



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

March 2020

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Issue date: April 13, 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 **March 1, 2020 through March 31, 2020**.<sup>1</sup>

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

## QUANTITATIVE REPORT

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	IAB Investigations Resolved*	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
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
February 2020	15	56	10	0	0	0
March 2020	9	54	11	1	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	7
Informal Complaints <sup>7</sup>	0
Administrative Investigations	0
Inquiries <sup>8</sup>	2
<b>TOTAL</b>	<b>9</b>

### CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>9</sup>

OIPA	2
BART Police Department	5
<b>TOTAL</b>	<b>7</b>

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

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During March 2020, **2 Citizen Complaints** were received by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #20-13) (IA2020-024)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest/Detention</li> </ul>	OIPA notified BPD which initiated an investigation.	37
2 (OIPA #20-14) (IA2020-026)	Officers #1-2: <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Arrest/Detention</li> <li>• Policy/Procedure</li> <li>• Policy/Procedure (AXON Camera)</li> </ul>	OIPA notified BPD which initiated an investigation.	35

During March 2020, **5 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-027)	Officer #1: <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	32
2 (IA2020-028)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	32
3 (IA2020-029)	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	33
4 (IA2020-030)	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	36
5 (IA2020-031)	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	38

During February 2020, **1 Informal Complaint** was received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-031)	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	34

## COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During February 2020, **2 Inquiries** were received by BPD (IA2020-025 and IA2020-032) but were not previously reported.

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During March 2020, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #19-17) (IA2019-057)	Officers racially profiled, improperly detained, harassed, and disrespected a group of detainees.	Officers #1-5: <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Arrest or Detention – Exonerated</li> </ul>	350	311

During March 2019, **3 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 (IA2019-053)	Officer contacted complainant based on complainant's race.	Officer #1: <ul style="list-style-type: none"> <li>• Bias-Based Policing – Administratively Closed<sup>10</sup></li> <li>• Conduct Unbecoming an Officer – Administratively Closed</li> </ul>	362	331
2 (IA2019-080)	Officer contacted complainant based on complainant's race.	Officer #1: <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> </ul>	287	274
3 (IA2020-011)	Employee improperly cited subject for illegal parking.	Employee #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming – Administratively Closed</li> </ul>	70	57

During March 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 (IA2019-083)	Officer attempted to non-verbally intimidate complainant and did so because of complainant's race. Officer was also parked illegally.	Officer #1: <ul style="list-style-type: none"> <li>• Conduct unbecoming an Officer – Unfounded</li> </ul>	301	288

2 (IA2020-005)	Officers yelled at complainant during a law enforcement contact.	Officers #1-2: • Conduct Unbecoming an Officer – Supervisor Referral <sup>11</sup>	82	47
3 (IA2019-131)	Officer refused to provide identification to complainant.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	86	54

During March 2020, **4 Administrative Investigations** were concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2019-079)	Officer improperly detained subject, used unnecessary force during the contact, failed to report a use of force, used unprofessional language, and failed to document a TASER deployment.	Officer #1: • Force – Not Sustained • Arrest or Detention – Unfounded • Conduct Unbecoming an Officer – Sustained • Policy/Procedure (Reporting Force)– Not Sustained • Policy/Procedure (Reporting TASER)– Not Sustained	291	260
2 (IA2019-063)	Officers used excessive force and failed to use required de-escalation tactics. One officer insufficiently documented the contact, failed to properly initiate a review of the use of force, and failed to provide sufficient care.	Officers #1-2: • Conduct Unbecoming an Officer – Sustained  Officer #1: • Force – Exonerated • Force (De-escalation) – Not Sustained  Officer #2: • Force – Not Sustained • Force (De-escalation) – Sustained • Force (Reporting) – Sustained • Force (Reporting to Supervisor) – Sustained	333	306
3 (IA2019-090)	Officer fell asleep while on duty.	Officer #1: • Conduct Unbecoming an Officer – Sustained	246	233

4 (1A2020-021)	Officers insufficiently reviewed a use of force.	Officers #1-2: • Policy/Procedure – Sustained	53	18
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BPD also categorized case #IA2020-032 (regarding fare enforcement practices and the performance of a BPD dispatcher) as an **Inquiry** and closed the complaint.

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During March 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: • Oral Counseling
3	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Written Reprimand

## 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	11
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	47
Investigations Reviewed During Current Month	12†

†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.<sup>12</sup>

<sup>1</sup> 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."

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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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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)).

<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> 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.