



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

August 2023

Issue date: October 16, 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 **August 1, 2023 through August 31, 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
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
March 2023	10	98	4	1	0	0
April 2023	12	99	10	1	0	0
May 2023	10	101	6	1	1	0
June 2023	7	103	6	1	2	0
July 2023	18	106	7	1	0	0
August 2023	18*	114†	8	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	18
Informal Complaints ⁷	0
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	18

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	1
BART Police Department	17
TOTAL	18

* This number includes 6 cases received in July 2023 that had not been previously added to the IA database. 12 complaints were received in August 2023.

† The number of open cases has been misreported since the receipt, by both IA and OIPA, of a complaint in November 2022 that was never entered into the IA database. The investigation was completed by OIPA, and the data entry error has now been corrected.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During August 2023, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #23-31) (IA2023-079)	Officers #1-2: • Policy/Procedure • Conduct Unbecoming an Officer	OIPA notified BPD which BPD initiated an investigation.	63

During August 2023, **10 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-077)	Officers #1-3: • Conduct Unbecoming an Officer	BPD initiated an investigation.	68
2 (IA2023-078)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	67
3 (IA2023-080)	Officers #1-2: • Conduct Unbecoming an Officer	BPD initiated an investigation.	61
4 (IA2023-082)	Officer #1: • Force	BPD initiated an investigation.	59
5 (IA2023-083)	Officer #1: • Force • Policy/Procedure (AXON camera)	BPD initiated an investigation.	61
6 (IA2023-084)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	60
7 (IA2023-085)	Officer #1: • Force • Bias-Based Policing • Policy/Procedure (AXON camera) Officer #2: • Performance of Duty	BPD initiated an investigation.	59

8 (IA2023-086)	Officers #1-2: • Force	BPD initiated an investigation.	52
9 (IA2023-087)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	61
10 (IA2023-088)	Officer #1: • Conduct Unbecoming an Officer • Courtesy	BPD initiated an investigation.	48
11 (IA2023-052)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	62

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During July 2023, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #23-30) (IA2023-072)	Officer #1: • Performance of Duty	OIPA notified BPD which BPD initiated an investigation.	80

During July 2023, **5 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-073)	Officers #1-3: • Force Officer #1: • Bias-Based Policing	BPD initiated an investigation.	84
2 (IA2023-074)	Officer #1: • Force	BPD initiated an investigation.	83
3 (IA2023-075)	Officer #1: • Force • Conduct Unbecoming an Officer	BPD initiated an investigation.	79

4 (IA2023-076)	Officers #1-2: • Force	BPD initiated an investigation.	77
5 (IA2023-081)	Officers #1-2: • Force	BPD initiated an investigation.	95

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During August 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 #22-35) (IA2022-080)	Officers improperly denied complainant an employment opportunity because of complainant's membership in a protected class and/or because of complainant's age.	Officers #1-3: • Policy/Procedure (Hiring Discrimination) – Exonerated	367	293

During August 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 (IA2022-062)	Officer was rude and targeted and harassed complainant.	Officer #1: • Conduct Unbecoming an Officer (Count 1) – Not Sustained • Conduct Unbecoming an Officer (Count 1) – Exonerated	431	361
2 (IA2022-063)	Officers improperly detained and subjected complainant to a mental health hold.	Officer #1: • Arrest/Detention – Exonerated	425	355

3 (IA 2022-064)	Officer used excessive force during a detention.	Officer #1: • Force – Exonerated	422	360
4 (IA 2022-065)	Officer sexually harassed complainant and others.	Officer #1: • Conduct Unbecoming an Officer – Administratively Closed ¹⁰	423	354
5 (IA 2022-066)	Officer used excessive force after a detention for fare evasion and misplaced complainant's property.	Officer #1: • Force – Not Sustained • Performance of Duty – Not Sustained	420	353
6 (IA 2022-068)	Officers harassed subject because of subject's race and officers used excessive force during a detention for fare evasion.	Officers #1-3: • Force – Exonerated Employee #1: • Force – Exonerated • Bias-Based Policing – Unfounded Officer #3: • Bias-Based Policing – Unfounded Officer #4: • Policy/Procedure (Report Documentation) – Sustained	409	362
7 (IA 2022-069)	Officer used excessive and unnecessary force during an ejection.	Officer #1: • Force – Exonerated	406	359

DISCIPLINE ISSUED DURING REPORTING PERIOD

During August 2023, 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 (Body Worn Camera)	Officer #1: • Letter of Discussion ¹¹
2	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera)	Officer #1: • Letter of Discussion
3	Officer did not properly approve the release of a subject from custody.	Officer #1: • Policy/Procedure (Release of Subject from Custody)	Officer #1: • Written Reprimand ¹²

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	3
BPD-Initiated Appeals	0
Investigations Being Monitored	31
Investigations Reviewed During Current Month	17†

†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.

