015.<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 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
January 2015	11	87	2	0	0
February 2015	9	78	3	0	0
March 2015	11	67	0	0 <sup>†</sup>	1
April 2015	13	68	2	0	0
May 2015	11	70	3	0	0
June 2015	17 <sup>*</sup>	75	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.

†Previous reports mistakenly indicated 1 appeal received by OIPA in March 2015. Those reports have been corrected and a notation has been made in the March 2015 report. No adjustment is required to the “Number of Open Cases” column in this report.

**Types of Cases Filed**

Citizen Complaints (Formal)	10
Informal Complaints <sup>7</sup>	2
Administrative Investigations	5
<b>TOTAL</b>	<b>17</b>

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

OIPA	3
BART Police Department	7
<b>TOTAL</b>	<b>10</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of June 2015, 3 **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 #15-40) (IA2015-056)	<u>Officer #1</u> • Courtesy	OIPA notified BPD, which initiated an investigation.	28
2 (OIPA #15-41)	<u>Officer #1</u> • Workplace Discrimination	OIPA notified the BART General Manager for further action.	17
3 (OIPA #15-42) (IA2015-063)	<u>Officers #1-3</u> • Conduct Unbecoming an Officer	OIPA notified BPD, which initiated an investigation.	14

During the month of June 2015, 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 (IA2015-054)	<u>Officer #1</u> • Bias-Based Policing • Arrest or Detention	BPD initiated an investigation.	29
2 (IA2015-055)	<u>Unidentified Officers</u> • Force	BPD initiated an investigation.	28
3 (IA2015-058)	<u>Officer #1</u> • Force • Conduct Unbecoming an Officer	BPD initiated an investigation.	35
4 (IA2015-059)	<u>Officer #1</u> • Force • Conduct Unbecoming an Officer	BPD initiated an investigation.	20

5 (IA2015-062)*	<u>Officers #1-3</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest or Detention</li> <li>• Conduct Unbecoming an Officer</li> <li>• Policy/Procedure</li> </ul> <u>Officer #4</u> <ul style="list-style-type: none"> <li>• Reporting Misconduct</li> <li>• Policy/Procedure</li> </ul>	BPD initiated an investigation.	14
6 (IA2015-068)	<u>Unidentified Officers</u> <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	13

\* After the present reporting period, and in order to accurately reflect the date that the allegations in this case were received, this case number has been changed to IA2014-169.

During the month of June 2015, 4 **Administrative Investigations** were initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2015-057)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul>	BPD initiated an investigation.	26
2 (IA2015-060)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Criminal</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	21
3 (IA2015-061)	<u>Employee #1</u> <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul>	BPD initiated an investigation.	24
4 (IA2015-067)	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> </ul> <u>Officer #3</u> <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul>	BPD initiated an investigation.	32

During the month of June 2015, 2 **Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-053)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	28
2 (IA2015-064)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	24

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

**Actions Taken/# of Days Elapsed**

During the month of May 2015, 1 **Administrative Investigation** was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2015-052)	<u>Officer #1</u> • Force • Policy/Procedure	BPD initiated an investigation.	54

During the month of April 2015, 1 **Citizen Complaint (Formal)** was received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-065)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	86

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of June 2015, 9 **Citizen Complaints (Formal)** were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition <sup>11</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2014-113)	Officers used excessive force in detaining an individual. One officer did not give self-identification and another officer harassed the individual.	<u>Officer #1</u> • Force (Counts 1-2) – Unfounded • Policy/Procedure – Exonerated  <u>Officer #2</u> • Force – Unfounded • Conduct Unbecoming an Officer – Unfounded	305	274

2 (IA2014-121)	Officer improperly detained an individual, did not inform the individual of the reason for the detention, and was rude to the individual.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Performance of Duty – Unfounded</li> <li>• Courtesy – Unfounded</li> </ul>	287	252
3 (IA2014-122)	Officer was improperly aggressive in issuing order to complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Sustained</li> </ul>	278	236
4 (IA2014-135)	Officer favored opposing party in dispute with complainant because of complainant's ethnicity.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> </ul>	252	217
5 (IA2014-137)	Officers did not properly classify crimes committed against complainant.	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Policy/Procedure – Sustained</li> </ul>	251	213
6 (IA2014-142)*	Officer made inappropriate comments and did so based on race, intervened in complainant's work and abused authority in doing so, inappropriately loitered, did not follow use of force protocols, and did not follow protocols in assisting a patron.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Sustained</li> <li>• Bias-Based Policing – Unfounded</li> <li>• Policy/Procedure – Unfounded</li> <li>• Abuse of Authority – Unfounded</li> <li>• Loitering – Not Sustained</li> <li>• Operations Functions – Exonerated</li> <li>• Use of Force Definition – Unfounded</li> </ul>	239	213
7 (IA2014-143)	Officer harassed individuals and improperly detained them.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> </ul>	237	196
8 (IA2014-158)	Officers displayed weapons in a manner that frightened complainant.	<u>BART Police Department</u> <ul style="list-style-type: none"> <li>• Service Review<sup>12</sup></li> </ul>	208	183

9 (IA2014-160)	Officers detained the wrong individual.	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Performance of Duty – Exonerated</li> </ul>	201	175
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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 June 2015, 1 **Informal Complaint** was addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2015-050)	Officer was driving patrol vehicle in an inappropriate manner.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Supervisory Referral<sup>13</sup></li> </ul>	48	15

During the month of June 2015, 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 (IA2014-082)	One employee did not make appropriate notifications involving a priority call for service and did not sufficiently document related information. Other employee did not process call for service in a timely manner and did not prioritize call appropriately.	<u>Employee #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty (Counts 1-3) – Sustained</li> </ul> <u>Employee #2</u> <ul style="list-style-type: none"> <li>• Performance of Duty (Count 1) – Not Sustained</li> <li>• Performance of Duty (Count 2) – Sustained</li> </ul>	371	351

Also during the month of June 2015, BPD reclassified IA2015-055 from a Citizen Complaint to an Inquiry after it was determined that the incident giving rise to the complaint did not involve any

BPD employees. As such, this case was removed from the “Number of Open Cases” column in the Quantitative Report on Page 2.

