



Office of the Independent Police Auditor

ANNUAL REPORT
2014 - 2015



Office of the Independent Police Auditor
Annual Report 2014 – 2015

Mark P. Smith
Independent Police Auditor

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MESSAGE FROM THE INDEPENDENT POLICE AUDITOR

In its fourth year of operation, the Office of the Independent Police Auditor (OIPA) focused on increasing its productivity and improving the overall quality of its investigations. After filling the vacancy in OIPA's investigator position that arose during the previous year, we have worked hard to complete our investigations and investigative reviews at a notably faster pace. I am confident that we have also meaningfully upgraded the analytical quality of our investigations and investigative reviews at the same time. Additionally, we focused much of our effort during the year on maintaining OIPA's robust program of community outreach, making policy recommendations to the BART Police Department (BPD), facilitating meaningful training for our own staff as well as for the BART Police Citizen Review Board (BPCRB), and meeting all of our other responsibilities as outlined by the BART Citizen Oversight Model (Model). OIPA has enjoyed a period of notable stability and high productivity this past year, which I will seek to build on next year by exploring avenues for this office to expand on the work it is presently doing.

I am pleased to present this fourth Annual Report of the Office of the Independent Police Auditor, for the year 2014-2015.



MARK P. SMITH
Independent Police Auditor
December 31, 2015

EXECUTIVE SUMMARY

Commitment to Community Outreach

During this year the Office of the Independent Police Auditor maintained its ongoing commitment to community outreach, including its efforts to focus on youth as well as some underrepresented groups in our community. This year more than any other, OIPA found success in connecting with schools around the Bay Area, allowing us to communicate our mission to large groups of young people all at one time. Additionally, we were pleased to collaborate with the BPCRB, BPD, and the Center for Independent Living (CIL) in Berkeley on a forum that focused on healthy and positive interactions between law enforcement and the vibrant disability community that thrives here in the Bay Area.

Draft Recommendations Regarding BPD Policies and Procedures

OIPA continued its practice of issuing policy recommendations to BPD this year. The first recommendation arose as a result of an OIPA complaint investigation which revealed that the relevant policy governing the issuance of business cards by officers to members of the public lacked sufficiently clear instruction. The second recommendation arose in collaboration with the BPCRB and addressed the need to set clear guidelines assuring that police officer interactions with individuals identifying as transgender would be conducted professionally. Subsequent to some additional collaboration with BPD, each recommendation was eventually moved forward toward incorporation into the BPD policy manual.

Commitment to Training for OIPA Staff

This year OIPA succeeded in renewing its commitment to ensuring that our own staff remains apprised of the latest scholarship and best practices with regard to civilian oversight of law enforcement. We also sought to take a leadership role in this area by participating as panelists and presenters at various symposia during the course of the year. Some of our training activities this year included:

- Use of Force Investigations
- Complaint Mediation
- Responding to LGBT Victims of Crime

By the Numbers

156 new or re-opened investigations were initiated by BPD's Internal Affairs Unit or OIPA during the course of the year. The total number of complaints brought directly to OIPA this year decreased by 10% from last year's total, which matches the decrease in the total number of complaints that were filed overall as compared with last year (10%). OIPA's share of all formal complaints received as compared with BPD Internal Affairs remained roughly constant with last year's share at around one-third.

Each investigation that was initiated included an average of 2.3 allegations of misconduct. The most common categories of misconduct being alleged were (in order): Conduct Unbecoming an Officer, Unauthorized Force, Neglect of Duty, Improper Procedure or Complaint against Policy, Racial Profiling/Bias-Based Policing, Improper Arrest/Detention, and Discourtesy.

153 investigations were closed or re-closed during the course of the year. Of these, 38 (or 25%) had a primary finding of *Sustained*, indicating that at least one instance of misconduct was determined to have occurred. 44 (or 29%) had a primary finding of either *Unfounded* or *Exonerated*, indicating that no misconduct was determined to have occurred. In 21 investigations (or 14%), it could not be definitively determined whether misconduct did or did not occur. The remaining cases were completed with an alternative disposition; the most common of these alternative dispositions was a *Supervisory Referral* which accounted for 34 cases (or 22%) and is commonly used for Informal Complaints.

AREAS OF FOCUS FOR THE OFFICE OF THE INDEPENDENT POLICE AUDITOR 2014-2015

Commitment to Community Outreach



OIPA with students from Mission San Jose High School

A robust and widespread program of community outreach continues to be an essential component of OIPA's operational framework. Because of the potential for misunderstandings and miscommunications regarding both the latitude and limitations of law enforcement personnel, it is critical to bridge these gaps through education and the sharing of relevant information. By connecting with the people and the communities served by BPD, OIPA intends to minimize both the quantity and the impact of negative interactions with law enforcement and to provide various segments of these communities with a better understanding of their rights and responsibilities during such interactions, as well as their available remedies.

In the past, OIPA has ensured that a substantial amount of its outreach efforts were targeted toward youth and youth-service-providers. This year was no different, as we remain firm in our belief that many of the negative interactions that youth commonly find themselves in with police are avoidable. We further believe that young people too often lack the knowledge and awareness of applicable law and police procedures that they ought to be equipped with, and we seek to empower youth who feel their voices may not be heard, as well as those who perceive that their rights have been potentially violated.

This year OIPA worked hard to establish direct relationships with Bay Area schools, allowing us to reach large groups of young people at once, as well as with some individual students who were completing academic assignments related to police misconduct and community responses to it. Although there are



Police officers and students at Oakland Youth Police Community Forum



OIPA with BPD Staff and Explorers at Oakland Youth Summit

many challenges inherent in meeting and addressing youth through their schools, due primarily to the schools' tightly-scheduled curricula, OIPA had some of its best success to date in accomplishing this goal over the past year. In 2014-2015, some of the groups that OIPA was able to meet with, or outreach events we were able to participate in, were:

- Mission San Jose High School
- Irvington High School
- Alternatives in Action High School - Oakland Youth Police Community Forum

- Garfield Elementary School – Gang Resistance Education and Training (GREAT) Program
- UC Berkeley, Goldman School of Public Policy – Blacks in Public Policy (BiPP) 2015 Debate
- Alameda County Developmental Disabilities Planning and Advisory Council
- Sobrante Park Neighborhood Crime Prevention Council
- Alameda County Department of Probation
- Newark Optimist Club
- Pittsburg, CA City Council
- Centerforce Youth Court
- 6th Annual Youth Action Summit
- Oakland Youth Commission
- Oakland Youth Summit
- Bay Area Black Prosecutors Association: Know Your Rights Youth Empowerment Summit

In addition to the list above, OIPA also sought to better comprehend law-enforcement-related concerns unique to certain sectors, including people with developmental or physical disabilities. OIPA proudly operates under the principle that all individuals must be afforded the opportunity to avail themselves of the service that this office was established to provide. One outreach event of particular note this year was a forum OIPA arranged with the Center for Independent Living (CIL) in Berkeley. CIL is an outgrowth of the independent living social movement of the 1960s that focused on helping people with disabilities achieve and enjoy independence. CIL has become a model for independent living centers all over the world, and it prides itself on supporting people with disabilities as they fight for and achieve their civil rights.

Recognizing that the disability community has its own unique history with, and concerns about, law enforcement, OIPA sought to connect directly with CIL and its constituents. Our goals were to educate people about the service that our office could provide to them, in an accessible manner, in case they should ever experience a negative law enforcement interaction; and also to learn from them about the various types of issues that most commonly might arise during their encounters with police. During the forum, the discussion amongst the attendees ranged from the legality of service animals on BART, to confiscation of service equipment (such as a walking cane) during a detention or arrest; to specific training for police officers on interacting effectively with persons who are disabled.

Certainly a successful educational event for OIPA, the forum at CIL was immeasurably enhanced by the collaborative efforts of the BPCRB and BPD as well. In addition to staff from our office, BPCRB members were present to add their valuable perspective to the discourse, and both sworn and civilian members of BPD also made presentations and answered questions from those in attendance. The lessons that OIPA learned from all of the participants and attendees at the forum continue to resonate with us now and guide our thoughts whenever we consider issues where accessibility is a factor. We look forward to continuing the important two-way communication between our office and the disability community into the future.



OIPA Presentation to Center for Independent Living



Center for Independent Living Audience Members



Members of the BART Board of Directors, the BART Police Department, the BART Police Citizen Review Board, and OIPA at the Center for Independent Living

Draft Recommendations Regarding BPD Policies and Procedures

The Office of the Independent Police Auditor continued its practice of issuing periodic recommendations regarding BART Police Department policies.¹ One of our principles in choosing which policy areas to address is to focus on those that seem to be of greatest interest and/or concern to the public. Sometimes that focus is narrowed through the lens of a specific complaint we have received and/or an investigation we have conducted. This is true of our recommendation regarding BPD's policy governing the issuance of business cards to members of the public. Other times our focus is guided by a prominent social issue, as was the case with our recommendation for a policy addressing BPD's law enforcement interactions with members of the public who identify as transgender.

Business Cards and Trading Cards

One of the methods by which BPD personnel can develop and maintain trust with members of the community is through their distribution of business cards upon request. Insofar as police officers are generally acting in service of the public, as well as being actors of the state, people rightfully desire and expect a reliable avenue toward identifying with certainty those officers with whom they interact. Whether their purpose is to formally commend an officer for a job well done, to complain about an officer for some form of improper treatment, or for any other legitimate reason, people generally have a right to learn the identity of the police department employees who contact them in a law enforcement setting.

OIPA's review of BPD's business card policy stemmed from an investigation that included a question about whether/when an officer was required to issue a business card (containing the officer's identity) after being requested to do so by a member of the public. We discovered, among other things, that the relevant policy in effect at that time lacked clear instruction as to when such cards were required to be distributed, and it also limited the issuance of business cards to only certain BPD personnel (despite the apparent BPD practice of issuing them to all personnel). Our recommendations therefore focused heavily on setting clearer standards where warranted and codifying those practices which we learned were already occurring and which we supported.