ISSUES DETECTED

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is handled by BPD.¹³ The OIPA Monthly Report will reflect information regarding monitored cases with detail not to exceed that which is

‡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).

allowable under state law. The investigations reviewed by OIPA during this and prior periods generated the following recommendations for revisions or additional investigation.

OIPA reviewed an IA Administrative Investigation in which IA reached a finding of Exonerated for the subject officer in connection with an allegation of excessive force. Here, the officer failed to activate their body worn camera prior to the use of force, which makes it difficult to determine whether the officer adhered to the de-escalation requirement of the policy governing the application of force. Notably, the officer asserted that they did not initially activate the camera because it was a low-level enforcement contact at its inception and the officer did not anticipate an escalation requiring a use of force. OIPA recommend that BPD provide guidance to the officer, specifically conveying that the seriousness or level of the contact has no bearing on whether camera activation is required.

Relatedly, OIPA has consistently recommended to BPD that officers should activate their cameras prior to consensual contacts and welfare checks, as these contacts may escalate to involve a detention or a use of force, both of which require activation per the applicable policy. IA also failed to address the subject officer's use of profanity and other inflammatory language in its final report.

BPD responded that the IA investigative report was being redrafted to incorporate additional analyses, agreeing that the appropriate finding for the allegation of excessive or unnecessary force is Not Sustained.

OIPA identified an enforcement contact that involved a reported firearm, and officers pointed their weapons at the subject. The subject officer reported that the body worn camera was not activated in a timely manner, but the supervisor who reviewed the use of force wrote that the camera was dislodged during the contact. This discrepancy was not acknowledged or addressed by IA in its final report. OIPA requested that BPD address these issues. BPD responded that they would provide guidance to the supervisor that factual discrepancies should not be overlooked and that IA personnel would be alerted to the issue and advised to identify and address similar discrepancies in their investigative reports.

OIPA reviewed another completed IA investigation in which the unit only investigated an allegation of Conduct Unbecoming an Officer although the complainant alleged that the officer used excessive force during the handcuffing and complained that the officer improperly pointed a firearm at him. OIPA requested that BPD review and address these issues, noting also that the supervisor who conducted an interview with the complainant did so in the presence of the subject officer, which contravenes BPD policy. BPD responded that because handcuffing is not considered a use of force by BPD, they determined that investigating an allegation of excessive was inappropriate under the circumstances. However, BPD advised that they would consider amending the report after further review of the facts and the complainant's intake interview.

OIPA reviewed an open IA investigation which does not reflect any review or investigation of an allegation racial profiling that was lodged by the complainant. OIPA requested that BPD review the case and make appropriate updates to the database and to the investigative plan. BPD responded that the assigned IA investigator will review the complaint and will follow up with OIPA.

OIPA reviewed an open IA investigation in which the complainant alleged that two officers used excessive force during the detention, but IA only listed one subject officer. The complainant also alleged that one officer spoke to him inappropriately and cursed at him during the contact, but that allegation was not addressed in the final IA report. OIPA requested that BPD review the investigation to address these issues. BPD responded by adding the additional officer as a subject of the complaint investigation. They further advised that they would review the investigation in connection with the omitted allegation of Conduct Unbecoming an Officer.

OIPA identified one report in which a supervisor asserted that officers used de-escalation during an arrest. Review of the available video showed that the 3 involved officers applied force immediately upon contacting the subject and employed no de-escalation tactics. OIPA requested that BPD review this report, speak to the involved supervisor about accurately reporting the facts of the contact, correcting any misstatements or inaccuracies, and reviewing the data entry process, generally, to ensure that the department is not overreporting the application of required de-escalation tactics prior to the use of force.

As noted in a prior OIPA report, OIPA's review of IA data for inclusion in this report also revealed some minor clerical errors, which BPD has committed to resolving or has resolved immediately upon being made aware. These are likely primarily attributable to recent staffing changes in the IA unit and OIPA's feedback is intended to support the training of new personnel by conveying our expectations related to consistent data entry and maintenance. The IA unit is in a transitional period with regard to staffing the Police Administrative Specialist position and the expectation is that new personnel will be fully trained in short order.

