



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

January 2022

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Issue date: February 14, 2022

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), 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 **January 1, 2022 through January 31, 2022**.<sup>1</sup> (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).

## QUANTITATIVE REPORT

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	Investigations Resolved	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
January 2021	8	61	5	2	0	0
February 2021	5	61	4	1	0	0
March 2021	7	61	7	0	0	0
April 2021	13	65	9	1	0	0
May 2021	9	69	4	1	0	0
June 2021	5	74	1	1	0	0
July 2021	10	81	3	0	0	0
August 2021	4	78	7	1	0	0
September 2021	10	81	8	2	0	0
October 2021	15	88	7	0	0	0
November 2021	8	87	11	1	0	0
December 2021	6	87	6	0	1	0
January 2022	4	84	7	1	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	4
Informal Complaints <sup>7</sup>	3
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>7</b>

### CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>9</sup>

OIPA	2
BART Police Department	2
<b>TOTAL</b>	<b>4</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During January 2022, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #22-01) (IA2022-002)	Officers #1-4: • Performance of Duty	OIPA initiated an investigation.	41

During January 2022, **2 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2022-001)	Officer #1: • Force	BPD initiated an investigation.	32
2 (IA2022-003)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	19

## COMPLAINTS/INVESTIGATIONS INITIATED DURING PRIOR REPORTING PERIOD

During October 2021, **1 Citizen Complaint** was received by OIPA but was not previously reported:

Complaint # OIPA Case # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #21-21) (IA2021-102)	Officer #1: • Performance of Duty	OIPA notified BPD which initiated an investigation.	122

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During January 2022, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #21-07) (IA2021-031)	Officer improperly detained and cited complainant based on complainant's national origin and made inappropriate comments during the detention.	Officers #1-2: • Arrest/Detention – Exonerated • Racial Animus – Exonerated • Bias-Based Policing – Exonerated • Conduct Unbecoming an Officer – Sustained	301	274

During January 2022, **3 Citizen Complaints** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-005)	Officers detained subjects based on subjects' race, one officer improperly requested a non-affirmed name (aka "Deadnaming"), and one officer acted in a threatening manner during the detention.	Officers #1-2: • Bias-Based Policing – Unfounded  Officer #1: • Performance of Duty – Exonerated  Officer #2: • Conduct Unbecoming an Officer – Unfounded	388	350
2 (IA2021-006)	Officer used excessive force during a detention and officer regularly spoke in an aggressive or demeaning manner to Black people.	Officer #1: • Force – Unfounded • Conduct Unbecoming an Officer – Unfounded • Bias-Based Policing – Unfounded	390	352
3 (IA2021-009)	Officers used excessive force during a detention.	Officers #1-2: • Force – Exonerated	375	337

During January 2022, **3 Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-098)	Officer was rude to complainant.	Officer #1: • Courtesy – Supervisor Referral	53	22
2 (IA2021-100)	Officer was rude to complainant.	Officer #1: • Courtesy – Supervisor Referral	48	7
3 (IA2021-101)	Officers were rude and aggressive to complainant.	Officers #1-2: • Courtesy – Supervisor Referral	53	22

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During January 2022, no discipline was issued by BPD.

## ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and 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	8
Complainant-Initiated Appeals	1
BPD-Initiated Appeals	0
Investigations Being Monitored	68
Investigations Reviewed During Current Month	12 <sup>†</sup>

<sup>†</sup>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 investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.<sup>10</sup>

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<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 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.

<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 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) 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 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.

<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. 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 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).

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<sup>7</sup> 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)).

<sup>8</sup> BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

<sup>9</sup> 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.

<sup>10</sup> OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

February 2022

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Issue date: March 14, 2022

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), 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 **February 1, 2022 through February 28, 2022**.<sup>1</sup> (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).

## QUANTITATIVE REPORT

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	Investigations Resolved	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
February 2021	5	61	4	1	0	0
March 2021	7	61	7	0	0	0
April 2021	13	65	9	1	0	0
May 2021	9	69	4	1	0	0
June 2021	5	74	1	1	0	0
July 2021	10	81	3	0	0	0
August 2021	4	78	7	1	0	0
September 2021	10	81	8	2	0	0
October 2021	15	88	7	0	0	0
November 2021	8	87	11	1	0	0
December 2021	6	87	6	0	1	0
January 2022	4	84	7	1	0	0
February 2022	6	81	9	1	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	6
Informal Complaints <sup>7</sup>	0
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>6</b>

### CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>9</sup>

OIPA	1
BART Police Department	5
<b>TOTAL</b>	<b>6</b>



## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During February 2022, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #22-04) (IA2022-008)	Unknown BPD Employees: <ul style="list-style-type: none"> <li>• Arrest/Detention</li> <li>• Policy/Procedure</li> </ul>	OIPA initiated an investigation.	32

During February 2022, **5 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2022-007)	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	28
2 (IA2022-009)	Officers #1-2: <ul style="list-style-type: none"> <li>• Criminal (Sexual Assault)</li> <li>• Force</li> <li>• Arrest/Detention</li> </ul>	BPD initiated an investigation.	33
3 (IA2022-006)	Officer #1: <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Conduct Unbecoming an Officer</li> <li>• Policy/Procedure (AXON Camera)</li> </ul>	BPD initiated an investigation.	34
4 (IA2022-005)	Officer #1: <ul style="list-style-type: none"> <li>• Search/Seizure</li> <li>• Conduct Unbecoming an Officer</li> <li>• Policy/Procedure (AXON Camera)</li> </ul>	BPD initiated an investigation.	34
5 (IA2022-004)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> <li>• Conduct Unbecoming an Officer</li> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	38

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During February 2022, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #21-06) (IA2021-030)	Officers improperly detained complainant, acted unprofessionally during the detention, and mistreated complainant based on complainant's race.	<p>Officers #1-2:</p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Exonerated</li> <li>• Bias-Based Policing – Exonerated</li> </ul> <p>Officer #1:</p> <ul style="list-style-type: none"> <li>• Arrest/Detention – Exonerated</li> </ul> <p>Officer #2:</p> <ul style="list-style-type: none"> <li>• Performance of Duty – Exonerated</li> </ul>	332	291

During February 2022, **8 Citizen Complaints** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-018)	Officer used excessive force during a welfare check.	Officer #1: • Force – Unfounded	363	344
2 (IA2021-017)	Officer used excessive force during a detention, failed to use available translation services, and did not promptly remove handcuffs.	Officer #1: • Force – Not Sustained • Performance of Duty – Sustained	365	340
3 (IA2021-015)	Officers improperly arrested subject based on subject's race.	Officers #1-3: • Bias-Based Policing – Unfounded	378	353
4 (IA2021-014)	Officer used excessive force during a contact.	Officer #1: • Force – Unfounded	378	346
5 (IA2021-012)	Officer used excessive force during a detention and made a racist comment during the contact.	Officer #1: • Force – Unfounded • Bias-Based Policing – Unfounded	390	351

6 (IA2021-013)	Officers used excessive force during a detention.	Officers #1-3: • Force – Exonerated	391	351
7 (IA2021-010)	Officers were hostile and disrespectful toward complainant, grabbed complainant's property, and used excessive force during the contact.	Officers #1-2: • Force – Unfounded • Conduct Unbecoming an Officer – Unfounded	391	351
8 (IA2021-011)	Officers were hostile and rude and did not take appropriate enforcement action upon complainant's request.	Officer #1: • Performance of Duty – Administratively Closed	393	355

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During February 2022, 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	Officer did not properly document a law enforcement contact involving use of force.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion <sup>10</sup>
2	Officer did not properly document a law enforcement contact involving use of force.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion
3	Officer was involved in a preventable vehicle collision.	Officer #1: • Policy/Procedure	Officer #1: • Letter of Discussion
3	Officer was involved in a preventable vehicle collision.	Officer #1: • Policy/Procedure	Officer #1: • Letter of Discussion

## ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and 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

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\*Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

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	9
Complainant-Initiated Appeals	1
BPD-Initiated Appeals	0
Investigations Being Monitored	68
Investigations Reviewed During Current Month	10 <sup>†</sup>

<sup>†</sup>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 investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.<sup>11</sup>

<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 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.

<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 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) 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 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.

<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. 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 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).

<sup>7</sup> 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)).

<sup>8</sup> BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

<sup>9</sup> 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.

<sup>10</sup> Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move

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to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

<sup>11</sup> OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

March 2022

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Issue date: April 11, 2022

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), 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 **March 1, 2022 through March 31, 2022**.<sup>1</sup> (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).