OIPA recommended that BPD provide business cards to all BPD personnel at no personal expense to the employee. OIPA also recommended that Department-issued business cards should include an employee's name, rank, and badge number, at minimum, while leaving the all further questions of design approval to the Chief of Police. OIPA recommended that on duty BPD personnel be required to carry the department-issued cards at all times, and that they be required to distribute the cards to any person upon request, provided that doing so would not interfere with the performance of their duties. We believed that these clear standards would help generate and maintain community trust of BPD, and

¹ It is not uncommon for OIPA, during the regular course of its work, to informally discuss policies with BPD and to make suggestions for alternatives or improvements. Much of OIPA's work is comprised of determining whether a given policy was violated in a specific instance, and discussions about policy and possible changes to it are therefore to be expected. However, it is important for OIPA to also take advantage of its responsibility to publicly issue recommendations on BPD policy, particularly where the underlying issue is likely to be of interest to members of the public, so that they may be informed and reach their own conclusions regarding the matter.

would help to minimize any appearance of intentionally avoiding accountability, whether by individual officers or by the Department more generally.

Lastly, OIPA recommended that BPD employees be provided with pre-printed, non-personalized cards as a substitute whenever they were awaiting the printing and delivery of their individually personalized cards (i.e. – a newly hired BPD police officer). This would help to eliminate the chance that delays in printing or other similar obstacles could be relied on as a reason to deny a request from a member of the public. After some minor edits deemed prudent by BPD, the new policy was implemented and formally incorporated into the BPD Policy Manual.² For further detail about BPD’s policy on Business Cards and Trading Cards, as well as OIPA’s complete recommendation regarding that policy, see Appendix A.

Interactions with Individuals Identifying as Transgender

Staff from OIPA and members of the BPCRB participated together in a training session focused on addressing issues between law enforcement and the transgender community. After the training, and at the suggestion of the BPCRB, OIPA began to explore the possibility of crafting a new policy recommendation for BPD that would set clear standards for officers’ interactions with individuals who identify as transgender. OIPA’s initial research revealed that relatively few jurisdictions currently operate with any policy in place. Additionally, it became clear to OIPA that members of, and advocates for, people in the transgender community had significant concerns regarding both realized and potential negative interactions between police officers and transgender people.

In our efforts to craft a policy that thoroughly and completely addressed all of the existing and anticipated areas of concern for the transgender community, OIPA researched existing policies in several jurisdictions across the nation³ and contacted respected and informed advocacy groups and individuals for input and suggestions at several stages of the drafting process. Invaluable input and critiques were provided by the Transgender Law Center (TLC) in Oakland, CA, and the National Center for Transgender Equality (NCTE) based in Washington, DC, among other knowledgeable individuals and organizations. OIPA also referred to a 2010 publication of recommended model policies and standards that was issued by the City of Los Angeles Human Relation Commission’s Transgender Working Group, which was, itself drafted in collaboration with the Executive Director of TLC.

After drafting some preliminary language, OIPA met with members of the BPCRB, BPD, and both of the BPD’s employee associations to collect additional insight and suggestions for satisfaction of the needs and concerns of the department and its officers. Here, OIPA was able to present information to these stakeholders that helped to establish a common understanding of the necessity for creating the policy at BART. The draft policy was refined and edited until all involved stakeholders agreed that the document

² Final adoption occurred after the end of the current reporting period, as BPD engages in a robust and healthy policy review process for all modifications such as this one.

³ OIPA collected and reviewed policies implemented by the police departments of New York City, San Francisco, Chicago, Boston, Washington, DC, Boston, the Massachusetts Bay Transportation Authority, and the University of California at Davis.

sufficiently and thoroughly achieved the goals of recognizing and upholding the rights of transgender people and establishing clear instructions for officers when doing so.

Available information indicated that transgender people regularly reported negative interactions with law enforcement personnel, including gender profiling, inappropriate or incorrect pronoun usage, and disrespectful language and behavior during contacts. The draft policy therefore required officers to treat transgender people respectfully, and it offered guidance as to appropriate methods of identifying and searching transgender people, as well as instruction regarding interpersonal communication and information-gathering. OIPA learned that in some instances, particularly in connection with domestic violence, transgender people did not summon the police for fear of having their status exposed. The draft policy provided instruction regarding the maintenance of confidentiality to help officers avoid “outing” and potentially endangering transgender people by publicly exposing their status or otherwise violating any privacy protections.

OIPA was informed that some transgender people reported being denied necessary medical treatment after being detained or arrested by law enforcement personnel. The draft policy also provided clear requirements for the provision of medical treatment, with particular attention to concerns that may be of heightened significance to members of the transgender community, such as hormone therapy. Provisions were included that would improve Departmental record-keeping in order to better track and address the police response to calls involving transgender people. In this way, any gaps in service could be quantified and appropriately addressed, while successes and accomplishments could also be monitored. Lastly, the draft policy included provisions for ongoing, evolving training of officers regarding these interactions. As the knowledge base expands, and increasing amounts of data are collected, officers will have access to the most advanced available information and training. In this way they will stay apprised of changing cultural conditions, and any previously unrecognized issues.

The BPCRB voted to officially adopt OIPA’s draft language and to propose it to BPD as a recommendation for a new policy. After a final round of edits by BPD that further clarified and strengthened some of the reporting requirements within the recommendation, the new policy was implemented and formally incorporated into the BPD Policy Manual. In describing the process undertaken by OIPA, the BPCRB, BPD, and BPD’s employee associations, one stakeholder from NCTE stated, “Most law enforcement agencies still don’t have those kinds of policies in place. In that sense BART is getting out ahead. Adopting a policy isn’t going to eliminate problems overnight, but the larger changes that need to happen can’t happen without these kinds of actions.”⁴ For further detail about BPD’s policy on Interactions with Individuals Identifying as Transgender, as well as OIPA’s complete recommendation regarding that policy, see Appendix B.

Commitment to Effective Training for OIPA Staff

OIPA endeavors to remain apprised of the latest scholarship and the best practices associated with oversight of law enforcement. We strive to collect knowledge and experience through training and

⁴ <http://www.bart.gov/news/articles/2014/news20141208>.

educational opportunities, and our staff was fortunate to attend a number of quality sessions and events to that end during this past year. Additionally, we have sought more opportunities to participate as leaders, speakers, and panelists at symposia or conferences this year, as researching and sharing topical information with colleagues can often prove to be just as educational as absorbing others' points of view and experiences. Through this two-way interaction with a variety of qualified sources, OIPA has been better able to conduct detailed, thorough, and accurate investigations in connection with individual complaints. Our office has also augmented its understanding of the subtleties and nuances of these investigations, and can better anticipate potential pitfalls or investigative impediments. By collecting the insight being offered by a wide range of experts and instructors, OIPA has been able to increase its efficiency, and maintain the highest standards of quality, which translates directly to our expanding role in the continued development of the oversight field on a national scale. In 2014-2015, some of the trainings that OIPA staff attended and/or participated in facilitating were:

- NACOLE 20th Annual Training Conference
- Responding to LGBT Victims of Crime
- Transgender and Law Enforcement Webinar
- San Francisco Public Defender's Forum on Race and Reform
- Law Enforcement Response to the Mentally Ill: Basic Principles and Practical Strategies
- Oakland Police Department Forum on Risk Management in Law Enforcement Agencies
- San Francisco Office of Citizen Complaints Training on Complaint Mediation
- NACOLE Academic Symposium on the Role of Civilians in Police Accountability
- A Call to Action: Safeguarding Children of Arrested Parents
- Use of Force Investigations
- Police Oversight Investigations
- Internal Affairs Investigations
- NACOLE-ILEAA Training Conference on Accountability and Transparency in Law Enforcement Agencies

Observation of BART Police Department Response to Protest Activity

This year OIPA took on the important new responsibility of observing BPD's response during certain protest activities. It is undeniable that protests over all sorts of social issues will occur with varying frequency over time; with regard to protests centered in and around the BART District it seems equally undeniable that the BART Police Department will often have some measure of involvement in responding to these activities. In light of this, it is to be reasonably expected that concerns may arise from time to time over the conduct of the police who are out at the scene.

Whether concerns come in the form of civilian complaints, news media reports, or social media postings, it seems prudent and forward thinking, when feasible, for OIPA to also be present at the scene of a protest in order to observe BPD. This presence would allow OIPA to have a real-time understanding of the nature of the scene that might later form the setting for one or more complaints from the public. It would potentially assist us in identifying complaints that seem to be frivolous or unfounded, and in

identifying complaints that seem to have merit. Our presence at the scene could also give us a head start in identifying involved parties and relevant evidence should we later be called upon to conduct an investigation in response to a civilian complaint. Therefore, OIPA initiated a program to facilitate staff observation of certain protest activity, and we responded to the scenes of four different protests over the course of the year. Whether OIPA's monitoring of BPD during protest activity will be frequent or merely occasional remains to be seen and will almost certainly vary over time. Either way, OIPA now feels prepared to meet this added responsibility and to do so safely and effectively.

Organization of Northern California Regional Oversight Forum

This year OIPA and the City of Berkeley Police Review Commission jointly hosted a Northern California Regional Oversight Forum in order to provide a training and networking opportunity for police oversight colleagues in the area. Oversight professionals, volunteers, and students, as well as sworn and civilian members of law enforcement came together to participate in the event, which provided an occasion for attendees to discuss some of the salient topics and developing themes facing the field of law enforcement oversight today. Agencies and organizations represented included BART (OIPA, the BPCRB, and BPD), the City of Berkeley, Sonoma County, the City of Oakland Citizens' Police Review Board, the City of San Francisco Office of Citizen Complaints, and Accountability Associates. There are a number of increasingly relevant themes and contemporary issues that are of particular interest to oversight agencies, and the regional forum was an ideal setting for the exchange of knowledge, insight, and opinion.