DISCIPLINARY UPDATE

OIPA reported in November 2022 that an officer was terminated by then-Chief Ed Alvarez in connection with sustained allegations of Conduct Unbecoming an Officer and Performance of Duty. BPD Internal Affairs received the misconduct complaint in May 2022 and completed its investigation in August 2022. On September 1, 2022, Chief Alvarez transmitted a "Notice of Intent to Discipline" to the subject officer. The officer's Skelly hearing resulted in Chief Alvarez upholding the termination and in June 2023 the subject officer exercised the right to have the termination decision arbitrated.[§]

On July 7, 2023, Arbitrator Alexander Cohn overturned the Department's decision to terminate. The Department and the District are required to adhere to the arbitrator's decision as part of the collectively bargained agreement between the officers' union(s) and the District.

[§]A "Skelly" is a hearing which must be made available to BPD employees prior to the imposition of recommended discipline. Generally, A Skelly hearing must be provided in the case of termination, demotion, suspension, reduction in pay, or a transfer with an accompanying loss in pay. This pre-disciplinary 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.

The arbitrator's Award Letter required that BPD reinstate the officer, and included the following determinations, assertions, and opinions:

Arbitrator Cohn noted that the officer did engage in the alleged misconduct, while also acknowledging that the officer was not performing assigned duties at the time of the contact with one of the complainants in this case. Arbitrator Cohn described the sustained misconduct as "...one isolated incident of inappropriate flirtation which was verbal, not physical, did not last more than a few minutes, and did not result in negative publicity. In other words...this was an isolated mistake of judgement...and not evidence of an ongoing pattern of misconduct toward women."

Highlighting that the officer "...appears to have a limited understanding of the power relationship between an armed police officer and a female citizen on her own in parking lot, who may be intimidated by the gun and uniform," the arbitrator determined that additional training was the appropriate course of action and required that the Department reinstate the officer to their former position, provide the aforementioned training, and convert the termination to a suspension, also delivering some back pay and restoration of lost benefits.

Arbitrator Cohn included a footnote in the Award letter which acknowledged that there were two allegations of misconduct and, based on very limited evidence, the second allegation was inappropriately considered by Chief Alvarez as one of the factors necessitating termination. The footnote reads, "Apparently the second woman appears to have welcomed the short flirtation." This assertion, which was unchallenged during the arbitration hearing due to the lack of testimony from the second victim, stands in stark contrast to the acknowledgement of the power dynamic described above.

The Award letter concludes with the admonishment that should the conduct recur, "...termination is likely to be the inevitable outcome."

The officer's reinstatement became effective on July 1, 2023.

OIPA

The Office of the Independent Police Auditor (OIPA) provides the public with effective and independent oversight of the San Francisco Bay Area Rapid Transit District (BART) Police Department (BPD) by conducting unbiased and thorough independent investigations and reviews of police department investigations, making policy recommendations to improve the performance of the police department, and maintaining continual communication with the public in the BART service area. In 2018, the BART Board of Directors adopted the BART Citizen Oversight Model (The Model). The Model charges OIPA with certain duties, including investigating complaints of BART police misconduct. Below is OIPA's report regarding a whistleblower complaint.

Background

On May 12, 2022, the BART Office of the Inspector General (OIG) received a copy of an anonymous whistleblower complaint. The OIG forwarded the complaint to OIPA as required by the BART Whistleblower Policy because the complaint included allegations against BPD personnel. The BART Whistleblower Policy is intended to encourage and enable employees and others to raise serious concerns within the District before seeking resolution outside the District.

BART's Independent Police Auditor (IPA) and BART's Inspector General decided that the OIG would investigate the whistleblower's allegation of overtime abuse, report their findings to OIPA, which OIPA would independently review, and OIPA would investigate the remaining allegations. The whistleblower's primary allegation was that BPD employees' personal relationships led to conflicts of interest and violations of BPD policies. On April 6, 2023, OIPA completed its report. OIPA did not substantiate any of the allegations against the subject officers. However, OIPA's whistleblower investigation uncovered additional significant issues of concern within BPD. The IPA crafted recommendations to address those issues that were unrelated to officer discipline.

The Model required OIPA to submit its findings to the BART Police Citizen Review Board (BPCRB) in a confidential personnel meeting, which occurred on April 10, 2023. On that date, the BPCRB agreed with OIPA's findings and secondary recommendations by majority vote (seven to one). Due to the nature of the whistleblower's allegations and because former BPD Chief Ed Alvarez announced his retirement on April 5, 2023, the IPA determined that it was appropriate to share OIPA's findings and recommendations directly with BART General Manager (GM) Robert Powers, who oversees BPD.

On May 1, 2023, OIPA formally informed the GM of its whistleblower investigation findings and related, but secondary, recommendations for improvement of the culture and operations of the police department. On May 31, 2023, the GM submitted a formal response to OIPA, but it was partially unresponsive, and did not include corrective action plans or implementation dates. The IPA's attempts to resolve the outstanding issues related to the GM's response were unsuccessful.