## QUANTITATIVE REPORT

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	Investigations Resolved	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
March 2021	7	61	7	0	0	0
April 2021	13	65	9	1	0	0
May 2021	9	69	4	1	0	0
June 2021	5	74	1	1	0	0
July 2021	10	81	3	0	0	0
August 2021	4	78	7	1	0	0
September 2021	10	81	8	2	0	0
October 2021	15	88	7	0	0	0
November 2021	8	87	11	1	0	0
December 2021	6	87	6	0	1	0
January 2022	4	84	7	1	0	0
February 2022	6	81	9	1	0	0
March 2022	6	74	14	1	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	6
Informal Complaints <sup>7</sup>	0
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>6</b>

### CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>9</sup>

OIPA	1
BART Police Department	5
<b>TOTAL</b>	<b>6</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During March 2022, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #22-10) (IA2022-014)	Unknown BPD Officer: <ul style="list-style-type: none"> <li>Conduct Unbecoming an Officer</li> </ul>	OIPA notified BPD which initiated an investigation.	28

During March 2022, **5 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2022-010)	Officers #1-3: <ul style="list-style-type: none"> <li>Conduct Unbecoming an Officer</li> <li>Arrest/Detention</li> <li>Search or Seizure</li> </ul>	BPD initiated an investigation.	40
2 (IA2022-011)	Officers #1-2: <ul style="list-style-type: none"> <li>Conduct Unbecoming an Officer</li> <li>Performance of Duty</li> </ul>	BPD initiated an investigation.	39
3 (IA2022-012)	Officer #1: <ul style="list-style-type: none"> <li>Bias-Based Policing</li> <li>Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	30
4 (IA2022-013)	Officers #1-2: <ul style="list-style-type: none"> <li>Bias-Based Policing</li> <li>Force</li> </ul>	BPD initiated an investigation.	34
5 (IA2022-015)	Officer #1: <ul style="list-style-type: none"> <li>Force</li> <li>Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	21

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During March 2022, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #21-18) (IA2021-071)	Officer improperly detained complainant and used excessive force, and one supervisor failed to properly document the contact and did not properly review the use of force.	Officer #1: <ul style="list-style-type: none"> <li>Arrest/Detention – Exonerated</li> <li>Force – Exonerated</li> </ul> Officer #2: <ul style="list-style-type: none"> <li>Policy/Procedure (AXON Camera) – Sustained</li> <li>Policy/Procedure (Use of Force Review) – Sustained</li> </ul>	195	156



During March 2022, **10 Citizen Complaints** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-020)	Officer used excessive force during a law enforcement contact.	Officer #1: • Force – Exonerated	377	336
2 (IA2021-021)	Officers used excessive force during a law enforcement contact.	Officers #1-2: • Force – Exonerated	375	334
3 (IA2021-022)	Officer improperly searched subject's phone, acted unprofessionally and was dishonest, failed to properly document enforcement activities, and failed to properly account for key evidence. One supervisor failed to properly document enforcement activities and improperly approved an insufficient report.	Officers #1-2: • Performance of Duty – Sustained  Officer #2: • Search or Seizure – Sustained • Conduct Unbecoming an Officer – Exonerated	378	353
4 (IA2021-024)	Officer racially profiled complainant.	Officer #1: • Bias-Based Policing – Unfounded	373	345
5 (IA2021-026)	Officer discriminated against subject because of subject's race and mental health status.	Officers #1-3: • Bias-Based Policing – Unfounded	368	351
6 (IA2021-028)	Officer improperly requested complainant's personal information.	Officer #1: • Performance of Duty – Administratively Closed	363	345
7 (IA2021-029)	Officer allowed subject to defy a protective order and escape detention.	Officer #1: • Performance of Duty – Unfounded	361	343
8 (IA2021-035)	Officers used excessive force during a law enforcement contact.	Officers #1-4: • Force – Exonerated	340	323
9 (IA2021-038)	Officer improperly detained complainant and damaged complainant's property.	Officer #1: • Arrest/Detention – Exonerated • Conduct Unbecoming an Officer – Unfounded	333	316

10 (IA2022-007)	Officer intimidated complainant while off duty.	Officer #1: Conduct Unbecoming an Officer – Supervisor Referral. <sup>10</sup>	333	316
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During March 2022, **1 Administrative Investigation** was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation(s)
1 (IA2021-034)	Employee acted aggressively toward a citizen, other employees consumed narcotics and thwarted drug-testing procedures.	Unknown BPD Employee #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming – Not Sustained</li> </ul>	354	336

### COMPLAINTS/INVESTIGATIONS CONCLUDED DURING PREVIOUS REPORTING PERIODS

During February 2022, **1 Citizen Complaint** was concluded by OIPA but was not previously reported:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #20-14) (IA2020-026)	Officers improperly detained complainant based on complainant's race and unnecessarily extended the length of the detention.	Officers #1-2: <ul style="list-style-type: none"> <li>• Bias-Based Policing – Exonerated</li> <li>• Arrest/Detention – Exonerated</li> <li>• Conduct Unbecoming an Officer – Exonerated</li> </ul>	360	291

Also, during the month of March 2022, BPD received and classified the following complaint as an **Inquiry** and **Administratively Closed**<sup>11</sup> the complaint: #IA2021-082 (after determining that no BPD officers were involved).

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During February 2022, 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	Supervisor improperly approved an insufficient report by a subordinate officer.	Officer #1: • Performance of Duty	Officer #1: • Written Reprimand <sup>12</sup>
2	Officer made inappropriate comments to detainee.	Officer #1: • Conduct Unbecoming an Officer	Officer #1: • Non-Documented
3	Officer was involved in a preventable vehicle collision.	Officer #1: • Policy/Procedure	Officer #1: • Letter of Discussion <sup>13</sup>
4	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion

## ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and 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	8
Complainant-Initiated Appeals	1
BPD-Initiated Appeals	0
Investigations Being Monitored	69
Investigations Reviewed During Current Month	18†

†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 investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.<sup>14</sup>

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\*Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

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<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 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.

<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 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) 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 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.

<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. 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 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).

<sup>7</sup> 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)).

<sup>8</sup> BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

<sup>9</sup> 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.

<sup>10</sup> A Supervisor 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 IAB.

<sup>11</sup> Administrative Closure is defined as follows in the BPD Policy Manual: 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.

<sup>12</sup> Written Reprimand (first level of formal discipline): If there have been no re-occurrences at the end of the time frames as determined by the collective bargaining agreement (up to 3 years), the immediate supervisor shall meet with the employee and advise him/her that the progressive discipline has become inactive and has been removed from the employee’s personnel files.

<sup>13</sup> Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

<sup>14</sup> OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

April 2022

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Issue date: May 9, 2022

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), 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 **April 1, 2022 through April 30, 2022**.<sup>1</sup> (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).

## QUANTITATIVE REPORT

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	Investigations Resolved	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
April 2021	13	65	9	1	0	0
May 2021	9	69	4	1	0	0
June 2021	5	74	1	1	0	0
July 2021	10	81	3	0	0	0
August 2021	4	78	7	1	0	0
September 2021	10	81	8	2	0	0
October 2021	15	88	7	0	0	0
November 2021	8	87	11	1	0	0
December 2021	6	87	6	0	1	0
January 2022	4	84	7	1	0	0
February 2022	6	81	9	1	0	0
March 2022	6	73*	14	1	0	0
April 2022	10	79	6	1	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	10
Informal Complaints <sup>7</sup>	0
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>10</b>

### CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>9</sup>

OIPA	5
BART Police Department	5
<b>TOTAL</b>	<b>10</b>

\* This total was adjusted to reflect the closure of IA2021-071/OIPA #21-18, which was completed in March 2022 but not listed by BPD as completed until April 2022.

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During April 2022, **5 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #22-12) (IA2022-016)	Unknown BPD Officers #1-2: <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Conduct Unbecoming an Officer</li> </ul>	OIPA notified BPD which initiated an investigation.	32
2 (OIPA #22-15) (IA2022-018)	Officers #1-3: <ul style="list-style-type: none"> <li>• Arrest/Detention</li> <li>• Force</li> <li>• Policy/Procedure</li> <li>• Conduct Unbecoming an Officer</li> </ul>	OIPA notified BPD which initiated an investigation.	29
3 (OIPA #22-14) (IA2022-019)	Unknown BPD Officers #1-2: <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> </ul>	OIPA notified BPD which initiated an investigation.	28
4 (OIPA #22-16) (IA2022-020)	Officers #1-2: <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Policy/Procedure</li> </ul>	OIPA notified BPD which initiated an investigation.	27
5 (OIPA #22-17) (IA2022-021)	Officer #1: <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Racial Animus</li> <li>• Conduct Unbecoming an Officer</li> </ul>	OIPA notified BPD which initiated an investigation.	25

During April 2022, **4 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2022-017)	Officer #1: <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	27
2 (IA2022-022)	Officer #1: <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Conduct Unbecoming an Officer</li> <li>• Policy/Procedure (AXON Camera)</li> </ul>	BPD initiated an investigation.	22
3 (IA2022-024)	Unknown Officers #1-2: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	17
4 (IA2022-025)	Officers #1-2: <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	14

## COMPLAINTS/INVESTIGATIONS RECEIVED DURING PRIOR REPORTING PERIOD

During March 2022, **1 Citizen Complaint (Formal)** was received by BPD but not previously reported:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2022-023)	Officer #1: <ul style="list-style-type: none"> <li>Force</li> <li>Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	56

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During April 2022, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #21-10) (IA2021-043)	Officers improperly detained subjects and used excessive force and did so because of the subjects' race.	Officers #1-5: <ul style="list-style-type: none"> <li>Arrest/Detention – Exonerated</li> <li>Force – Exonerated</li> <li>Bias-Based Policing – Unfounded</li> </ul>	347	313

During April 2022, **2 Citizen Complaints** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-008)	Officers did not take enforcement action against fare evaders and attempted intimidate complainant.	Officers #1-5: <ul style="list-style-type: none"> <li>Performance of Duty – Administratively Closed</li> <li>Conduct Unbecoming an Officer – Administratively Closed</li> </ul>	483	469 <sup>†</sup>
2 (IA2021-042)	Officer harassed complainant during a law enforcement contact.	Officers #1-2: <ul style="list-style-type: none"> <li>Conduct Unbecoming an Officer – Unfounded</li> </ul>	351	338

<sup>†</sup> BPD reported that this case was tolled due to a subject officer's unavailability from May 28, 2021 to April 1, 2022 (308 days).