OIPA #15-41, which was received by OIPA during the current reporting period, was referred to the BART General Manager for further action instead of to BPD due to the potential for a conflict of interest. Therefore, it has been removed from the “Number of Open Cases” column in the Quantitative Report on Page 2.

**Discipline Issued During Reporting Period**

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

During the month of June 2015, 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 made inappropriate statements to a detainee.	<u>Officer #1</u> • Conduct Unbecoming an Officer	<u>Officer #1</u> 3-day Suspension (held in abeyance)
2	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Oral Counseling
3	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Oral Counseling
4	Employee did not prioritize call for service appropriately.	<u>Employee #1</u> • Performance of Duty	<u>Employee #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	7
Complainant-Initiated Appeals	0
Investigations Being Monitored	12
Investigations Reviewed During Current Month	30*

\*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 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) 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> 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>12</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

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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>13</sup> A Supervisory Referral refers to an instance involving an inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

# Office of the Independent Police Auditor

## Monthly Report

July 2015



August 10, 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 July 1, 2015 through July 31, 2015.<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 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
January 2015	11	87	2	0	0
February 2015	9	78	3	0	0
March 2015	11	67	0	0	1
April 2015	13	68	2	0	0
May 2015	11	70	3	0	0
June 2015	17	75	0	0	0
July 2015	14*	73	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 (Formal)	12
Informal Complaints <sup>7</sup>	2
Administrative Investigations	0
<b>TOTAL</b>	<b>14</b>

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

OIPA	4
BART Police Department	8
<b>TOTAL</b>	<b>12</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of July 2015, 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 #15-44) (IA2015-073)	<u>Officer #1</u> • Racial Profiling/Bias-Based Policing • Courtesy	OIPA initiated an investigation and notified BPD, which also initiated an investigation.	32
2 (OIPA #15-45) (IA2015-069)	<u>Officer #1</u> • Performance of Duty	OIPA notified BPD, which initiated an investigation.	32
3 (OIPA #15-48) (IA2015-075)	<u>Officers #1-2</u> • Performance of Duty • Conduct Unbecoming an Officer  <u>Officer #3</u> • Performance of Duty	OIPA notified BPD, which initiated an investigation.	18
4 (OIPA #15-49) (IA2015-080)	<u>Officers #1-2</u> • Performance of Duty  <u>Officer #3</u> • Conduct Unbecoming an Officer	OIPA notified BPD, which initiated an investigation.	14

During the month of July 2015, 7 **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 (IA2015-062)*	<u>BART Police Department</u> • Service Review <sup>11</sup>	BPD initiated an investigation.	19
2 (IA2015-072)	<u>Officer #1</u> • Force • Bias-Based Policing	BPD initiated an investigation.	29
3 (IA2015-074)	<u>Officer #1</u> • Force	BPD initiated an investigation.	33
4 (IA2015-076)	<u>Officers #1-2</u> • Performance of Duty	BPD initiated an investigation.	33

5 (IA2015-077)	<u>Officer #1</u> • Bias-Based Policing	BPD initiated an investigation.	35
6 (IA2015-078)	<u>Officer #1</u> • Performance of Duty • Conduct Unbecoming an Officer • Policy/Procedure  <u>Officer #2</u> • Performance of Duty • Policy/Procedure  <u>Officer #3</u> • Performance of Duty	BPD initiated an investigation.	11
7 (IA2015-079)	<u>Officer #1</u> • Force • Bias-Based Policing • Courtesy  <u>Officer #2</u> • Force	BPD initiated an investigation.	12

\*A different case that was previously referenced by this case number (in June 2015) has now been re-designated as IA2014-169.

During the month of July 2015, 2 **Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-066)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	34
2 (IA2015-070)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	34

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

#### Actions Taken/# of Days Elapsed

During the month of June 2015, 1 **Citizen Complaint (Formal)** was received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-071)	<u>Officer #1</u> • Service Review	BPD initiated an investigation.	53

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of July 2015, 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 #14-77)	Officer made inappropriate comments, did so on the basis of race, and intervened in complainant's work. Employee did not refer complaint to on-duty personnel as required and intentionally avoided providing complainant with immediate assistance.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Profiling – Unfounded</li> <li>• Conduct Unbecoming an Officer – Sustained</li> <li>• Policy/Procedure – Unfounded</li> </ul> <u>Employee #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	266	233

During the month of July 2015, 11 **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 (IA2014-095)	Officers used excessive force in detaining complainant and did so because of complainant's race.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force (Counts 1-2) – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> </ul> <u>Officers #2-3</u> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> <li>• Bias-Based Policing – Unfounded</li> </ul>	377	342

<p>2 (IA2014-128)</p>	<p>Officers used excessive force in detaining complainant, did so because of complainant's race, and did not follow protocol when one officer searched complainant.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> <li>• Supervision – Exonerated</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Force (Count 1) – Exonerated</li> <li>• Force (Counts 2-3) – Unfounded</li> <li>• Bias-Based Policing – Unfounded</li> <li>• Search Protocol – Exonerated</li> </ul> <p><u>Officer #3</u></p> <ul style="list-style-type: none"> <li>• Supervision – Exonerated</li> </ul>	<p>297</p>	<p>262</p>
<p>3 (IA2014-139)</p>	<p>Officer improperly arrested complainant, mishandled complainant's property, gave false testimony about complainant, and insufficiently documented and reviewed the facts of the underlying incident.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Truthfulness – Not Sustained</li> <li>• Arrest or Detention – Exonerated</li> <li>• Property/Procedure – Exonerated</li> <li>• Performance of Duty – Sustained</li> </ul>	<p>273</p>	<p>261</p>
<p>4 (IA2014-145)</p>	<p>Officers deployed TASERS and removed an individual from a BART train without justification.</p>	<p><u>Unidentified Officers</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> </ul>	<p>253</p>	<p>249</p>

