

Office of the Independent Police Auditor

Monthly Report

June 2014



July 14, 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 June 1, 2014 through June 30, 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
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
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*	60	0	0	0

*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	10
Administrative Investigations	0
Comments of Non-Complaint	1
TOTAL	11

Citizen Complaints Received per Department

OIPA	1
BART Police Department	9*
TOTAL	10

*This number includes one complaint that was initially brought to OIPA. However, as the complaint was initiated by an individual who was neither a victim of, nor a witness to, the alleged misconduct, OIPA was required to refer it to BPD for proper intake processing.

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of June 2014, 1 Citizen Complaint was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations ⁷	Action Taken	Number of Days Elapsed Since Complaint Filed ⁸
1 (OIPA #14-47) (IA2014-081)	<u>Unidentified Officer(s)</u> • Service Review	OIPA notified BPD, which initiated an investigation.	27

During the month of June 2014, 8 Citizen Complaints were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-070)	<u>Officer #1</u> • Force <u>Officer #2</u> • Force	BPD initiated an investigation.	41
2 (IA2014-071)	<u>Officer #1</u> • Arrest or Detention • Performance of Duty • Conduct Unbecoming an Officer	BPD initiated an investigation.	41
3 (IA2014-072)	<u>Officer #1</u> • Arrest or Detention • Conduct Unbecoming an Officer • Policy/Procedure	BPD initiated an investigation.	35
4 (IA2014-075)	<u>Officer #1</u> • Force <u>Officer #2</u> • Force	BPD initiated an investigation.	32
5 (IA2014-076)	<u>Officer #1</u> • Force • Performance of Duty	BPD initiated an investigation.	31
6 (IA2014-077)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	19

7 (IA2014-078)	<u>Officer #1</u> • Force • Search or Seizure	BPD initiated an investigation.	24
8 (IA2014-081)	<u>Officer #1</u> • Force	BPD initiated an investigation.	20

During the month of June 2014, 1 Comment of Non-Complaint was received by BPD:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2014-073)	<u>Officer #1</u> • Arrest or Detention • Conduct Unbecoming an Officer <u>Officer #1</u> • Arrest or Detention • Conduct Unbecoming an Officer	BPD initiated an investigation.	33

Complaints/Investigations Initiated During a Previous Reporting Period

Actions Taken/# of Days Elapsed

During the month of May 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 (IA2014-074)	<u>Unidentified Employee #1</u> • Courtesy	BPD initiated an investigation.	49

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of June 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 (IA2013-118)	Officer's demeanor toward complainant was rude. Officer did not document contact with complainant as required.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained • Policy/Procedure (Count 1) – Sustained • Policy/Procedure (Count 2) – Sustained 	244	210
2 (IA2013-126)	Officer harassed complainant, who had insufficient funds available for his travel on BART.	<u>Unidentified Officer</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Administratively Closed¹⁰ 	238	204
3 (IA2013-136)*	Officer removed complainant from a BART train without justification and used excessive force in doing so.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Unfounded • Detention – Exonerated 	206	168

*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 June 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 (IA2014-006)	Officer used excessive force during an arrest.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Administratively Closed 	194	155

During the month of June 2014, 4 Comments of Non-Complaint 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 (IA2014-018)	Officer unnecessarily issued complainant a citation.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral ¹¹	137	100
2 (IA2014-064)	Employee refused to provide complainant with information about a case.	<u>Employee #1</u> • Performance of Duty – Supervisory Referral	57	32
3 (IA2014-063)	Officer was rude while issuing a citation to complainant.	<u>Officer #1</u> • Courtesy – Supervisory Referral	56	15
4 (IA2014-073)	Officers targeted complainants and detained them without justification.	<u>Officer #1</u> • Arrest or Detention – Supervisory Referral • Conduct Unbecoming an Officer – Supervisory Referral <u>Officer #2</u> • Arrest or Detention – Supervisory Referral • Conduct Unbecoming an Officer – Supervisory Referral	33	8

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BPD

During the month of June 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 activate his recording device.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling

2	Officer did not activate his recording device.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
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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	11
Complainant-Initiated Appeals	0
Investigations Being Monitored	17
Investigations Reviewed During Current Month	20*

*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 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.

¹¹ 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.