



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

September 2017

Issue date: October 16, 2017

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 BART Police Citizen Review Board (BPCRB). This report provides information for the period **September 1, 2017 through September 30, 2017**.¹

The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Division.

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
September 2016	9	57	0	0	0
October 2016	6	51	0	0	0
November 2016	13	55	1	0	0
December 2016	9	57	0	0	0
January 2017	6	52	0	0	0
February 2017	7	41	0	0	0
March 2017	9	43	0	0	0
April 2017	8	42	1	0	0
May 2017	13	47	1	0	0
June 2017	11	44	1	0	0
July 2017	13	48	0	0	0
August 2017	12	35	0	0	0
September 2017	12	31	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	10
Informal Complaints ⁷	2
Administrative Investigations	0
TOTAL	12

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁸

OIPA	4
BART Police Department	6
TOTAL	10

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During September 2017, **4 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (OIPA #17-33) (IA2017-082)	Employee #1: • Conduct Unbecoming	OIPA notified BPD, which initiated an investigation.	39
2 (OIPA #17-34) (IA2017-085)	Officer #1: • Bias-Based Policing • Conduct Unbecoming	OIPA notified BPD, which initiated an investigation.	26
3 (OIPA #17-35) (IA2017-086)	Officers #1-3: • Force	OIPA notified BPD, which initiated an investigation.	25
4 (OIPA #17-36) (IA2017-087)	Officers #1-2: • Conduct Unbecoming	OIPA notified BPD, which initiated an investigation.	18

During September 2017, **5 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2017-077)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	40
2 (IA2017-079)	Employee #1: • Conduct Unbecoming	BPD initiated an investigation.	38
3 (IA2017-083)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	33
4 (IA2017-084)	Officer #1: • Force	BPD initiated an investigation.	28
5 (IA2017-088)	Officer #1: • Performance of Duty	BPD initiated an investigation.	17

During September 2017, **1 Informal Complaint** was received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2017-080)	Officers #1-2: • Arrest or Detention • Search or Seizure	BPD initiated an investigation.	34

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During August 2017, **2 Citizen Complaints (Formal)** were received by BPD but not previously reported:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2017-078)	Officer #1: • Force	BPD initiated an investigation.	48
2 (IA2017-081)	Officers #1-3: • Conduct Unbecoming an Officer	BPD initiated an investigation.	46

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During September 2017, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #17-09)	Officer improperly detained and arrested subject, and used excessive force during the arrest.	Officer #1: • Force – Exonerated • Arrest or Detention – Exonerated	214	196

During September 2017, **8 Citizen Complaints (Formal)** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2017-006)	Officers improperly detained complainant and improperly applied handcuffs during the detention.	Officers #1-2: • Arrest or Detention – Exonerated • Handcuffing – Exonerated	263	224
2 (IA2017-032)	Officers used excessive force during arrest.	Officers #1-2: • Force – Exonerated	161	93
3 (IA2017-049)	Officers used excessive force during arrest of complainant.	Officers #1-2: • Force – Exonerated	128	90

4 (IA2017-053)	Officer improperly contacted complainant based on race and was rude to complainant.	Officer #1: • Bias-Based Policing – Not Sustained • Conduct Unbecoming an Officer – Unfounded	103	82
5 (IA2017-061)	Employee improperly contacted complainant based on race and yelled at complainant.	Employee #1: • Bias-Based Policing – Unfounded • Conduct Unbecoming – Not Sustained	87	54
6 (IA2017-068)	Officers did not appropriately enforce the law.	BART Police Department: • Service Review ⁹	75	42
7 (IA2017-075)	Officers used excessive force during arrest of subject.	Officers #1-2: • Force – Exonerated	60	27
8 (IA2017-076)	Officers used excessive force during arrest and were disrespectful to complainant.	Officers #1-3: • Force – Exonerated Officers #1-4 • Conduct Unbecoming an Officer – Unfounded	52	21

During September 2017, **5 Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2017-031)	Officer was rude to complainant and did not appropriately respond to the call for service.	Officer #1: • Performance of Duty – Supervisory Referral ¹⁰ • Conduct Unbecoming an Officer – Supervisory Referral	168	132
2 (IA2017-063)	Officer did not take appropriate law enforcement action.	Officer #1: • Performance of Duty – Supervisory Referral	81	37
3 (IA2017-065)	Officer improperly detained complainant.	Officer #1: • Arrest or Detention – Supervisory Referral	74	42
4 (IA2017-067)	Employee did not appropriately respond to the call for service.	Employee #1: • Conduct Unbecoming – Supervisory Referral	74	41
5 (IA2017-082)	Employee was unprofessional and discourteous.	Employee #1: • Conduct Unbecoming – Supervisory Referral	39	19

INVESTIGATIONS COMPLETED DURING A PRIOR REPORTING PERIOD

During August 2017, **2 Citizen Complaints (Formal)** were completed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2017-017)	Officer improperly detained complainant and embarrassed complainant.	Officer #1: • Conduct Unbecoming an Officer – Administratively Closed ¹¹	216	168
2 (IA2017-039)	Officers used excessive force during arrest of complainant.	Officers #1-2: • Force – Exonerated	146	98

During August 2017, **1 Informal Complaint** was addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2017-064)	Employee was unprofessional and did not return complainant's phone calls.	Employee #1: • Conduct Unbecoming – Supervisory Referral	77	23

DISCIPLINE ISSUED DURING REPORTING PERIOD

During September 2017, BPD 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	Employee did not convey relevant information to an outside law enforcement agency.	Employee #1: • Performance of Duty	Employee #1: • Informal Counseling

ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (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 conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	3
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	29
Investigations Reviewed During Current Month	31 [†]

[†]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.

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is handled by BPD. The OIPA Monthly Report will reflect information regarding monitored cases with detail not to exceed that which is allowable under state law. The majority of investigations reviewed by OIPA during the period did not raise any concerns or generate any recommendations for revisions or follow-up.

- After review of all investigations closed by BPD in September 2017, OIPA referred 6 cases to the Chief of Police for review, comment, and further discussion.

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 BART Police Citizen Review Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is also made aware of additional complaints about the BART Police Department 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 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) 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 BART Police 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. 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 BART Police Citizen Review Board after receiving and reviewing the findings issued by 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 The BART Police Department defines an Informal Complaint as, “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.” (BART Police Department Policy Manual, Policy 1020.1.1(d)).

⁸ It is important to note that OIPA does not separate citizen complaints it receives into “Formal” and “Informal” classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

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 A Supervisory Referral refers to an instance involving an Inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

¹¹ Administrative Closure refers to allegations that are received and documented; however the Chief of Police or his/her designee determines, based on a preliminary investigation, that further investigation is not warranted. Under these circumstances, the complaint will be Administratively Closed and documented in a summary memorandum to the case file. Employees will be documented as witnesses only, not as subjects to the complaint. Internal Affairs will send a letter to the complainant notifying them that the case was closed following a preliminary investigation.