<p>5 (IA2014-150)</p>	<p>Officers did not take sufficient action in response to complainant's call for service and did not document or record incident as required. One officer did not document use of equipment as required.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Unfounded</li> <li>• Policy/Procedure – Sustained</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Exonerated</li> <li>• Policy/Procedure (Count 1) – Not Sustained</li> <li>• Policy/Procedure (Count 2) – Sustained</li> </ul>	<p>262</p>	<p>250</p>
<p>6 (IA2014-154)</p>	<p>One employee did not obtain and record sufficient information about an incident. One employee prematurely terminated BPD's involvement in incident.</p>	<p><u>Employee #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> </ul> <p><u>Employee #2</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Exonerated</li> </ul>	<p>249</p>	<p>216</p>
<p>7 (IA2014-161)</p>	<p>Officer improperly detained complainant because of complainant's race.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> </ul>	<p>229</p>	<p>202</p>
<p>8 (IA2014-169)</p>	<p>Officers did not follow protocol when one officer searched complainant. One officer did not report alleged misconduct as required and did not document incident in a timely manner.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty (Counts 1-2) – Sustained</li> </ul> <p><u>Officers #2-3</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Policy/Procedure – Exonerated</li> </ul> <p><u>Officer #4</u></p> <ul style="list-style-type: none"> <li>• Supervisory Responsibility – Exonerated</li> </ul>	<p>371</p>	<p>353</p>

9 (IA2015-001)	Officers did not sufficiently investigate after responding to a call for service and did not document incident as required. One officer did not record incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> <li>• Policy/Procedure (Count 1) – Sustained</li> <li>• Policy/Procedure (Count 2) – Not Sustained</li> </ul>	216	189
10 (IA2015-008)	Officer harassed complainant.	<u>Unidentified Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> </ul>	188	161
11 (IA2015-062)	BPD's patrols of a BART parking lot are insufficient.	<u>BART Police Department</u> <ul style="list-style-type: none"> <li>• Service Review</li> </ul>	19	8

During the month of July 2015, 4 **Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2015-051)	Officer mistreated complainant's property.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Policy/Procedure – Supervisory Referral<sup>13</sup></li> </ul>	84	70
2 (IA2015-053)	Officer inappropriately prolonged detention of the complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Supervisory Referral</li> </ul>	56	21
3 (IA2015-064)	Officer was rude to complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Supervisory Referral</li> </ul>	52	28

4 (IA2015-066)	Officer was antagonistic toward complainant.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	34	6
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Also during the month of July 2015, BPD reclosed IA2014-115 after having reopened it. This case was initially closed during March 2015, and was reported on during that month. As none of the findings changed when the case was reclosed, it has not been reported on again this month.

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

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

During the month of July 2015, 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 report alleged misconduct as required and did not document incident in a timely manner.	<u>Officer #1</u> • Performance of Duty (Counts 1-2)	<u>Officer #1</u> Oral 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	7
Complainant-Initiated Appeals	0
Investigations Being Monitored	12
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.

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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 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) 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> 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> 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> A Supervisory Referral refers to an instance involving an inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

# Office of the Independent Police Auditor

## Monthly Report

August 2015



October 19, 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 August 1, 2015 through August 31, 2015.<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 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
January 2015	11	87	2	0	0
February 2015	9	78	3	0	0
March 2015	11	67	0	0	1
April 2015	13	68	2	0	0
May 2015	11	70	3	0	0
June 2015	17	75	0	0	0
July 2015	14	73	1	0	0
August 2015	19*	75	2	0	0

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

**Types of Cases Filed**

Citizen Complaints (Formal)	13
Informal Complaints <sup>7</sup>	3
Administrative Investigations	3
<b>TOTAL</b>	<b>19</b>

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

OIPA	3
BART Police Department	10
<b>TOTAL</b>	<b>13</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of August 2015, 3 **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 #15-52)	<u>Unidentified Employee(s)</u> • Performance of Duty	OIPA notified BPD, which determined that the matter was limited to a parking or infraction citation.	63
2 (OIPA #15-53)	<u>Unidentified Employee(s)</u> • Performance of Duty	OIPA notified BPD, which determined that the matter was limited to a parking or infraction citation.	62
3 (OIPA #15-58) (IA2015-096)	<u>Officer #1</u> • Policy/Procedure	OIPA notified BPD, which initiated an investigation.	49

During the month of August 2015, 8 **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 (IA2015-081)	<u>Officers #1-2</u> • Force • Conduct Unbecoming an Officer • Courtesy • Policy/Procedure	BPD initiated an investigation.	77
2 (IA2015-082)	<u>Unidentified Employee(s)</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	73
3 (IA2015-083)	<u>Officers #1-3</u> • Arrest or Detention	BPD initiated an investigation.	73
4 (IA2015-087)	<u>Officer #1</u> • Arrest or Detention	BPD initiated an investigation.	66

5 (IA2015-090)	<u>Officers #1-2</u> • Performance of Duty • Conduct Unbecoming an Officer • Policy/Procedure	BPD initiated an investigation.	60
6 (IA2015-098)	<u>Officers #1-3</u> • Arrest or Detention	BPD initiated an investigation.	49
7 (IA2015-099)	<u>Officer #1</u> • Arrest or Detention	BPD initiated an investigation.	54
8 (IA2015-101)	<u>Officers #1-2</u> • Performance of Duty	BPD initiated an investigation.	77

During the month of August 2015, 3 **Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-086)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	69
2 (IA2015-089)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	64
3 (IA2015-093)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	50

During the month of August 2015, 2 **Administrative Investigations** were initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2015-085)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	73
2 (IA2015-088)	<u>Officer #1</u> • Force • Policy/Procedure	BPD initiated an investigation.	73

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

**Actions Taken/# of Days Elapsed**

During the month of April 2015, 1 **Citizen Complaint (Formal)** was received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-095)	<u>Officer #1</u> • Arrest or Detention	BPD initiated an investigation.	178