- On September 21, 2023, the IPA determined that it would be in the best interest of BPD and the District if OIPA forwarded its report, findings, and recommendations to Interim Chief of BPD Kevin Franklin for his response and potential corrective action plans. The IPA expects that Interim Chief Franklin will address OIPA's secondary recommendations where there are significant risks to

BPD if the issues OIPA identified remain unaddressed. The IPA will report how the interim chief or chief responds to OIPA's recommendations while continuing to endeavor to preserve the anonymity of the whistleblower and the subject officer(s).

Investigation Results

BPD personnel did not engage in conflict-of-interest violations or other BPD policy violations.

OIPA received allegations from an anonymous whistleblower that BPD employees violated BPD policy because they had a personal relationship that resulted in a conflict of interest. The whistleblower's related allegations against BPD officers included sexual harassment, supervision, performance of duty (work schedule adherence/overtime abuse), and conduct unbecoming an officer. The investigation was complex and wide-ranging, and included numerous interviews with subjects and witnesses, as well as review of BPD personnel files. We did not substantiate the allegations and provided those in BART with oversight responsibilities detailed reports of our findings and recommendations. A summary of the allegations, findings, and an explanation of the findings are below, but we removed details that would serve to identify the subjects of the investigation. Although OIPA did not find that the subject BPD employees violated any applicable policy, our investigation indicated that there were areas of concern within BPD that should be addressed. Because these issues may negatively impact BPD should they remain uncorrected, the IPA made recommendations. Again, these were not disciplinary recommendations, but suggestions for how to improve the police department's performance, practices, and culture.

OIPA's recommendations addressed the following areas of concern, among other issues:

- BPD performance evaluations
 - OIPA determined that at least one BPD employee's performance evaluation documentation was incomplete and did not include critiques of the employee's performance.
- The perception of unfairness and conflicting relationships among some BPD officers and management:
 - Some employees expressed concerns about cliques and other relationships among BPD employees that resulted in unfair treatment or the perception thereof.
- Expanding list of discriminatory harassment complaint recipients (BPD Policy 328)
 - BPD's existing policy manual suggests contacting BART HR or the OIG to lodge complaints outside of the BPD chain of command.
 - OIPA recommended adding OIPA as a possible recipient of harassment complaints from BPD employees in order to fully inform the employees about their options for objectively resolving complaints.
- Parking rules for employees
 - BPD employees, including those responsible for parking enforcement, were not provided clear instructions about where BPD employees are allowed to park their personal vehicles. This confusion led to the perception that one employee was receiving special privileges from a supervisor.

NOTE: The District has highlighted its concerns that any ongoing inability to fill vacancies in the police department may significantly impact public safety and the perception thereof. OIPA's concerns, particularly about BPD performance evaluations and some officers' perceptions of unfairness and conflicting relationships within BPD, if left unaddressed may

result in difficulties in retaining and hiring qualified BPD officers. As mentioned above, in the interest of moving forward to address issues discovered during the investigation, OIPA will submit its recommendations to Interim Chief Franklin for his review and will generate a public report to memorialize the Department's response to the recommendations.

TABLE OF OIPA FINDINGS - CASE #22-21

ALLEGATIONS	FINDINGS
Policy/Procedure (Recruitment and Selection)	Exonerated
Policy/Procedure (Enabling Illegal Parking)	Unfounded
Policy/Procedure (Enabling Late Arrival/Early Departure/Overtime Abuse)	Unfounded
Policy/Procedure (Conflicting Relationships)	Unfounded
Policy/Procedure (Discriminatory Harassment)	Unfounded
Supervision	Unfounded
Performance of Duty (Adherence to BPD Parking Policies)	Not Sustained
Policy/Procedure (Adherence to Schedule/Overtime Abuse)	Unfounded
Conduct Unbecoming an Officer (Favoritism, Retaliation)	Not Sustained

OIPA Findings Defined

- **Unfounded:**
It was determined to be more likely than not that the misconduct alleged by the complainant did not occur.
- **Exonerated:**
It was determined to be more likely than not that the conduct alleged by the complainant did occur, but that such conduct did not violate any applicable law or policy.
- **Not Sustained:**
Based on the available evidence, it could not be determined whether the misconduct alleged by the complainant did or did not occur.
- **Sustained:**
It was determined to be more likely than not that the misconduct alleged by the complainant did occur.

