

Office of the Independent Police Auditor

Monthly Report

June 2015



July 13, 2015

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, 2015 through June 30, 2015.¹

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 2014	11	61	0	0	0
July 2014	10	67	0	0	1
August 2014	20	75	2	0	0
September 2014	12	72	0	0	0
October 2014	14	78	0	0	0
November 2014	17	84	1	0	0
December 2014	11	84	1	0	0
January 2015	11	87	2	0	0
February 2015	9	78	3	0	0
March 2015	11	67	0	0 [†]	1
April 2015	13	68	2	0	0
May 2015	11	70	3	0	0
June 2015	17*	75	0	0	0

*This number includes two cases that were initiated in a prior reporting period but not previously reported on. They are therefore included in this report.

†Previous reports mistakenly indicated 1 appeal received by OIPA in March 2015. Those reports have been corrected and a notation has been made in the March 2015 report. No adjustment is required to the “Number of Open Cases” column in this report.

Types of Cases Filed

Citizen Complaints (Formal)	10
Informal Complaints ⁷	2
Administrative Investigations	5
TOTAL	17

Citizen Complaints Received per Department⁸

OIPA	3
BART Police Department	7
TOTAL	10

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of June 2015, 3 **Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations ⁹	Action Taken	Number of Days Elapsed Since Complaint Filed ¹⁰
1 (OIPA #15-40) (IA2015-056)	<u>Officer #1</u> • Courtesy	OIPA notified BPD, which initiated an investigation.	28
2 (OIPA #15-41)	<u>Officer #1</u> • Workplace Discrimination	OIPA notified the BART General Manager for further action.	17
3 (OIPA #15-42) (IA2015-063)	<u>Officers #1-3</u> • Conduct Unbecoming an Officer	OIPA notified BPD, which initiated an investigation.	14

During the month of June 2015, 6 **Citizen Complaints (Formal)** were received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-054)	<u>Officer #1</u> • Bias-Based Policing • Arrest or Detention	BPD initiated an investigation.	29
2 (IA2015-055)	<u>Unidentified Officers</u> • Force	BPD initiated an investigation.	28
3 (IA2015-058)	<u>Officer #1</u> • Force • Conduct Unbecoming an Officer	BPD initiated an investigation.	35
4 (IA2015-059)	<u>Officer #1</u> • Force • Conduct Unbecoming an Officer	BPD initiated an investigation.	20

5 (IA2015-062)*	<u>Officers #1-3</u> <ul style="list-style-type: none"> • Force • Arrest or Detention • Conduct Unbecoming an Officer • Policy/Procedure <u>Officer #4</u> <ul style="list-style-type: none"> • Reporting Misconduct • Policy/Procedure 	BPD initiated an investigation.	14
6 (IA2015-068)	<u>Unidentified Officers</u> <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	13

* After the present reporting period, and in order to accurately reflect the date that the allegations in this case were received, this case number has been changed to IA2014-169.

During the month of June 2015, 4 **Administrative Investigations** were initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2015-057)	<u>Officer #1</u> <ul style="list-style-type: none"> • Policy/Procedure 	BPD initiated an investigation.	26
2 (IA2015-060)	<u>Officer #1</u> <ul style="list-style-type: none"> • Criminal • Conduct Unbecoming an Officer 	BPD initiated an investigation.	21
3 (IA2015-061)	<u>Employee #1</u> <ul style="list-style-type: none"> • Policy/Procedure 	BPD initiated an investigation.	24
4 (IA2015-067)	<u>Officers #1-2</u> <ul style="list-style-type: none"> • Bias-Based Policing <u>Officer #3</u> <ul style="list-style-type: none"> • Policy/Procedure 	BPD initiated an investigation.	32

During the month of June 2015, 2 **Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-053)	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	28
2 (IA2015-064)	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	24

Complaints/Investigations Initiated During a Previous Reporting Period

Actions Taken/# of Days Elapsed

During the month of May 2015, 1 **Administrative Investigation** was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2015-052)	<u>Officer #1</u> <ul style="list-style-type: none"> • Force • Policy/Procedure 	BPD initiated an investigation.	54

