

Office of the Independent Police Auditor

Monthly Report

November 2013



December 9, 2013

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 November 1, 2013 through November 30, 2013.¹

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
November 2012	17	57	0	0	0
December 2012	12	52	2	0	0
January 2013	6	49	0	1	0
February 2013	9	46	0	0	0
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

*This number includes one case that was initiated in a prior reporting period, but was not previously reported on. It is therefore included in this report. The Number of Open Cases from the previous report mistakenly included the case and has been corrected. This number also includes one case that was re-opened by the BART Police Department for further investigation at the request of OIPA (IA2012-117).

Types of Cases Filed

Citizen Complaints	16
Administrative Investigations	0
Comments of Non-Complaint	1
TOTAL	17

Citizen Complaints Received per Department

OIPA	7
BART Police Department	9
TOTAL	16

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of November 2013, 7 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 #13-70) (IA2013-120)	<u>Civilian #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	38
2 (OIPA #13-71) (IA2013-114)	<u>Officer #1</u> • Arrest or Detention <u>Officer #2</u> • Arrest or Detention	BART PD initiated an investigation.	34
3 (OIPA #13-74) (IA2013-118)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	26
4 (OIPA #13-75) (IA2013-119)	<u>Officer #1</u> • Conduct Unbecoming an Officer <u>Officer #2</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	26
5 (OIPA #13-77) (IA2013-125)	<u>Officer #1</u> • Bias-Based Policing • Arrest or Detention • Conduct Unbecoming an Officer • Policy/Procedure <u>Officer #2</u> • Bias-Based Policing • Conduct Unbecoming an Officer • Discourtesy	OIPA initiated an investigation and informed BART PD of the complaint. BART PD initiated two separate investigations based on the allegations raised.*	21
6 (OIPA #13-78) (IA2013-127)	<u>Civilian #1</u> • Truthfulness • Conduct Unbecoming an Officer	BART PD initiated an investigation.	18

7 (OIPA #13-79) (IA2013-128)	<u>Civilian #1</u> • Policy/Procedure	BART PD initiated an investigation.	17
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*The second of these investigations is included in the following chart under Case #IA2013-126.

During the month of November 2013, 8 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 (IA2013-113)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	38
2 (IA2013-116)	<u>Officer #1</u> • Truthfulness	BART PD initiated an investigation.	32
3 (IA2013-117)	<u>Officer #1</u> • Performance of Duty • Conduct Unbecoming an Officer <u>Officer #2</u> • Performance of Duty	BART PD initiated an investigation.	29
4 (IA2013-121)	<u>Officer #1</u> • Bias-Based Policing • Arrest or Detention	BART PD initiated an investigation.	24
5 (IA2013-124)	<u>Officer #1</u> • Conduct Unbecoming an Officer <u>Officer #2</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	19
6 (IA2013-123)	<u>Officer #1</u> • Performance of Duty • Conduct Unbecoming an Officer <u>Officer #2</u> • Performance of Duty • Conduct Unbecoming an Officer	BART PD initiated an investigation.	17

7 (IA2013-126)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	21
8 (IA2013-129)	<u>Officer #1</u> • Force	BART PD initiated an investigation.	13

During the month of November 2013, 1 Comment of Non-Complaint was received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2013-122)	<u>Officer #1</u> • Arrest or Detention	BART PD initiated an investigation.	24

Complaints/Investigations Initiated During a Previous Reporting Period

Actions Taken/# of Days Elapsed

During the month of September 2013, 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 (IA2013-115)	<u>Officer #1</u> • Bias-Based Policing	BART PD initiated an investigation.	76

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of November 2013, 8 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 (IA2013-029)	Officer discriminated against complainant, improperly detained her, and failed to consider other individuals as possible suspects. Officer did not document this contact.	<u>Officer #1</u> <ul style="list-style-type: none"> • Arrest or Detention – Unfounded • Performance of Duty – Unfounded • Bias-Based Policing – Unfounded • Policy/Procedure – Sustained 	243	206
2 (IA2013-031)	Officers pushed complainant’s head up against a wall, forced him onto a bench, and made references to him based on his race. Another officer did not complete a use of force report.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force (Count 1) – Unfounded • Force (Count 2) – Exonerated • Bias-Based Policing – Unfounded <u>Officer #2</u> <ul style="list-style-type: none"> • Force (Count 1) – Unfounded • Force (Count 2) – Exonerated • Bias-Based Policing – Unfounded <u>Officer #3</u> <ul style="list-style-type: none"> • Policy/Procedure – Sustained 	241	224

3 (IA2013-045)	Officer made threatening and inappropriate remarks to complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (Count 1) – Sustained • Conduct Unbecoming an Officer (Count 2) – Exonerated • Conduct Unbecoming an Officer (Count 3) – Not Sustained 	181	164
4 (IA2013-048)	Officer threw complainant to the ground, pushed him to the ground, and kicked him.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force (Count 1) – Unfounded • Force (Count 2) – Exonerated • Force (Count 3) – Not Sustained 	181	160
5 (IA2013-063)	Employee improperly issued a parking ticket to complainant.	<u>Civilian #1</u> <ul style="list-style-type: none"> • Performance of Duty – Unfounded 	133	112
6 (IA2013-088)	Officers did not conduct a thorough investigation in response to a bicycle theft.	<u>BART Police Department</u> <ul style="list-style-type: none"> • Performance of Duty – Service Review¹⁰ 	103	68
7 (IA2013-090)	Officers inappropriately searched and handcuffed complainant following a dispute with two juveniles.	<u>Unknown Officers</u> <ul style="list-style-type: none"> • Arrest or Detention – Administratively Closed¹¹ • Search or Seizure – Administratively Closed 	81	61
8 (IA2013-117)	Officers made insufficient attempts to locate an individual who had created a disturbance in a BART station. One officer did not take the situation seriously.	<u>Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty – Supervisory Referral¹² • Conduct Unbecoming an Officer – Supervisory Referral <u>Officer #2</u> <ul style="list-style-type: none"> • Performance of Duty – Supervisory Referral 	29	10

During the month of November 2013, 2 Comments of Non-Complaint were 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 (IA2013-104)	Officer was rude to complainant during a phone call.	<u>Officer #1</u> • Courtesy – Supervisory Referral	50	23
2 (IA2013-110)	Officer improperly reported statement made by complainant during a criminal investigation.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral	46	30

Complaints/Investigations Concluded During a Previous Reporting Period

Dispositions/# of Days Elapsed

During the month of September 2013, 1 Citizen Complaint was concluded by the BART Police Department. Though it was accounted for correctly in the number of pending cases, it was not previously reported on:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-023)	Officer was rude to complainant, misused discretion regarding the issuance of a citation, and failed to complete a required report.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Not Sustained • Conduct Unbecoming an Officer – Sustained • Policy/Procedure – Sustained	265	184

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BART PD

During the month of November 2013, 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 improperly accessed a law enforcement database and misused the information that was obtained.	<u>Officer #1</u> <ul style="list-style-type: none"> • Policy/Procedure (Count 1) • Policy/Procedure (Count 2) • Policy/Procedure (Count 3) • Policy/Procedure (Count 4) • Conduct Unbecoming an Officer 	<u>Officer #1</u> Termination
2	Officer misused discretion regarding the issuance of a citation and failed to complete a required report.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Policy/Procedure 	<u>Officer #1</u> Written Reprimand

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	2
Complainant-Initiated Appeals	0
Investigations Being Monitored	12
Investigations Reviewed During Current Month	25*

*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 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.

¹² 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.