



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

January 2020

Issue date: February 10, 2020

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), 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 **January 1, 2020 through January 31, 2020**.¹

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

QUANTITATIVE REPORT

| | Cases Filed ² | Open Cases ³ | IAB Investigations Resolved* | OIPA Investigations Concluded ⁴ | Cases Appealed to OIPA ⁵ | Cases Appealed by BPCRB ⁶ |
|----------------|--------------------------|-------------------------|------------------------------|--|-------------------------------------|--------------------------------------|
| January 2019 | 15 | 64 | | 1 | 0 | 0 |
| February 2019 | 12 | 60 | | 1 | 0 | 0 |
| March 2019 | 14 | 57 | | 1 | 0 | 0 |
| April 2019 | 14 | 57 | | 0 | 0 | 0 |
| May 2019 | 10 | 56 | | 2 | 0 | 0 |
| June 2019 | 9 | 61 | | 1 | 0 | 0 |
| July 2019 | 11 | 61 | | 0 | 0 | 0 |
| August 2019 | 9 | 62 | | 1 | 0 | 0 |
| September 2019 | 13 | 53 | | 1 | 0 | 0 |
| October 2019 | 6 | 53 | 6 | 1 | 0 | 0 |
| November 2019 | 10 | 59 | 2 | 1 | 0 | 0 |
| December 2019 | 6 | 58 | 6 | 1 | 0 | 0 |
| January 2020 | 8 | 53 | 13 | 2 | 0 | 0 |

TYPES OF CASES FILED

| | |
|----------------------------------|----------|
| Citizen Complaints (Formal) | 2 |
| Informal Complaints ⁷ | 3 |
| Administrative Investigations | 3 |
| Inquiries ⁸ | 0 |
| TOTAL | 8 |

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

| | |
|------------------------|----------|
| OIPA | 1 |
| BART Police Department | 1 |
| TOTAL | 2 |

¹OIPA added a new data column to the October 2019 Monthly Report which will be populated going forward.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During January 2020, **1 Citizen Complaint** was received by OIPA:

| Complaint # (IA Case #) | Nature of Complaint | Action Taken | Days Elapsed Since Complaint Filed |
|------------------------------------|--|---|---------------------------------------|
| 1 (OIPA #20-02) (IA2020-003) | Officer #1: <ul style="list-style-type: none"> • Criminal (Fraud) • Conduct Unbecoming an Officer | OIPA notified BPD which initiated an investigation. | 31 |

During January 2020, **1 Citizen Complaint (Formal)** was received by BPD:

| Complaint # (IA Case #) | Nature of Complaint | Action Taken | Days Elapsed Since Complaint Filed |
|----------------------------|--|---------------------------------|---------------------------------------|
| 1 (IA2020-002) | Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing | BPD initiated an investigation. | 31 |

During January 2020, **3 Informal Complaints** were received by BPD:

| Complaint # (IA Case #) | Nature of Complaint | Action Taken | Days Elapsed Since Investigation Initiated |
|----------------------------|---|--|---|
| 1 (IA2020-001) | Officer #1: <ul style="list-style-type: none"> • Performance of Duty | Administratively Closed ¹⁰ | 40 |
| 2 (IA2020-005) | Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer | BPD initiated a Supervisor Referral. ¹¹ | 19 |
| 3 (IA2020-007) | Officer #1: <ul style="list-style-type: none"> • Courtesy | BPD initiated a Supervisor Referral. | 13 |

During January 2020, **2 Administrative Investigations** were initiated by BPD:

| Complaint # (IA Case #) | Nature of Complaint | Action Taken | Days Elapsed Since Investigation Initiated |
|----------------------------|---|---------------------------------|--|
| 1 (IA2020-006) | Officers #1-2: <ul style="list-style-type: none"> • Force • Force (Reporting) • Force (Report Preparation) • Policy/Procedure (AXON Camera) Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer Officer #2: <ul style="list-style-type: none"> • Force (Duty to Intercede and Report) • Performance of Duty | BPD initiated an investigation. | 14 |
| 2 (IA2020-008) | Officer #1: <ul style="list-style-type: none"> • Criminal • Conduct Unbecoming an Officer | BPD initiated an investigation. | 38 |

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During December 2019, **1 Administrative Investigation** was initiated by BPD:

| Complaint # (IA Case #) | Nature of Complaint | Action Taken | Days Elapsed Since Complaint Filed |
|----------------------------|---|---------------------------------|------------------------------------|
| 1 (IA2020-004) | Officer #1: <ul style="list-style-type: none"> • Force • Arrest/Detention • Policy/Procedure | BPD initiated an investigation. | 69 |

