

Office of the Independent Police Auditor

Monthly Report

November 2014



December 8, 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 November 1, 2014 through November 30, 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
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
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

*This number includes one case that was initiated in a prior reporting period but not previously reported on. It is therefore included in this report.

Types of Cases Filed

Citizen Complaints	14
Administrative Investigations	0
Comments of Non-Complaint	3
TOTAL	17

Citizen Complaints Received per Department

OIPA	4
BART Police Department	10
TOTAL	14

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of November 2014, 4 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 #14-74) (IA2014-149)	<u>Officer #1</u> <ul style="list-style-type: none"> • Racial Profiling • Performance of Duty <u>Officer #2</u> <ul style="list-style-type: none"> • Racial Profiling • Performance of Duty <u>Officer #3</u> <ul style="list-style-type: none"> • Racial Profiling • Performance of Duty <u>BART Police Department</u> <ul style="list-style-type: none"> • Policy Complaint 	OIPA initiated an investigation and notified BPD, which also initiated an investigation.	34
2 (OIPA #14-77) (IA2014-142)	<u>Officer #1</u> <ul style="list-style-type: none"> • Racial Profiling • Conduct Unbecoming an Officer • Performance of Duty 	OIPA initiated an investigation and notified BPD, which also initiated an investigation.	21
3 (OIPA #14-78) (IA2014-152)	<u>Officer #1</u> <ul style="list-style-type: none"> • Racial Profiling • Performance of Duty • Courtesy 	OIPA initiated an investigation and notified BPD, which also initiated an investigation.	14
4 (OIPA #14-79) (IA2014-153)	<u>Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty 	OIPA notified BPD, which initiated an investigation.	12

During the month of November 2014, 9 Citizen Complaints were received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-135)	<u>Officer #1</u> <ul style="list-style-type: none"> • Courtesy 	BPD initiated an investigation.	35

2 (IA2014-137)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	34
3 (IA2014-139)	<u>Officer #1</u> • Truthfulness • Arrest or Detention • Conduct Unbecoming an Officer • Policy/Procedure	BPD initiated an investigation.	28
4 (IA2014-141)	<u>Officer #1</u> • Bias-Based Policing • Conduct Unbecoming an Officer • Courtesy	BPD initiated an investigation.	24
5 (IA2014-143)	<u>Officer #1</u> • Arrest or Detention	BPD initiated an investigation.	20
6 (IA2014-145)	<u>Officer #1</u> • Force • Arrest or Detention	BPD initiated an investigation.	18
7 (IA2014-148)	<u>Officer #1</u> • Search or Seizure <u>Officer #2</u> • Search or Seizure	BPD initiated an investigation.	30
8 (IA2014-150)	<u>BART Police Department</u> • Service Review ⁹	BPD initiated an investigation.	17
9 (IA2014-151)	<u>Officer #1</u> • Courtesy	BPD initiated an investigation.	35

During the month of November 2014, 3 Comments of Non-Complaint were received by BPD:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2014-140)	<u>Officer #1</u> • Courtesy	BPD initiated an investigation.	21
2 (IA2014-146)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	18

3 (IA2014-147)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	18
	<u>Officer #2</u> • Policy/Procedure		

Complaints/Investigations Initiated During a Previous Reporting Period

Actions Taken/# of Days Elapsed

During the month of October 2014, 1 previously unreported Citizen Complaint was received by BPD:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-144)	<u>Officer #1</u> • Conduct Unbecoming an Officer • Policy/Procedure	OIPA notified BPD, which initiated an investigation.	45

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of November 2014, 1 Citizen Complaint was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Allegations	Disposition ¹⁰	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #13-89)	Officers improperly detained complainant. One officer initiated the detention based on complainant's perceived economic status and used unnecessary physical force during contact.	<u>Officer #1</u> • Unnecessary or Excessive Use of Force – Exonerated • Racial Profiling – Not Sustained • Arrest or Detention – Exonerated <u>Officer #2</u> • Arrest or Detention – Unfounded	353	341

During the month of November 2014, 7 Citizen Complaints were 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 (IA2014-033)	Officers did not sufficiently investigate a reported crime, did not effectuate a citizen's arrest, and did not resolve the conflict that led to the reported crime fairly between two parties.	<u>Officer #1</u> • Performance of Duty – Sustained <u>Officer #2</u> • Performance of Duty – Sustained <u>Officer #3</u> • Performance of Duty – Exonerated <u>Officer #4</u> • Performance of Duty – Exonerated	268	254
2 (IA2014-041)*	Officers improperly detained complainants, improperly arrested them, and used excessive force against them.	<u>Officer #1</u> • Force (Count 1) – Exonerated • Force (Count 2) – Exonerated • Force (Count 3) – Exonerated • Arrest – Exonerated • Detention – Exonerated <u>Officer #2</u> • Force – Not Sustained • Arrest – Exonerated • Detention – Exonerated <u>Officer #3</u> • Force – Exonerated • Arrest – Exonerated • Detention – Exonerated	262	245

