

Office of the Independent Police Auditor

Monthly Report
September 2014



October 13, 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 September 1, 2014 through September 30, 2014.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
September 2013	14	44	0	0	0
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

Types of Cases Filed

Citizen Complaints	11
Administrative Investigations	0
Comments of Non-Complaint	1
TOTAL	12

Citizen Complaints Received per Department

OIPA	2
BART Police Department	9
TOTAL	11

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of September 2014, 2 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 #14-62)	<u>Unknown Employee</u> <ul style="list-style-type: none"> • Performance of Duty • Conduct Unbecoming an Officer 	OIPA notified BPD, which determined the matter involving BPD was limited to a parking or infraction citation.*	24
2 (OIPA #14-64) (IA2014-118)	<u>Officer #1</u> <ul style="list-style-type: none"> • Courtesy 	OIPA notified BPD, which initiated an investigation.	19

*As BPD's action in this case has concluded, it is being counted amongst those closed during September. Notably, BPD determined that the allegation involving Conduct Unbecoming an Officer involved only non-BPD employees.

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

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-111)	<u>Officer #1</u> <ul style="list-style-type: none"> • Policy/Procedure 	BPD initiated an investigation.	35
2 (IA2014-112)	<u>Officer #1</u> <ul style="list-style-type: none"> • Supervision • Performance of Duty <u>Officer #2</u> <ul style="list-style-type: none"> • Performance of Duty 	BPD initiated an investigation.	33
3 (IA2014-113)	<u>Officer #1</u> <ul style="list-style-type: none"> • Force • Policy/Procedure <u>Officer #2</u> <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	32

4 (IA2014-116)	<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"> • Bias-Based Policing • Arrest or Detention 	BPD initiated an investigation.	29
5 (IA2014-114)	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	28
6 (IA2014-115)	<u>Officer #1</u> <ul style="list-style-type: none"> • Force • Policy/Procedure <u>Officer #2</u> <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	28
7 (IA2014-117)	<u>Officer #1</u> <ul style="list-style-type: none"> • Arrest or Detention • Courtesy <u>Officer #2</u> <ul style="list-style-type: none"> • Arrest or Detention 	BPD initiated an investigation.	18
8 (IA2014-120)	<u>Employee #1*</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	18
9 (IA2014-121)	<u>Officer #1</u> <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	14

*The involved member in this case is a volunteer with BPD.

During the month of September 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 (IA2014-119)	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	13

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of September 2014, 10 Citizen Complaints were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition ⁹	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-142)	Officers unjustifiably detained complainant and used excessive force to do so.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Exonerated • Arrest or Detention – Exonerated <u>Officer #2</u> <ul style="list-style-type: none"> • Force – Exonerated • Arrest or Detention – Exonerated 	350	321
2 (IA2013-130)*	Officer improperly singled out African-Americans when searching for a subject and referred to complainant using the wrong gender.	<u>Officer #1</u> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Exonerated 	300	276
3 (IA2013-139)	Officer unjustifiably detained complainant and used excessive force to do so.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Exonerated • Arrest or Detention – Exonerated 	290	252
4 (IA2014-140)	Officer #1 unjustifiably detained complainant, made inappropriate physical contact with complainant, and discarded a complaint form. Officer #2 did not record incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer (Count 1) – Unfounded • Conduct Unbecoming an Officer (Count 2) – Not Sustained <u>Officer #2</u> <ul style="list-style-type: none"> • Policy/Procedure – Sustained 	290	252

5 (IA2014-013)	Officer used excessive force to detain complainant and did not record incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Exonerated • Policy/Procedure – Sustained 	252	233
6 (IA2014-011)	Officer targeted complainant for issuance of a citation based on ethnicity.	<u>Officer #1</u> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded 	245	204
7 (IA2014-025) ⁺	Officer contacted complainant based on ethnicity, detained complainant without justification, was overly aggressive, made threatening gestures, did not provide a business card, and yelled at a bystander.	<u>Officer #1</u> <ul style="list-style-type: none"> • Bias-Based Policing – Not Sustained • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer (Count 1) – Not Sustained • Conduct Unbecoming an Officer (Count 2) – Unfounded • Conduct Unbecoming an Officer (Count 3) – Unfounded • Conduct Unbecoming an Officer (Count 4) – Exonerated 	212	174
8 (IA2014-028) ⁺	Officer harassed African-American females based on their race.	<u>Unknown Officer</u> <ul style="list-style-type: none"> • Bias-Based Policing – Not Sustained • Conduct Unbecoming an Officer – Not Sustained 	208	189
9 (IA2014-080)	Officers did not respond to a call involving an individual using multiple seats on a train, and officers are not present on trains sufficiently often.	<u>BART Police Department</u> <ul style="list-style-type: none"> • Service Review¹⁰ 	117	88

10 (IA2014-083)	Officers are not sufficiently thorough in patrolling train stations at the end of revenue service.	<u>BART Police Department</u> • Service Review	98	69
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*The allegations in this case were also investigated by OIPA and reported on in August under OIPA #13-81.

†As OIPA is also investigating this case, it will not be taken out of the "Number of Open Cases" column in the Quantitative Report on Page 2 until OIPA's findings have also been finalized.

During the month of September 2014, 2 Administrative Investigations were completed by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2014-008)	Officer used excessive force on two occasions to detain complainant and did not record incident as required.	<u>Officer #1</u> • Force (Count 1) – Exonerated • Force (Count 2) – Exonerated • Policy/Procedure – Not Sustained	256	227
2 (IA2014-012)	Officer did not notify supervisor of a traffic accident or that damage had occurred as a result.	<u>Officer #1</u> • Policy/Procedure (Count 1) – Unfounded • Policy/Procedure (Count 2) – Not Sustained	250	221

During the month of September 2014, 3 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 (IA2014-102)	Officers were rude and aggressive in interaction with patrons at the end of revenue service.	<u>Officer #1</u> • Courtesy – Supervisory Referral ¹¹ <u>Officer #2</u> • Courtesy – Supervisory Referral	53	14

2 (IA2014-108)	Officer did not take action to stop an individual from smoking in a prohibited area.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral	46	13
3 (IA2014-110)	Officer was rude to several witnesses when he responded to a report of a crime on a train.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral	45	19

Also during the month of September 2014, BPD closed IA2014-059 as an Inquiry after making the determination that the misconduct alleged did not involve any BPD employees. As OIPA is also investigating this case, it will not be taken out of the “Number of Open Cases” column in the Quantitative Report on Page 2 until OIPA’s findings have also been finalized. Additionally, BPD reclassified IA2014-085 from a Citizen Complaint to an Inquiry after making the determination that the misconduct alleged did not involve any BPD employees. As such, this case was removed from the “Number of Open Cases.”

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BPD

During the month of September 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
3	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

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	10
Complainant-Initiated Appeals	0
Investigations Being Monitored	14
Investigations Reviewed During Current Month	29*

*This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA’s findings are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA’s investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

⁸ In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

⁹ In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded – The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated – The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained – The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained – The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

¹⁰ A service review refers to an instance when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.

¹¹ 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.