During the month of April 2015, 1 **Citizen Complaint (Formal)** was received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-065)	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	86

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of June 2015, 9 **Citizen Complaints (Formal)** were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition ¹¹	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2014-113)	Officers used excessive force in detaining an individual. One officer did not give self-identification and another officer harassed the individual.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force (Counts 1-2) – Unfounded • Policy/Procedure – Exonerated <u>Officer #2</u> <ul style="list-style-type: none"> • Force – Unfounded • Conduct Unbecoming an Officer – Unfounded 	305	274

2 (IA2014-121)	Officer improperly detained an individual, did not inform the individual of the reason for the detention, and was rude to the individual.	<u>Officer #1</u> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated • Performance of Duty – Unfounded • Courtesy – Unfounded 	287	252
3 (IA2014-122)	Officer was improperly aggressive in issuing order to complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Sustained 	278	236
4 (IA2014-135)	Officer favored opposing party in dispute with complainant because of complainant's ethnicity.	<u>Officer #1</u> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded 	252	217
5 (IA2014-137)	Officers did not properly classify crimes committed against complainant.	<u>Officers #1-2</u> <ul style="list-style-type: none"> • Policy/Procedure – Sustained 	251	213
6 (IA2014-142)*	Officer made inappropriate comments and did so based on race, intervened in complainant's work and abused authority in doing so, inappropriately loitered, did not follow use of force protocols, and did not follow protocols in assisting a patron.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Sustained • Bias-Based Policing – Unfounded • Policy/Procedure – Unfounded • Abuse of Authority – Unfounded • Loitering – Not Sustained • Operations Functions – Exonerated • Use of Force Definition – Unfounded 	239	213
7 (IA2014-143)	Officer harassed individuals and improperly detained them.	<u>Officer #1</u> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated 	237	196
8 (IA2014-158)	Officers displayed weapons in a manner that frightened complainant.	<u>BART Police Department</u> <ul style="list-style-type: none"> • Service Review¹² 	208	183

9 (IA2014-160)	Officers detained the wrong individual.	<u>Officers #1-2</u> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated • Performance of Duty – Exonerated 	201	175
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* 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 2015, 1 **Informal Complaint** was addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2015-050)	Officer was driving patrol vehicle in an inappropriate manner.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Supervisory Referral¹³ 	48	15

During the month of June 2015, 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 (IA2014-082)	One employee did not make appropriate notifications involving a priority call for service and did not sufficiently document related information. Other employee did not process call for service in a timely manner and did not prioritize call appropriately.	<u>Employee #1</u> <ul style="list-style-type: none"> • Performance of Duty (Counts 1-3) – Sustained <u>Employee #2</u> <ul style="list-style-type: none"> • Performance of Duty (Count 1) – Not Sustained • Performance of Duty (Count 2) – Sustained 	371	351

Also during the month of June 2015, BPD reclassified IA2015-055 from a Citizen Complaint to an Inquiry after it was determined that the incident giving rise to the complaint did not involve any

BPD employees. As such, this case was removed from the “Number of Open Cases” column in the Quantitative Report on Page 2.

OIPA #15-41, which was received by OIPA during the current reporting period, was referred to the BART General Manager for further action instead of to BPD due to the potential for a conflict of interest. Therefore, it has been removed from the “Number of Open Cases” column in the Quantitative Report on Page 2.

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BPD

During the month of June 2015, 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 made inappropriate statements to a detainee.	<u>Officer #1</u> • Conduct Unbecoming an Officer	<u>Officer #1</u> 3-day Suspension (held in abeyance)
2	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Oral Counseling
3	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Oral Counseling
4	Employee did not prioritize call for service appropriately.	<u>Employee #1</u> • Performance of Duty	<u>Employee #1</u> Informal Counseling

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	7
Complainant-Initiated Appeals	0
Investigations Being Monitored	12
Investigations Reviewed During Current Month	30*

*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 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 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 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 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.

⁹ 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.

¹⁰ 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).

¹¹ 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)

¹² 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.

¹³ A Supervisory 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.