



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

August 2017

Issue date: September 18, 2017

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 (BPCRB). This report provides information for the period **August 1, 2017 through August 31, 2017**.¹

The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Division.

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
August 2016	9	61	0	0	0
September 2016	9	57	0	0	0
October 2016	6	51	0	0	0
November 2016	13	55	1	0	0
December 2016	9	57	0	0	0
January 2017	6	52	0	0	0
February 2017	7	41	0	0	0
March 2017	9	43	0	0	0
April 2017	8	42	1	0	0
May 2017	13	47	1	0	0
June 2017	11	44	1	0	0
July 2017	13	48	0	0	0
August 2017	12	35	0	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	8
Informal Complaints ⁷	3
Administrative Investigations	1
TOTAL	12

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁸

OIPA	2
BART Police Department	6
TOTAL	8

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During August 2017, **2 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (OIPA #17-29) (IA2017-066)	Officer #1: • Bias-Based Policing	OIPA notified BPD, which initiated an investigation.	47
2 (OIPA #17-32) (IA2017-070)	Employee #1: • Performance of Duty	OIPA notified BPD, which categorized the complaint as a Service Review.	38

During August 2017, **6 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2017-068)	Officer #1: • Performance of Duty	BPD initiated an investigation.	47
2 (IA2017-069)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	39
3 (IA2017-071)	Employee #1: • Conduct Unbecoming	BPD initiated an investigation.	41
4 (IA2016-073)	Officers #1-2: • Bias-Based Policing	BPD initiated an investigation.	32
5 (IA2017-075)	Officers #1-2: • Force	BPD initiated an investigation.	32
6 (IA2017-076)	Officers #1-2: • Force	BPD initiated an investigation.	24

During August 2017, **3 Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2017-065)	Officer #1: • Arrest or Detention	BPD initiated an investigation.	26
2 (IA2017-067)	Employee #1: • Performance of Duty	BPD initiated an investigation.	46
3 (IA2017-072)	Employee #1: • Conduct Unbecoming	BPD initiated an investigation.	27

During August 2017, **1 Administrative Investigation** was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2017-074)	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure • Conduct Unbecoming an Officer 	BPD initiated an investigation.	27

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During August 2017, **21 Citizen Complaints (Formal)** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2016-063)	Officers used excessive force and unreasonably seized complainant's property, and one officer did so because of complainant's race.	Officers #1-2: <ul style="list-style-type: none"> • Force – Exonerated Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded Officer #2: <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Search/Seizure – Exonerated 	453	427*
2 (IA2016-081)	Officer used excessive force on complainant.	Officer #1: <ul style="list-style-type: none"> • Force – Exonerated 	384	344
3 (IA2016-109)	Officers did not properly respond to and document a call for service.	Officers #1-2: <ul style="list-style-type: none"> • Performance of Duty – Not Sustained Officer #3: <ul style="list-style-type: none"> • Performance of Duty – Sustained • Policy/Procedure – Sustained 	296	254
4 (IA2017-008)	Officers used excessive force on complainant.	Officers #1-2: <ul style="list-style-type: none"> • Force – Exonerated 	296	254
5 (IA2017-011)	Officer used excessive force on complainant and did not properly document the contact.	Officer #1: <ul style="list-style-type: none"> • Force – Not Sustained • Policy/Procedure – Not Sustained 	214	172