Agendized topics during the forum included a dialogue about fair and impartial policing guidelines, which seemed particularly fitting against the backdrop of an invigorated national dialogue about racial and cultural inequities in the provision and tenor of police services. The application of fair and impartial policing techniques is universally recognized by oversight agencies to be of the utmost importance, and strategic methods for monitoring the effectiveness of efforts to eliminate bias in policing seemed to be of common interest to everyone in attendance no matter what their individual roles were within their respective oversight systems.

Forum participants also engaged in discussion about the rising use of on-body cameras by law enforcement officers, and they had an opportunity to discuss the implementation and use of specific hardware and data storage packages while also deliberating the social, political, and legal implications of contemporary body camera programs. Discussion on this topic ranged from video and audio recording quality to considerations of victim privacy protections, and the forum was an ideal setting for exploration of this rapidly evolving issue.

Many different jurisdictions, both in Northern California and elsewhere throughout the country, had recently found themselves embroiled in discourse about appropriate crowd control tactics in the wake of social protest activity. The forum allowed for an exploration of techniques for evaluating various approaches to managing large crowds and minimizing violence as much as possible. Crowd control and crowd management are areas in which law enforcement agency personnel may find it challenging to

adhere to established departmental policies against an ever-changing and mobile backdrop, particularly when sharing mutual aid responsibilities with neighboring agencies whose policies and culture may differ. The discussion at the regional forum also encompassed methods by which these crowd control techniques can be effectively and thoroughly reviewed and analyzed by responsible and appropriate oversight bodies, in an effort to allow the free expression of ideas by the public without condoning destructive or violent activity.

Many of the forum attendees compared and contrasted their agencies' efforts to function as a bridge between police departments and the communities they serve. Outreach to members of the public remains an important role of most oversight agencies, and functioning as a source of information to the community serves to establish and maintain trust. Attendees shared outreach strategies that had been more successful, as well as ones that had been less so, and they discussed new ideas on how to effectively apprise different communities of the resources available to them under the umbrella of civilian oversight of law enforcement.

This type of networking event serves to strengthen and evolve the oversight process with the sharing of detailed information and the exchange of new ideas. OIPA was honored to take part in the development, planning, and execution of the event, and we were certainly enriched by the collective knowledge and enthusiastic contributions of all of the attendees. For further detail about the Northern California Regional Oversight Forum, see Appendix C.





Participants from Multiple Agencies in attendance at the Northern California Regional Oversight Forum

2014-2015 BY THE NUMBERS

The BART Citizen Oversight Model dictates that this report shall include a breakdown of cases filed over the course of the last year, including complaints about the police received by the Office of the Independent Police Auditor, the BART Police Department, or any other District departments. The following tables are designed to satisfy the specific reporting requirements as stated in Chapter 1-04(J) of the Model.

It is important to note that the nature of the data being reported is one that lends itself to occasional change. For example, a case that was initially labeled as a Formal Complaint during the month it was received might later be determined to be an Informal Complaint during a subsequent month, as more details are obtained. The data reported here is aggregated from OIPA's monthly reports filed with the BART Police Citizen Review Board and generally reflects cases as they were initially received; it therefore might not reflect some changes that have taken place since. Importantly, OIPA has communicated with BPD Internal Affairs each month since OIPA started its periodic reporting; as a part of this communication we seek to reconcile every case and discuss any changes to cases, such as the one in the example above, so that no case is unaccounted for and that every change made can be explained and justified.

Total Number of Cases Filed or Reopened; Number of Pending Cases at Month-End

	Number of Cases Filed ⁵	Number of Open Cases ⁶
July 2014	10	67
August 2014	20	75
September 2014	12	72
October 2014	14	78
November 2014	17	84
December 2014	11	84
January 2015	11	87
February 2015	9	78
March 2015	11	67
April 2015	13	68
May 2015	11	70
June 2015	17	75
TOTALS	156	

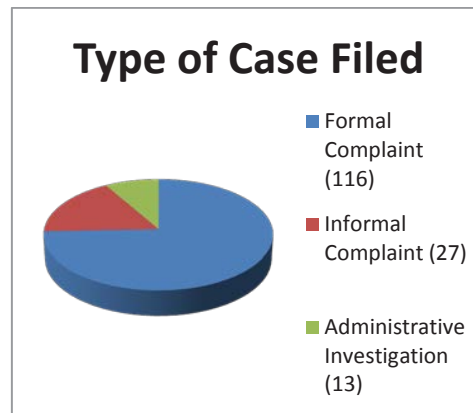
⁵ This number includes all Formal Complaints filed against members of the BART Police Department, whether with OIPA or BPD, as well as Informal Complaints filed with BPD and Administrative Investigations initiated internally by BPD members. It also includes any previously-closed cases that were reopened during the reporting period for further investigation. This number refers to individual cases, each of which could potentially have more than one allegation of misconduct subject to investigation, and each of which could also potentially involve more than one accused BPD employee.

⁶ This number indicates all investigations that are open as of the end of each reporting period. It includes Formal Complaints (regardless of whether the investigation is being conducted by OIPA, BPD, or both), Informal Complaints, and Administrative Investigations.

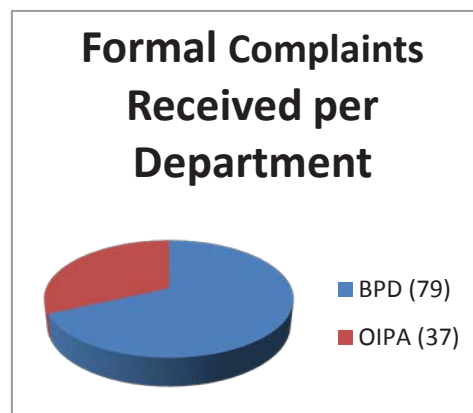
The number of cases filed or reopened this year represents a decrease of 18 cases, or 10%, from 2013-2014.

Types of Cases Filed or Reopened/Formal Complaints Received per Department

Out of the 156 cases alleging misconduct against BPD officers that were filed or reopened during the 2014-2015 reporting period, 116 were Formal Complaints, 27 were received by BPD as Informal Complaints,⁷ and 13 were Administrative Investigations⁸ internally initiated by BPD.



Of the 116 Formal Complaints that were filed or reopened, 37 (or 32%) of them were initiated through OIPA.⁹ The number of complaints received by OIPA decreased by 4 (or 10%) from 2013-2014, which matches the decrease in total number of complaints filed. The share of all incoming Formal Complaints received by OIPA (as opposed to BPD) remained roughly constant at around one-third.



⁷ As defined by BPD, an Informal Complaint is, “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.” (2015 BPD Policy Manual, Policy 1020.1.1(d)).

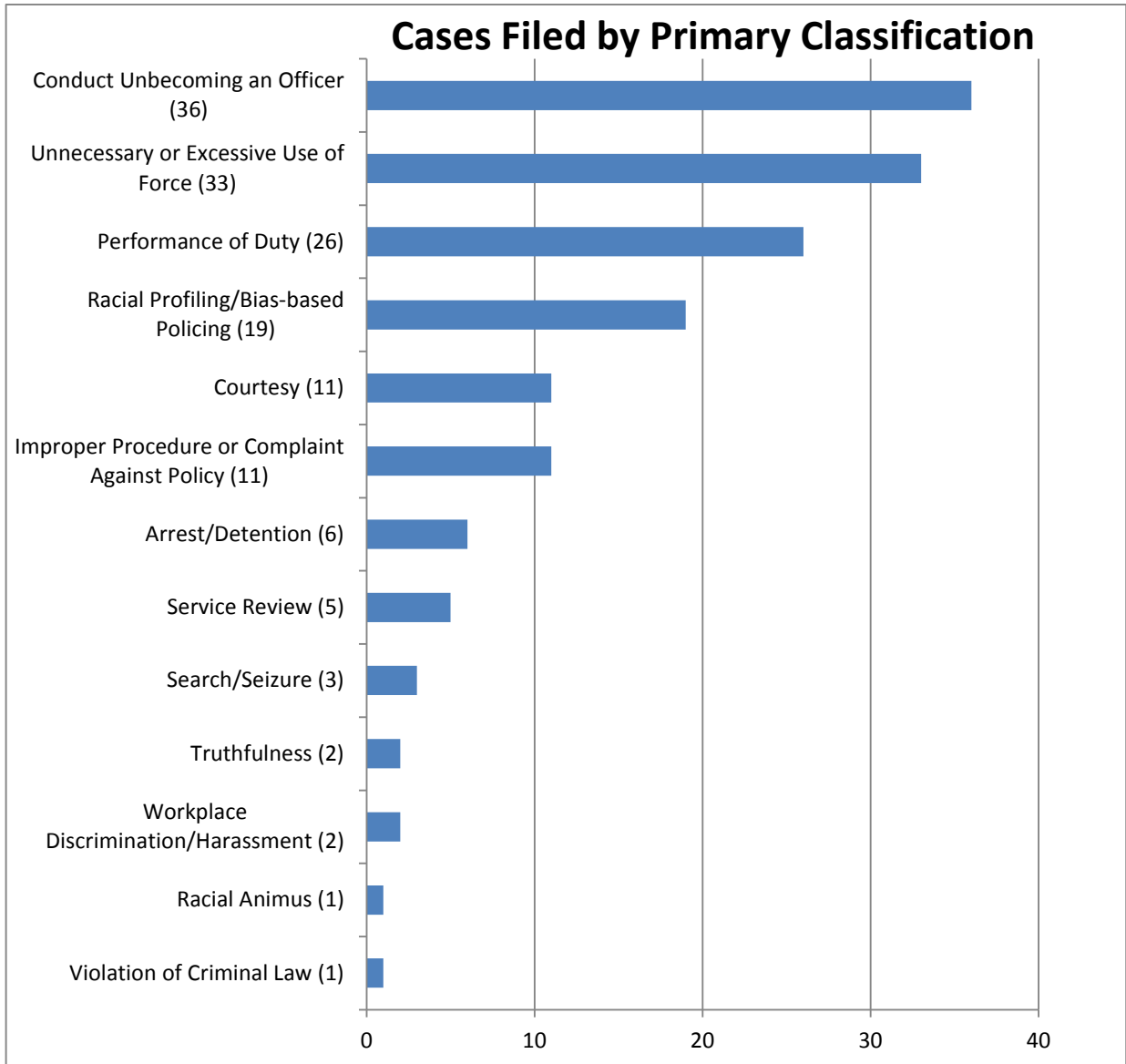
⁸ Administrative Investigations are those generated internally, by BPD, as opposed to by a complainant or other external reporting party.