During the month of July 2015, 1 **Citizen Complaint (Formal)** was received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-109)	<u>Officers #1-2</u> • Force	BPD initiated an investigation.	88

During the month of July 2015, 1 **Administrative Investigation** was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2015-084)	<u>Employee #1</u> • Policy/Procedure	BPD initiated an investigation.	105

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of August 2015, 2 **Citizen Complaints** were concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Allegations	Disposition <sup>11</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #15-06)	Officer improperly searched complainant, used more force than necessary while searching complainant, and was rude to complainant, and officer's conduct was inappropriately based on complainant's race.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Profiling – Unfounded</li> <li>• Unnecessary or Excessive Use of Force – Not Sustained</li> <li>• Search or Seizure – Exonerated</li> <li>• Courtesy – Unfounded</li> </ul>	272	195
2 (OIPA #15-17)	Officer was rude to complainant and improperly declined to provide information requested by complainant regarding an involved party, and officer's conduct was inappropriately based on complainant's appearance.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Profiling – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Policy/Procedure – Exonerated</li> </ul>	209	154

During the month of August 2015, 11 **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 (IA2014-167)	Officer improperly detained complainant on the basis of race and used excessive force in doing so.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> </ul>	408	348

<p>2 (IA2014-127)</p>	<p>Officers detained subjects without justification and did not advise subjects of the reason for detention. One officer used excessive force and was rude to a subject.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Arrest or Detention – Exonerated</li> <li>• Courtesy – Sustained</li> <li>• Policy/Procedure – Unfounded</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Policy/Procedure – Unfounded</li> </ul>	<p>370</p>	<p>316</p>
<p>3 (IA2014-123)</p>	<p>Officer used excessive force and poor decision-making during arrest of complainant, acted unprofessionally, did not maintain proper focus on a detainee, and did not document incident as required.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force (Counts 1-3) – Not Sustained</li> <li>• Performance of Duty – Sustained</li> <li>• Conduct Unbecoming an Officer (Counts 1-2) – Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul>	<p>369</p>	<p>315</p>
<p>4 (IA2014-151)</p>	<p>Officer responded to complainant’s request for service slowly and was disrespectful to complainant.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Unfounded</li> <li>• Courtesy – Unfounded</li> </ul>	<p>350</p>	<p>298</p>
<p>5 (IA2014-149)</p>	<p>Officers cited complainant without justification and did so improperly on the basis of ethnicity.</p>	<p><u>Officers #1-3</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Arrest or Detention – Exonerated</li> </ul>	<p>349</p>	<p>289</p>
<p>6 (IA2014-141)</p>	<p>Officer detained complainants without justification, did so improperly based on complainants’ ethnicity, and was rude.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Arrest or Detention – Unfounded</li> <li>• Courtesy – Not Sustained</li> </ul>	<p>339</p>	<p>268</p>

<p>7 (IA2014-152)*</p>	<p>Officers detained subject without justification, did not release subject from detention because of subject's race, and did not listen to witnesses at the scene. One officer did not document incident as required.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Arrest or Detention – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Policy/Procedure – Sustained</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Arrest or Detention – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul> <p><u>Officer #3</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Performance of Duty – Unfounded</li> </ul>	<p>229</p>	<p>202</p>
<p>8 (IA2014-153)</p>	<p>Employee did not sufficiently respond to complainant's request for assistance.</p>	<p><u>Employee #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Not Sustained</li> </ul>	<p>327</p>	<p>267</p>
<p>9 (IA2014-164)</p>	<p>Officer used excessive force against complainant and did not self-identify as a peace officer.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force (Count 1) – Unfounded</li> <li>• Force (Count 2) – Exonerated</li> <li>• Policy/Procedure – Unfounded</li> </ul>	<p>295</p>	<p>220</p>
<p>10 (IA2015-003)<sup>†</sup></p>	<p>Officer used excessive force and was aggressive with complainant because of complainant's race, and officer acted unprofessionally toward complainant.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> <li>• Bias-Based Policing – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	<p>273</p>	<p>217</p>

11 (IA2015-038)	Officers did not respond to complainant's call for service.	<u>BART Police Department</u> • Service Review <sup>12</sup>	173	121
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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.

† As OIPA also completed an investigation into this case during the reporting period, it will only be counted as closed once in calculating the "Number of Open Cases" in the Quantitative Report on Page 2.

During the month of August 2015, 2 **Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2015-020)	Officer detained complainant without justification and was rude during detention.	<u>Officers #1-2</u> • Arrest or Detention – Supervisory Referral <sup>13</sup> • Courtesy – Supervisory Referral	209	145
2 (IA2015-070)	Officer committed traffic violations.	<u>Officers #1-3</u> • Policy/Procedure – Supervisory Referral	104	51

During the month of August 2015, 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 (IA2014-165)	Employee did not complete work individually, as was required.	<u>Employee #1</u> • Conduct Unbecoming an Officer – Sustained	294	242
2 (IA2014-168)	Officer used unprofessional and racist language in referring to subjects.	<u>Officer #1</u> • Conduct Unbecoming an Officer (Counts 1-3) – Sustained	292	236

Also during the month of August 2015, BPD closed two complaints initially received by OIPA (OIPA #15-52 and #15-53) upon determining that each complaint was limited in nature to a parking or infraction citation. As such, these two cases have been removed from the "Number of Open Cases" in the Quantitative Report on Page 2.