6 (IA2017-012)	Officer escalated tension by unnecessarily summoning additional officers to the scene of a contact, and officer lied to supervisor about details of the contact.	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (Count 1) – Exonerated • Conduct Unbecoming an Officer (Count 2) – Unfounded 	204	159
7 (IA2017-013)	Officers unlawfully detained complainant and stole complainant's property. One officer whispered false accusations of criminal conduct about complainant.	Officers #1-2: <ul style="list-style-type: none"> • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer (Count 1) – Unfounded Officer #2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (Count 2) – Unfounded 	189	154
8 (IA2017-014)	Officer unlawfully detained complainant, used excessive force, and groped complainant during the detention.	Officer #1: <ul style="list-style-type: none"> • Force – Exonerated • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer – Unfounded 	193	148
9 (IA2017-016)	Officer used excessive force during arrest of subject.	Officer #1: <ul style="list-style-type: none"> • Force (Counts 1-2) – Exonerated • Force (Count 3) – Unfounded 	186	144
10 (IA2017-019)	Officers used excessive force during an arrest.	Officer #1: <ul style="list-style-type: none"> • Force (Counts 1-2) – Unfounded Officer #2: <ul style="list-style-type: none"> • Force (Counts 1-2) – Unfounded • Force (Counts 3-6) – Exonerated 	253	207
11 (IA2017-021)	Officers did not properly investigate a call for service and two officers used excessive force against complainant.	Officers #1-2: <ul style="list-style-type: none"> • Force – Exonerated Officers #1-3: <ul style="list-style-type: none"> • Performance of Duty – Exonerated 	166	131
12 (IA2017-025)	Officer unlawfully detained complainant and used excessive force when doing so.	Officer #1: <ul style="list-style-type: none"> • Force – Exonerated • Arrest or Detention – Exonerated 	146	118
13 (IA2017-026)	Officer used excessive force on complainant.	Officer #1: <ul style="list-style-type: none"> • Force – Exonerated 	147	100

14 (IA2017-027)	Officers detained complainant because of complainant's race.	Officers #1-2: • Bias-Based Policing – Unfounded	143	115
15 (IA2017-028)	Officer did not properly respond to a request for assistance.	Officer #1: • Performance of Duty – Sustained	147	100
16 (IA2017-030)	Department did not provide sufficient supervision to deter criminal activity.	BART Police Department • Service Review ⁹	138	110
17 (IA2017-033)	Officers used excessive force against complainant and one officer did not properly investigate suspected criminal activity.	Officers #1-2: • Force – Exonerated Officer #2: • Performance of Duty – Unfounded	136	91
18 (IA2017-034)	Officers planned to rape complainant.	Officers #1-3: • Conduct Unbecoming an Officer – Unfounded	135	100
19 (IA2017-042)	Officer bullied complainant and used unnecessary force.	Officer #1: • Force – Unfounded • Conduct Unbecoming an Officer – Unfounded	109	83
20 (IA2017-058)	Officer provided conflicting testimony during an administrative proceeding.	Officer #1: • Performance of Duty – Unfounded	63	35

*This investigation (IA2016-063) was tolled from December 28, 2016 to August 21, 2017 pending litigation.

During August 2017, 3 **Administrative Investigations** were concluded by BPD:

Investigation # (IA Case #)	Nature of Complainant	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Address Complaint
1 (IA2016-103)	Employees did not convey relevant information to an outside law enforcement agency.	Employees #1-2: • Performance of Duty – Sustained	342	300
2 (IA2016-114)	Officers used excessive force and did not properly report the use of force.	Officers #1-2: • Force – Unfounded • Policy/Procedure – No Finding [†]	280	234
3 (IA2017-022)	Officer used excessive force.	Officer #1: • Force – Exonerated	198	172

[†]The disposition of one allegation in IA2016-114 was not reported by BPD prior to the finalization of this report.

Also during the month of August 2017, BPD classified each of the following cases as an **Inquiry** and Administratively Closed the complaints: IA2017-043 (Complainant withdrew complaint after receiving clarifying information from the Office of the General Manager); IA2017-054 (Complainant did not provide sufficient information for investigation by BPD).

DISCIPLINE ISSUED DURING REPORTING PERIOD

During August 2017, BPD 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 failed random alcohol screening.	Officer #1: • Policy/Procedure	Officer #1: • Informal Counseling

ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (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 conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	2
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	22
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.

MONITORING INFORMATION

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is handled by BPD. The OIPA Monthly Report reflects additional information regarding monitored cases with detail not to exceed that which is allowable under state law. The majority of investigations reviewed by OIPA during the period did not raise any concerns or generate any recommendations for revisions or follow-up.

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 BART Police Citizen Review Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is also made aware of additional complaints about the BART Police Department 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 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) 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 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.

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. 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 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).

⁷ 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)).

⁸ 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.

⁹ 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.