During April 2022, **2 Administrative Investigations** were concluded by BPD:

Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation(s)	
1 (IA2021-032)	Officer was impaired while on duty.	Officer #1: <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> <li>• Policy/Procedure – Not Sustained</li> </ul>	385	357
2 (IA2021-037)	Complainant stated that officer should be held accountable for misconduct during an arrest/detention and use of force. Supervisor did not forward potential misconduct complaint to Internal Affairs.	Officer #1: <ul style="list-style-type: none"> <li>• Force – Administratively Closed</li> </ul> Officer #2: <ul style="list-style-type: none"> <li>• Supervision – Training Recommendation</li> </ul>	363	349

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During April 2022, 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	Officer used racist language in an email to BART staff.	Officer #1: <ul style="list-style-type: none"> <li>• Racial Animus</li> <li>• Conduct Unbecoming an Officer</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>• No Action<sup>§</sup></li> </ul>
2	Officer was impaired while on duty.	Officer #1: <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>• Written Reprimand<sup>10</sup></li> </ul>
3	Officer failed to properly document a law enforcement contact and did not properly review the use of force.	Officer #2: <ul style="list-style-type: none"> <li>• Policy/Procedure (AXON Camera) – Sustained</li> <li>• Policy/Procedure (Use of Force Review) – Sustained</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>• Letter of Discussion<sup>11</sup></li> </ul>
4	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure (AXON Camera)</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>• Letter of Discussion</li> </ul>

‡Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

§ Subject officer separated from the Department prior to the imposition of any discipline for the sustained allegations.

5	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion
6	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion

## ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and 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	8
Complainant-Initiated Appeals	1
BPD-Initiated Appeals	0
Investigations Being Monitored	71
Investigations Reviewed During Current Month	10 <sup>†</sup>

<sup>†</sup>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 investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.<sup>12</sup>

<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 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.

<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 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) 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 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.

<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. OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

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<sup>6</sup> 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).

<sup>7</sup> 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)).

<sup>8</sup> BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

<sup>9</sup> 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.

<sup>10</sup> Written Reprimand (first level of formal discipline): If there have been no re-occurrences at the end of the time frames as determined by the collective bargaining agreement (up to 3 years), the immediate supervisor shall meet with the employee and advise him/her that the progressive discipline has become inactive and has been removed from the employee’s personnel files.

<sup>11</sup> Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

<sup>12</sup> OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

May 2022

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Issue date: June 13, 2022

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), 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 **May 1, 2022 through May 31, 2022**.<sup>1</sup> (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).

## QUANTITATIVE REPORT

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	Investigations Resolved	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
May 2021	9	69	4	1	0	0
June 2021	5	74	1	1	0	0
July 2021	10	81	3	0	0	0
August 2021	4	78	7	1	0	0
September 2021	10	81	8	2	0	0
October 2021	15	88	7	0	0	0
November 2021	8	87	11	1	0	0
December 2021	6	87	6	0	1	0
January 2022	4	84	7	1	0	0
February 2022	6	81	9	1	0	0
March 2022	6	73	14	1	0	0
April 2022	10	79	6	1	0	0
May 2022	14	86	6	1	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	14
Informal Complaints <sup>7</sup>	0
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>14</b>

### CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>9</sup>

OIPA	2
BART Police Department	12
<b>TOTAL</b>	<b>14</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During May 2022, **2 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #22-20) (IA2022-029)	Officer #1: • Policy/Procedure • Conduct Unbecoming an Officer	OIPA notified BPD which initiated an investigation.	34
2 (OIPA #22-22) (IA2022-034)	Officer #1: • Performance of Duty	OIPA notified BPD which initiated an investigation.	20

During May 2022, **10 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2022-026)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	39
2 (IA2022-027)	Officers #1-2: • Force	BPD initiated an investigation.	44
3 (IA2022-028)	Employee #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	33
4 (IA2022-030)	Officer #1: • Performance of Duty • Conduct Unbecoming an Officer	BPD initiated an investigation.	32
5 (IA2022-032)	Officers #1-2: • Force	BPD initiated an investigation.	27
6 (IA2022-033)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	24
7 (IA2022-035)	Officer #1: • Force • Bias-Based Policing	BPD initiated an investigation.	20
8 (IA2022-036)	Officers #1-2: • Performance of Duty	BPD initiated an investigation.	18
9 (IA2022-037)	Officer #1: • Force	BPD initiated an investigation.	21
10 (IA2022-038)	Officer #1: • Force  Officer #2: • Bias-Based Policing	BPD initiated an investigation.	13

## COMPLAINTS/INVESTIGATIONS RECEIVED DURING PRIOR REPORTING PERIOD

During April 2022, **1 Citizen Complaint (Formal)** was received by BPD but not previously reported:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2022-031)	Officers #1-2: • Force	BPD initiated an investigation.	53

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During April 2022, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #22-17) (IA2022-022)	Officer addressed subject using a racist term.	Officer #1: • Racial Animus – Unfounded • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Exonerated	60	19

During May 2022, **5 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-036)	Officers refused to assist complainant and ejected complainant from BART property.	Officers #1-2: • Performance of Duty – Unfounded	374	347
2 (IA2021-040)	One officer intentionally struck complainant during a Proof of Payment ejection and one officer spoke aggressively to complainant.	Officer #1: • Force – Exonerated  Officer #2: • Conduct Unbecoming an Officer – Unfounded	367	343
3 (IA2021-044)	Officers improperly detained juvenile for fare evasion, used excessive force during the detention, and did so because of the race of the detainee.	Officers #1-3: • Force – Exonerated • Arrest/Detention – Exonerated • Bias-Based Policing – Unfounded	381	343

4 (IA2021-045)	Officer was rude to complainant.	Officer #1: • Conduct Unbecoming an Officer – Not Sustained	366	342
5 (IA2021-047)	Officer refused to take law enforcement action as requested by complainant.	Officer #1: • Performance of Duty – Exonerated • Policy/Procedure – Unfounded	356	329

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During May 2022, 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	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Oral Counseling <sup>10</sup>
2	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion <sup>11</sup>
3	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion
4	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion

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\*Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).



## ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and 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	8
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	73
Investigations Reviewed During Current Month	20 <sup>†</sup>

<sup>†</sup>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 investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.<sup>12</sup>

<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 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.

<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 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) 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 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.

<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. 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 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).

<sup>7</sup> 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)).

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<sup>8</sup> BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

<sup>9</sup> 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.

<sup>10</sup> Oral Counseling (third level of pre-discipline): An oral counseling may be the next step of the informal process. It is documented in a memorandum to the employee entitled "Oral Counseling." Prior to issuance, the supervisor should discuss the performance or infraction in detail with the employee. The purpose of the discussion is for the employee to be made aware of the unacceptable behavior. An employee who is covered by a collective bargaining agreement and who may be issued an Oral Counseling is entitled to appropriate association representation. An Oral Counseling is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to progressive discipline.

<sup>11</sup> Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

<sup>12</sup> OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

June 2022

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Issue date: July 11, 2022

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), 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 **June 1, 2022 through June 30, 2022.**<sup>1</sup> (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).

## QUANTITATIVE REPORT

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	Investigations Resolved	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
June 2021	5	74	1	1	0	0
July 2021	10	81	3	0	0	0
August 2021	4	78	7	1	0	0
September 2021	10	81	8	2	0	0
October 2021	15	88	7	0	0	0
November 2021	8	87	11	1	0	0
December 2021	6	87	6	0	1	0
January 2022	4	84	7	1	0	0
February 2022	6	81	9	1	0	0
March 2022	6	73	14	1	0	0
April 2022	10	79	6	1	0	0
May 2022	14	86	6	1	0	0
June 2022	8	87	7	1	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	5
Informal Complaints <sup>7</sup>	0
Administrative Investigations	3
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>8</b>

### CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>9</sup>

OIPA	1
BART Police Department	4
<b>TOTAL</b>	<b>5</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During June 2022, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #22-25) (IA2022-043)	Officers #1-3: • Force	OIPA notified BPD which initiated an investigation.	33

During June 2022, **3 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2022-042)	Officer #1: • Force • Conduct Unbecoming an Officer	BPD initiated an investigation.	38
2 (IA2022-045)	Officers #1-2: • Force • Bias-Based Policing  Officer #2: • Performance of Duty	BPD initiated an investigation.	19
3 (IA2022-046)	Employee #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	19