## Discipline Issued During Reporting Period

### Sustained Allegations/Resulting Action Taken by BPD

During the month of August 2015, 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 made inappropriate comments.	<u>Officer #1</u> • Conduct Unbecoming an Officer	<u>Officer #1</u> Informal Counseling
2	Officer #1 did not document incident as required. Officer #2 did not document use of equipment as required.	<u>Officers #1-2</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling  <u>Officer #2</u> Oral Counseling
3	Officer insufficiently documented and reviewed the facts of the underlying incident.	<u>Officer #1</u> • Performance of Duty	<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	5
Complainant-Initiated Appeals	0
Investigations Being Monitored	15
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

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by a citizen). This number 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) 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> 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)

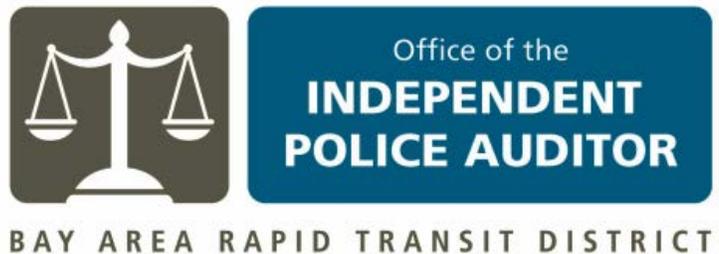
<sup>12</sup> A Service Review refers to an instance when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.

<sup>13</sup> A Supervisory Referral refers to an instance involving an inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

# Office of the Independent Police Auditor

Monthly Report

September 2015



October 19, 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 September 1, 2015 through September 30, 2015.<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 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
January 2015	11	87	2	0	0
February 2015	9	78	3	0	0
March 2015	11	67	0	0	1
April 2015	13	68	2	0	0
May 2015	11	70	3	0	0
June 2015	17	75	0	0	0
July 2015	14	73	1	0	0
August 2015	19	75	2	0	0
September 2015	9	78	1	0	0

**Types of Cases Filed**

Citizen Complaints (Formal)	6
Informal Complaints <sup>7</sup>	2
Administrative Investigations	1
<b>TOTAL</b>	<b>9</b>

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

OIPA	0
BART Police Department	6
<b>TOTAL</b>	<b>6</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of September 2015, 6 **Citizen Complaints (Formal)** were received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations <sup>9</sup>	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>10</sup>
1 (IA2015-094)	<u>Officers #1-3</u> • Force • Arrest or Detention	BPD initiated an investigation.	30
2 (IA2015-097)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	45
3 (IA2015-100)	<u>Officer #1</u> • Force	BPD initiated an investigation.	42
4 (IA2015-103)	<u>Officer #1</u> • Arrest or Detention	BPD initiated an investigation.	27
5 (IA2015-104)	<u>Officer #1</u> • Bias-Based Policing • Conduct Unbecoming an Officer • Courtesy • Policy/Procedure  <u>Officer #2</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	21
6 (IA2015-107)	<u>Officers #1-3</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	19

During the month of September 2015, 2 **Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-092)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	46
2 (IA2015-102)	<u>Employee #1</u> • Performance of Duty	BPD initiated an investigation.	38

During the month of September 2015, 1 **Administrative Investigation** was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2015-091)	<u>Officers #1-2</u> • Force	BPD initiated an investigation.	48

**Complaints/Investigations Concluded During Reporting Period**

Dispositions/# of Days Elapsed

During the month of September 2015, 1 **Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Allegations	Disposition <sup>11</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #13-77)*	One officer targeted complainant for law enforcement contact based on ethnicity, arrested and searched complainant without proper justification, and harassed complainant. Other officer targeted subjects for law enforcement contact based on inappropriate factors.	<u>Officer #1</u> • Racial Profiling/Bias-Based Profiling – Unfounded • Arrest or Detention – Exonerated • Search or Seizure – Exonerated • Conduct Unbecoming an Officer – Unfounded  <u>Officer #2</u> • Racial Profiling/Bias-Based Profiling – Not Sustained	700 <sup>†</sup>	179

\* 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.

† It is OIPA’s position that the applicable statute of limitations governing this investigation was tolled from May 1, 2014 through September 8, 2015 due to the unavailability of a subject officer.

During the month of September 2015, 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 (IA2015-046)	The number of officers on patrol in certain areas of the BART District is insufficient.	<u>BART Police Department</u> • Service Review <sup>12</sup>	166	121

During the month of September 2015, 5 **Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2015-086)	Officer operated a patrol vehicle unsafely.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral <sup>13</sup>	69	21
2 (IA2015-089)	Officer operated a patrol vehicle unsafely.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	64	20
3 (IA2015-092)	Officer operated a patrol vehicle unsafely.	<u>Officer #1</u> • Policy/Procedure – Supervisory Referral	46	22
4 (IA2015-093)	Officer did not sufficiently respond to a request for assistance from complainant.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral	50	5
5 (IA2015-102)	Employee did not sufficiently respond to a request for assistance from complainant.	<u>Employee #1</u> • Performance of Duty – Supervisory Referral	38	18

## Discipline Issued During Reporting Period

### Sustained Allegations/Resulting Action Taken by BPD

During the month of September 2015, 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 sufficiently investigate after responding to a call for service and did not document incident as required.	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Policy/Procedure</li> </ul>	<u>Officers #1-2</u> Letter of Discussion
2	Officer did not report a use of force as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul>	<u>Officer #1</u> Suspension (1 day)
3	Officer used unprofessional and racist language in referring to subjects.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer (Counts 1-3)</li> </ul>	<u>Officer #1</u> Suspension (7 days)
4	Officer did not report alleged misconduct, did not record incident as required, used excessive force, and did not document a use of force as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Policy/Procedure (Counts 1-3)</li> </ul>	<u>Officer #1</u> Suspension (3 days)
5	Officer was rude to a subject.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Courtesy</li> </ul>	<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	4
Complainant-Initiated Appeals	0
Investigations Being Monitored	15
Investigations Reviewed During Current Month	15*

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

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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 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) 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> 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>12</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

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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>13</sup> A Supervisory Referral refers to an instance involving an inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

# Office of the Independent Police Auditor

## Monthly Report

October 2015



December 14, 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 October 1, 2015 through October 31, 2015.<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 2014	14	78	0	0	0
November 2014	17	84	1	0	0
December 2014	11	84	1	0	0
January 2015	11	87	2	0	0
February 2015	9	78	3	0	0
March 2015	11	67	0	0	1
April 2015	13	68	2	0	0
May 2015	11	70	3	0	0
June 2015	17	75	0	0	0
July 2015	14	73	1	0	0
August 2015	19	75	2	0	0
September 2015	9	78	1	0	0
October 2015	14	79	2	0	0

