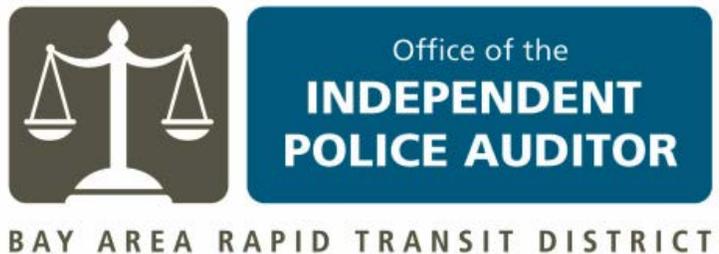


Office of the Independent Police Auditor

Monthly Report

February 2013



March 11, 2013

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, 2013 through February 28, 2013.¹

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 |
|----------------|------------------------------------|-----------------------------------|--|---|--|
| February 2012 | 14 | 57 | 0 | 0 | 0 |
| March 2012 | 7 | 61 | 0 | 1 | 0 |
| April 2012 | 6 | 55 | 0 | 1 | 0 |
| May 2012 | 10 | 54 | 0 | 0 | 0 |
| June 2012 | 13 | 61 | 1 | 0 | 0 |
| July 2012 | 7 | 58 | 0 | 0 | 0 |
| August 2012 | 13 | 60 | 0 | 0 | 0 |
| September 2012 | 8 | 57 | 1 | 0 | 0 |
| October 2012 | 9 | 49 | 1 | 0 | 0 |
| November 2012 | 17 | 57 | 0 | 0 | 0 |
| December 2012 | 12 | 52 | 2 | 0 | 0 |
| January 2013 | 6 | 49 [†] | 0 | 1 | 0 |
| February 2013 | 9 | 46 [*] | 0 | 0 | 0 |

[†] This number was previously reported as 50. It has been determined that one previously-closed case was inadvertently reopened in the Internal Affairs case database during January 2013 without being re-closed, and should have therefore not been counted in the Number of Open Cases.

^{*} Included in this number is one previously-closed case that was reopened by the BART Police Department during this reporting period pursuant to a review by OIPA. That case is reported on further below.

Types of Cases Filed

| | |
|-------------------------------|----------|
| Citizen Complaints | 7 |
| Administrative Investigations | 0 |
| Comments of Non-Complaint | 2 |
| TOTAL | 9 |

Citizen Complaints Received per Department

| | |
|------------------------|----------|
| OIPA | 1 |
| BART Police Department | 6 |
| TOTAL | 7 |

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of February 2013, 1 Citizen Complaint was received by OIPA:

| Complaint # (OIPA Case #) (IA Case #) | Nature of Complaint | Action Taken | Number of Days Elapsed Since Complaint Filed ⁷ |
|---|---------------------|---|---|
| 1 (OIPA 13-11) (IA2013-013) | Performance of Duty | OIPA notified BART PD, which initiated an investigation | 19 |

During the month of January 2013, 6 Citizen Complaints were received by the BART Police Department:

| Complaint # (IA Case #) | Nature of Complaint | Action Taken | Number of Days Elapsed Since Complaint Filed |
|----------------------------|---|------------------------------------|--|
| 1 (IA2013-007) | Force; Conduct Unbecoming an Officer; Policy/Procedure | BART PD initiated an investigation | 38 |
| 2 (IA2013-008) | Bias-Based Policing | BART PD initiated an investigation | 30 |
| 3 (IA2013-009) | Performance of Duty; Policy/Procedure | BART PD initiated an investigation | 30 |
| 4 (IA2013-011) | Bias-Based Policing; Courtesy | BART PD initiated an investigation | 18 |
| 5 (IA2013-014) | Bias-Based Policing; Conduct Unbecoming an Officer; Performance of Duty | BART PD initiated an investigation | 13 |
| 6 (IA2013-015) | Force | BART PD initiated an investigation | 13 |

During the month of February 2013, 2 Comments of Non-Complaint were received by the BART Police Department:

| Comment # (IA Case #) | Nature of Comment | Action Taken | Number of Days Elapsed Since Comment Filed |
|--------------------------|---------------------|------------------------------------|---|
| 1 (IA2013-010) | Performance of Duty | BART PD initiated an investigation | 26 |
| 2 (IA2013-012) | Policy/Procedure | BART PD initiated an investigation | 16 |

Complaints/Investigations Reopened During Reporting Period

Actions Taken/# of Days Elapsed

During the month of February 2013, 1 previously closed Citizen Complaint was reopened by the BART Police Department pursuant to a review by OIPA:

| Complaint # (OIPA Case #) (IA Case #) | Nature of Complaint | Action Taken | Number of Days Elapsed Since Complaint Initially Filed | Number of Days Elapsed Since OIPA Request to Reopen |
|---|---------------------|--|---|--|
| 1 (OIPA 12-02) (IA2012-003) | Neglect of Duty | BART PD reopened this complaint to conduct further investigation | 434 | 74 |