During June 2022, **3 Administrative Investigations** were initiated by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2022-040)	Officers #1-2: • Conduct Unbecoming an Officer • Workplace Discrimination/Harassment	BPD initiated an investigation.	34
2 (IA2022-041)	Officer #1: • Conduct Unbecoming an Officer • Force • Performance of Duty • Policy/Procedure (AXON Camera) • Policy/Procedure	BPD initiated an investigation.	40
3 (IA2022-044)	Officers #1-3: • Policy/Procedure • Performance of Duty  Officer #3: • Conduct Unbecoming an Officer	BPD initiated an investigation.	25

## COMPLAINTS/INVESTIGATIONS RECEIVED DURING PRIOR REPORTING PERIOD

During May 2022, 1 **Citizen Complaint (Formal)** was received by BPD but not previously reported:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2022-039)	Officers #1-4: • Force	BPD initiated an investigation.	48

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During June 2022, 1 **Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #21-15) (IA2021-046)	Officer targeted subjects based on race, improperly detained a subject, used excessive force during a contact, made a racist comment, did not display badge, and did not properly affix a body-worn camera. One supervisor did not properly complete a use of force review.	<p>Officer #1:</p> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Bias-Based Policing – Exonerated</li> <li>• Policy/Procedure (Badge) – Exonerated</li> <li>• Arrest/Detention – Exonerated</li> <li>• Racial Animus – Not Sustained</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Policy/Procedure (AXON Camera) – Sustained</li> </ul> <p>Officer #2:</p> <ul style="list-style-type: none"> <li>• Supervision – Exonerated</li> <li>• Performance of Duty – Exonerated</li> <li>• Policy/Procedure (Report Preparation) – Sustained</li> </ul>	384	351

During June 2022, **4 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-049)	Officers used excessive force during a detention and one officer did so because of the subject's race.	Officers #1-2: • Force – Exonerated  Officer #2: • Bias-Based Policing – Unfounded	376	338
2 (IA2021-050)	One officer targeted subject because of subject's race, two officers improperly detained subject, and one officer did not properly activate a body-worn camera during the detention.	Officer #1: • Policy/Procedure (AXON Camera Activation) – Not Sustained • Policy/Procedure (AXON Camera Test) – Sustained  Officers #2-3: • Arrest/Detention – Exonerated  Officer #3: • Bias-Based Policing – Unfounded	371	351
3 (IA2021-053)	Officers used excessive force during a detention.	Officers #1-5: • Force – Exonerated	360	342
4 (IA2021-054)	Officer inappropriately touched subject and did not properly communicate reason for detention, one officer misgendered subject, and three officers ridiculed subject.	Officer #1: • Performance of Duty – Unfounded • Conduct Unbecoming an Officer (Count1) – Exonerated  Officers #1-3: • Conduct Unbecoming an Officer (Count 2) – Unfounded  Officer #3: • Conduct Unbecoming an Officer (Count 3) – Exonerated	357	325

During June 2022, **2 Administrative Investigations** were concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2021-033)	Service Review for The Commission on Accreditation for Law Enforcement Agencies (CALEA®)* related to maintenance of evidence.	BPD: <ul style="list-style-type: none"> <li>Evidence Handling – Training Recommendation</li> </ul>	446	408
2 (IA2021-048)	Officers improperly detained subject, one officer used excessive force and did not properly document the use of force, and a supervisor approved an inaccurate report.	Officer #1: <ul style="list-style-type: none"> <li>Force – Not Sustained</li> <li>Performance of Duty – Not Sustained</li> </ul> Officers #1-2: <ul style="list-style-type: none"> <li>Arrest/Detention – Exonerated</li> </ul> Officer #3: <ul style="list-style-type: none"> <li>Performance of Duty – Exonerated</li> </ul>	375	344

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During June 2022, 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	Officer generated an inaccurate report.	Officer #1: <ul style="list-style-type: none"> <li>Policy/Procedure</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>Non-Documented</li> </ul>
2	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> <li>Policy/Procedure (AXON Camera)</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>Letter of Discussion<sup>10</sup></li> </ul>
3	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> <li>Policy/Procedure (AXON Camera)</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>Letter of Discussion</li> </ul>

\* The CALEA Accreditation programs provide public safety agencies with an opportunity to voluntarily meet an established set of professional standards.

†Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).



4	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion
5	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: Letter of Discussion
6	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: Letter of Discussion

## ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and 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	7
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	73
Investigations Reviewed During Current Month	18†

†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.<sup>11</sup> The OIPA Monthly Report will reflect information regarding monitored cases with detail not to exceed that which is allowable under state law. In recent months, OIPA identified the following areas for improved performance and conveyed recommendations to BPD. The Chief of Police and senior staff responded by discussing and addressing the issues and implementing certain changes. Summarized below are the results of reviews conducted by OIPA, including reviews of Supervisor use of Force Reports and Internal Affairs investigations. Most of these reviews were conducted and discussed with BPD prior to the current reporting period but have not been previously reported by OIPA.

### Purged Disciplinary Memoranda

In one instance, OIPA noted that a disciplinary memo that was included in the Internal Affairs database (IAPro) had been purged from the record. It was OIPA's opinion at the time that the document was purged earlier than required by the existing Collective Bargaining Agreement (CBA) between the officers' unions (BART Police Officers' Association and BART Police Managers' Association) and BART management.

During a discussion with OIPA about this issue, Chief Alvarez and Lieutenant Tania Salas, who heads the BPD Internal Affairs Bureau (IA), pledged to maintain disciplinary memos in the IAPro record in keeping with the requirements of the CBA.

Subsequently, OIPA became aware that the Chief typically exercises discretion in determining the duration for which disciplinary memoranda will be maintained in an employee's file. The CBA provides, for example, that a Written Reprimand be maintained for "up to 3 years." The Chief, however, may elect to purge that record from IAPro and from the officers' personnel file after any duration that he deems appropriate, though this authority is not specifically acknowledged in the CBA.<sup>‡</sup>

Historically, when OIPA recommends discipline, and when that recommendation is approved by the BPCRB as required by the BART Citizen Oversight Model (Model), our expectation has been that the memo will be maintained in the database and the personnel file for the full allowable duration under the CBA. Because BPD employees are subject to a progressive disciplinary system, the maintenance of prior discipline is a key component of the conceived escalation of discipline for subsequent sustained allegations. In this instance, the purged memo could not be retrieved, and any subsequent discipline would be imposed absent consideration of the prior violation.

Because the language of the existing CBA permits the Chief to purge the record after any duration, OIPA will submit more specific recommendations for discipline such that they include the amount of time that the associated record and memoranda will be maintained in the subject officer's file so that both IA and OIPA can reference and rely on prior sustained allegations more consistently.

The Chief maintains his authority to minimize the purge duration at his discretion when applying discipline recommended by Internal Affairs, and the Chief maintains his option to appeal OIPA findings and recommendations approved by the BPCRB. Where the Chief exercises his right to appeal under the Model, the final decision will be made by the BART General Manager.

### **Deletion of Misconduct Allegations**

OIPA identified an instance in which an Internal Affairs investigator deleted an allegation of an improper search from the IAPro record, even though the complainant specifically objected to the search during the intake interview. Without acknowledging that this was an error or identifying any means by which to avoid similar deletions in the future, IA updated the record to include this allegation.

OIPA also identified an instance in which an Internal Affairs investigator deleted an allegation of Bias-Based Policing from the IAPro record, even though this was the sole allegation included in the Complaint Intake form submitted to IA by a BPD Sergeant. The Bias-Based Policing allegation was changed to a Performance of Duty allegation without further explanation. OIPA requested that BPD replace the Performance of Duty allegation with the Bias-Based Policing allegation so that required reporting about complaints would remain accurate. OIPA also recommended that BPD ensure that IA investigators refrain from changing allegations without discussion with the supervising IA Lieutenant going forward. As of this writing the sole listed allegation remains as Performance of Duty despite OIPA's request for adjustment.

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<sup>‡</sup> During this discussion with OIPA, Chief Alvarez and Lt. Salas did not express a differing understanding of the CBA requirements, instead pledging only to maintain documentation in compliance with the CBA. There was an opportunity for the Department to defend the allegedly premature purging of records by explaining its position that the application of discretion by the Chief was allowable under the CBA, but this position was not expressed until months later during an arbitration at which both the Chief and the Lieutenant testified and at which the Independent Police Auditor was present.

### **Proper Notice to Subject Officers**

OIPA noted that a subject officer in an IA investigation did not receive an accurate notice of the IA investigation and the related allegations of misconduct. OIPA recommended that the officer be properly notified in writing. As a result of the inquiry by OIPA, IA recognized that it had improperly identified the subject officer, who was subsequently removed as a subject of the investigation, and they resolved the matter by properly notifying the correct subject officer of the ongoing investigation and the allegations of misconduct.

Relatedly, OIPA recommended that the use of force review process include better documentation of the reason(s) that a supervisory review is elevated to an administrative misconduct investigation. Chief Alvarez indicated that this recommendation would be taken under advisement.

### **Supervisor Use of Force Review**

During review of a use of force that occurred on a station platform, OIPA noted deficiencies in the Supervisor Use of Force Report. Specifically, OIPA believed that it was inappropriate for the responding supervisor to determine that the type and amount of force was within BPD policy prior to reviewing the only available video footage of the contact.

