

Office of the Independent Police Auditor

Monthly Report

December 2014



January 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 December 1, 2014 through December 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
December 2013	14	62	0	0	0
January 2014	9	53	0	0	0
February 2014	11	55	0	0	0
March 2014	19	65	0	0	0
April 2014	18	68	1	0	0
May 2014	12	57	0	0	0
June 2014	11	61	0	0	0
July 2014	10	67	0	0	1
August 2014	20	75	2	0	0
September 2014	12	72	0	0	0
October 2014	14	78	0	0	0
November 2014	17	84	1	0	0
December 2014	11	84	1	0	0

Types of Cases Filed

Citizen Complaints (Formal)	10
Informal Complaints ⁷	0
Administrative Investigations	1
TOTAL	11

Citizen Complaints Received per Department⁸

OIPA	4
BART Police Department	6
TOTAL	10

Complaints/Investigations Initiated During Reporting Period**Actions Taken/# of Days Elapsed**

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

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations ⁹	Action Taken	Number of Days Elapsed Since Complaint Filed ¹⁰
1 (OIPA #14-85) (IA2014-155)	<u>Officers #1-5</u> <ul style="list-style-type: none">• Arrest or Detention• Performance of Duty• Policy/Procedure	OIPA notified BPD, which initiated an investigation.	33
2 (OIPA #14-87) (IA2014-159)	<u>Officers #1-2</u> <ul style="list-style-type: none">• Performance of Duty	OIPA notified BPD, which initiated an investigation.	31
3 (OIPA #14-89) (IA2014-158)	<u>BART Police Department</u> <ul style="list-style-type: none">• Service Review¹¹	OIPA notified BPD, which initiated an investigation.	26
4 (OIPA #14-90) (IA2014-162)	<u>Officer #1</u> <ul style="list-style-type: none">• Courtesy• Policy/Procedure	OIPA notified BPD, which initiated an investigation.	13

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

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-154)	<u>Officer #1</u> <ul style="list-style-type: none">• Performance of Duty	BPD initiated an investigation.	39
2 (IA2014-156)	<u>Officer #1</u> <ul style="list-style-type: none">• Performance of Duty• Policy/Procedure <u>Employee #1</u> <ul style="list-style-type: none">• Performance of Duty	BPD initiated an investigation.	28
3 (IA2014-157)	<u>Officer #1</u> <ul style="list-style-type: none">• Force• Arrest or Detention• Performance of Duty• Conduct Unbecoming an Officer	BPD initiated an investigation.	42

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

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

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

Complaints/Investigations Concluded During Reporting Period**Dispositions/# of Days Elapsed**

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

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

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

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

2 (IA2014-068)	Civilian improperly parked police vehicle in a restricted area and impeded pedestrian traffic. Officer did not take enforcement action in response to improperly parked vehicle.	<u>Civilian #1</u> • Policy/Procedure (Counts 1-2) – Exonerated <u>Officer #1</u> • Performance of Duty – Exonerated	258	223
3 (IA2014-070)	Officers used excessive force when arresting complainant and did not record the incident as required.	<u>Officer #1</u> • Force – Unfounded • Policy/Procedure – Exonerated <u>Officer #2</u> • Force – Unfounded	223	206
4 (IA2014-086)	Officer was rude to complainant.	<u>Officer #1</u> • Courtesy - Unfounded	179	159
5 (IA2014-094)	Officer engaged in stalking behavior toward complainant.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Unfounded	166	146
6 (IA2014-091)	Officer used excessive force when detaining complainant and mishandled the call for service that led to complainant's detention.	<u>Officer #1</u> • Force – Unfounded • Conduct Unbecoming an Officer – Unfounded	166	146
7 (IA2014-112)	Officers did not take sufficient action in response to a service call and did not record the incident as required. One officer did not rectify the other's insufficient action and did not report an equipment malfunction as required.	<u>Officer #1</u> • Performance of Duty – Exonerated • Policy/Procedure – Unfounded <u>Officer #2</u> • Performance of Duty – Exonerated • Supervision – Exonerated • Policy/Procedure (Count 1) – Not Sustained • Policy/Procedure (Count 2) – Sustained	124	107

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

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

Complaints/Investigations Concluded During Previous Reporting Periods

Dispositions/# of Days Elapsed

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

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

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BPD

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

Case #	Nature of Sustained Allegation(s)	Classification of Sustained Allegation(s)	Action Taken
1	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
2	Officer did not take sufficient action in response to a call for service.	<u>Officer #1</u> • Performance of Duty	<u>Officer #1</u> Informal Counseling
3	Officers did not sufficiently investigate a reported crime and did not effectuate a citizen's arrest	<u>Officer #1</u> • Performance of Duty <u>Officer #2</u> • Performance of Duty	<u>Officer #1</u> Letter of Discussion <u>Officer #2</u> Informal Counseling

Additional Notes

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

Investigations Being Conducted	13
Complainant-Initiated Appeals	0
Investigations Being Monitored	15
Investigations Reviewed During Current Month	22*

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

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 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 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 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 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.

¹⁰ 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).

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

¹² 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)

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