

Office of the Independent Police Auditor

Monthly Report

August 2014



September 8, 2014

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period August 1, 2014 through August 31, 2014.¹

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
August 2013	17	43	3	0	0
September 2013	14	44	0	0	0
October 2013	16	50	1	0	0
November 2013	18	58	0	0	0
December 2013	14	62	0	0	0
January 2014	9	53	0	0	0
February 2014	11	55	0	0	0
March 2014	19	65	0	0	0
April 2014	18	68	1	0	0
May 2014	12	57	0	0	0
June 2014	11	61	0	0	0
July 2014	10	67	0	0	1
August 2014	20*	75 [†]	2	0	0

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

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

Types of Cases Filed

Citizen Complaints	12
Administrative Investigations	3
Comments of Non-Complaint	5
TOTAL	20

Citizen Complaints Received per Department

OIPA	2
BART Police Department	10
TOTAL	12

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

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

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

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

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

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

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

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

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

Complaints/Investigations Initiated During a Previous Reporting Period

Actions Taken/# of Days Elapsed

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

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

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

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

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

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

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

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

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

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

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

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

<p>2 (IA2013-138)</p>	<p>Officer #1 did not sufficiently investigate a crime reported by complainant and did not record involvement in incident as required. Officer #2 did not provide sufficient instruction to Officer #1.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> • Performance of Duty – Unfounded • Policy/Procedure – Not Sustained <p><u>Officer #2</u></p> <ul style="list-style-type: none"> • Failure to Supervise – Unfounded 	<p>269</p>	<p>237</p>
<p>3 (IA2014-002)</p>	<p>Complainant was improperly issued a citation due to a problem with the parking verification system.</p>	<p><u>BART Police Department</u></p> <ul style="list-style-type: none"> • Service Review¹¹ 	<p>244</p>	<p>232</p>
<p>4 (IA2014-007)</p>	<p>Officers took too long to respond to complainant’s call for service, did not allow complainant to assist in the search for a subject, and did not make sufficient effort to locate the subject.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> • Performance of Duty (Count 1) – Exonerated • Performance of Duty (Count 2) – Exonerated • Performance of Duty (Count 3) – Unfounded <p><u>Officer #2</u></p> <ul style="list-style-type: none"> • Performance of Duty (Count 1) – Exonerated • Performance of Duty (Count 2) – Exonerated • Performance of Duty (Count 3) – Unfounded 	<p>221</p>	<p>208</p>
<p>5 (IA2014-014)</p>	<p>Employee was rude in directing complainant not to sit on an escalator rail inside a station.</p>	<p><u>Employee #1</u></p> <ul style="list-style-type: none"> • Courtesy – Not Sustained 	<p>210</p>	<p>177</p>
<p>6 (IA2014-016)*</p>	<p>Officer drove quickly in front of complainant, a pedestrian, in a BART parking lot in a manner that forced complainant to stop walking.</p>	<p><u>Unknown Employee</u></p> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained 	<p>201</p>	<p>187</p>

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

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

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

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BPD

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

Case #	Nature of Sustained Allegation(s)	Classification of Sustained Allegation(s)	Action Taken
1	Officers did not document or record a law enforcement contact as required.	<u>Officer #1</u> • Policy/Procedure <u>Officer #2</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling <u>Officer #2</u> Informal Counseling

Additional Notes

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

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

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

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 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.

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.