BPD noted that the supervisor may have felt pressure to complete the review and generate a report within 24 hours, as was the requirement at the time. Subsequently, Chief Alvarez and BPD command staff provided additional training to the involved supervisor and changed the Department's practice to allow supervisors one full week to finalize their review completely and more thoroughly. This new requirement allows supervisors more time to request and review station video, including in instances where body worn camera video may be unavailable.

In another instance, a supervisor conducted a use of force review and completed a Supervisor Use of Force Report in which the supervisor noted that the subject officer's body-worn camera was not properly or timely activated and did not capture the entire contact. Though this is an apparent violation of BPD policy, the supervisor wrote that this failure was "addressed" with the officer.

As a result of the conversation between BPD and OIPA, this supervisor was counseled by a Deputy Chief and assigned to revise the report, which has now been completed. The policy violation was properly addressed, and the subject officer received discipline for the late camera activation.

### **IA Complaint Categories**

During the normal course of our review, OIPA identified one case illustrating that the criteria by which IA categorizes a complaint as "Formal" or "Informal" remains unclear and undocumented. There are no written instructions for IA investigators which define the differences between these two approaches to resolving complaints within IA.

Additionally in connection with the above complaint, OIPA noted that the complainant was informed that IA would conduct an investigation, but the complainant was not informed that the complaint would be categorized as "Informal." Because the complainant did not agree to the informal investigative approach, the decision to resolve the complaint in this way was made unilaterally by the assigned IA investigator, based on unclear criteria. IA asserted that investigators apply certain

criteria to determine whether a complaint is “Formal” or “Informal.” Those criteria are not listed in any policy language and are applied at the discretion of IA personnel.<sup>§</sup>

OIPA requested a discussion with the Chief and the IA Lieutenant to clarify the criteria and process for categorizing complaints as Formal or Informal. OIPA also recommended that BPD policy be revised to include the criteria for categorization. BPD responded by explaining that each complaint would be evaluated based on the specific facts and circumstances of the complaint and the underlying law enforcement activity, and that going forward, the decision would be made by the IA Lieutenant and not the assigned investigator. The Chief advised OIPA that per BPD policy, Force and Bias complaints “shall” be formal investigations, while “Informal” investigations are designated based on departmental “past practice.”

### **IA Investigative Processes**

While reviewing transcripts and audio recordings of interviews conducted by IA investigators, OIPA has occasionally identified instances in which the interviewer poses leading questions, where an answer is embedded in the inquiry. This approach does not represent the objective approach that is appropriate for any investigative interview. OIPA requested that IA investigators receive additional guidance advising them that including an answer in a question creates the appearance that the investigation is not objective. A lack of objectivity in internal investigations undermines confidence in the investigative process and outcome, which does not align with a commitment to progressive policing practices. The IA Lieutenant acknowledged that she continues to provide training and instruction to IA investigators to avoid using this method during interviews. OIPA will continue to identify these instances and bring them to the attention of the IA Lieutenant as necessary going forward.

In another case, the findings in an IA investigative report appeared to have been reached without reconciliation of inconsistent assertions within the report. Specifically, the IA investigator opined that the subject officer used no force during a detention, while the subject officer’s written narrative described using some (“very little”) force to effect the detention. This inconsistency remains unresolved, and the report has not yet been revised to resolve the inconsistency.\*\*

In the same case, OIPA determined that the underlying supervisory use of force review inaccurately indicated that two subject officers activated their body-worn cameras prior to engaging the subject and applying force. The entire contact was not captured in the buffering period of the recording as required to avoid disciplinary action. Nevertheless, the officers were not disciplined for the policy violation, nor did BPD generate a record in the IAPro database reflecting the policy violation and/or any action taken by the department. The final IA investigative report did not fully or appropriately address this policy violation. That report asserts that the subject officers’ body-worn cameras were activated in a timely manner, although the recordings were reviewed and referenced as part of the investigative process.

OIPA recommended that both officers receive appropriate discipline for the failure, that the supervisor’s use of force review be revised to remove the inaccurate assertion, and that the

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<sup>§</sup> OIPA does not differentiate between Formal and Informal complaints, treating every complaint equally and conducting a thorough investigation to reach our investigative conclusions as to each allegation of misconduct.

\*\* OIPA did not have concerns that the ultimate determination about the use of force was inaccurate. OIPA believes that the finding reached was appropriate given the facts and circumstances of the contact.

supervisor be promptly advised that the inclusion of inaccurate information in a report is a potential violation of BPD policy. As of this writing, neither officer has received any discipline, the IAPro database does not reflect that the violation occurred, and the supervisor's report remains unrevised or amended.<sup>††</sup> As a result, reporting about the number and type of misconduct allegations received and resolved by IA has been and remains inaccurate.

OIPA believes that the imposition of appropriate discipline in connection with policy violations is intended, in part, to discourage future transgressions. Here, one of the officers who did not properly activate their camera on this occasion has been sustained for similar violations 3 times in the 13 months following the completion of this IA investigation, indicating that the seriousness of the violation was not properly conveyed by the Department to prevent these similar, subsequent violations and indicating that the progressive disciplinary system was not properly applied.

### **Going Forward**

As a matter of practice, OIPA is constantly seeking areas for improvement in policing practices, policy, and accountability processes. OIPA has and will continue to bring these items to the attention of the Chief, who has consistently made himself available for in-depth and detailed discussions about any issues detected and has also been appropriately responsive to OIPA recommendations in most instances. This level of communication allows for prompt remedial action where appropriate and allows the Department to address any systemic or specific concerns which is in keeping with both the progressive approach to policing and to the ongoing efforts toward improvement of the Department and toward increasing public safety and enhancing community trust and confidence.

### **OIPA Policy Work – Excited Delirium**

On June 14, 2021, the American Medical Association (AMA) issued a press release adopting a policy opposing “excited delirium” as an official medical diagnosis. AMA referred to studies showing that the term has been misapplied and diagnosed disproportionately in connection with law enforcement-related deaths of Black and Brown individuals, who are also more likely to experience excessive sedative intervention instead of behavioral de-escalation.

As a response to these findings and in effort toward improving racial equity, OIPA presented proposed policy recommendations to the BART Police Citizens Review Board (BPCRB). In the proposal, OIPA recommended that BPD remove the term from the BPD Policy Manual and issue a departmental bulletin informing BPD employees of the change.

The BPCRB endorsed the recommendations presented by OIPA and on June 21, 2022, Chief Edgardo Alvarez issued BPD Bulletin 22-238, stating that BPD personnel shall refrain from the use of the term “excited delirium” in all written reports. This policy change affirms BPD’s commitment to “continuous improvement through policy changes and ongoing training that exceeds industry standards.” The updated BPD policy is expected to be provided to the BPCRB for their review at an upcoming regular meeting.

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<sup>††</sup> The BPD supervisor noted that the officers were conducting a Welfare Check, and the supervisor explained to the officers that although BPD policy does not require camera activation prior to or during a Welfare Check, it is recommended that they do activate during such contacts. OIPA agrees, and we believe that because Welfare Checks can reasonably be expected to develop into law enforcement contacts on some occasions, some of which may involve force and some resulting in misconduct complaints, it is prudent to activate the camera in these situations.

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<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 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.

<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 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) 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 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.

<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. 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 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).

<sup>7</sup> 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)).

<sup>8</sup> BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

<sup>9</sup> 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.

<sup>10</sup> Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

<sup>11</sup> OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

July 2022

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Issue date: August 8, 2022

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), 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 **July 1, 2022 through July 31, 2022**.<sup>1</sup> (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).

## QUANTITATIVE REPORT

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	Investigations Resolved	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
July 2021	10	81	3	0	0	0
August 2021	4	78	7	1	0	0
September 2021	10	81	8	2	0	0
October 2021	15	88	7	0	0	0
November 2021	8	87	11	1	0	0
December 2021	6	87	6	0	1	0
January 2022	4	84	7	1	0	0
February 2022	6	81	9	1	0	0
March 2022	6	73	14	1	0	0
April 2022	10	79	6	1	0	0
May 2022	14	86	6	1	0	0
June 2022	8	87	7	1	0	0
July 2022	10	91	5	0	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	10
Informal Complaints <sup>7</sup>	0
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>10</b>

### CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>9</sup>

OIPA	3
BART Police Department	7
<b>TOTAL</b>	<b>10</b>



## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During July 2022, **3 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #22-27) (IA2022-050)	Officers #1-3: <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest/Detention</li> <li>• Conduct Unbecoming an Officer</li> </ul> Officers #2-3: <ul style="list-style-type: none"> <li>• Policy/Procedure (Documentation)</li> </ul>	OIPA notified BPD which initiated an investigation.	33
2 (OIPA #22-28) (IA2022-055)	Officer #1: <ul style="list-style-type: none"> <li>• Truthfulness</li> </ul>	OIPA notified BPD which initiated an investigation.	21
3 (OIPA #22-29) (IA2022-056)	Officers #1-4: <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul>	OIPA notified BPD which initiated an investigation.	9

During July 2022, **5 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2022-049)	Officers #1-2: <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Conduct Unbecoming an Officer</li> <li>• Policy/Procedure (AXON Camera)</li> </ul>	BPD initiated an investigation.	37
2 (IA2022-051)	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	38
3 (IA2022-052)	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	26
4 (IA2022-053)	Officers #1-6: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	34
5 (IA2022-054)	Officer #1: <ul style="list-style-type: none"> <li>• Courtesy</li> </ul>	BPD initiated an investigation.	18

