

# Office of the Independent Police Auditor

Monthly Report  
September 2013



October 7, 2013

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period September 1, 2013 through September 30, 2013.<sup>1</sup>

**Quantitative Report**

|                | Number of Cases Filed <sup>2</sup> | Number of Open Cases <sup>3</sup> | Number of OIPA Investigations Concluded <sup>4</sup> | Number of Cases Appealed to OIPA <sup>5</sup> | Number of Cases Appealed by CRB <sup>6</sup> |
|----------------|------------------------------------|-----------------------------------|--|---|--|
| September 2012 | 8                                  | 57                                | 1  | 0   | 0  |
| October 2012   | 9                                  | 49                                | 0  | 0   | 0  |
| November 2012  | 17                                 | 57                                | 0  | 0   | 0  |
| December 2012  | 12                                 | 52                                | 2  | 0   | 0  |
| January 2013   | 6                                  | 49                                | 0  | 1   | 0  |
| February 2013  | 9                                  | 46                                | 0  | 0   | 0  |
| March 2013     | 10                                 | 46                                | 1  | 0   | 0  |
| April 2013     | 11                                 | 47                                | 1  | 1   | 0  |
| May 2013       | 7                                  | 42                                | 0  | 2   | 0  |
| June 2013      | 8                                  | 38                                | 0  | 0   | 0  |
| July 2013      | 15                                 | 44                                | 1  | 1   | 0  |
| August 2013    | 17                                 | 43                                | 3  | 0   | 0  |
| September 2013 | 14*                                | 44                                | 0  | 0   | 0  |

\*This number includes three cases that were initiated in prior reporting periods, but were not previously reported on. They are therefore included in this report.

**Types of Cases Filed**

|                               |           |
|-------------------------------|-----------|
| Citizen Complaints            | 13        |
| Administrative Investigations | 1         |
| Comments of Non-Complaint     | 0         |
| <b>TOTAL</b>                  | <b>14</b> |

**Citizen Complaints Received per Department**

|                        |           |
|------------------------|-----------|
| OIPA                   | 2         |
| BART Police Department | 11        |
| <b>TOTAL</b>           | <b>13</b> |

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of September 2013, 2 Citizen Complaints were received by OIPA:

| Complaint #<br>(OIPA Case #)<br>(IA Case #) | Nature of Allegations <sup>7</sup>  | Action Taken  | Number of Days Elapsed Since Complaint Filed <sup>8</sup> |
|---|---|---|---|
| 1<br>(OIPA 13-49)<br>(IA2013-092)           | <u>Officer #1</u><br>• Excessive Use of Force<br><br><u>Unknown Officers</u><br>• Search or Seizure | OIPA initiated an investigation. OIPA also notified BART PD of the complaint. | 20  |
| 2<br>(OIPA 13-60)<br>(IA2013-095)           | <u>Officer #1</u><br>• Arrest or Detention  | OIPA referred the complaint to BART PD and will monitor their investigation.  | 7   |

During the month of September 2013, 9 Citizen Complaints were received by the BART Police Department:

| Complaint #<br>(IA Case #) | Nature of Allegations  | Action Taken                        | Number of Days Elapsed Since Complaint Filed |
|----------------------------|--|-------------------------------------|--|
| 1<br>(IA2013-083)          | <u>Unknown Officers</u><br>• Policy/Procedure  | BART PD initiated an investigation. | 36   |
| 2<br>(IA2013-084)          | <u>Officer #1</u><br>• Conduct Unbecoming an Officer<br>• Performance of Duty<br>• Courtesy<br><br><u>Officer #2</u><br>• Conduct Unbecoming an Officer<br>• Performance of Duty<br>• Courtesy | BART PD initiated an investigation. | 35   |
| 3<br>(IA2013-087)          | <u>Civilian #1</u><br>• Courtesy   | BART PD initiated an investigation. | 34   |
| 4<br>(IA2013-089)          | <u>Officer #1</u><br>• Performance of Duty<br><br><u>Officer #2</u><br>• Performance of Duty   | BART PD initiated an investigation. | 19   |

|                   |   |                                     |    |
|-------------------|---|-------------------------------------|----|
| 5<br>(IA2013-090) | <u>Officer #1</u><br>• Performance of Duty<br><br><u>Officer #2</u><br>• Performance of Duty                                | BART PD initiated an investigation. | 18 |
| 6<br>(IA2013-091) | <u>Officer #1</u><br>• Force<br>• Conduct Unbecoming an Officer<br><br><u>Officer #2</u><br>• Conduct Unbecoming an Officer | BART PD initiated an investigation. | 14 |
| 7<br>(IA2013-096) | <u>Officer #1</u><br>• Force  | BART PD initiated an investigation. | 14 |
| 8<br>(IA2013-094) | <u>Officer #1</u><br>• Force  | BART PD initiated an investigation. | 11 |
| 9<br>(IA2013-093) | <u>Civilian #1</u><br>• Courtesy  | BART PD initiated an investigation. | 10 |