**Types of Cases Filed**

Citizen Complaints (Formal)	12
Informal Complaints <sup>7</sup>	1
Administrative Investigations	1
<b>TOTAL</b>	<b>14</b>

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

OIPA	3
BART Police Department	9
<b>TOTAL</b>	<b>12</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of October 2015, 3 **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 #15-68) (IA2015-111)	<u>Officers #1-2</u> • Performance of Duty • Conduct Unbecoming an Officer	OIPA notified BPD, which initiated an investigation.	62
2 (OIPA #15-75) (IA2015-114)	<u>Officer #1</u> • Performance of Duty	OIPA notified BPD, which initiated an investigation.	54
3 (OIPA #15-81) (IA2015-117)	<u>BART Police Department</u> • Service Review <sup>11</sup>	OIPA notified BPD, which initiated an investigation.	45

During the month of October 2015, 9 **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 (IA2015-106)	<u>Officer #1</u> • Force • Arrest or Detention • Policy/Procedure  <u>Officers #2-3</u> • Force	BPD initiated an investigation.	69
2 (IA2015-108)	<u>Officers #1-2</u> • Arrest or Detention	BPD initiated an investigation.	68
3 (IA2015-110)	<u>Employee #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	66
4 (IA2015-112)	<u>Officer #1</u> • Conduct Unbecoming an Officer • Courtesy	BPD initiated an investigation.	61
5 (IA2015-113)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	53

6 (IA2015-115)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	54
7 (IA2015-116)	<u>Officer #1</u> • Performance of Duty • Conduct Unbecoming an Officer • Courtesy	BPD initiated an investigation.	47
8 (IA2015-119)	<u>Officer #1</u> • Performance of Duty • Conduct Unbecoming an Officer • Courtesy	BPD initiated an investigation.	56
9 (IA2015-121)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	46

During the month of October 2015, 1 **Informal Complaint** was received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-105)	<u>Employee #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	74

During the month of October 2015, 1 **Administrative Investigation** was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2015-123)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	48

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of October 2015, 2 **Citizen Complaints** were 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 #14-78)	Officers improperly detained subject based on subject's race, and one officer did not properly document incident as required.	<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>• Policy/Procedure – Sustained</li> </ul> <u>Officers #2-3</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Profiling – Unfounded</li> <li>• Arrest or Detention – Exonerated</li> </ul>	385	323 <sup>†</sup>
2 (OIPA #15-04)	Officers improperly detained subjects on the basis of race, used excessive force, and were aggressive toward subjects.	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force – Exonerated</li> <li>• Racial Profiling/Bias-Based Profiling – Unfounded</li> <li>• Arrest or Detention – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	319	274

<sup>†</sup>It is OIPA's position that the applicable statute of limitations governing this investigation was tolled from March 13, 2015 through August 2, 2015 due to the unavailability of a subject officer.

During the month of October 2015, 9 **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 (IA2015-111)	Officers did not provide sufficient assistance and were condescending to complainant.	<u>Officers #1-2</u> • Performance of Duty – Supervisory Referral <sup>13</sup>	62	14
2 (IA2015-034)	Officer was untruthful during courtroom testimony and detained complainant without justification.	<u>Officer #1</u> • Truthfulness – Unfounded • Arrest or Detention – Exonerated	238	186
3 (IA2015-014)	Officer cited complainant on the basis of race, did not cite other individuals engaged in identical conduct, and did not properly document the contact.	<u>Officer #1</u> • Bias-Based Policing – Unfounded • Performance of Duty – Not Sustained • Policy/Procedure – Sustained	294	234
4 (IA2015-007)*	Officers improperly contacted subjects on the basis of race, used excessive force, and were aggressive toward subjects. One officer used unnecessary force when contacting an uninvolved subject.	<u>Officers #1-2</u> • Force and Conduct – Exonerated • Force – Unfounded • Bias-Based Policing – Unfounded	319	259
5 (IA2015-015)	Employee was confrontational and unhelpful to complainant.	<u>Employee #1</u> • Courtesy – Sustained	298	232

6 (IA2015-002)	Officers improperly detained subjects on the basis of race and were intimidating toward subjects.	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Arrest or Detention – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	333	258
7 (IA2015-039)	Employee was rude and impatient when contacting complainant.	<u>Employee #1</u> <ul style="list-style-type: none"> <li>• Courtesy – Supervisory Referral</li> </ul>	228	155
8 (IA2014-136)	Employee issued a citation without justification, did not follow proper procedure in doing so, was rude to complainant, and offered preferential treatment to another individual.	<u>Employee #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Courtesy – Not Sustained</li> <li>• Policy/Procedure – Not Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul>	417	351
9 (IA2013-125)	Officer targeted subject for law enforcement contact based on ethnicity.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Not Sustained</li> </ul>	756	702 <sup>†</sup>

\* As OIPA also completed an investigation into this case during the reporting period, it will only be counted as closed once in calculating the “Number of Open Cases” in the Quantitative Report on Page 2.

†It is BPD’s position that the applicable statute of limitations governing this investigation was tolled from June 10, 2014 through September 9, 2015 due to the unavailability of a subject officer.

During the month of October 2015, 1 **Informal Complaint** was addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2015-105)	Officer was accusatory toward complainant and inappropriately contacted complainant’s supervisor.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Supervisory Referral</li> </ul>	74	5

Also during the month of October 2015, BPD classified IA2015-021 as an Inquiry and administratively closed the complaint after making the determination that the misconduct alleged did not involve any BPD employees.<sup>14</sup> Additionally, BPD classified IA2015-048 as an Inquiry and administratively closed it after making the determination that the sole concern at issue was a parking dispute which would be handled by the established citation dispute process.

