

Office of the Independent Police Auditor

Monthly Report

January 2014



February 10, 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 January 1, 2014 through January 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
January 2013	6	49	0	1	0
February 2013	9	46	0	0	0
March 2013	10	46	1	0	0
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

Types of Cases Filed

Citizen Complaints	6
Administrative Investigations	3
Comments of Non-Complaint	0
TOTAL	9

Citizen Complaints Received per Department

OIPA	2
BART Police Department	4
TOTAL	6

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

During the month of January 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 #14-02) (IA2014-004)	<u>Officer #1</u> <ul style="list-style-type: none">• Unnecessary or Excessive Use of Force• Arrest or Detention	OIPA initiated an investigation and informed BART PD, which also initiated an investigation.	25
2 (OIPA #14-07) (IA2014-007)	<u>Officer #1</u> <ul style="list-style-type: none">• Performance of Duty• Conduct Unbecoming an Officer <u>Officer #2</u> <ul style="list-style-type: none">• Performance of Duty• Conduct Unbecoming an Officer <u>Unspecified Officer(s)</u> <ul style="list-style-type: none">• Service Review⁹	BART PD initiated an investigation.	11

During the month of January 2014, 4 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-001)	<u>Officer #1</u> <ul style="list-style-type: none">• Conduct Unbecoming an Officer <u>Officer #2</u> <ul style="list-style-type: none">• Conduct Unbecoming an Officer	BART PD initiated an investigation.	40
2 (IA2014-002)	<u>Unspecified Officer(s)</u> <ul style="list-style-type: none">• Service Review	BART PD initiated an investigation.	34
3 (IA2014-003)	<u>Officer #1</u> <ul style="list-style-type: none">• Performance of Duty• Policy/Procedure	BART PD initiated an investigation.	26

4 (IA2014-009)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	11
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During the month of January 2014, 3 Administrative Investigations were initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2014-005)	<u>Officer #1</u> • Force	BART PD initiated an investigation.	20
2 (IA2014-006)	<u>Officer #1</u> • Force	BART PD initiated an investigation.	40
3 (IA2014-008)	<u>Officer #1</u> • Force	BART PD initiated an investigation.	11

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of January 2014, 13 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition ¹⁰	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-052)	Officers belittled complainant and one officer was rude to complainant.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Unfounded • Courtesy – Unfounded <u>Officer #2</u> • Conduct Unbecoming an Officer – Unfounded	220	185
2 (IA2013-068)	Unidentified officer indicated he did not believe complainant and failed to take a report when she notified him of a crime.	<u>Unidentified Officer #1</u> • Performance of Duty – Unfounded • Conduct Unbecoming an Officer – Unfounded • Policy/Procedure – Unfounded	220	185

3 (IA2013-056)	Officers were illegally parking their police cars in a particular location.	<u>BART Police Department</u> • Policy/Procedure – Service Review	213	192
4 (IA2013-054)	Officer racially profiled complainant and improperly detained him for selling items without a permit.	<u>Officer #1</u> • Bias-Based Policing – Not Sustained • Arrest/Detention – Exonerated	209	181
5 (IA2013-062)	Officer improperly detained complainant for fare evasion.	<u>Officer #1</u> • Arrest/Detention – Exonerated	196	175
6 (IA2013-070)	Officers slammed complainant down while taking him into custody.	<u>Officer #1</u> • Force – Exonerated <u>Officer #2</u> • Force – Exonerated	184	152
7 (IA2013-077)	Complainant fell asleep on train and unknown employee who awoke him was rude. Complainant later indicated he did not desire to pursue complaint.	Administratively Closed ¹¹	175	140
8 (IA2013-081)	Officer used excessive force during arrest of complainant.	<u>Officer #1</u> • Force – Exonerated	164	132
9 (IA2013-084)	Officer was rude and unprofessional toward complainant, who asked to use a BART restroom.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Unfounded	161	135
10 (IA2013-089)	Complainant was threatened by another individual with a knife and officers nearby took no action.	<u>Unknown Officer</u> • Performance of Duty – Unfounded	145	119

11 (IA2013-093)	Based on complainant's ethnicity, employee was rude when complainant greeted him.	<u>Civilian #1</u> • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Not Sustained	136	110
12 (IA2013-127)	Employee was untruthful regarding timing noted on Complainant's parking citation. Complainant did not wish to pursue complaint further.	Administratively Closed	77	42
13 (IA2013-128)	Employee improperly issued complainant a parking citation.	Administratively Closed	80	41

During the month of January 2014, 1 Administrative Investigation was completed by the BART Police Department:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2012-103)	Officer improperly released information without notifying the Department.	Administratively Closed	460	425*

*The investigation into this complaint was suspended for a period of time due to an associated matter that was pending arbitration.

During the month of January 2014, 2 Comments of Non-Complaint were 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 (IA2013-131)	Officer did not issue a citation based on complainant's report of another individual urinating in public.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral ¹²	66	32

2 (IA2013-134)	Officer did not assist complainant's grandson who was stranded at a BART station.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	55	21
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Also during the month of January 2014, the BART Police Department reclassified IA2013-132 from a Citizen Complaint to an Inquiry after the citizen who raised the issue in that case clarified that he did not have a complaint but rather wished to make an inquiry about his property. As such, this case was removed from the pending total of open cases. The BART Police Department also re-closed IA2012-117 during the month of January 2014 after having reopened it for further investigation at the request of OIPA. No findings changed as a result of the further investigation, and this case too was removed from the pending total of open cases.

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BART PD

No discipline was issued by BART PD during the month of January 2014.

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 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	6
Complainant-Initiated Appeals	0
Investigations Being Monitored	16
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 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 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.

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.