

Office of the Independent Police Auditor

Monthly Report

March 2014



April 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 March 1, 2014 through March 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
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
February 2014	11	55	0	0	0
March 2014	19*	65	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.

Types of Cases Filed

Citizen Complaints	11
Administrative Investigations	2
Comments of Non-Complaint	6
TOTAL	19

Citizen Complaints Received per Department

OIPA	6
BART Police Department	5
TOTAL	11

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of March 2014, 6 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 #14-20) (IA2014-022)	<u>Officer #1</u> • Conduct Unbecoming an Officer	OIPA notified BART PD, which determined the matter did not involve any BART PD employees and reclassified it as an Inquiry.	40
2 (OIPA #14-21) (IA2014-024)	<u>Officer #1</u> • Suspicious Death • Performance of Duty <u>Officer #2</u> • Suspicious Death • Performance of Duty	OIPA initiated an investigation and informed BART PD, which forwarded the matter to the BART General Manager.	39
3 (OIPA #14-23) (IA2014-029)	<u>Employee #1</u> • Policy/Procedure	OIPA notified BART PD, which determined the matter was a parking citation dispute and would be handled by the established citation dispute process. The matter was reclassified as an Inquiry.	32
4 (OIPA #14-27) (IA2014-028)	<u>Officer #1</u> • Racial Profiling	OIPA initiated an investigation and informed BART PD, which also initiated an investigation.	26
5 (OIPA #14-28) (IA2014-025)	<u>Officer #1</u> • Racial Profiling • Arrest or Detention • Conduct Unbecoming an Officer	OIPA initiated an investigation and informed BART PD, which also initiated an investigation.	26
6 (OIPA #14-31) (IA2014-039)	<u>Officer #1</u> • Policy/Procedure	OIPA notified BART PD, which forwarded the matter to the BART General Manager.	17

During the month of March 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 (IA2014-031)	<u>Officer #1</u> <ul style="list-style-type: none"> • Force • Arrest or Detention <u>Officer #2</u> <ul style="list-style-type: none"> • Arrest or Detention 	BART PD initiated an investigation.	31
2 (IA2014-033)	<u>Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty <u>Officer #2</u> <ul style="list-style-type: none"> • Performance of Duty 	BART PD initiated an investigation.	30
3 (IA2014-026)	<u>Officer #1</u> <ul style="list-style-type: none"> • Force <u>Officer #2</u> <ul style="list-style-type: none"> • Force 	BART PD initiated an investigation.	24
4 (IA2014-041)	<u>Undetermined Officers</u> <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer 	BART PD initiated an investigation.	24

During the month of March 2014, 1 Administrative Investigation was initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2014-036)	<u>Officer #1</u> <ul style="list-style-type: none"> • Force 	BART PD initiated an investigation.	28

During the month of March 2014, 6 Comments of Non-Complaint were received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2014-023)	<u>Employee #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	40
2 (IA2014-027)	<u>Employee #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	25
3 (IA2014-032)	<u>Employee #1</u> • Performance of Duty	BART PD initiated an investigation.	37
4 (IA2014-030)	<u>Officer #1</u> • Courtesy	BART PD initiated an investigation.	37
5 (IA2014-035)	<u>Officer #1</u> • Policy/Procedure	BART PD initiated an investigation.	16
6 (IA2014-044)	<u>Employee #1</u> • Policy/Procedure	BART PD initiated an investigation.	42

Complaints/Investigations Initiated During a Previous Reporting Period

Actions Taken/# of Days Elapsed

During the month of February 2014, 1 previously unreported Citizen Complaint was received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-021)	<u>Officer #1</u> • Conduct Unbecoming an Officer <u>Officer #2</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	46

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

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2014-034)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	89

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of March 2014, 7 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition ⁹	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-041)	Officers did not detain complainant during initial encounter. Complainant was later improperly arrested for public intoxication and battery on a peace officer.	<u>Officer #1</u> • Arrest or Detention (Count 1) – Exonerated • Arrest or Detention (Count 2) – Unfounded • Performance of Duty – Sustained <u>Officer #2</u> • Performance of Duty – Sustained	325	291
2 (IA2013-091)	Officers made inappropriate comments during complainant’s arrest, and one officer used excessive force.	<u>Officer #1</u> • Force – Exonerated • Conduct Unbecoming an Officer – Unfounded <u>Officer #2</u> • Conduct Unbecoming an Officer – Unfounded	203	183

3 (IA2013-096)	Officer used excessive force in during an arrest and did not activate the mobile video recorder as required.	<u>Officer #1</u> • Force – Exonerated • Policy/Procedure – Exonerated	203	186
4 (IA2013-097)	Officer improperly advised complainant that a citation could be issued based on where complainant parked his car.	<u>Officer #1</u> • Policy/Procedure – Service Review ¹⁰	193	179
5 (IA2013-099)	Officer used excessive force during complainant’s arrest.	<u>Officer #1</u> • Force (Count 1) – Exonerated • Force (Count 2) – Unfounded	186	155
6 (IA2013-133)	Complainant indicated there is insufficient signage in BART station to notify patrons that bicycles parked there are not being monitored.	<u>BART Police Department</u> • Service Review	118	104
7 (IA2014-015)	Complainant indicated that an officer parked a police vehicle in a bus zone, preventing access to arriving buses.	<u>Unidentified Officer</u> • Policy/Procedure – Supervisory Referral ¹¹	67	27

During the month of March 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 (IA2013-080)	A former employee indicated that unnamed officers had consumed alcohol while on duty.	<u>Unidentified Officers</u> • Conduct Unbecoming an Officer – Administrative Closure ¹²	256	242*

*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 March 2014, 1 Comment of Non-Complaint was 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 (IA2014-032)	Officer cited Complainant for a violation, but did not cite another individual who committed a violation.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral	37	23

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BART PD

No discipline was issued by BART PD during the month of March 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	10
Complainant-Initiated Appeals	0
Investigations Being Monitored	16
Investigations Reviewed During Current Month	28*

*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 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.

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.

¹² 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.