⁹ Any cases that were received independently by both OIPA and the BART Police Department are included only in OIPA’s total in order to avoid being double-counted.

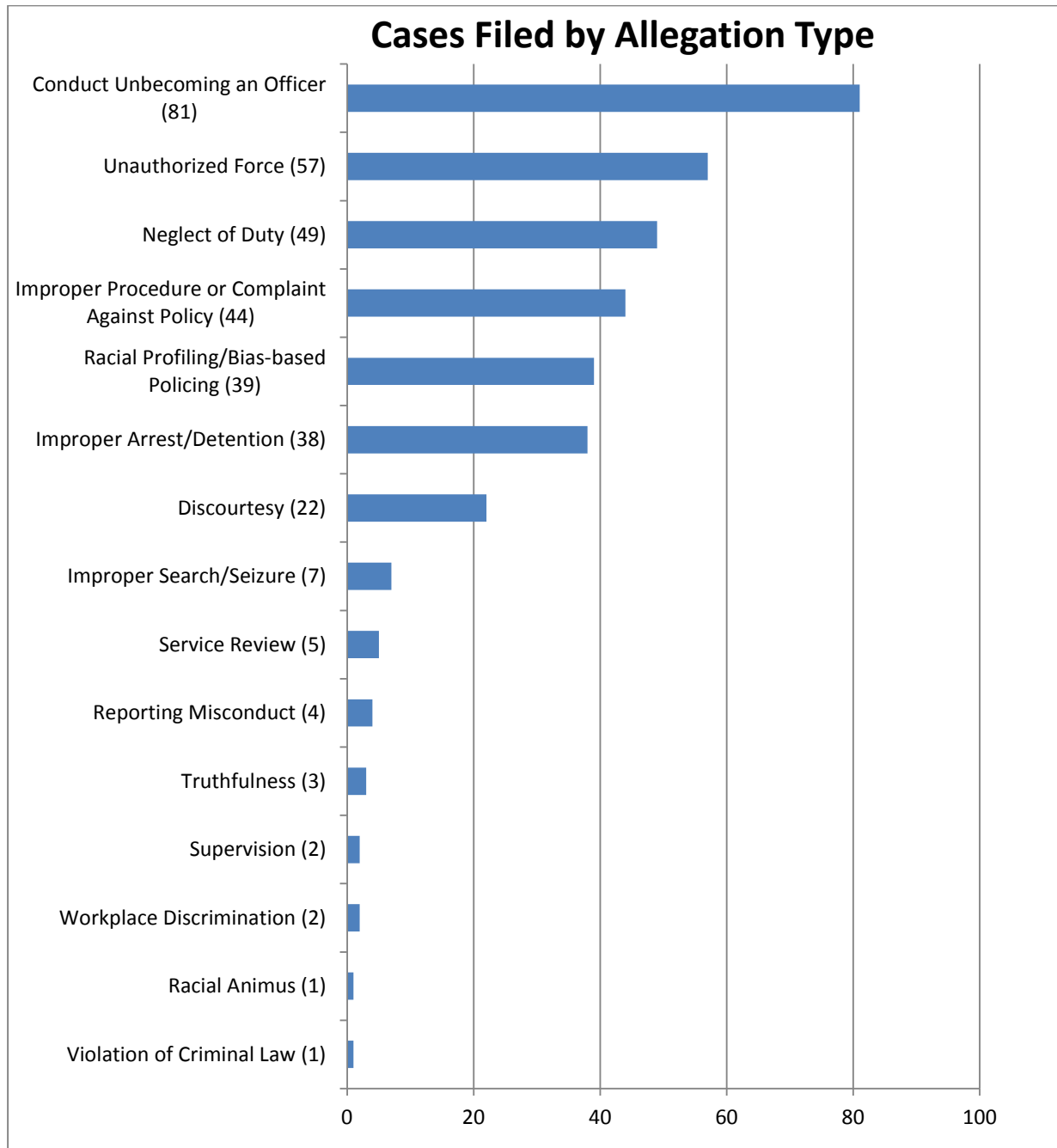
Complaints of misconduct are classified by the specific allegations they have raised. As complaints commonly include multiple types of allegations, they are also given a primary classification; the primary classification is generally the most serious type of misconduct that has been alleged. Following is a breakdown of the 156 cases alleging misconduct that were filed or reopened during the 2014-2015 reporting period, separated by primary classification.

Note that classifications can sometimes change over the course of an investigation for a variety of reasons. For example, as investigators uncover more information about a complaint, they may learn that more serious allegations than those initially raised are involved. Additionally, it is important to note that for cases that have been both initiated and completed within the current reporting period, the primary classification is determined by the findings of the case instead of the initial allegations that were raised (i.e. – the most serious Sustained allegation would become the primary overall classification).¹⁰

¹⁰ For more information on the hierarchy of findings, see Page 22 of this report.

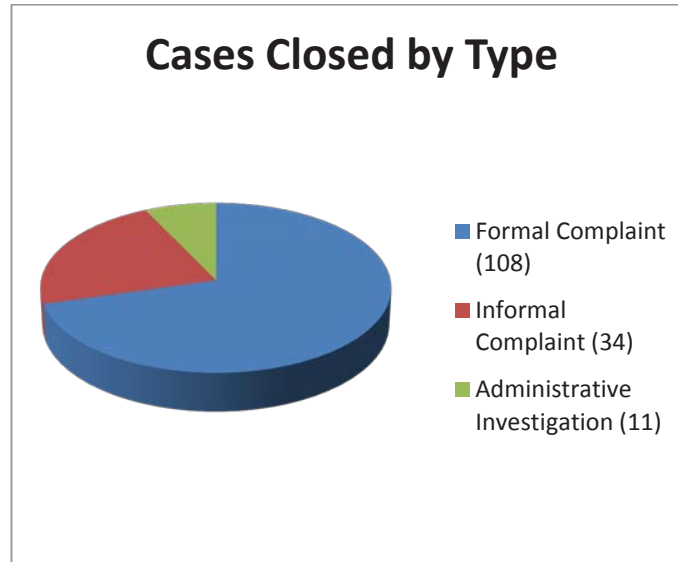


Following is a breakdown of allegation types for the 156 cases alleging misconduct that were filed or reopened during the 2014-2015 reporting period. Each case may include multiple allegations and/or multiple involved officers, which is why the total number of allegation types is significantly greater than the total number of cases. Once again, allegations are commonly added to or removed from a case during the course of an investigation for a variety of reasons; a significant number of the allegations reported here may have been changed or removed over the course of the year. This chart is therefore most appropriately seen as a reflection of all of the allegations that were raised during 2014-2015, whether they ultimately survived to the end of an investigation or not.



Disposition of Cases Completed

During the 2014-2015 reporting period, 153 investigations were completed.¹¹ 108 of these investigations were Formal Complaints, 34 were Informal Complaints, and 11 were Administrative Investigations. It should be noted that the majority of cases reported on here were completed by BPD; this is largely a reflection of OIPA's investigative jurisdiction which, as dictated by the Citizen Oversight Model, is substantially smaller than that of BPD's.

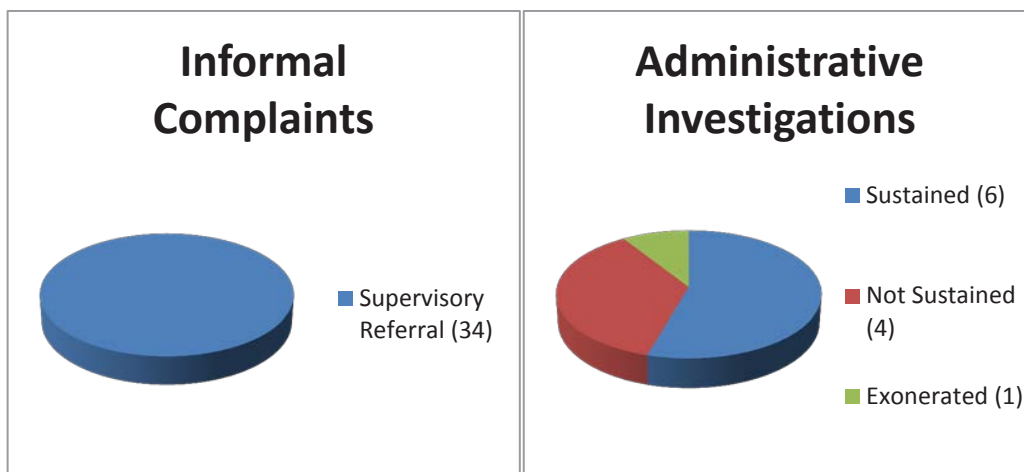
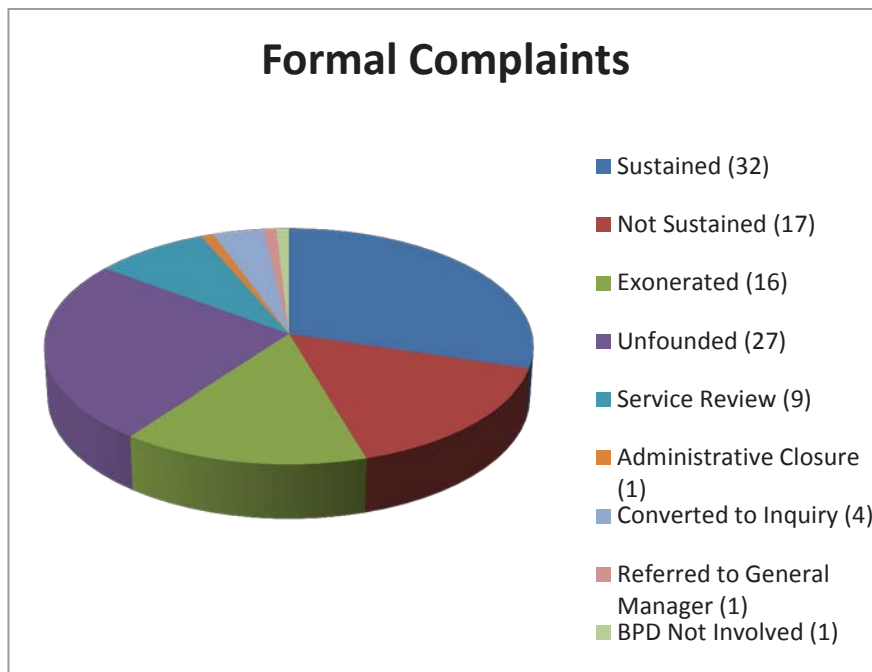