**Complaints/Investigations Initiated During a Previous Reporting Period**

Actions Taken/# of Days Elapsed

During the month of July 2013, 1 previously unreported Citizen Complaint was received by the BART Police Department:

| Complaint #<br>(IA Case #) | Nature of Allegations        | Action Taken                        | Number of Days Elapsed<br>Since Complaint Filed |
|----------------------------|------------------------------|-------------------------------------|---|
| 1<br>(IA2013-086)          | <u>Officer #1</u><br>• Force | BART PD initiated an investigation. | 86  |

During the month of August 2013, 1 previously unreported Citizen Complaint was received by the BART Police Department:

| Complaint #<br>(IA Case #) | Nature of Allegations  | Action Taken                        | Number of Days Elapsed<br>Since Complaint Filed |
|----------------------------|--|-------------------------------------|---|
| 1<br>(IA2013-088)          | <u>Officer #1</u><br>• Performance of Duty<br><br><u>Officer #2</u><br>• Performance of Duty | BART PD initiated an investigation. | 40  |

During the month of August 2013, 1 previously unreported Administrative Investigation was initiated by the BART Police Department:

| Investigation #<br>(IA Case #) | Nature of Investigation                                    | Action Taken                        | Number of Days Elapsed Since Investigation Initiated |
|--------------------------------|--|-------------------------------------|--|
| 1<br>(IA2013-080)              | <u>Unknown Officers</u><br>• Conduct Unbecoming an Officer | BART PD initiated an investigation. | 67   |

**Complaints/Investigations Concluded During Reporting Period**

Dispositions/# of Days Elapsed

During the month of September 2013, 4 Citizen Complaints were concluded by the BART Police Department:

| Complaint #<br>(IA Case #) | Nature of Allegations  | Disposition <sup>9</sup>  | Number of Days Elapsed Since Complaint Filed | Number of Days Taken to Complete Investigation |
|----------------------------|--|---|--|--|
| 1<br>(IA2013-074)          | Officer was observed driving a patrol car without front and rear license plates.   | <u>BART Police Department</u><br>• Service Review <sup>10</sup>   | 47   | 34   |
| 2<br>(IA2013-020)          | Officer was unprofessional and made complainant feel threatened by his aggressive demeanor. Officer did not complete a required report about the matter. | <u>Officer #1</u><br>• Conduct Unbecoming an Officer – Not Sustained<br>• Policy/Procedure – Sustained                            | 216  | 191  |
| 3<br>(IA2013-014)          | Officer unnecessarily detained complainant based on his race and for eating inside a BART station. Officer was sarcastic.                                | <u>Officer #1</u><br>• Bias Based Policing – Unfounded<br>• Conduct Unbecoming an Officer – Unfounded<br>• Detention – Exonerated | 223  | 189  |

|   |  |   |  |  |
|---|--|---|--|--|
| <p style="text-align: center;">4<br/>(IA2013-022)</p> | <p>Officers laughed at complainant, asked her inappropriate questions, and did not identify themselves upon request after complainant overslept while on a BART train.</p> | <p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer (Inappropriate Questions/Conduct) – Unfounded</li> <li>• Courtesy (Providing Name/Badge) – Unfounded</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer (Inappropriate Questions/Conduct) – Unfounded</li> <li>• Courtesy (Providing Name/Badge) – Unfounded</li> </ul> <p><u>Officer #3</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer (Inappropriate Questions/Conduct) – Unfounded</li> <li>• Courtesy (Providing Name/Badge) – Unfounded</li> </ul> | <p style="text-align: center;">229</p> | <p style="text-align: center;">204</p> |
|---|--|---|--|--|

During the month of September 2013, 1 Administrative Investigation was concluded by the BART Police Department:

| Investigation #<br>(IA Case #) | Nature of Allegations   | Disposition  | Number of Days Elapsed Since Investigation Initiated | Number of Days Taken to Complete Investigation |
|--------------------------------|---|--|--|--|
| 1<br>(IA2013-006)              | One officer yelled at another and discriminated against the second officer on the basis of gender and sexual orientation. | <u>Officer #1</u> <ul style="list-style-type: none"> <li>• Workplace Discrimination / Harassment – Sustained</li> <li>• Workplace Discrimination / Harassment – Not Sustained</li> <li>• Courtesy – Unfounded</li> </ul> | 252  | 233  |

