

Office of the Independent Police Auditor

Monthly Report

October 2014



November 10, 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 October 1, 2014 through October 31, 2014.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
October 2013	16	50	1	0	0
November 2013	18	58	0	0	0
December 2013	14	62	0	0	0
January 2014	9	53	0	0	0
February 2014	11	55	0	0	0
March 2014	19	65	0	0	0
April 2014	18	68	1	0	0
May 2014	12	57	0	0	0
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

*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	13
Administrative Investigations	0
Comments of Non-Complaint	1
TOTAL	14

Citizen Complaints Received per Department

OIPA	7
BART Police Department	6
TOTAL	14

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of October 2014, 6 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 #14-66) (IA2014-122)	<u>Officer #1</u> • Conduct Unbecoming an Officer	OIPA notified BPD, which initiated an investigation.	35
2 (OIPA #14-69) (IA2014-125)	<u>BART Police Department</u> • Service Review ⁹	OIPA notified BPD, which initiated an investigation.	24
3 (OIPA #14-70) (IA2014-133)	<u>Employee #1</u> • Conduct Unbecoming an Officer	OIPA notified BPD, which initiated an investigation.	24
4 (OIPA #14-71) (IA2014-136)	<u>Employee #1</u> • Bias-Based Policing • Policy/Procedure	OIPA notified BPD, which initiated an investigation.	18
5 (OIPA #14-72) (IA2014-132)	<u>BART Police Department</u> • Policy/Procedure	OIPA notified BPD, which initiated an investigation.	17
6 (OIPA #14-73) (IA2014-138)	<u>Officer #1</u> • Bias-Based Policing	OIPA initiated an investigation and notified BPD, which also initiated an investigation.	14

OIPA received one additional complaint during October and initiated an investigation (OIPA #14-67). The same complaint had already been received by BPD in June 2014 and was reported on then (IA2014-075); therefore, it has not been included in this report in order to avoid double-counting it.

During the month of October 2014, 6 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 (IA2014-127)	<u>Officer #1</u> • Force • Arrest or Detention	BPD initiated an investigation.	27
2 (IA2014-123)	<u>Officer #1</u> • Force	BPD initiated an investigation.	26

3 (IA2014-126)	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Courtesy • Policy/Procedure 	BPD initiated an investigation.	26
4 (IA2014-128)	<u>Officer #1</u> <ul style="list-style-type: none"> • Force • Bias-Based Policing • Arrest or Detention • Search or Seizure <u>Officer #2</u> <ul style="list-style-type: none"> • Force • Bias-Based Policing • Arrest or Detention 	BPD initiated an investigation.	24
5 (IA2014-131)	<u>Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty • Conduct Unbecoming an Officer <u>Officer #2</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Procedure 	BPD initiated an investigation.	21
6 (IA2014-134)	<u>Officer #1</u> <ul style="list-style-type: none"> • Search or Seizure • Performance of Duty • Conduct Unbecoming an Officer <u>Officer #2</u> <ul style="list-style-type: none"> • Supervision 	BPD initiated an investigation.	12

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

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2014-130)	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	21

Complaints/Investigations Initiated During a Previous Reporting Period

Actions Taken/# of Days Elapsed

During the month of September 2014, 1 previously unreported Citizen Complaint was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (OIPA #14-61) (IA2014-129)	<u>Officer #1</u> • Courtesy	OIPA notified BPD, which initiated an investigation.	56

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of October 2014, 6 Citizen Complaints were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition ¹⁰	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-102)	One officer threw complainant to ground, and then officers used excessive force to take complainant into custody. Officers did not record incident as required.	<u>Officer #1</u> • Force (Count 1) – Unfounded • Force (Count 2) – Exonerated • Policy/Procedure – Sustained <u>Officer #2</u> • Force – Unfounded • Policy/Procedure – Exonerated	396	377
2 (IA2014-026)	Officers used excessive force to take complainant into custody and one officer struck complainant’s head.	<u>Officer #1</u> • Force – Exonerated <u>Officer #2</u> • Force (Count 1) – Exonerated • Force (Count 2) – Unfounded	234	206

<p>3 (IA2014-053)</p>	<p>Officer struck a person on the head, referred to him using an offensive term, and was disrespectful to complainant who witnessed the incident.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> • Force – Unfounded • Conduct Unbecoming an Officer – Unfounded 	<p>208</p>	<p>194</p>
<p>4 (IA2014-052)</p>	<p>Officers improperly issued complainants a citation, targeted complainants on the basis of ethnicity, and were unnecessarily aggressive toward complainants.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated • Bias-Based Policing – Unfounded • Courtesy – Unfounded <p><u>Officer #2</u></p> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated • Bias-Based Policing – Unfounded • Courtesy – Unfounded 	<p>199</p>	<p>187</p>
<p>5 (IA2014-104)</p>	<p>Officers’ decision to issue complainants a citation was based on ethnicity.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded <p><u>Officer #2</u></p> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded 	<p>199</p>	<p>180</p>
<p>6 (IA2014-061)</p>	<p>Officers took complainant’s property subsequent to an arrest. One officer used offensive language toward complainant, did not record incident as required, and did not accurately document efforts to record the incident.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded • Courtesy – Not Sustained • Policy/Procedure (Count 1) – Not Sustained • Policy/Procedure (Count 2) – Sustained <p><u>Officer #2</u></p> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded 	<p>187</p>	<p>168</p>

During the month of October 2014, 2 Comments of Non-Complaint were addressed by BPD:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2014-119)	Officer harassed complainant and stated that he would inform complainant's employer about complainant's conduct.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral ¹¹	41	7
2 (IA2014-130)	Officer used the carpool lane while driving alone and also used a cellular phone while driving.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	21	0*

*The Supervisory Referral in this case was issued the same day the complaint was received.

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BPD

During the month of October 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 record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
2	Officer did not record 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	12
Complainant-Initiated Appeals	0
Investigations Being Monitored	12
Investigations Reviewed During Current Month	28*

*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.