These same 153 completed cases are reported on in further detail below. First, these completed cases have been separated by type (Formal Complaint, Informal Complaint, or Administrative Investigation) and overall finding. As with classifications, overall findings are generally assigned to a case according to a hierarchy and depend upon which finding has been reached for each allegation included in a case. If any allegation in the case has been Sustained, that will dictate the overall finding as Sustained regardless of the findings of all other allegations. This means that a case may be deemed Sustained solely on the basis of an allegation other than the most egregious one.

This hierarchy, and the resulting overall finding, is the same when any allegation in a case has been Not Sustained (absent any Sustained allegations, of course). If all allegations in a case are adjudicated as Unfounded and/or Exonerated, then the overall finding will be the one linked to the case's most egregious allegation. Two additional overall findings utilized by BPD for allegations of misconduct are Supervisor Referral¹² and Service Review.¹³ Absent any other findings in a case, either of these two may become the overall finding.

¹¹ This number includes any cases that were re-closed during the reporting period after having been reopened by BPD for further investigation at the request of OIPA. Additionally, unlike with cases received during the year, cases closed by both OIPA and BPD are counted individually here, as the findings of each agency regarding the same complaint are independent and stand on their own.

¹² For instances involving an Informal Complaint, the Internal Affairs Unit may address the issue through a Supervisor Referral. An assigned supervisor would then address the issue informally with the involved employee

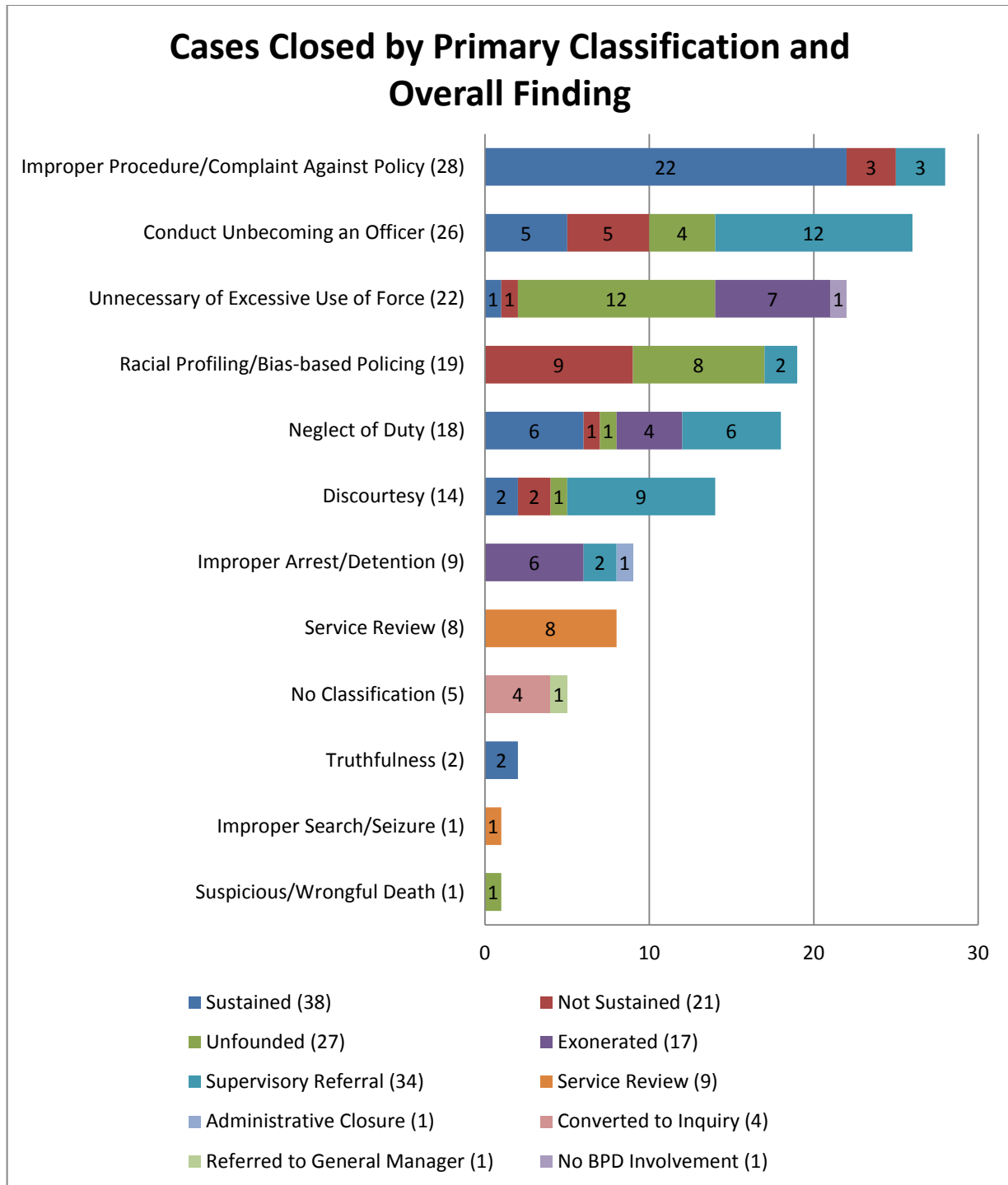


The next chart is a breakdown of the 153 cases completed during the 2014-2015 reporting period separated by primary classification and overall finding. A Sustained allegation in a case will also become the primary classification of the case, regardless of whether there are more egregious allegations that have not been Sustained, and regardless of what the previous primary classification of the case might

and document the content of the conversation in a memorandum to the Internal Affairs Unit. (2015 BPD Policy Manual, Policy 1020.1.1(e)).

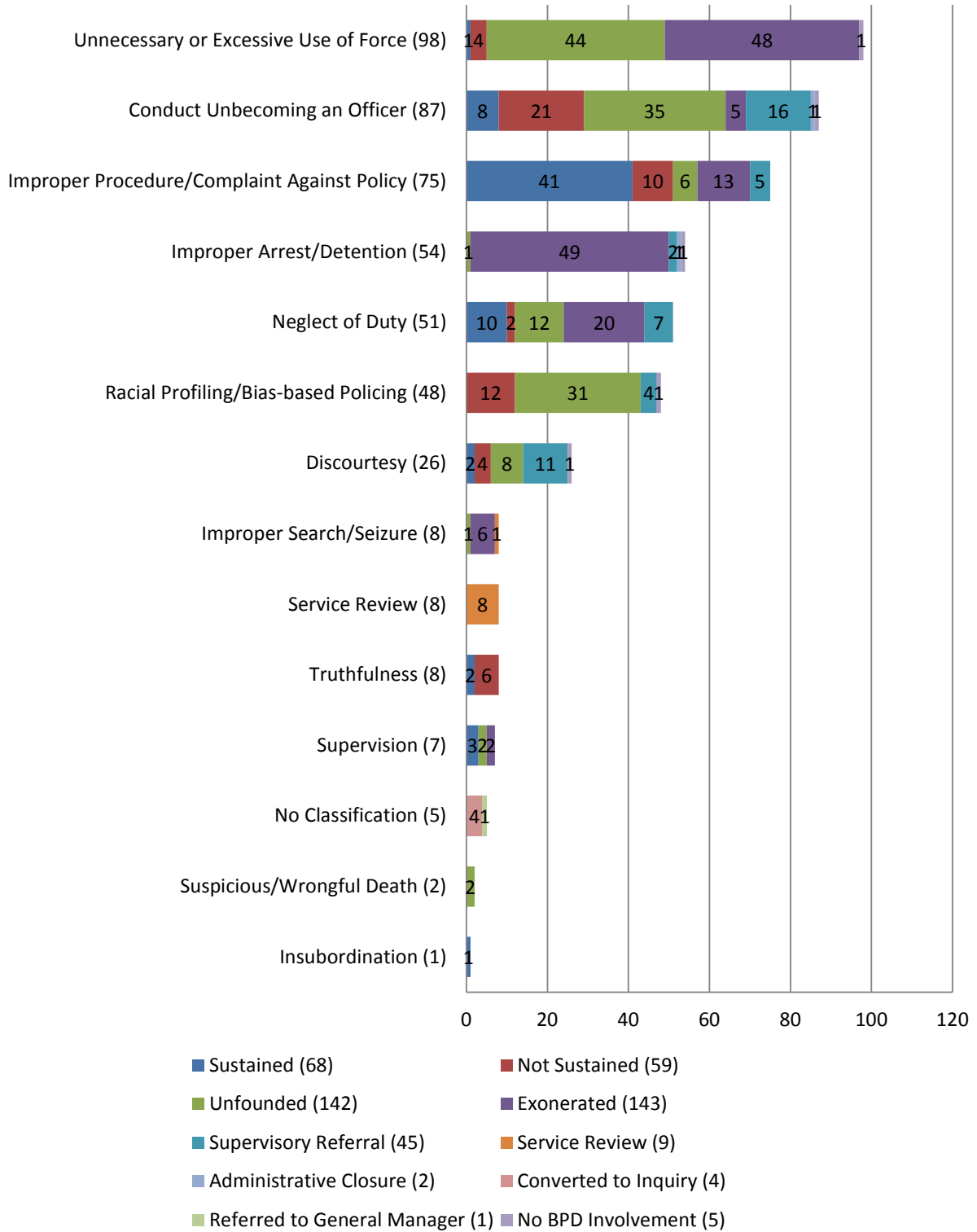
¹³ A Service Review is defined by BPD as follows: When a citizen/customer raises a concern pertaining to a global practice throughout the Department such as Department policy, procedure and/or tactics. Depending on the circumstances, the concern may be evaluated and addressed through a Service Review conducted by Internal Affairs, a designated review committee, or a member of Command Staff. When appropriate, a Service Review could result in a change to Department policy, training and/or tactics. (2015 BPD Policy Manual, Policy 1020.1.1(h)).

have been. If multiple allegations in a case have been Sustained, then the most egregious one will dictate the primary classification of the case. This is also true when any allegation in a case has been Not Sustained (absent any Sustained allegations, of course). If all allegations in a case are adjudicated as Unfounded and/or Exonerated, then the primary classification will be the one linked to the most egregious allegation.