**Discipline Issued During Reporting Period**

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

During the month of October 2015, 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	Employee did not follow proper procedure when issuing a parking citation.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
2	Officer did not properly document incident as required.	<u>Officer #1</u> • Policy/Procedure	<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	2
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.

<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> 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> 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> A Supervisory Referral refers to an instance involving an inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

<sup>14</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

November 2015



December 14, 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 BART Police Citizen Review Board. This report provides information for the period November 1, 2015 through November 30, 2015.<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 BPCRB <sup>6</sup>
November 2014	17	84	1	0	0
December 2014	11	84	1	0	0
January 2015	11	87	2	0	0
February 2015	9	78	3	0	0
March 2015	11	67	0	0	1
April 2015	13	68	2	0	0
May 2015	11	70	3	0	0
June 2015	17	75	0	0	0
July 2015	14	73	1	0	0
August 2015	19	75	2	0	0
September 2015	9	78	1	0	0
October 2015	14	79	2	0	0
November 2015	3	72	1	0	0

**Types of Cases Filed**

Citizen Complaints (Formal)	3
Informal Complaints <sup>7</sup>	0
Administrative Investigations	0
<b>TOTAL</b>	<b>3</b>

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

OIPA	0
BART Police Department	3
<b>TOTAL</b>	<b>3</b>

**Complaints/Investigations Initiated During Reporting Period**

Actions Taken/# of Days Elapsed

During the month of November 2015, 3 **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 (IA2015-122)	<u>Officer #1</u> • Bias-Based Policing	BPD initiated an investigation.	26
2 (IA2015-120)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	31
3 (IA2015-118)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	41

**Complaints/Investigations Concluded During Reporting Period**

Dispositions/# of Days Elapsed

During the month of November 2015, 1 **Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Allegations	Disposition <sup>9</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #15-44)*	Officers improperly detained subject on the basis of race and were rude toward subject.	<u>Officers #1-2</u> • Racial Profiling/Bias-Based Profiling – Unfounded • Courtesy – Unfounded	158	138

\*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 November 2015, 8 **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 (IA2015-045)	Officer cited complainant after inducing complainant to violate traffic law.	<u>Officer #1</u> • Arrest or Detention – Unfounded	220	192
2 (IA2015-036)	One officer did not properly investigate crime. Other officer did not sufficiently supervise subordinate officer.	<u>Officer #1</u> • Performance of Duty (Counts 1-2) – Sustained  <u>Officer #2</u> • Performance of Duty – Sustained	229	198
3 (IA2015-041)	Officer was driving erratically.	<u>Officer #1</u> • Policy/Procedure – Exonerated	230	207
4 (IA2015-065)	Officer conspired to extort vendors and used or excessive force against complainant.	<u>Officer #1</u> • Force – Unfounded • Conduct Unbecoming an Officer – Unfounded	240	217
5 (IA2015-027)	Officers detained complainant without cause and used excessive force when doing so.	<u>Officer #1</u> • Arrest or Detention – Exonerated • Force (Count 1) – Exonerated • Force (Counts 2-4) – Unfounded  <u>Officer #2</u> • Force (Count 1) – Exonerated • Force (Counts 2-3) – Unfounded	284	246
6 (IA2015-006)	Employee threatened to harm complainant.	<u>Employee #1</u> • Conduct Unbecoming an Officer – Not Sustained	324	286

7 (IA2014-156)	Officers and employee did not appropriately respond to complainant's request for service.	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> </ul> <u>Employee #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> </ul>	364	333
8 (IA2015-031)*	Officer was discourteous, did not take sufficient action in response to a call for service, and did not take action on the basis of race.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Courtesy – Unfounded</li> <li>• Bias-Based Policing – Not Sustained</li> <li>• Performance of Duty – Unfounded</li> </ul>	238	219

\*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 2015, 2 **Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2015-107)	Officers unnecessarily cited complainant.	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Supervisory Referral<sup>10</sup></li> </ul>	75	55
2 (IA2015-099)	Officer intentionally intimidated complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Supervisory Referral</li> </ul>	110	85

During the month of November 2015, 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 (IA2015-067)	Officers targeted subject for law enforcement contact based on ethnicity.	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> </ul>	186	155

**Discipline Issued During Reporting Period**

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

During the month of November 2015, 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 used poor decision-making during arrest of complainant, acted unprofessionally, did not maintain proper focus on a detainee, and did not document incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Policy/Procedure</li> <li>• Conduct Unbecoming an Officer</li> <li>• Performance of Duty</li> </ul>	<u>Officer #1</u> Written Reprimand
2	One officer did not properly investigate crime. Other officer did not sufficiently supervise subordinate officer.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty (Counts 1-2)</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	<u>Officer #1</u> Letter of Discussion  <u>Officer #2</u> Informal Counseling
3	Officer did not properly document a law enforcement contact.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul>	<u>Officer #1</u> Informal Counseling
4	Employee was confrontational and unhelpful to complainant.	<u>Employee #1</u> <ul style="list-style-type: none"> <li>• Courtesy</li> </ul>	<u>Employee #1</u> Informal Counseling
5	Officers and employee did not appropriately respond to complainant's request for service.	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul> <u>Employee #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	<u>Officer #1</u> Letter of Discussion  <u>Officer #2</u> Oral Counseling  <u>Employee #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	1
Complainant-Initiated Appeals	0
Investigations Being Monitored	16
Investigations Reviewed During Current Month	14*

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

<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 BART Police Citizen Review 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.

<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 BART Police Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA’s investigative jurisdiction.

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

<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 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

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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> 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.