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of January 2013, 9 Citizen Complaints were concluded by the BART Police Department:

| Complaint # (IA Case #) | Nature of Complaint | Disposition | Number of Days Elapsed Since Complaint Filed | Number of Days Taken to Complete Investigation |
|----------------------------|---|--|---|---|
| 1 (IA2012-079) | <u>Police Officer #1</u> • Performance of Duty | <u>Police Officer #1</u> • Performance of Duty – Exonerated | 174 | 155 |

| | | | | |
|-------------------|---|---|-----|-----|
| 2 (IA2012-068) | <u>Police Officer #1</u> <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer | <u>Police Officer #1</u> <ul style="list-style-type: none"> • Force – Exonerated • Conduct Unbecoming an Officer – Not Sustained | 206 | 182 |
| 3 (IA2012-041) | <u>Police Officer #1</u> <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer • Courtesy • Policy/Procedure | <u>Police Officer #1</u> <ul style="list-style-type: none"> • Force – Not Sustained • Conduct Unbecoming an Officer – Not Sustained • Courtesy – Not Sustained • Policy/Procedure – Sustained | 284 | 264 |
| 4 (IA2012-040) | <u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Courtesy | <u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained • Courtesy – Not Sustained | 285 | 261 |
| 5 (IA2012-039) | <u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (2 Counts) • Courtesy (2 Counts) • Procedure | <u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (Count 1) – Not Sustained • Conduct Unbecoming an Officer (Count 2) – Not Sustained • Courtesy (Count 1) – Not Sustained • Courtesy (Count 2) – Not Sustained • Procedure – Exonerated | 292 | 268 |
| 6 (IA2012-099) | <u>Police Officer #1</u> <ul style="list-style-type: none"> • Bias-Based Policing • Performance of Duty • Conduct Unbecoming an Officer | <u>Police Officer #1</u> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Performance of Duty – Unfounded • Conduct Unbecoming an Officer – Unfounded | 123 | 109 |

| | | | | |
|-------------------|--|--|-----|-----|
| 7 (IA2012-087) | <u>Police Officer #1</u> • Bias-Based Policing • Arrest or Detention | <u>Police Officer #1</u> • Bias-Based Policing – Unfounded • Arrest or Detention – Exonerated | 165 | 151 |
| 8 (IA2012-071) | <u>Police Officer #1 – (Unidentified)</u> • Performance of Duty | <u>Police Officer #1 – (Unidentified)</u> • Performance of Duty – Unfounded | 199 | 185 |
| 9 (IA2012-070) | <u>Police Officer #1</u> • Courtesy • Performance of Duty <u>Police Officer #2</u> • Performance of Duty | <u>Police Officer #1</u> • Courtesy – Not Sustained • Performance of Duty – Exonerated <u>Police Officer #2</u> • Performance of Duty – Exonerated | 212 | 198 |

During the month of February 2013, 1 Administrative Investigation was concluded by the BART Police Department:

| Investigation # (IA Case #) | Nature of Investigation | Disposition | Number of Days Elapsed Since Investigation Initiated | Number of Days Taken to Complete Investigation |
|--------------------------------|---|---|--|--|
| 1 (IA2012-012) | <u>Police Officer #1</u> • Performance of Duty | <u>Police Officer #1</u> • Performance of Duty – Sustained | 390 | 365 |

During the month of February 2013, 1 Comment of Non-Complaint was addressed by the BART Police Department:

| Comment # (IA Case #) | Nature of Comment | Disposition | Number of Days Elapsed Since Comment Filed | Number of Days Taken to Address Comment |
|--------------------------|---------------------|-----------------------------------|--|---|
| 1 (IA2013-005) | Performance of Duty | Supervisory Referral ⁸ | 47 | 11 |

Complaints/Investigations Concluded During Previous Reporting Period

Dispositions/# of Days Elapsed

One Citizen Complaint was correctly counted as closed during January 2013 but was inadvertently not listed in that month’s report:

| Complaint # (IA Case #) | Nature of Complaint | Disposition | Number of Days Elapsed Since Complaint Filed | Number of Days Taken to Complete Investigation |
|----------------------------|-------------------------------------|--|--|--|
| 1 (IA2012-038) | <u>Police Officer #1</u> • Force | <u>Police Officer #1</u> • Force – Exonerated | 290 | 251 |

Two Comments of Non-Complaint were marked as open in the Internal Affairs case database though each had, in fact, been closed during a prior reporting period:

| Comment # (IA Case #) | Nature of Comment | Disposition | Number of Days Elapsed Since Comment Filed | Number of Days Taken to Address Comment |
|--------------------------|---------------------|----------------------|--|---|
| 1 (IA2012-112) | Performance of Duty | Supervisory Referral | 90 | 21 |
| 2 (IA2012-114) | Courtesy | Supervisory Referral | 87 | 1 |

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 the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department’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 | 1 |
| Investigations Being Monitored | 18 |
| 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.

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 the OIPA for further action, such complaints are included in the Quantitative Report above; the 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)).

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 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).

⁸ In defining a “Supervisory Referral,” the BART Police Department Manual indicates that an assigned supervisor will address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Section.