

Office of the Independent Police Auditor

Monthly Report

July 2014



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

August 11, 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 July 1, 2014 through July 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
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
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

[†]Though correctly reported on in June 2014, this number inadvertently did not include one specific case. It has therefore been adjusted upward by 1.

^{*}This number includes one case that was initiated in a prior reporting period but not previously reported on. It is therefore included in this report.

Types of Cases Filed

Citizen Complaints	9
Administrative Investigations	1
Comments of Non-Complaint	0
TOTAL	10

Citizen Complaints Received per Department

OIPA	4
BART Police Department	5
TOTAL	9

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of July 2014, 4 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 #14-49) (IA2014-083)	<u>Unidentified Officer(s)</u> • Service Review	OIPA notified BPD, which initiated an investigation.	35
2 (OIPA #14-50) (IA2014-086)	<u>Officer #1</u> • Conduct Unbecoming an Officer	OIPA notified BPD, which initiated an investigation.	25
3 (OIPA #14-51) (IA2014-087)	<u>Officer #1</u> • Conduct Unbecoming an Officer	OIPA notified BPD, which initiated an investigation.	21
4 (OIPA #14-53)	<u>Officer #1</u> • Excessive Use of Force <u>Officer #2</u> • Excessive Use of Force	OIPA initiated an investigation and also notified BPD.	13

During the month of July 2014, 4 Citizen Complaints were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-079)	<u>Officer #1</u> • Force	BPD initiated an investigation.	41
2 (IA2014-084)	<u>Officer #1</u> • Force • Conduct Unbecoming an Officer <u>Officer #2</u> • Force • Conduct Unbecoming an Officer	BPD initiated an investigation.	34
3 (IA2014-088)	<u>Officer #1</u> • Force	BPD initiated an investigation.	18
4 (IA2014-089)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	20

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

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2014-082)	<u>Employee #1</u> <ul style="list-style-type: none"> • Performance of Duty • Policy/Procedure 	BPD initiated an investigation.	35

Complaints/Investigations Initiated During a Previous Reporting Period

Actions Taken/# of Days Elapsed

During the month of June 2014, 1 previously unreported Citizen Complaint was received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-085)	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	42

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of July 2014, 3 Citizen Complaints were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition ⁹	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-116)	Officer's court testimony was dishonest, and officer was inappropriately unfamiliar with the case at issue when discussing it in court.	<u>Officer #1</u> <ul style="list-style-type: none"> • Truthfulness – Not Sustained • Performance of Duty – Sustained 	277	242

<p>2 (IA2013-143)</p>	<p>Officers unjustifiably detained complainant, used excessive force in taking complainant into custody, and embarrassed complainant by doing so. One officer did not record incident as required.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> • Detention/Arrest – Exonerated • Force – Exonerated • Conduct Unbecoming an Officer – Unfounded <p><u>Officer #2</u></p> <ul style="list-style-type: none"> • Detention/Arrest – Exonerated • Force – Exonerated • Conduct Unbecoming an Officer – Unfounded <p><u>Officer #3</u></p> <ul style="list-style-type: none"> • Detention/Arrest – Exonerated • Force – Exonerated • Conduct Unbecoming an Officer – Unfounded • Policy (AXON Flex) – Sustained 	<p>225</p>	<p>190</p>
<p>3 (IA2014-004)*</p>	<p>Officers unjustifiably detained complainant and used excessive force in taking complainant into custody. One officer did not record incident as required.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> • Force – Exonerated • Arrest/Detention – Exonerated <p><u>Officer #2</u></p> <ul style="list-style-type: none"> • Force – Exonerated • Arrest/Detention – Exonerated <p><u>Officer #3</u></p> <ul style="list-style-type: none"> • Force – Unfounded • AXON Flex Camera – Sustained 	<p>207</p>	<p>172</p>

*As OIPA is also investigating this case, it will not be taken out of the "Number of Open Cases" column in the Quantitative Report on Page 2 until OIPA's findings have also been finalized.

During the month of July 2014, 1 Administrative Investigation was completed by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2013-141)	While off-duty, officer was intoxicated and became involved in an altercation.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Not Sustained	238	197

During the month of July 2014, 1 Comment of Non-Complaint was 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 (IA2014-074)	Employee was discourteous when requesting that complainant verify disability status on one particular occasion.	<u>Employee #1</u> • Courtesy – Supervisory Referral ¹⁰	77	46

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BPD

During the month of July 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 document or record a law enforcement contact as required.	<u>Officer #1</u> • Policy/Procedure (2 counts)	<u>Officer #1</u> Letter of Discussion

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	12
Complainant-Initiated Appeals	0
Investigations Being Monitored	18
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 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 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)

¹⁰ 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.