As mentioned previously, each closed case may include multiple different allegations of misconduct, each of which receives its own finding; furthermore, there may be only one category of misconduct alleged in a case, but it could be alleged against multiple different officers who each subsequently receive an individual finding. The next chart shows a breakdown of each allegation that received a finding as part of a completed case during the 2014-2015 reporting period. Note that the number of individual allegations with a finding far exceeds the number of closed cases in the previous chart.

Allegations Completed by Classification and Finding



Report on Discipline

For each allegation of misconduct that is Sustained against an officer, BPD may ultimately issue discipline to that officer as a result. Below is an account of the discipline issued during 2014-2015. BPD employs a system of progressive discipline wherein penalties can include, from least to most severe: Informal Counseling, Letter of Discussion, Oral Counseling, Written Reprimand, Pay Step Reduction, Suspension, Demotion, and Termination. Note that the cases below do not necessarily correspond to the investigations completed with at least one Sustained allegation over the course of the reporting year, as the actual imposition of discipline commonly takes place one or more months after an investigation is complete; this is, in part, because of the due process afforded to employees who are subject to discipline.¹⁴

Case #	Nature of Sustained Allegation(s)	Classification of Sustained Allegation(s)	Action Taken
1	Officer did not document or record a law enforcement contact as required.	<u>Officer #1</u> • Policy/Procedure (2 counts)	<u>Officer #1</u> Letter of Discussion
2	Officers did not document or record a law enforcement contact as required.	<u>Officer #1</u> • Policy/Procedure <u>Officer #2</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling <u>Officer #2</u> Informal Counseling
3	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
4	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
5	Officer was inappropriately unfamiliar with the case at issue when discussing it in court.	<u>Officer #1</u> • Performance of Duty	<u>Officer #1</u> Written Reprimand
6	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
7	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
8	Officer did not accurately document efforts to record the incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling

¹⁴ In one case not reported on here, no discipline was issued as a result of a *Sustained* finding because the subject employee retired from service prior issuance.

9	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
10	Officer did not take sufficient action in response to a call for service.	<u>Officer #1</u> • Performance of Duty	<u>Officer #1</u> Informal Counseling
11	Officers did not sufficiently investigate a reported crime and did not effectuate a citizen's arrest	<u>Officer #1</u> • Performance of Duty <u>Officer #2</u> • Performance of Duty	<u>Officer #1</u> Letter of Discussion <u>Officer #2</u> Informal Counseling
12	Officer did not accurately document efforts to record an incident.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
13	Officer did not report an equipment malfunction as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Oral Counseling
14	Involved officers: did not properly conduct required inspections; did not accurately complete required documentation; did not properly supervise employees; made disparaging remarks toward other employees; did not cooperate with an investigation as required; acted insubordinately during an investigation.	<u>Officer #1</u> • Performance of Duty • Conduct Unbecoming an Officer • Policy/Procedure • Supervision <u>Officer #2</u> • Policy/Procedure <u>Officer #3</u> • Policy/Procedure <u>Officer #4</u> • Policy/Procedure <u>Officer #5</u> • Insubordination • Conduct Unbecoming an Officer • Policy/Procedure	<u>Officer #1</u> Demotion (in abeyance) <u>Officer #2</u> 1-day Suspension (in abeyance) <u>Officer #3</u> Written Reprimand <u>Officer #4</u> Written Reprimand <u>Officer #5</u> Pay-step Reduction

15	Officer did not properly update dispatch of status and did not record incident as required.	<u>Officer #1</u> • Policy/Procedure (Counts 1-2)	<u>Officer #1</u> Oral Counseling
16	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Oral Counseling
17	Officer improperly identified the violation alleged by complainant.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
18	Employee was discourteous to complainant.	<u>Employee #1</u> • Courtesy	<u>Employee #1</u> Oral Counseling
19	Officer did not report the use of force as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
20	Officer failed to take appropriate action in response to another officer's inappropriate statements made to a detainee.	<u>Officer #1</u> • Supervision	<u>Officer #1</u> Informal Counseling
21	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Oral Counseling
22	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Oral Counseling
23	Officer exhibited unprofessional behavior.	<u>Officer #1</u> • Conduct Unbecoming an Officer	<u>Officer #1</u> Oral Counseling
24	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
25	Officer exhibited unprofessional behavior.	<u>Officer #1</u> • Conduct Unbecoming an Officer	<u>Officer #1</u> Letter of Discussion
26	Officer did not correctly apply a policy regarding ridership on BART.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling

27	Officer made inappropriate statements to a detainee.	<u>Officer #1</u> • Conduct Unbecoming an Officer	<u>Officer #1</u> 3-day Suspension (held in abeyance)
28	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Oral Counseling
29	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Oral Counseling
30	Employee did not prioritize call for service appropriately.	<u>Employee #1</u> • Performance of Duty	<u>Employee #1</u> Informal Counseling

Cases Being Appealed

Apart from the 156 incoming cases reported on earlier, OIPA is responsible for receiving appeals from complainants who disagree with the findings reached by BPD during its investigations of their complaints. Upon receipt of such an appeal, OIPA reviews the completed BPD investigation, determines whether or not further investigation is warranted and, if it is warranted, directs or conducts the additional investigative work. OIPA then reaches its own independent findings regarding the misconduct being alleged in the complaint at issue. No such appeals were received by OIPA during this reporting year.

Cases Submitted from OIPA to the BPCRB

All completed OIPA investigations and appeals are submitted to the BPCRB, which then reviews them and votes on whether to agree or disagree with the investigative findings as well as any disciplinary recommendations that have been reached. If the BPCRB disagrees with OIPA, they have the option to appeal to the BART Chief of Police. This reporting year, the BPCRB voted to disagree with at least one of OIPA's findings and/or recommendations in two of the investigations that it reviewed. In the first case, the BPCRB agreed with all of OIPA's investigative findings but reached a different conclusion with regard to the disciplinary recommendations for each of two subject officers. In the second case, the BPCRB agreed with some of OIPA's investigative findings but reached a different conclusion with regard to one finding; the BPCRB also reached a different conclusion with regard to OIPA's disciplinary recommendation for one subject officer.

Cases Reviewed/Monitored by OIPA

OIPA reviews misconduct investigations conducted by BPD in a variety of different ways. Though work-intensive, some reviews are completed informally, with any concerns being addressed through a conversation with BPD Internal Affairs investigators. It is this type of review that occurs each month when OIPA prepares a periodic report for the BPCRB. OIPA performs a review of some sort on each new case that came in during the month, and each closed case that was completed during the month. Therefore, without accounting for any of the other instances when OIPA finds reason to examine a particular BPD investigation, OIPA reviewed more than 319 cases in this fashion in 2014-2015.

In addition, OIPA actively monitors those cases that are initiated through our office, even though they do not fall within our investigative jurisdiction. We have a responsibility to ensure that those cases are investigated in a timely, thorough, complete, objective, and fair manner. During the 2014-2015 reporting period OIPA monitored 28 such cases, which is four fewer than last year's total.¹⁵

Beyond citizen complaints, OIPA is also responsible for responding immediately to the scene of officer-involved shootings and monitoring BPD's administrative investigations into such incidents. OIPA also is required to notify the Chairperson of the BPCRB upon learning of such incidents whenever they result in death or serious bodily injury. No officer-involved shootings occurred during this reporting period.

¹⁵ These cases overlap with the number of reviewed cases mentioned earlier. These cases, however, receive a higher level of scrutiny from OIPA than some others that are reviewed more informally.

LOOKING FORWARD

As the Office of the Independent Police Auditor moves into its fifth year of operations, we intend to remain committed to our high standard of investigative quality as we simultaneously seek to move closer to becoming a recognized leader in the field of civilian oversight, both locally and nationally. As in the past, OIPA plans to maintain its commitment to a dynamic program of community outreach throughout the Bay Area, as well as to a targeted focus on outreach to youth. New expansion of our outreach program may be accomplished partially through pairing with the BART Police Citizen Review Board on larger-scale and more far-reaching projects, such as the inclusion of educational and contact information on discounted fare cards that are available exclusively to young Bay Area students. Additionally, we will look to reeducate BART patrons about our office through efforts such as an extended car card campaign as well as in-station meet and greet events that will provide an opportunity for BART patrons to have personal contact with OIPA staff and learn more about our services and our mission in a face-to-face setting.

