

Office of the Independent Police Auditor

Monthly Report

April 2014



May 12, 2014

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period April 1, 2014 through April 30, 2014.¹

Quantitative Report

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

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

Types of Cases Filed

Citizen Complaints	10
Administrative Investigations	2
Comments of Non-Complaint	6
TOTAL	18

Citizen Complaints Received per Department

OIPA	5*
BART Police Department	5
TOTAL	10

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

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

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

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

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

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

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

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

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

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

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

Complaints/Investigations Initiated During a Previous Reporting Period

Actions Taken/# of Days Elapsed

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

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

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

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

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

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

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

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

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

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

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

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

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

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

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BPD

During the month of April 2014, BART PD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s)	Classification of Sustained Allegation(s)	Action Taken
1	Officers did not detain an individual for further investigation as they should have.	<u>Officer #1</u> • Performance of Duty <u>Officer #2</u> • Performance of Duty	<u>Officer #1</u> Letter of Discussion <u>Officer #2</u> Informal Counseling

Additional Notes

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

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

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

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the "Citizen Board, Office of the District Secretary, and other District departments." As complaints received by the 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.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as "Comments of Non-Complaint;" these are comments "on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint." (BART Police Department Policy Manual, Policy 1020.1.1(e)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

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

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA's findings are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes

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

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

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

⁷ In 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.

⁸ 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).

⁹ OIPA defines its investigative findings as follows:

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

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

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

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

¹⁰ 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)

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

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