Summary of Allegations and Findings:

1. Personal Relationship – Conflict of Interest

- **Allegation:** Employees violated BPD policy because they had a personal relationship that resulted in a conflict of interest.
- **Relevant Policy & Law:** BPD Policy 1060 prohibiting conflicting relationships; Government Code section 12940.

- Determination: Allegation unfounded. The evidence did not substantiate the allegation that employees have had a personal relationship that resulted in a conflict of interest.

2. Sexual Harassment

- Allegation: Employee violated BPD policy because they sexually harassed another employee.
- Relevant Policy & Law: BPD Policy 328.2 provides that BPD “is an equal opportunity employer and is committed to creating and maintaining a work environment that is free of all forms of discriminatory harassment, including sexual harassment and retaliation (Government Code § 12940(k); 2 CCR 11023).”
- Determination: Allegation unfounded. The evidence did not substantiate the allegation.

3. Restructuring, Promotion, Reassignment

- Allegation: Employee violated BPD policy by providing special assignments because they had a personal relationship with another employee that resulted in a conflict of interest.
- Relevant Policy & Law: BPD Policy 1060 prohibits conflicting relationships. Government Code section 12940.
- Determination: Allegation exonerated. OIPA determined that it was more likely than not that the actions did not violate any applicable law or policy.

4. Special Parking Privileges

- Allegation: Employee violated BPD policy because they gave another employee a special privilege to park in a BART Station parking lot when BPD employees were prohibited from parking there.
- Relevant Policy & Law: BPD Policy 1060 (avoiding actual or perceived favoritism).
- Determination: Allegation unfounded. The evidence did not substantiate the allegation.

5. Work Schedule Adherence and Overtime Abuse

- Allegation: Employee favored another employee by allowing them to arrive and leave work as they pleased, and work overtime unlike their subordinates
- Relevant Policy & Law: BPD Policy 1060 (avoiding actual or perceived favoritism).
- Investigative Summary:
The BART Office of the Inspector General (OIG), who accepted this aspect of the complaint for investigation, determined that the evidence did not support the allegation that the employee was allowed to work as much overtime as they would like while their subordinates were not permitted to work overtime. OIG’s analysis and supporting evidence shows that the allegation lacked merit.
- Determination: Allegation unfounded. The evidence did not substantiate the allegation that an employee allowed another employee to arrive late and leave early from work as a special privilege. The evidence did not support a related allegation that that an employee abused overtime.

6. Supervision

- Allegation: Employee did not meet their responsibilities as a supervisor in connection with any potential violations of BPD’s conflicting relationships policy because they favor certain employees.

- Relevant Policy & Law: BPD Policies 328.4.1 and 1060.2.2 (supervisor's responsibility regarding avoiding and minimizing discrimination, harassment, retaliation, and conflicts of interest).
- Determination: Allegation unfounded. Because there was insufficient evidence of discrimination, harassment, or retaliation and BPD Policy does not require supervisors to act when there is a mere perception of favoritism, this allegation is unfounded.

7. Adherence to BPD Parking Policies

- Allegation: Employee violated BPD parking policy by parking in Lot A at Lake Merritt BART Station when BPD employees were prohibited from parking there.
- Relevant Policy & Law: May 13, 2021, email advising BPD employees that they were no longer allowed to park in Lot A at the Lake Merritt BART Station.
- Determination: Allegation not sustained. Based on the available evidence, it could not be determined whether the alleged misconduct did or did not occur. Notably, there were some unofficial adjustments to the enforcement of employee parking restrictions due to the COVID pandemic.

8. Performance of Duty - Work Schedule Adherence and Overtime Abuse

- Allegation: Employee arrived and left work as they pleased; worked as much overtime as they wanted; and prohibited their subordinates from working overtime, all as a privilege from a supervisor.
- Relevant Policy & Law: BPD Policy 1060 (avoiding actual or perceived favoritism).
- Determination: Allegation unfounded. The evidence did not substantiate the allegation that the supervisor allowed the employee to arrive late and leave early from work as a special privilege. The evidence did not support the allegation that the employee abused overtime.

9. Conduct Unbecoming an Officer (Favoritism/Retaliation)

- Allegation: Favoritism at BPD results in BPD staff feeling afraid to voice any opposition or criticism for fear of retaliation.
- Relevant Policy & Law: BPD Policy 328.3.4 (prohibiting retaliation); BPD Policy 1020.1.2 (defining Conduct Unbecoming an Officer).
- Determination: Allegation not sustained. Based on the available evidence, OIPA could not determine whether subject employee's conduct contributed to the perception that BPD complainants could be subject to retaliation to the point that a reasonable person would find the conduct unbecoming of a police employee.

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 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.

¹¹ 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).

¹² 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.

¹³ 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.