OIPA will also endeavor to enhance the training that is received by BPCRB members as they undertake their important role within the system of civilian oversight at BART. In keeping with the obligations of the Citizen Oversight Model, OIPA intends to facilitate more formalized, systematic, and thorough sharing of information that is important for any such review board to have at its disposal. At the same time, OIPA is engaged in the early stages of exploring its own internal technology upgrade, specifically with regard to its file and data management systems. As the amount of material for which we are responsible continues to grow over time, so too must our ability to recall, analyze, and report on that material as efficiently as possible.

Since its inception, OIPA has expended substantial effort to become a source of knowledge for both emerging and established oversight agencies. OIPA recognizes that we are experiencing a moment in history on a national scale when increasing quantities of communities and municipalities are identifying a need for civilian oversight of police, and it is our aim to ensure that OIPA will continue to be considered a trusted resource for nascent agencies nationwide. Along the same lines, we will also work to maintain our deep connection to the National Association for Civilian Oversight of Law Enforcement, both in a leadership role and as strategic practitioners looking to learn and utilize the most advanced and forward thinking principles and methods of this important and growing field.

In 2015-2016, OIPA looks forward to continuing to produce the highest quality of investigative work, taking new steps to further expand our outreach portfolio, and remaining a valuable resource to some of the many new practitioners within the increasingly prominent national field of civilian oversight.

APPENDICES

APPENDIX A

OIPA Policy Recommendation for BPD Policy 1053 – Business Cards and Trading Cards

APPENDIX B

OIPA Policy Recommendation for BPD Policy 403 – Interactions with Individuals Identifying as Transgender

APPENDIX C

Bay Area Regional Oversight Forum Flyer and Agenda

APPENDIX A

OIPA Policy Recommendation for BPD Policy 1053 – Business Cards and Trading Cards

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: BART Police Department, Chief of Police DATE: December 14, 2015

FROM: Independent Police Auditor

SUBJECT: **Policy Recommendation – BPD Policy 1053**

Chapter 1-04(G) of the Citizen Oversight Model (Model) states that the Office of the Independent Police Auditor (OIPA) shall develop recommendations concerning General Orders and Directives, procedures, practices, and training of the BART Police Department (BPD), with the goal of improving professionalism, safety, effectiveness, and accountability. In accordance with these sections of the Model, OIPA developed recommendations for changes to *BPD Policy 1053 – Business Cards and Trading Cards*.

It is not uncommon for members of the public who interact with a police officer to request that officer's identifying information (name, badge number, etc.). The purposes for such a request may stem from a desire to complain about the officer's conduct, an intention to formally commend an officer who has provided excellent assistance, or the simple notion of thorough record-keeping. Whatever the reason for the requests, it seems that BPD officers commonly responded in a few different ways. Some might provide the requestor with a business card containing their identifying information, others might simply state their names verbally, and some, in instances where a written citation has been issued by the officer, might inform the requestor that the identifying information can be located on the citation.

In an effort to maximize the professionalism of BPD officers, as well as more easily facilitate the public's recognition and acknowledgement of BPD's genuine and meaningful efforts at maintaining heightened accountability, OIPA believes that officers should always give a member of the public a business card upon request (providing the action does not interfere with any of the officer's duties). Providing an official business card with an officer's identifying information eliminates the need for a member of the public to rely on his/her memory when later recalling the officer's name, eliminates the need for a member of the public to guess at the spelling of an officer's name, and provides a uniform, reliable, and professional manner for officers to supply the information that is being requested of them by the public that they serve.

In line with OIPA's position, on April 13, 2015 OIPA presented a draft business card distribution policy to the BART Police Citizen Review Board (BPCRB) for its review and comment. Over the course of that meeting and subsequent ones, input on the draft policy was received from the BPCRB, BPD, and the BART Police Officers Association. OIPA also conducted research into comparable policies (or the lack thereof) at other law enforcement agencies in the region, and an

inquiry was made into best practices as designated by a national law enforcement accreditation association.

On November 17, 2015, BPD implemented a revised policy, including nearly all of the recommendations drafted by OIPA. Due to an oversight, OIPA did not previously make a formal submission of its recommended policy in writing to BPD (despite the fact that it was discussed by the parties listed above over the course of at least two months). In light of this, OIPA is sending this communication now. Attached for your reference is our recommended policy annotated with commentary on the suggested changes, as well as a redline version of our recommendations that illustrates each individual suggested edit.

Please feel free to contact me at your convenience with any questions.



Mark P. Smith
BART Independent Police Auditor

Attachments (2)

BAY AREA RAPID TRANSIT POLICE DEPARTMENT POLICY MANUAL

POLICY 1053 - BUSINESS CARDS AND TRADING CARDS

1053.1 PURPOSE AND SCOPE

To establish a procedure for the issuance and distribution of business and trading cards for and by police personnel.

1053.2 DEFINITIONS

Business Card - A card intended for distribution by police personnel to the public, which identifies the distributing person as a BART Police Department representative and bears the distributing person's name, rank, and badge number.

Comment [OIPA1]: This definition has been expanded from the current policy to include name, rank, and badge number. However, design approval remains with the Chief of Police.

Trading Card - A card given to others that bears a person or group's name and photo. The color photo selected for the card must be department-approved.

1053.3 BUSINESS CARDS

The design of BART Police Department business cards must be approved by the Chief of Police. Business cards shall be issued by the Support Services Deputy Chief.

(a) Personalized Business Cards

Personalized business cards shall be issued to all BPD personnel at no personal expense. Such personalized business cards shall be issued to BPD personnel as soon as practicable upon employment by the Department. BPD personnel whose supply of personalized business cards is exhausted shall notify the Support Services Division Deputy Chief, who shall facilitate the issuance of additional personalized business cards.

Comment [OIPA2]: This section has been expanded with the intention of ensuring that all BPD personnel receive personalized cards instead of just managers and special units. It is OIPA's understanding that this will codify the current practice.

Additional information with regard to BPD personnel assigned to special units, such as K-9 and SWAT, may be included on those personalized business cards at the discretion of the Chief of Police.

(b) Non-Personalized Business Cards

Non-personalized business cards shall be issued at no personal expense to BPD personnel pending the delivery of personalized business cards as described in subsection (a). Such non-personalized cards shall be issued to BPD personnel by Division Supervisors.

Comment [OIPA3]: This section is intended to ensure that generic Department business cards are issued to BPD personnel while they are waiting for delivery of personalized cards.

1053.3.1 DISTRIBUTION OF BUSINESS CARDS

On-duty BPD personnel shall carry Department-issued business cards at all times, and BPD personnel shall distribute a Department-issued business card to any person upon request, providing the action does not interfere with the performance of official duties.

Comment [OIPA4]: This section states the requirement for BPD personnel to distribute cards when requested.

BPD personnel shall write their name, rank, and badge number on non-personalized business cards when distributing them.

Comment [OIPA5]: Even where a BPD member has not yet received personalized cards, the member's name, rank, and badge number should be provided in writing.

OIPA DRAFT POLICY RE BUSINESS CARDS AND TRADING CARDS

BPD personnel are not required to immediately provide a business card if:

1. Doing so presents a concern with regard to the safety of the officer or others
2. An investigation may be jeopardized
3. A police function may be materially hindered

BPD personnel shall be prepared to articulate a sufficient and reasonable explanation for any refusal to provide a Department-issued business card upon request.

Business cards are intended for distribution in the normal course of business. They shall not be used, directly or indirectly, in an effort to gain favor or special treatment for the recipient, or for BPD personnel.

Comment [OIPA6]: It is understood that there are circumstances where providing a card as required by this policy could prove problematic. However, BPD members should be prepared to explain why they were unable to provide a card when requested.

1053.4 TRADING CARDS

Photo trading cards are issued to personnel as approved by command staff.

1053.4.1 DISTRIBUTION OF TRADING CARDS

Employees distribute their trading cards to children and members of the public to promote goodwill and positive community relations. As with business cards, the trading cards shall not be used, directly or indirectly, in an effort to gain favor or special treatment for the recipient.

OIPA DRAFT Policy Recommendation for BPD POLICY 1053 - Business Cards and Trading Cards (with Comments)

~~Business Cards and Trading Cards~~

BAY AREA RAPID TRANSIT POLICE DEPARTMENT POLICY MANUAL

POLICY 1053 - BUSINESS CARDS AND TRADING CARDS

1053.1 PURPOSE AND SCOPE

To establish a procedure for the issuance and ~~reordering~~distribution of business and trading cards for ~~and by~~ police

~~personnel.~~

1053.2 DEFINITIONS

Business Card - A card ~~given to others that bears the person's name and title identifying him or her~~intended for distribution by police personnel to the public, which identifies the distributing person as a BART ~~police~~Police Department representative, and bears the distributing person's name, rank, and badge number.

Trading Card - A card given to others that bears a person or group's name and photo. The color ~~photo~~ selected for the card must be department-approved.

1053.3 BUSINESS CARDS

~~Only authorized personnel may distribute~~

The design of BART Police Department business cards, the design of which must be approved

~~by the Chief of Police. Business cards~~ are ordered through~~shall be issued by~~ the Support Services ~~Division~~Deputy Chief, ~~commander.~~

(a) Personalized Business Cards~~—~~

Personalized business cards shall be issued to all ~~police~~BPD personnel at no personal expense. Such personalized business cards shall be issued to BPD personnel as soon as practicable upon employment by the Department. BPD personnel whose supply of personalized business cards is exhausted shall notify the Support Services Division Deputy Chief, who shall facilitate the issuance of additional personalized business cards.

