

Office of the Independent Police Auditor

Monthly Report

May 2014



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

June 9, 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 May 1, 2014 through May 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
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
April 2014	18	68	1	0	0
May 2014	12*	57	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. In order to avoid double-counting, it does not include a case received in May by OIPA that had already been received by the BART Police Department (BPD) during a previous month.

Types of Cases Filed

Citizen Complaints	5
Administrative Investigations	2
Comments of Non-Complaint	5
TOTAL	12

Citizen Complaints Received per Department

OIPA	2*
BART Police Department	3
TOTAL	5

*These two cases appear to have been received, independently, by both OIPA and BPD. They are included only in OIPA's total, however, in order to avoid being double-counted.

Complaints/Investigations Initiated During Reporting Period**Actions Taken/# of Days Elapsed**

During the month of May 2014, 2 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 #14-39) (IA2014-062)	<u>Officer #1</u> <ul style="list-style-type: none">• Performance of Duty	OIPA notified BPD, which initiated an investigation.	28
2 (OIPA #14-41) (IA2014-063)	<u>Officer #1</u> <ul style="list-style-type: none">• Courtesy	OIPA notified BPD, which initiated an investigation.	21

During the month of May 2014, 2 Citizen Complaints were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-066)	<u>Officer #1</u> <ul style="list-style-type: none">• Force• Conduct Unbecoming an Officer <u>Officer #2</u> <ul style="list-style-type: none">• Force• Conduct Unbecoming an Officer <u>Officer #3</u> <ul style="list-style-type: none">• Force• Conduct Unbecoming an Officer <u>Officer #4</u> <ul style="list-style-type: none">• Force• Conduct Unbecoming an Officer <u>Officer #5</u> <ul style="list-style-type: none">• Force• Conduct Unbecoming an Officer	BPD initiated an investigation.	25

2 (IA2014-069)	<u>Officer #1</u> • Force	BPD initiated an investigation.	14
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During the month of May 2014, 2 Administrative Investigations were initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2014-061)	<u>Officer #1</u> • Policy/Procedure <u>Officer #2</u> • Policy/Procedure	BPD initiated an investigation.	33
2 (IA2014-067)	<u>Officer #1</u> • Force	BPD initiated an investigation.	17

During the month of May 2014, 4 Comments of Non-Complaint were received by BPD:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2014-054)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	39
2 (IA2014-056)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	38
3 (IA2014-058)	<u>Officer #1</u> • Courtesy	BPD initiated an investigation.	38
4 (IA2014-064)	<u>Employee #1</u> • Performance of Duty	BPD initiated an investigation.	22

Complaints/Investigations Initiated During a Previous Reporting Period

Actions Taken/# of Days Elapsed

During the month of April 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 (IA2014-068)	<u>Officer #1</u> • Policy/Procedure <u>Employee #1</u> • Policy/Procedure	BPD initiated an investigation.	41

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

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2014-065)	<u>Officer #1</u> • Courtesy	BPD initiated an investigation.	59

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of May 2014, 12 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 (IA2013-101)	Officer contacted complainant because of his race and improperly issued him a citation.	<u>Officer #1</u> • Bias-Based Policing – Unfounded • Arrest or Detention – Exonerated	245	210
2 (IA2013-103)	Officer used excessive force during arrest of complainant.	<u>Officer #1</u> • Force – Exonerated	247	216
3 (IA2013-105)	Officers were not properly supervised and were neglecting their duty during a local community event. They behaved inappropriately toward participants of the event, and one officer did not provide his identification to complainant.	<u>Officer #1</u> • Supervisor Responsibility – Exonerated • Performance of Duty – Exonerated • Conduct Unbecoming an Officer – Unfounded • Policy/Procedure – Unfounded <u>Officer #2</u> • Performance of Duty – Exonerated • Conduct Unbecoming an Officer – Unfounded	230	212