## COMPLAINTS/INVESTIGATIONS RECEIVED DURING PRIOR REPORTING PERIOD

During June 2022, **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 (IA2022-047)	Officers #1-4: • Force	BPD initiated an investigation.	39
2 (IA2022-048)	Officer #1: • Performance of Duty • Conduct Unbecoming an Officer	BPD initiated an investigation.	46

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During July 2022, **5 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-056)	Officers used excessive force during a detention.	Officer #1: • Force – Exonerated	378	344
2 (IA2021-057)	One employee targeted subject because of subject's race and sexual orientation and the employee was rude to the complainant.	Employee #1: • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded	376	349
3 (IA2021-058)	Officer contacted complainant based on complainant's race, officers used excessive force during the detention, one officer's report did not accurately reflect officer's actions, and one supervisor failed to properly address complaints of misconduct.	Officers #1-3: • Force – Exonerated  Officer#1: • Performance of Duty – Not Sustained  Officer #2: • Bias-Based Policing – Unfounded  Officer #3: • Performance of Duty – Sustained	371	339
4 (IA2021-061)	Officer contacted and harassed complainant based on complainant's race.	Officer #1: • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Not Sustained	354	339

5 (IA2021-065)	Officers used excessive force during a detention.	Officers #1-2: • Force – Exonerated	322	297
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## DISCIPLINE ISSUED DURING REPORTING PERIOD

During July 2022, 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	Supervisor did not properly address a misconduct complaint.	Officer #1: • Performance of Duty	Officer #1: • Oral Counseling <sup>10</sup>

## ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and 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	7
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	75
Investigations Reviewed During Current Month	12†

†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.<sup>11</sup> The OIPA Monthly Report will reflect information regarding monitored cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.

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<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 departments."

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\*Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

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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.

<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 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) 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 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.

<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. 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 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).

<sup>7</sup> 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)).

<sup>8</sup> BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

<sup>9</sup> 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.

<sup>10</sup> Oral Counseling (third level of pre-discipline): An oral counseling may be the next step of the informal process. It is documented in a memorandum to the employee entitled "Oral Counseling." Prior to issuance, the supervisor should discuss the performance or infraction in detail with the employee. The purpose of the discussion is for the employee to be made aware of the unacceptable behavior. An employee who is covered by a collective bargaining agreement and who may be issued an Oral Counseling is entitled to appropriate association representation. An Oral Counseling is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to progressive discipline.

<sup>11</sup> OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

August 2022

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Issue date: September 12, 2022

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), 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 **August 1, 2022 through August 31, 2022**.<sup>1</sup> (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).

## QUANTITATIVE REPORT

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	Investigations Resolved	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
August 2021	4	78	7	1	0	0
September 2021	10	81	8	2	0	0
October 2021	15	88	7	0	0	0
November 2021	8	87	11	1	0	0
December 2021	6	87	6	0	1	0
January 2022	4	84	7	1	0	0
February 2022	6	81	9	1	0	0
March 2022	6	73	14	1	0	0
April 2022	10	79	6	1	0	0
May 2022	14	86	6	1	0	0
June 2022	8	87	7	1	0	0
July 2022	10	91	5	0	0	0
August 2022	10	85	17	2	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	10
Informal Complaints <sup>7</sup>	0
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>10</b>

### CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>9</sup>

OIPA	1
BART Police Department	9
<b>TOTAL</b>	<b>10</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During August 2022, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #22-30) (IA2022-063)	Officers #1-2: <ul style="list-style-type: none"> <li>• Arrest/Detention</li> <li>• Policy/Procedure</li> </ul>	OIPA notified BPD which initiated an investigation.	26

During August 2022, **9 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2022-057)	Officers #1-2: <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	38
2 (IA2022-058)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	42
3 (IA2022-059)	Officers #1-2: <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Arrest/Detention</li> <li>• Force</li> </ul> Officer #2: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	34
4 (IA2022-060)	Officer #1: <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	35
5 (IA2022-061)	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	33
6 (IA2022-062)	Officer #1: <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	32
7 (IA2022-064)	Officers #1-2: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	23
8 (IA2022-065)	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	24
9 (IA2022-066)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> <li>• Performance of Duty</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	21

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During August 2022, **2 Citizen Complaints** were concluded by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #21-19) (IA2021-074)	Officers improperly detained subjects and used excessive force and did so because of the subjects' race.	Officers #1-4: <ul style="list-style-type: none"> <li>• Arrest/Detention – Exonerated</li> <li>• Force – Exonerated</li> <li>• Policy/Procedure (Report Writing) – Sustained</li> </ul>	346	325
1 (OIPA #22-01) (IA2022-002)	Officers did not provide aid to a person in distress.	Unknown Officers: <ul style="list-style-type: none"> <li>• Performance of Duty – Administratively Closed</li> </ul>	251	233

During August 2022, **11 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2022-032)	Officers used excessive force during a detention.	Unknown Officers: Force – Administratively Closed <sup>10</sup>	118	105
2 (IA2022-026)	Officer solicited personal relationships while on duty, harassed complainant, and used inappropriate and offensive language.	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer (Offensive Comments) – Sustained</li> <li>• Conduct Unbecoming an Officer (Unwelcomed Solicitation) – Sustained</li> <li>• Performance of Duty – Sustained</li> </ul>	130	112
3 (IA2022-014)	Unnamed officers participated in illicit activities.	Unknown Officers: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Administratively Closed</li> </ul>	182	169
4 (IA2021-095)	Officers failed to interview a witness during an administrative investigation.	Officers #1-2: <ul style="list-style-type: none"> <li>• Performance of Duty – Administratively Closed</li> </ul>	322	303
5 (IA2021-079)	Officer used excessive force and failed to advise the complainant that they were detained.	Officers #1-2: <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Detention – Unfounded</li> </ul>	334	321
6 (IA2021-073)	Officer used excessive force.	Officer #1: <ul style="list-style-type: none"> <li>• Force – Exonerated</li> </ul>	343	311



7 (IA2021-069)	Employee selected complainant for Proof of Payment enforcement because of complainant's race and gender, and employee was aggressive during the contact.	Employee #1: <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	350	318
8 (IA2021-066)	Officer targeted complainant for fare evasion enforcement while allowing others to evade, officer did so because of complainant's race, and officer tried to intimidate complainant.	Officer #1: <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Performance of Duty – Exonerated</li> </ul>	355	321
9 (IA2021-064)	Officers used excessive force.	Officers #1-2: <ul style="list-style-type: none"> <li>• Force – Exonerated</li> </ul>	357	344
10 (IA2021-063)	Officer used excessive force.	Officer #1: <ul style="list-style-type: none"> <li>• Force – Exonerated</li> </ul>	361	342
11 (IA2021-068)	Officer was rude to complainant.	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	363	329

During August 2022, **1 Administrative Investigation** was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2021-062)	Officer used excessive force.	Officer #1: <ul style="list-style-type: none"> <li>• Force – Exonerated</li> </ul>	375	355

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING PREVIOUS REPORTING PERIODS

During July 2022, **3 Citizen Complaints** were concluded by BPD but were not previously reported:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-055)	Officer harassed complainant.	Officer #1: • Conduct Unbecoming an Officer – Not Sustained	418	351
2 (IA2021-059)	Officer used excessive force.	Officer #1: • Force – Not Sustained	392	346
3 (IA2021-060)	Officer used excessive force and harassed complainant.	Officer #1: • Force – Not Sustained	394	349

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During August 2022, 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	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera) •	Officer #1: Letter of Discussion <sup>11</sup>
2	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: Letter of Discussion

\*Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

## ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and 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	9
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	75
Investigations Reviewed During Current Month	12 <sup>†</sup>

<sup>†</sup>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.<sup>12</sup> The OIPA Monthly Report will reflect information regarding monitored cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.

<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 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.

<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 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) 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 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.

<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. 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 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).

<sup>7</sup> 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)).

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<sup>8</sup> BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

<sup>9</sup> 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.

<sup>10</sup> Administrative Closure is defined as follows in the BPD Policy Manual: 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.

<sup>11</sup> Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

<sup>12</sup> OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

September 2022

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Issue date: November 14, 2022

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), 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, 2022 through September 30, 2022**. <sup>1</sup> (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).