~~managers and other~~

Additional information with regard to BPD personnel assigned to special assignments/units approved by the Support Services Division

~~Deputy Chief.~~

~~1. Personnel have the option of ordering, such as K-9 and SWAT, may be included on those personalized business cards~~ through at the department at their

OIPA DRAFT POLICY RE BUSINESS CARDS AND TRADING CARDS

~~own expense. Interested personnel must forward a memo to discretion of the Support Services Deputy Chief via the chain of command. The order for the optional personalized Police business cards shall be paid for by the employee prior to the order being placed.~~

(b) Non-Personalized Business Cards -

~~Non-personalized business cards shall be distributed issued at no personal expense to BPD personnel pending the delivery of personalized business cards as described in subsection (a). Such non-personalized cards shall be issued to BPD personnel by Division Supervisors. to authorized Operations personnel by zone commanders.~~

1053.3.1 DISTRIBUTION OF BUSINESS CARDS

~~On-duty BPD personnel shall carry Department-issued business cards at all times, and BPD personnel shall distribute a Department-issued business card to any person upon request, providing the action does not interfere with the performance of official duties.~~

~~BPD personnel shall write their name, rank, and badge number on non-personalized business cards when distributing them.~~

~~BPD personnel are not required to immediately provide a business card if:~~

- ~~1. Doing so presents a concern with regard to the safety of the officer or others~~
- ~~2. An investigation may be jeopardized~~
- ~~3. A police function may be materially hindered~~

~~BPD personnel shall be prepared to articulate a sufficient and reasonable explanation for any refusal to provide a Department-issued business card upon request.~~

~~Business cards can be distributed as a are intended for distribution in the normal course of business. They shall not be used, directly~~

~~or indirectly, in an effort to gain favor or special treatment for the recipient, or for BPD personnel.~~

1053.4 TRADING CARDS

Photo trading cards are issued to personnel as approved by command staff.

1053.4.1 DISTRIBUTION OF TRADING CARDS

Employees distribute their trading cards to children and members of the public to promote goodwill and positive community relations. As with business cards, the trading cards shall not be used, directly or indirectly, in an effort to gain favor or special treatment for the recipient.

APPENDIX B

OIPA Policy Recommendation for BPD Policy 403 – Interactions with Individuals Identifying as Transgender

**APPENDIX B
OIPA POLICY RECOMMENDATION FOR BPD
POLICY 403 – INTERACTIONS WITH INDIVIDUALS
IDENTIFYING AS TRANSGENDER**

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: BART Police Department, Chief of Police DATE: March 11, 2015

FROM: Independent Police Auditor

SUBJECT: **Policy Recommendation – Interactions with Individuals Identifying as Transgender**

This memorandum is intended to represent the collaborative effort of the following stakeholders:

The BART Citizen Review Board (CRB), members of the BART Police Department (BPD) including, but not limited to, staff of the Professional Standards Bureau and representatives of the BART Police Officers' Association and the BART Police Managers' Association, and staff of the Office of the Independent Police Auditor (OIPA).

Chapter 2-08(C) of the BART Citizen Oversight Model states that the CRB shall develop recommendations as to the General Orders and Directives, procedures, and practices of BPD in consultation with OIPA, with the goal of improving professionalism, safety, effectiveness, and accountability.

At the suggestion of the CRB, OIPA was tasked with researching and drafting a policy to address BPD officer interaction with individuals identifying as transgender. OIPA collected information regarding existing policies in other jurisdictions and reviewed recommended model policies and standards. OIPA staff attended trainings and contacted advocacy organizations, both nationally and locally, including Just Detention International and the National Center for Transgender Equality in Washington, DC, as well as Oakland's Transgender Law Center. Based on all of its research, OIPA crafted the first draft of a policy in response to the CRB's suggestion. The stakeholders listed above then engaged in an exchange of ideas and suggestions in an effort to refine the initial draft and optimize both its clarity and its potential effectiveness. Once ready, the draft was submitted to the CRB for approval as a policy recommendation to BPD.

On March 9, 2015, the CRB voted unanimously to accept the attached version of the policy and to recommend it to BPD for implementation. The recommended policy is therefore being forwarded to you for further action.



Mark P. Smith
BART Independent Police Auditor

INTERACTIONS WITH INDIVIDUALS IDENTIFYING AS TRANSGENDER

PURPOSE

The San Francisco Bay Area Rapid Transit District Police Department (BPD) recognizes and places a high priority on the rights of all people. This directive establishes policies for interactions with transgender people.

DEFINITIONS

Gender Identity:

One's internal, deeply held sense of gender. Unlike gender expression (see below), gender identity is not visible to others.

Gender Expression:

External manifestations of gender; expressed through one's name, pronouns, clothing, haircut, behavior, voice, or body characteristics.

Transgender (adj.):

An umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they were assigned at birth. People under the transgender umbrella may describe themselves using one or more of a wide variety of terms, including transgender.

INTERACTIONS WITH TRANSGENDER PEOPLE

BPD officers and employees are to interact with transgender people and the transgender community in a manner that is professional, respectful, and courteous.

Officers are cautioned not to treat a person's transgender status or appearance as a basis of suspicion or as evidence of a crime.

Officers shall follow the policies governing interactions with transgender people when either of these two conditions is met:

1. A person explicitly informs the officer(s) that the person is a transgender person.
2. An officer has good reason to believe that the person is a transgender person. Good reason may be based on apparent intention of gender appearance and presentation; reasonable observation; background checks; third party information; prior interaction, and/or routine policing procedures.

If gender expression does not clearly indicate a transgender person's identity, an officer may politely and respectfully ask how the person wishes to be addressed. For example, an officer may ask a transgender person which name and pronoun the person prefers.

When a person self-identifies as a transgender person, officers shall not question this identity or ask about the person's transition status unless there is a compelling, professional, and articulable reason to do so. The reason(s) shall be documented in written form on an official BPD document.

An officer shall not ask questions or make statements about a transgender person's genitalia, breasts, or transition status unless there is a compelling, professional, and articulable reason to do so. The reason(s) shall be documented in written form on an official BPD document.

Whether or not the name on a person's driver's license or identification card coincides with the person's gender identity, an officer shall address or refer to the person by the name that the person has used to identify him or herself. An officer shall also use the pronouns consistent with the name provided by the person.

Under no circumstances may an officer frisk, search, or otherwise touch any person for the purpose of obtaining information about that person's gender status. Under no circumstances shall transgender people be subject to more invasive search procedures than non-transgender people.

DETERMINATION OF LEGAL NAME

In the event a transgender person's legal name is required, the person's legal name should be obtained in the following manner:

Absent extenuating circumstances, an officer should ask the person for his or her legal name in a one-on-one situation.

If the contact is in a group environment, the officer should ask the person to step outside the group to obtain the legal name and avoid "outing" the person.

MEDICAL TREATMENT OF TRANSGENDER ARRESTEES

Whenever a transgender person who is detained by or in the custody of BPD requires or expresses a need for medical attention or medication (including, but not limited to hormone therapy), an officer shall respond to and address the need with the same urgency and respect as required in connection with any other medical need, illness, or injury experienced by any other detainee or arrestee.

PROCESSING OF TRANSGENDER ARRESTEES

Appearance-related items, including, but not limited to, prosthetics, clothes, wigs, or make-up should not be confiscated or removed from transgender people unless such items present a safety hazard, impede the administration of medical attention, or are needed for evidentiary reasons (see BPD Policy 902).

JUVENILE TRANSGENDER INDIVIDUALS

All interactions with juvenile transgender individuals shall conform to the mandates set out by this policy. This policy does not affect any other provisions outlined in applicable directives covering the processing and handling of juveniles.

PROTECTION OF PRIVACY

Under no circumstances shall an officer disclose that a person is transgender to non-police personnel or to other non-relevant BPD personnel without a compelling, professional, and articulable reason to do so. The reason(s) shall be documented in written form on an official BPD document.

CONFIDENTIALITY OF RECORDS AND DATA

If a person has self-identified as transgender, this information may be recorded in public documents. If the person has not self-identified as transgender, this information shall not be recorded in public documents without a compelling, professional, and articulable reason to do so. The reason(s) shall be documented in written form on an official BPD document.

RECORD-KEEPING AND DATA TRACKING

All BPD forms and reports, (both paper and computerized/digital, which record the gender of a person shall be revised to include transgender identity.

BPD shall establish and maintain records concerning the number of calls involving transgender people and the corresponding police service response rate.

All case reports, other reports and non-charging documents shall refer to a transgender person's name as shown on official documents. The person's preferred name shall be listed as an alias or, "Also Known As," (AKA). Preferred gender pronouns should be used in the narrative.

TRAINING

Training on interactions with transgender people and review of this Policy should be conducted as directed by the Personnel and Training Section.

All BPD members will be scheduled to attend a Peace Officer Standards and Training (POST) or other departmentally approved training on the subject of interactions with transgender people.

Each sworn member of this Department who receives initial training will thereafter be required to complete an approved refresher course, as deemed necessary, in order to stay apprised of changing cultural conditions.

POLICY RECOMMENDATION

APPENDIX C

Bay Area Regional Oversight Forum Flyer and Agenda

**APPENDIX C
BAY AREA REGIONAL OVERSIGHT FORUM
FLYER AND AGENDA**



NACOLE™ Northern California Regional Forum

This conference will be a great opportunity to network with colleagues and friends in the Northern California region and to discuss relevant topics in the field of police oversight, including the rising use of on-body cameras by officers.

WHEN: Wednesday, March 4, 2015

WHERE: Joseph P. Bort Building—Auditorium
101 Eighth Street, Oakland, CA
(directly across from Lake Merritt
BART Station)

TIME: 9:00 a.m. - 4:00 p.m.
Continental breakfast and lunch will be served

**RSVP is required to agrayso@bart.gov by Friday,
February 27, 2015**

Sponsored by: BART Office of Independent Police Auditor and City of Berkeley



NACOLE NORTHERN CALIFORNIA REGIONAL FORUM

March 4, 2015

AGENDA

Arrival & Check-In	9:00 – 9:30
Welcome & Introductions	9:30 – 9:45
Body Cameras	9:45 – 10:45
Break	10:45 – 11:00
Body Cameras (cont'd.)	11:00 – 11:30
Outreach	11:30 – 12:00
Lunch	12:00 - 1:00
Crowd Control	1:00 - 2:15
Break	2:15 - 2:30
Fair and Impartial Policing	2:30 - 3:30
Wrap-up & Networking	3:30 – 4:00



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