		<u>Officer #3</u> <ul style="list-style-type: none"> • Performance of Duty – Exonerated • Conduct Unbecoming an Officer – Unfounded 		
4 (IA2013-106)	Officer improperly detained and arrested complainant, improperly touched complainant during a search, and did not provide his identification to complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> • Arrest – Unfounded • Detention – Exonerated • Conduct Unbecoming an Officer – Unfounded • Policy/Procedure – Unfounded 	230	195
5 (IA2013-107)	Officer improperly cited complainant for fare evasion.	<u>Officer #1</u> <ul style="list-style-type: none"> • Arrest/Detention – Exonerated 	230	195
6 (IA2013-109)	Officers improperly detained complainant based on his race and used excessive force. One officer did not record the incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Exonerated • Bias-Based Policing – Unfounded <u>Officer #2</u> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Arrest/Detention – Exonerated • Policy/Procedure – Sustained 	237	213
7 (IA2013-114)	Officers improperly arrested complainant and her husband in front of their child.	<u>Officer #1</u> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated <u>Officer #2</u> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated 	216	185
8 (IA2013-121)	Officer improperly cited complainant for fare evasion and treated him aggressively due to his ethnicity. Officer did not record the incident	<u>Officer #1</u> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded 	206	188

	as required.	<ul style="list-style-type: none"> • Policy/Procedure – Sustained 		
9 (IA2013-124)	Officers improperly detained complainant for fare evasion and caused a loss of his property.	<u>Officer #1</u> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer – Unfounded <u>Officer #2</u> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer – Unfounded 	201	189
10 (IA2013-130)*	While attempting to find a suspect on a train, officers improperly focused their attention on complainant due to her race.	<u>Unknown Officers</u> <ul style="list-style-type: none"> • Bias-Based Policing – Administratively Closed¹⁰ 	182	170
11 (IA2013-135)*	Officer detained complainant due to her ethnicity and improperly cited her for fare evasion. Officer was discourteous and unprofessional during detention.	<u>Officer #1</u> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Arrest or Detention – Unfounded • Conduct Unbecoming an Officer – Unfounded • Courtesy – Unfounded 	171	145
12 (IA2014-001)	Officers did not take a crime report from complainant because of his race.	<u>Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty – Not Sustained • Conduct Unbecoming an Officer – Unfounded <u>Officer #2</u> <ul style="list-style-type: none"> • Performance of Duty – Not Sustained • Conduct Unbecoming an Officer – Unfounded 	159	141

*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 May 2014, 5 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 (IA2014-065)	Officer was rude to complainant on the phone.	<u>Officer #1</u> • Courtesy – Supervisory Referral ¹¹	59	48
2 (IA2014-048)	Officer required complainant to leave train station when complainant's tickets were deemed invalid.	<u>Officer #1</u> • Policy/Procedure – Supervisory Referral	54	43
3 (IA2014-054)	Employee did not respond when complainant attempted to discuss a parking citation issued by employee.	<u>Employee #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	39	11
4 (IA2014-056)	Officer drove a police vehicle unsafely.	<u>Officer #1</u> • Policy/Procedure – Supervisory Referral	38	17
5 (IA2014-058)	Officer was rude and did not let complainant explain herself when being cited for using a cell phone while driving.	<u>Officer #1</u> • Courtesy – Supervisory Referral	38	17

Also during the month of May 2014, the BART Police Department closed 5 cases as Inquiries. In IA2014-051, IA2014-029, and IA2014-037, the sole concern at issue was a disputed parking citation. In IA2014-022 and IA2014-040, it was determined that no BPD employees were involved. As such, these 5 cases were removed from the pending total of open cases.

Complaints/Investigations Concluded During Previous Reporting Period**Dispositions/# of Days Elapsed**

During the month of March 2014, 1 Citizen Complaint was concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2014-024)*	Officers did not properly investigate an incident that resulted in the death of complainant's brother.	Case referred to BART General Manager for further action.	95	21

*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 April 2014, 1 Citizen Complaint was concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2014-039)	Officer improperly allowed an individual to park in a restricted location.	Case referred to BART General Manager for further action.	73	13

During the month of April 2014, 2 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 (IA2014-044)	Employee improperly issued a parking citation.	<u>Employee #1</u> • Policy/Procedure – Supervisory Referral	98	39
2 (IA2014-035)	Officer improperly directed complainant to move his bicycle from a particular train car.	<u>Officer #1</u> • Policy/Procedure – Supervisory Referral	72	13

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BPD

During the month of May 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 take enforcement action against a person who potentially fare-evaded, did not document contact with the person, and did not activate his recording device.	<u>Officer #1</u> <ul style="list-style-type: none">• Performance of Duty (2 counts)• Policy/Procedure	<u>Officer #1</u> Letter of Discussion
2	Officer gave complainant incorrect information regarding a court date.	<u>Officer #1</u> <ul style="list-style-type: none">• Policy/Procedure	<u>Officer #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	11
Complainant-Initiated Appeals	0
Investigations Being Monitored	16
Investigations Reviewed During Current Month	36*

*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.