## QUANTITATIVE REPORT

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	Investigations Resolved	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
September 2021	10	81	8	2	0	0
October 2021	15	88	7	0	0	0
November 2021	8	87	11	1	0	0
December 2021	6	87	6	0	1	0
January 2022	4	84	7	1	0	0
February 2022	6	81	9	1	0	0
March 2022	6	73	14	1	0	0
April 2022	10	79	6	1	0	0
May 2022	14	86	6	1	0	0
June 2022	8	87	7	1	0	0
July 2022	10	91	5	0	0	0
August 2022	10	85	17	2	0	0
September 2022	11	90	7	0	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	10
Informal Complaints <sup>7</sup>	0
Administrative Investigations	1
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>11</b>

### CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>9</sup>

OIPA	2
BART Police Department	8
<b>TOTAL</b>	<b>10</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During September 2022, **2 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #22-32) (IA2022-070)	Officers #1-2: <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Policy/Procedure</li> </ul>	OIPA notified BPD which initiated an investigation.	69
2 (OIPA #22-34) (IA2022-076)	Officers #1-5: <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest/Detention</li> <li>• Policy/Procedure</li> <li>• Courtesy</li> <li>• Conduct Unbecoming an Officer</li> </ul>	OIPA initiated an investigation.	46

During September 2022, **9 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2022-067)	Officers #1-3: <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> </ul>	BPD initiated an investigation.	74
2 (IA2022-068)	Officers #1-4: <ul style="list-style-type: none"> <li>• Force</li> <li>• Bias-Based Policing</li> </ul>	BPD initiated an investigation.	73
3 (IA2022-069)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	70
4 (IA2022-071)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest/Detention</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	62
5 (IA2022-072)	Officers #1-2: <ul style="list-style-type: none"> <li>• Force</li> <li>• Bias-Based Policing</li> </ul>	BPD initiated an investigation.	56
6 (IA2022-073)	Officer #1: <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul> Officers #1-3: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	48
7 (IA2022-074)	Officer #1: <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	52
8 (IA2022-077)	Officers #1-2: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	45

During September 2022, **1 Administrative Investigation** was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2022-075)	Officer #1: • Policy/Procedure	BPD initiated an investigation.	47

### COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During September 2022, **6 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2022-048)	Officer operated a Department vehicle in an unsafe manner.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral. <sup>10</sup> • Performance of Duty – Supervisor Referral	144	76
2 (IA2022-034)	Officer operated a Department vehicle in an unsafe manner.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral.	194	131
3 (IA2021-084)	Employees failed to take action during the commission of a crime.	Employees #1-2: • Performance of Duty – Unfounded	389	334
4 (IA2021-077)	Officers failed to interview a witness during an administrative investigation.	Officers #1-3: • Bias-Based Policing – Unfounded	398	338
5 (IA2021-067)	Employee followed and watched complainant due to complainant's race and gender.	Employee #1: • Bias-Based Policing – Unfounded	418	351
6 (IA2021-070)	Officers used excessive force.	Officers #1-2: Force – Exonerated	416	341

During September 2022, **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 (IA2022-029)	Officer operated a Department vehicle in an unsafe manner.	Officer #1: • Conduct Unbecoming – Supervisor Referral	188	133



## DISCIPLINE ISSUED DURING REPORTING PERIOD

During September 2022, 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	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Report Writing)	Officer #1: Letter of Discussion <sup>11</sup>
2	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: Letter of Discussion
3	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: Oral Counseling <sup>12</sup>
4	Officer was involved in a preventable vehicle collision.	Officer #1: • Policy/Procedure	Officer #1: Letter of Discussion
5	Officer was involved in a preventable vehicle collision.	Officer #1: • Policy/Procedure	Officer #1: Letter of Discussion

## ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and 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	7
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	75
Investigations Reviewed During Current Month	10†

†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.<sup>13</sup> The OIPA Monthly Report will reflect information regarding monitored cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.

\*Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

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<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 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.

<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 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) 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 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.

<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. 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 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).

<sup>7</sup> 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)).

<sup>8</sup> BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

<sup>9</sup> 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.

<sup>10</sup> A Supervisor 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 IAB.

<sup>11</sup> Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

<sup>12</sup> Oral Counseling (third level of pre-discipline): An oral counseling may be the next step of the informal process. It is documented in a memorandum to the employee entitled "Oral Counseling." Prior to issuance, the supervisor should discuss the performance or infraction in detail with the employee. The purpose of the discussion is for the employee to be made aware of the unacceptable behavior. An employee who is covered by a collective bargaining agreement and who may be issued an Oral Counseling is entitled to appropriate association representation. An Oral Counseling is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to progressive discipline.

<sup>13</sup> OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

October 2022

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Issue date: January 9, 2023

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), 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 **October 1, 2022 through October 31, 2022**.<sup>1</sup> (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).

## QUANTITATIVE REPORT

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	Investigations Resolved	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
October 2021	15	88	7	0	0	0
November 2021	8	87	11	1	0	0
December 2021	6	87	6	0	1	0
January 2022	4	84	7	1	0	0
February 2022	6	81	9	1	0	0
March 2022	6	73	14	1	0	0
April 2022	10	79	6	1	0	0
May 2022	14	86	6	1	0	0
June 2022	8	87	7	1	0	0
July 2022	10	91	5	0	0	0
August 2022	10	85	17	2	0	0
September 2022	11	90	7	0	0	0
October 2022	5	82	13	1	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	5
Informal Complaints <sup>7</sup>	0
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>5</b>

### CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>9</sup>

OIPA	1
BART Police Department	4
<b>TOTAL</b>	<b>5</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During October 2022, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #22-35) (IA2022-080)	Officers #1-2: <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Performance of Duty</li> <li>• Policy/Procedure</li> </ul>	OIPA initiated an investigation.	87

During October 2022, **4 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2022-079)	Employee #1: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	87
2 (IA2022-081)	Officers #1-2: <ul style="list-style-type: none"> <li>• Arrest/Detention</li> <li>• Force</li> </ul>	BPD initiated an investigation.	83
3 (IA2022-084)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	77
4 (IA2022-085)	Officers #1-2: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	76

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During October 2022, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #21-24) (IA2021-086)	Officers improperly detained subjects and used excessive force and did so because of the subjects' race.	<p>Officer #1:</p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Sustained</li> <li>• Policy/Procedure (De-escalation) – Sustained</li> <li>• Policy/Procedure (Cooperation with Investigations) – Sustained</li> </ul> <p>Officers #1-2:</p> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> </ul> <p>Officer #3:</p> <ul style="list-style-type: none"> <li>• Policy/Procedure (Supervisor Responsibility) – Exonerated</li> </ul>	434	345

During October 2022, **9 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-083)	Officers used excessive force and did so because of complainant's race.	<p>Officers #1-2:</p> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> </ul>	451	356
2 (IA2021-085)	Officer operated a Department vehicle in an unsafe manner.	<p>Officers #1-3:</p> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> <li>• Arrest/Detention – Exonerated</li> </ul>	440	351
3 (IA2021-088)	Officers used excessive force during an improper detention.	<p>Officer #1:</p> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Arrest/Detention – Exonerated</li> </ul>	435	353
4 (IA2021-089)	Officer used excessive force.	<p>Officer #1:</p> <ul style="list-style-type: none"> <li>• Force – Not Sustained</li> </ul>	434	358
5 (IA2021-090)	Officer used excessive force and did so because of complainant's race.	<p>Officer #1:</p> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> </ul>	427	352

6 (IA2021-091)	Officer failed to eject a passenger who violated the BART Code of Conduct.	Unknown Officer #1: • Performance of Duty – Administratively Closed <sup>10</sup>	423	342
7 (IA2021-093)	Officers improperly detained a subject.	Officers #1-2: • Arrest/Detention – Exonerated	425	344
8 (IA2021-096)	Officer used excessive force and did so because of complainant's race.	Officer #1: • Force – Exonerated • Bias-Based Policing – Unfounded	397	321
9 (IA2021-102)	Officer failed to take appropriate law enforcement action.	Officer #1: • Performance of Duty – Unfounded	446	350

During October 2022, **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 (IA2022-028)	Employee was rude and discourteous during a fare inspection.	Employee #1: • Conduct Unbecoming an Officer – Supervisor Referral. <sup>11</sup>	243	155

During October 2022, **2 Administrative Investigations** were concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2021-087)	Officer did not fully perform investigative duties, was untruthful in related documentation and was untruthful when questioned about the alleged misconduct.	Officer #1: • Truthfulness – Sustained • Performance of Duty – Sustained • Conduct Unbecoming an Officer – Sustained	434	336
2 (IA2021-078)	One employee made rude and/or disrespectful comments to complainant and mimicked an Asian dialect and another employee laughed at complainant in connection with the above conduct.	Employees #1-2: • Bias-Based Policing – Not Sustained • Conduct Unbecoming an Officer – Not Sustained	451	361

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During October 2022, 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	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Report Writing)	Officer #1: • Letter of Discussion <sup>12</sup>
2	Officer was involved in a preventable vehicle collision.	Officer #1: • Policy/Procedure	Officer #1: • Written Reprimand <sup>13</sup>
3	Officer did not fully perform investigative duties, was untruthful in related documentation and was untruthful when questioned about the alleged misconduct.	Officer #1: • Truthfulness • Conduct Unbecoming an Officer • Performance of Duty	Officer #1: • Skelly Notice Issued for Formal Discipline <sup>14</sup>

## ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and 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	7
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	70
Investigations Reviewed During Current Month	15†

†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.<sup>15</sup> The OIPA Monthly Report will reflect information regarding monitored cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.

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<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 departments." As complaints received by the BART Police Citizen Review Board are customarily directed to OIPA for further action, such

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\*Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).



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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.

<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 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) 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 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.

<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. 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 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).

<sup>7</sup> 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)).

<sup>8</sup> BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

<sup>9</sup> 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.

<sup>10</sup> Administrative Closure is defined as follows in the BPD Policy Manual: 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.

<sup>11</sup> A Supervisor 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 IAB.

<sup>12</sup> Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual).