During the month of September 2013, 7 Comments of Non-Complaint were addressed by the BART Police Department:

| Comment #<br>(IA Case #) | Nature of Comment   | Disposition  | Number of Days Elapsed Since Comment Filed | Number of Days Taken to Address Comment |
|--------------------------|---|--|--|---|
| 1<br>(IA2013-065)        | Officer made an unsafe lane change while driving.   | <u>Officer #1</u> <ul style="list-style-type: none"> <li>• Policy/Procedure – Supervisory Referral<sup>11</sup></li> </ul> | 63   | 30                                      |
| 2<br>(IA2013-073)        | Officer did not cite a patron smoking in a BART station or engage individuals who were gambling at a BART station.          | <u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Supervisory Referral</li> </ul>           | 62   | 28                                      |
| 3<br>(IA2013-072)        | Officer did not ask complainant, who was having a dispute with another party, whether he wanted the other party prosecuted. | <u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Supervisory Referral</li> </ul>           | 58   | 32                                      |

|                           |  |   |           |           |
|---------------------------|--|---|-----------|-----------|
| <p>4<br/>(IA2013-071)</p> | <p>Officers did not respond to investigate a disturbance at a BART station that was observed by complainant.</p>   | <p><u>Officer #1</u><br/> <ul style="list-style-type: none"> <li>• Performance of Duty – Supervisory Referral</li> </ul> <u>Officer #2</u><br/> <ul style="list-style-type: none"> <li>• Performance of Duty – Supervisory Referral</li> </ul> </p> | <p>56</p> | <p>22</p> |
| <p>5<br/>(IA2013-082)</p> | <p>Complainant observed officer in uniform but not equipped with a gun or Taser.</p>   | <p><u>Officer #1</u><br/> <ul style="list-style-type: none"> <li>• Policy/Procedure – Supervisory Referral</li> </ul> </p>  | <p>43</p> | <p>11</p> |
| <p>6<br/>(IA2013-078)</p> | <p>Officer had a negative attitude and stereotyped complainant based on race when issuing a ticket to complainant for fare evasion. Complainant, who was upset about being cited, retracted allegations about officer’s bias and attitude.</p> | <p><u>Officer #1</u><br/> <ul style="list-style-type: none"> <li>• Arrest or Detention – Supervisory Referral</li> </ul> </p>   | <p>41</p> | <p>14</p> |
| <p>7<br/>(IA2013-079)</p> | <p>Civilian issued a warning to complainant about an expired parking permit, even though the permit is valid.</p>  | <p><u>Officer #1</u><br/> <ul style="list-style-type: none"> <li>• Performance of Duty – Supervisory Referral</li> </ul> </p>   | <p>39</p> | <p>14</p> |

**Complaints/Investigations Concluded During a Previous Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of July 2013, 1 additional Citizen Complaint was concluded by the BART Police Department. This case was initially closed in March 2013, but was reopened for further investigation in April 2013. It was then re-closed in July 2013 and is reported on here:

| Complaint #<br>(IA Case #) | Nature of Allegations  | Disposition  | Number of Days Elapsed Since Complaint Filed | Number of Days Taken to Complete Investigation |
|----------------------------|--|--|--|--|
| 1<br>(IA2013-015)          | Complainant was improperly detained for fare evasion, and an officer displayed his firearm in a threatening manner and refused to identify himself upon request. Officers also did not initiate a complaint as requested by complainant. | <u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Unfounded</li> <li>• Policy/Procedure – Not Sustained</li> </ul><br><u>Officer #2</u> <ul style="list-style-type: none"> <li>• Policy/Procedure – Sustained</li> </ul> | 223  | 142  |

**Additional Notes**

In accordance with the BART Citizen Oversight Model, OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department’s Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

|  |     |
|--|-----|
| Investigations Being Conducted               | 1   |
| Complainant-Initiated Appeals                | 1   |
| Investigations Being Monitored               | 14  |
| Investigations Reviewed During Current Month | 26* |

\*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.

<sup>1</sup> 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

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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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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.

<sup>8</sup> 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).

<sup>9</sup> 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)

<sup>10</sup> 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.

<sup>11</sup> 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.