



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

February 2023

Issue date: April 10, 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 **February 1, 2023 through February 28, 2023**.¹ (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 ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
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
January 2023	6	87	5	0	0	0
February 2023	12	91	9	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	11
Informal Complaints ⁷	1
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	12

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	2
BART Police Department	9
TOTAL	11

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During February 2023, **2 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #23-02) (IA2023-009)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Policy/Procedure • Policy/Procedure (Body Worn Camera) 	OIPA notified BPD which had already received a complaint and had initiated an investigation.	114
2 (OIPA #23-04) (IA2023-016)	Officers #1-2: <ul style="list-style-type: none"> • Force • Arrest/Detention Officer #2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	OIPA notified BPD which initiated an investigation.	45

During February 2023, **9 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-007)	Officers #1-2: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	63
2 (IA2023-008)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	62
3 (IA2023-010)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	56
4 (IA2023-011)	Officers #1-3: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	55
5 (IA2023-012)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	57
6 (IA2023-014)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	53
7 (IA2023-015)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	47
8 (IA2023-017)	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	42
9 (IA2023-018)	Officer #1: <ul style="list-style-type: none"> • Force Employee #1: <ul style="list-style-type: none"> • Policy/Procedure 	BPD initiated an investigation.	42

During February 2023, **1 Informal Complaint** was received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2023-013)	Employee #1: • Policy/Procedure	BPD initiated a Supervisor Referral. ¹⁰	55

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During February 2023, **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) (IA2022-070)	Officers did not properly investigate a crime and did not sufficiently respond to inquiries from complainant.	Officers #1-3: • Performance of Duty – Exonerated	216	155

During February 2023, **7 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2022-010)	Officers illegally searched complainant's vehicle, improperly arrested complainant, threatened to use excessive force, and expressed racial animus during the contact.	Officers #1-2: • Search/Seizure – Exonerated Officer #2: • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Exonerated Officer #3: • Arrest/Detention – Exonerated	404	338
2 (IA2022-013)	Officers used excessive force and did so because of subject's race.	Officers #1-2: • Force – Exonerated Officer #1: • Bias-Based Policing – Not Sustained Officer #2: • Bias-Based Policing – Unfounded	398	332

3 (IA2022-015)	Officer applied handcuffs too tightly and stole complainant's property.	Officer #1: • Force – Exonerated • Conduct Unbecoming an Officer – Unfounded	385	319
4 (IA2022-017)	Officer denied complainant's request for medical assistance and did not properly document a law enforcement contact.	Officer #1: • Performance of Duty – Unfounded • Policy/Procedure (Body Worn Camera) – Unfounded	363	297
5 (IA2022-020)	Officers improperly required disabled complainant to wear face covering.	Officers #1-2: • Performance of Duty – Exonerated • Bias-Based Policing – Unfounded	363	297
6 (IA2022-023)	Officer used excessive force during an arrest.	Officer #1: • Force – Exonerated	392	326
7 (IA2022-061)	Officer embarrassed and harassed complainant.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral*	363	297

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING A PRIOR REPORTING PERIOD BUT NOT PREVIOUSLY REPORTED

During December 2022, 1 **Citizen Complaint** was concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2022-092)	Officer was discourteous to complainant.	Officer #1: • Courtesy – Supervisor Referral	126	1†

* In this instance, IA documented its intention to recategorize the complaint as an Informal Complaint and resolve the matter via Supervisor referral (SR), wherein an assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA. However, the subject officer in this complaint separated from the Department prior to the issuance of the SR. The IA database still reflects this complaint as a Formal Complaint that was resolved via SR and the associated memorandum reflects that the conversation with the subject officer did not occur.

† Though the required Supervisor Referral memorandum was completed and signed by both the assigned supervisor and the subject officer on December 6, 2022, that document wasn't uploaded to the IA database until February 16, 2023, at which time BPD changed the status of the complaint to completed and notified the complainant (73 days after receipt of the complaint).

DISCIPLINE ISSUED DURING REPORTING PERIOD

During February 2023 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	7
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	19
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.¹¹ 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.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the "Citizen Board, Office of the District Secretary, and other District departments." As complaints received by the BART Police Citizen Review Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is also made aware of additional complaints about the BART Police Department by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes previously completed cases that have been re-opened during the current reporting period.

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

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

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

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

⁷ The BART Police Department defines an Informal Complaint as, “A comment on the actions of a Department employee, where the reporting party expressly states that he or she does not feel that the matter should be formally investigated with the understanding that an Informal Complaint does not hold the potential to result in disciplinary action against the employee.” (BART Police Department Policy Manual, Policy 1020.1.1(d)).

⁸ 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.

⁹ 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.

¹⁰ 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 IA.

¹¹ 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.