<sup>13</sup> A Written Reprimand is the first level of formal discipline and may be warranted if informal pre-discipline does not correct the conduct, attendance, work performance or the violation is of such a nature to warrant formal discipline. (BPD Policy Manual).

<sup>14</sup> The "Skelly" pre-discipline process is intended to provide the employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. (BPD Policy Manual).

<sup>15</sup> OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

November 2022

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Issue date: February 13, 2023

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), 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 **November 1, 2022 through November 30, 2022**. <sup>1</sup> (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).

## QUANTITATIVE REPORT

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	Investigations Resolved	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
November 2021	8	87	11	1	0	0
December 2021	6	87	6	0	1	0
January 2022	4	84	7	1	0	0
February 2022	6	81	9	1	0	0
March 2022	6	73	14	1	0	0
April 2022	10	79	6	1	0	0
May 2022	14	86	6	1	0	0
June 2022	8	87	7	1	0	0
July 2022	10	91	5	0	0	0
August 2022	10	85	17	2	0	0
September 2022	11	90	7	0	0	0
October 2022	5	82	13	1	0	0
November 2022	5	84	3	1	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	5
Informal Complaints <sup>7</sup>	0
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>5</b>

### CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>9</sup>

OIPA	1
BART Police Department	4
<b>TOTAL</b>	<b>5</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During November 2022, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #22-37) (IA2022-088)	Officers #1-3: <ul style="list-style-type: none"> <li>• Force</li> <li>• Bias-Based Policing</li> <li>• Arrest/Detention</li> </ul> Officers #1-4: <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul> Officers #1&4: <ul style="list-style-type: none"> <li>• Courtesy</li> </ul> Officers #1-2: <ul style="list-style-type: none"> <li>• Search/Seizure</li> </ul>	OIPA notified BPD which initiated an investigation.	95

During November 2022, **4 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2022-086)	Officers #1-2: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	102
2 (IA2022-087)	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	102
3 (IA2022-089)	Officers #1-2: <ul style="list-style-type: none"> <li>• Arrest/Detention</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	88
4 (IA2022-094)	Officers #1-2: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	75

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During November 2022, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #21-24) (IA2021-086)	Officers improperly detained complainant and did not provide badge numbers upon request.	Officers #1-2: • Arrest/Detention – Exonerated  Officer #1: • Policy/Procedure – Unfounded  Officer #2: • Policy/Procedure – Exonerated	368	277

During November 2022, **2 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-092)	Officer improperly detained and searched complainant and used excessive force during the detention.	Officer #1: • Force – Exonerated • Arrest/Detention – Unfounded • Search/Seizure – Unfounded	454	351
2 (IA2022-003)	Officer was unprofessional and argumentative.	Officers #1-3: • Conduct Unbecoming an Officer – Unfounded	383	288

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During November 2022, 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	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion <sup>10</sup>

\*Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

2	Officer made inappropriate suggestive comments during unwelcome sexual solicitation of complainant while on duty.	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer (Offensive Comments)</li> <li>• Conduct Unbecoming an Officer (Unwelcomed Solicitation)</li> <li>• Performance of Duty</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>• Termination<sup>11</sup></li> </ul>
3	Officer did not fully perform investigative duties, was untruthful in related documentation and was untruthful when questioned about the alleged misconduct.	Officer #1: <ul style="list-style-type: none"> <li>• Truthfulness</li> <li>• Conduct Unbecoming an Officer</li> <li>• Performance of Duty</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>• Skelly Notice Issued for Formal Discipline<sup>12</sup></li> </ul>

**ADDITIONAL NOTES**

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and 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	7
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	75
Investigations Reviewed During Current Month	8†

†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.<sup>13</sup> The OIPA Monthly Report will reflect information regarding monitored cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.

<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 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.

<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 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) 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 BART Police Citizen Review Board. It therefore includes

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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. 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 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).

<sup>7</sup> 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)).

<sup>8</sup> BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

<sup>9</sup> 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.

<sup>10</sup> Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual).

<sup>11</sup> Termination is the final level of Progressive Discipline. (BPD Policy Manual).

<sup>12</sup> The "Skelly" pre-discipline process is intended to provide the employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. (BPD Policy Manual).

<sup>13</sup> OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

December 2022

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Issue date: February 13, 2023



This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), 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 **December 1, 2022 through December 31, 2022.** <sup>1</sup> (The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).

## QUANTITATIVE REPORT

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	Investigations Resolved	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
December 2021	6	87	6	0	1	0
January 2022	4	84	7	1	0	0
February 2022	6	81	9	1	0	0
March 2022	6	73	14	1	0	0
April 2022	10	79	6	1	0	0
May 2022	14	86	6	1	0	0
June 2022	8	87	7	1	0	0
July 2022	10	91	5	0	0	0
August 2022	10	85	17	2	0	0
September 2022	11	90	7	0	0	0
October 2022	5	82	13	1	0	0
November 2022	5	84	3	1	0	0
December 2022	5	86	3	0	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	4
Informal Complaints <sup>7</sup>	0
Administrative Investigations	1
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>5</b>

### CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>9</sup>

OIPA	0
BART Police Department	4
<b>TOTAL</b>	<b>4</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During December 2022, **4 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2022-091)	Officers #1-2: • Arrest/Detention	BPD initiated an investigation.	73
2 (IA2022-092)	Officer #1: • Courtesy	BPD initiated an investigation.	70
3 (IA2022-093)	Officer #1: • Conduct Unbecoming an Officer  Officers #2-3: • Force  Officer #4: • Bias-Based Policing	BPD initiated an investigation.	69
4 (IA2022-095)	Employee #1: • Bias-Based Policing • Courtesy • Performance of Duty	BPD administratively closed the complaint.	55

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During December 2022, **2 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2022-001)	One officer used excessive force and two officers did not properly document the contact and the use of force.	Officer #1: • Policy/Procedure (Use of Force Documentation) – Sustained  Officer #2: • Force – Exonerated • Policy/Procedure (Body Worn Camera) – Sustained	396	327
2 (IA2022-009)	Officers used excessive force during a detention, engaged in sexual misconduct during the detention, and improperly cited the complainant.	Officers #1-2: • Force – Exonerated • Conduct Unbecoming an Officer – Unfounded  Officer #2: • Arrest/Detention – Exonerated	440	351

During December 2022, **1 Administrative Investigation** was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2021-097)	Officer did not generate a report as required and did not properly investigate a reported crime.	Officer #1: <ul style="list-style-type: none"> <li>• Performance of Duty –Sustained</li> <li>• Policy/Procedure (Report Documentation) – Sustained</li> </ul>	423	353

### DISCIPLINE ISSUED DURING REPORTING PERIOD

During December 2022, 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	Officers did not properly document a law enforcement contact.	Officers #1-2: <ul style="list-style-type: none"> <li>• Policy/Procedure (Body Worn Camera)</li> </ul>	Officers #1-2: <ul style="list-style-type: none"> <li>• Letter of Discussion<sup>10</sup></li> </ul>
2	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure (Body Worn Camera)</li> </ul>	Officers #1-2: <ul style="list-style-type: none"> <li>• Letter of Discussion</li> </ul>
3	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure (Body Worn Camera)</li> </ul>	Officers #1-2: <ul style="list-style-type: none"> <li>• Letter of Discussion</li> </ul>
4	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure (Body Worn Camera)</li> </ul>	Officers #1-2: <ul style="list-style-type: none"> <li>• Letter of Discussion</li> </ul>
5	Officers did not properly document a law enforcement contact including a use of force.	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure (Use of Force Documentation)</li> </ul> Officer #2: <ul style="list-style-type: none"> <li>• Policy/Procedure (Body Worn Camera)</li> </ul>	Officers #1-2: <ul style="list-style-type: none"> <li>• Letter of Discussion</li> </ul>
6	Officer did not take appropriate investigative action in connection with a reported crime and did not complete a report as required.	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure</li> <li>• Performance of Duty</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>• Written Reprimand<sup>11</sup></li> </ul>

\*Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

## ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and 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	7
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	18 <sup>†</sup>
Investigations Reviewed During Current Month	9 <sup>†</sup>

<sup>†</sup>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.<sup>12</sup> The OIPA Monthly Report will reflect information regarding monitored cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.

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<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 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.

<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 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) 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 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.

<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. OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

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<sup>†</sup> Beginning in December 2022, OIPA began exclusively monitoring and reporting the number of active monitored Internal Affairs investigations in keeping with the 2018 recommendations for improvements to the oversight structure submitted by the OIR Group and approved for implementation by the BART Board of Directors. By focusing resources on active Internal Affairs investigations, OIPA is better able to address the accuracy of allegations at the outset of the investigative process and will be better able to address any disagreements about investigative conclusions or processes prior to the transmission of correspondence to complainants and subject employees. This is especially important for maintaining accuracy of allegations at the intake stage and accuracy of analyses and investigative conclusions prior to closure of the complaint.

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<sup>6</sup> 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).

<sup>7</sup> 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)).

<sup>8</sup> BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

<sup>9</sup> 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.

<sup>10</sup> Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual).

<sup>11</sup> A Written Reprimand is the first level of formal discipline and may be warranted if informal pre-discipline does not correct the conduct, attendance, work performance or the violation is of such a nature to warrant formal discipline. (BPD Policy Manual).

<sup>12</sup> OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.