# Office of the Independent Police Auditor

Monthly Report

December 2015



January 11, 2016

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 BART Police Citizen Review Board. This report provides information for the period December 1, 2015 through December 31, 2015.<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 BPCRB <sup>6</sup>
December 2014	11	84	1	0	0
January 2015	11	87	2	0	0
February 2015	9	78	3	0	0
March 2015	11	67	0	0	1
April 2015	13	68	2	0	0
May 2015	11	70	3	0	0
June 2015	17	75	0	0	0
July 2015	14	73	1	0	0
August 2015	19	75	2	0	0
September 2015	9	78	1	0	0
October 2015	14	79	2	0	0
November 2015	3	72	1	0	0
December 2015	16*	78	1	0	0

\*This number includes 6 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 (Formal)	13
Informal Complaints <sup>7</sup>	2
Administrative Investigations	1
<b>TOTAL</b>	<b>16</b>

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

OIPA	2
BART Police Department	11
<b>TOTAL</b>	<b>13</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of December 2015, 2 **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 #15-94) (IA2015-139)	<u>Officer #1</u> • Performance of Duty	OIPA notified BPD, which initiated an investigation.	13
2 (OIPA #15-90) (IA2015-134)	<u>BART Police Department</u> • Performance of Duty	OIPA notified BPD, which initiated an investigation.	34

During the month of December 2015, 5 **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 (IA2015-133)	<u>Officer #1</u> • Force	BPD initiated an investigation.	20
2 (IA2015-128)	<u>Officer #1</u> • Bias-Based Policing	BPD initiated an investigation.	28
3 (IA2015-137)	<u>Unidentified Officer(s)</u> • Performance of Duty	BPD initiated an investigation.	13
4 (IA2015-124)	<u>Employee #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	40
5 (IA2015-129)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	30

During the month of December 2015, 2 **Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-136)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	13
2 (IA2015-138)	<u>Officer #1</u> • Conduct Unbecoming an Officer • Policy/Procedure	BPD initiated an investigation.	11

During the month of December 2015, 1 **Administrative Investigations** was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2015-135)	<u>Officer #1</u> • Force	BPD initiated an investigation.	17

### **Complaints/Investigations Initiated During Previous Reporting Periods**

#### Actions Taken/# of Days Elapsed

During the month of September 2015, 1 **Citizen Complaint (Formal)** was received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-131)	<u>Officer #1</u> • Force	BPD initiated an investigation.	104

During the month of October 2015, 3 **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 (IA2015-125)	<u>Officer #1</u> • Bias-Based Policing • Force • Arrest/Detention • Conduct Unbecoming an Officer	BPD initiated an investigation.	87
2 (IA2015-126)	<u>Officer #1</u> • Arrest/Detention • Conduct Unbecoming an Officer	BPD initiated an investigation.	96
3 (IA2015-127)	<u>Officer #1</u> • Force	BPD initiated an investigation.	100

During the month of November 2015, 2 **Citizen Complaints (Formal)** were initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2015-130)	<u>Officer #1</u> • Arrest/Detention	BPD initiated an investigation.	56
2 (IA2015-132)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	48

**Complaints/Investigations Concluded During Reporting Period**

Dispositions/# of Days Elapsed

During the month of December 2015, 1 **Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Allegations	Disposition <sup>11</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #15-21)	Officer was discourteous, did not take sufficient action in response to a call for service, and omitted to take action on the basis of race, age, and gender.	<u>Officer #1</u> • Racial Profiling/Bias-Based Profiling – Unfounded • Performance of Duty – Unfounded • Courtesy – Unfounded	266	240

During the month of December 2015, 3 **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 (IA2015-009)	Officers used excessive force when taking complainant into custody, and one officer did not appropriately retrieve complainant's property.	<u>Officers #1-4</u> • Force – Unfounded  <u>Officer #5</u> • Force – Unfounded • Performance of Duty – Sustained	348	320
2 (IA2015-049)	Officers mishandled complainant's property and removed complainant from BART property without justification.	<u>Officers #1-2</u> • Policy/Procedure (Counts 1-2) – Unfounded	252	226
3 (IA2015-117)	BPD officers do not sufficiently patrol trains.	<u>BART Police Department</u> • Performance of Duty – Service Review <sup>12</sup>	70	29

During the month of December 2015, 3 **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 (IA2014-034)	Officer committed a traffic violation.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	726	712*
2 (IA2015-069)	Officer did not appropriately respond to complainant's request for service and did not properly monitor voicemail and email.	<u>Officer #1</u> • Performance of Duty – Sustained • Policy/Procedure – Sustained	186	145

3 (IA2015-088)	Officer did not properly report a use of force.	<u>Officer #1</u> • Policy/Procedure – Sustained	157	131
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\*The statute of limitations with regard to this investigation was tolled from January 22, 2014, until October 6, 2015 because the subject officer was on extended leave during the course of the investigation. The subject officer subsequently retired from service prior to the completion of the investigation.

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

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

During the month of November 2015, 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 (IA2015-033)	Officers mocked complainant, treated complainant differently on the basis of complainant's primary language, and did not properly document a detention.	<u>Officers #1-2</u> • Bias-Based Policing – Not Sustained • Conduct Unbecoming an Officer – Not Sustained • Policy/Procedure – Not Sustained	266	215

During the month of November 2015, 1 **Informal 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 (IA2015-113)	Officer harassed complainant.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral <sup>13</sup>	81	29

During the month of October 2015, 1 **Administrative Investigation** 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 (IA2014-163)	Officer was discourteous and intimidating to employee and inappropriately video recorded interaction with employee. Employee was rude to BART patrons and to an officer.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul> <u>Employee #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer (Counts 1-3) – Not Sustained</li> <li>• Conduct Unbecoming an Officer (Count 4) – Sustained</li> </ul>	397	303

**Discipline Issued During Reporting Period**

Sustained Allegations/Resulting Action Taken by BPD

During the month of December 2015, 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 appropriately retrieve complainant's property.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	<u>Officer #1</u> Informal Counseling
2	Officer did not appropriately respond to complainant's request for service and did not properly monitor voicemail and email.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> <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	0
Complainant-Initiated Appeals	0
Investigations Being Monitored	11
Investigations Reviewed During Current Month	26*

\*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 BART Police Citizen Review 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.

<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 BART Police Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA’s investigative jurisdiction.

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

<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).

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<sup>11</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>12</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>13</sup> 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.