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During January 2020, **2 Citizen Complaints** were concluded by OIPA:

| Complaint # (OIPA Case #) | Nature of Complaint | Disposition | Days Elapsed Since Complaint Filed | Days Taken to Complete Investigation |
|--------------------------------------|--|--|------------------------------------|--------------------------------------|
| 1 (OIPA #19-15) (IA2019-054) † | Officers improperly detained complainant on the basis of race and sexual orientation, used excessive force during the contact, failed to summon mental health providers, made rude comments, and failed to provide identification to complainant upon request. | Officers #1-2: <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Force – Exonerated • Policy/Procedure (General Conduct) – Unfounded Officer #2: <ul style="list-style-type: none"> • Courtesy – Exonerated • Policy/Procedure (Mental Health Support) – Unfounded | 299 | 289 |
| 2 (OIPA #19-13) (IA2019-041) ‡ | Officer improperly detained subject and used excessive force during the contact. Officer failed to properly document a law enforcement contact. | Officer #1: <ul style="list-style-type: none"> • Arrest/detention – Exonerated • Force – Exonerated • Policy/Procedure (AXON Camera) – Sustained | 321 | 286 |

During January 2020, **6 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 (IA2019-025) | Officer used unnecessary or excessive force during a contact. | Officer #1: <ul style="list-style-type: none"> • Force – Exonerated | 354 | 330 |

† This complaint remains on the list of open investigations in the IAB database pending presentation of the OIPA investigative report to the BPCRB in closed session.

‡ This complaint remains on the list of open investigations in the IAB database pending presentation of the OIPA investigative report to the BPCRB in closed session.

| | | | | |
|-------------------|--|--|-----|-----|
| 2 (IA2019-037) | Officer improperly investigated a meritless complaint of criminal activity. | Officer #1: • Policy/Procedure – Administratively Closed | 329 | 304 |
| 3 (IA2019-065) | Employee treated complainant differently based on economic class. | Employee #1: • Bias-Based Policing – Administratively Closed | 263 | 246 |
| 4 (IA2019-069) | Employee was rude and disrespectful and snatched complainant's property from hand. | Employee #1: • Conduct Unbecoming – Administratively Closed | 251 | 234 |
| 5 (IA2019-074) | Officers used unnecessary or excessive force during a contact. | Officers #1-2: • Force – Exonerated | 230 | 218 |
| 6 (IA2019-081) | Officers did not respond to a call for service. | Unknown Officers: • Performance of Duty – Administratively Closed | 230 | 218 |

During January 2020, **2 Informal Complaints** were addressed by BPD:

| Complaint # (IA Case #) | Nature of Complaint | Disposition | Days Elapsed Since Complaint Filed | Days Taken to Complete Investigation |
|----------------------------|---|--|------------------------------------|--------------------------------------|
| 1 (IA2019-056) | Officer was disrespectful and dismissive toward complainant and did not take appropriate action in response to a report of criminal activity. | Officer #1: • Performance of Duty – Supervisor Referral | 286 | 268 |
| 2 (IA2020-001) | Officer did not take appropriate action upon request from complainant. | Officer #1: • Performance of Duty – Reclassified as an Inquiry by BPD and administratively closed the complaint | 40 | 1 |
| 3 (IA2019-118) | Officers were rude and confrontational when communicating with complainant. | Officers #1-2: • Conduct Unbecoming an Officer – Supervisor Referral | 70 | 26 |

During January 2020, **3 Administrative Investigations** were concluded by BPD:

| Investigation # (IA Case #) | Nature of Allegations | Disposition | Days Elapsed Since Investigation Initiated | Days Taken to Address Allegation |
|--------------------------------|--|--|--|----------------------------------|
| 1 (IA2019-050) | Officers and employees did not respond appropriately to a call for service. | Officer #1: • Performance of Duty – Reclassified as a Service Review ¹² by BPD | 67 | 20 |
| 2 (IA2019-067) | Officer used excessive or unnecessary force during an arrest and failed to accurately document the use of force. | Officer #1: • Force – Sustained • Force (Reporting) – Sustained | 270 | 253 |
| 3 (IA2019-077) | Officer failed to properly document a law enforcement contact. | Officer #1: • Policy/procedure (AXON Camera) – Sustained | 270 | 253 |

Also, during the month of January 2020, BPD classified each of the following complaints as an **Inquiry** and administratively closed the complaints: #IA2019-116 (after the complainant abandoned the complaint process), and #IA2019-123 (after determining that no allegation of officer misconduct was articulated).

DISCIPLINE ISSUED DURING REPORTING PERIOD

During January 2020, 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 did not properly document a law enforcement contact. | Officer #1: • Policy/Procedure (AXON Camera) | Officer #1: • Oral Counseling |
| 2 | Officer did not properly document a law enforcement contact. | Officer #1: • Policy/Procedure (AXON Camera) | Officer #1: • Letter of Discussion |
| 3 | Officer did not properly document a law enforcement contact. | Officer #1: • Policy/Procedure (AXON Camera) | Officer #1: • Letter of Discussion |

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 | 8 |
| Complainant-Initiated Appeals | 0 |
| BPD-Initiated Appeals | 0 |
| Investigations Being Monitored | 42 |
| Investigations Reviewed During Current Month | 14† |

†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.

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 will reflect information regarding monitored cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.¹³

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 OIPA 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 BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

⁹ 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.

¹⁰ Administrative Closure is defined as follows in the BPD Policy Manual: 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.

¹¹ A Supervisor Referral refers to an instance involving an Inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

¹² 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.

¹³ OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.