		<u>Officer #4</u> <ul style="list-style-type: none"> • Force – Exonerated • Arrest – Exonerated • Detention – Exonerated 		
3 (IA2014-047)	Officers used excessive force when arresting complainant and stole complainant's property.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Exonerated <u>Officer #2</u> <ul style="list-style-type: none"> • Force – Exonerated <u>Officer #3</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded <u>Officer #4</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded 	243	222
4 (IA2014-055)	One officer did not notify complainant of a crime involving complainant's property. Another officer showed insufficient concern regarding the crime involving complainant's property.	<u>Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty – Not Sustained <u>Officer #2</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded 	221	189
5 (IA2014-072)	Officers improperly arrested complainant and applied handcuffs too tightly. One officer lost complainant's property.	<u>Officer #1</u> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer – Unfounded • Policy/Procedure – Exonerated <u>Officer #2</u> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated • Policy/Procedure – Exonerated 	182	165

6 (IA2014-078)	Officer used excessive force against complainant and improperly detained and searched complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Exonerated • Arrest or Detention – Exonerated • Search or Seizure – Exonerated 	171	157
7 (IA2014-103)	Officer harassed individual who was suspected of fare evasion.	<u>Officer #1 (Unidentified)</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained 	112	91

*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 November 2014, 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 (IA2014-057)	Involved officers: did not properly conduct required inspections; did not accurately complete required documentation; did not properly supervise employees; made false statements; made disparaging remarks toward other employees; did not cooperate with an investigation as required; acted insubordinately during an investigation.	<u>Officer #1</u> <ul style="list-style-type: none"> • Truthfulness – Not Sustained • Performance of Duty – Sustained • Conduct Unbecoming an Officer – Sustained • Policy/Procedure – Sustained • Supervision – Sustained <u>Officer #2</u> <ul style="list-style-type: none"> • Truthfulness – Not Sustained • Policy/Procedure – Sustained <u>Officer #3</u> <ul style="list-style-type: none"> • Truthfulness – Not Sustained • Policy/Procedure – Sustained 	222	202

		<u>Officer #4</u> <ul style="list-style-type: none"> • Truthfulness – Not Sustained • Policy/Procedure – Sustained <u>Officer #5</u> <ul style="list-style-type: none"> • Truthfulness – Not Sustained • Insubordination – Sustained • Conduct Unbecoming an Officer – Sustained • Policy/Procedure – Sustained 		
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During the month of November 2014, 1 Comment of Non-Complaint was 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 (IA2014-146)	Officer used a cellular phone while driving.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Supervisory Referral¹¹ 	18	2

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Complaints/Investigations Concluded During Previous Reporting Periods

Dispositions/# of Days Elapsed

During the month of September 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 (IA2014-031)	Officers improperly arrested complainant and used excessive force.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Unfounded <u>Officer #2</u> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated 	269	184

During the month of October 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 (IA2011-055)	Involved officers: improperly arrested complainants; did not properly supervise employees; belittled complainants; did not properly account for a complainant's disability.	<u>Officer #1</u> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated • Supervision – Exonerated <u>Officer #2</u> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated <u>Officer #3</u> <ul style="list-style-type: none"> • Courtesy/Conduct Unbecoming an Officer – Not Sustained • Discrimination – Not Sustained 	1179*	1133*

		<p><u>Officer #4</u></p> <ul style="list-style-type: none"> • Courtesy/Conduct Unbecoming an Officer – Unfounded • Discrimination – Unfounded <p><u>Officer #5</u></p> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated <p><u>Officer #6</u></p> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated <p><u>Officer #7</u></p> <ul style="list-style-type: none"> • Courtesy/Conduct Unbecoming an Officer – Not Sustained • Discrimination – Not Sustained <p><u>Officer #8</u></p> <ul style="list-style-type: none"> • Courtesy/Conduct Unbecoming an Officer – Not Sustained • Discrimination – Not Sustained <p><u>Officer #9</u></p> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated • Courtesy/Conduct Unbecoming an Officer – Unfounded • Discrimination – Unfounded 		
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*The applicable temporal limitation affecting the potential issuance of discipline resulting from this complaint investigation was tolled for an extended period of time due to ongoing civil litigation related to the same matter that gave rise to the complaint.

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BPD

During the month of November 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 accurately document efforts to record the incident as required.	<u>Officer #1</u> • 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	14
Complainant-Initiated Appeals	0
Investigations Being Monitored	13
Investigations Reviewed During Current Month	29*

*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 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.

¹⁰ 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)

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.