



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

October 2023

Issue date: December 11, 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, 2023 through October 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
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
September 2023	11	115	11	1	0	0
October 2023	4	106	14	2	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	3
Informal Complaints ⁷	0
Administrative Investigations	1
Inquiries ⁸	0
TOTAL	4

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	1
BART Police Department	3
TOTAL	4

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During October 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 #23-36) (IA2023-103)	Officer #1: • Bias-Based Policing • Policy/Procedure	OIPA initiated an investigation.	53

During October 2023, **2 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-099)	Officer #1: • Courtesy	BPD initiated an investigation.	66
2 (IA2023-101)	Officers #1-2: • Force	BPD initiated an investigation.	48

During October 2023, **1 Administrative Investigation** was initiated by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2023-102)	Officer #1: • Policy/Procedure (Documentation) • Arrest/Detention	BPD initiated an investigation.	47

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During February 2023, **1 Citizen Complaint** was received by BPD but not forwarded to Internal Affairs:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-100)	Officers #1-2: • Force	BPD initiated an investigation.	296*

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During October 2023, **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 #23-07) (IA2023-024)	Officer failed to appropriately respond to a call for service.	Officer #1: • Performance of Duty – Administratively Closed [†]	265	221

*This case was initiated based on a complaint to a BPD supervisor during a use of force review. The supervisor failed to properly forward the complaint to IA as required by BPD policy.

[†]OIPA determined that further investigation would be unlikely to reveal any additional relevant evidence or information that would allow for a disposition in connection with the alleged misconduct.

2 (OIPA #23-04) (IA2023-016)	Officers improperly detained and cited complainant based on complainant's race and used excessive force during the detention.	Officers #1-2: • Arrest/Detention – Exonerated • Force – Exonerated • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Exonerated	290	197
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During October 2023, **10 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-081)	Officers used excessive force during a detention for fare evasion.	Officers #1-3: • Force – Exonerated	789	744 [‡]
2 (IA2022-072)	Officers detained complainant for fare evasion because of complainant's race, used excessive force during the detention, and failed to properly document the contact.	Officers #1-2: • Force – Exonerated • Bias-Based Policing – Unfounded Officer #1: • Policy/Procedure (Documentation) – Not Sustained Officer #3: • Performance of Duty – Sustained	448	396
3 (IA2022-077)	Officers used excessive force during a vehicle stop.	Officers #1-2: • Force – Exonerated •	437	371

[‡] IA reported that they tolled this investigation from 1/7/21 to 4/28/23 (841 days) due to civil litigation.

4 (IA2022-081)	Officers improperly detained a subject and used excessive force during the detention.	Officers #1-2: • Force – Exonerated • Arrest/Detention – Exonerated	419	351
	Officers intimidated complainant during a fare inspection contact and one officer did not properly document the contact.	Officers #1-2: • Conduct Unbecoming an Officer – Unfounded Officer #2: • Policy/Procedure (AXON Camera) – Sustained	412	351
	Officers used excessive force during a detention for a code of conduct violation.	Officers #1-2: • Force – Exonerated	398	349
	Officers unlawfully detained complainant and took complainant's property.	Officers #1-2: • Conduct Unbecoming an Officer – Unfounded Officer #2: • Arrest/Detention – Exonerated	370	317
	Officers improperly cited complainant for fare evasion.	Officers #1-2: • Conduct Unbecoming an Officer – Unfounded	376	315
	Officer took law enforcement action based on complainant's race.	Officer #1: • Bias-Based Policing – Administratively Closed ¹⁰	356	311
10 (IA2023-034)	Officers used excessive force during the detention of a person experiencing a mental health crisis.	Officers #1-2: • Force – Exonerated	429	370

During October 2023, **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 (IA2023-097)	Employees failed to take fare evasion enforcement action.	Employee #1: • Conduct Unbecoming an Officer – Supervisor Referral. ¹¹	80	14

DISCIPLINE ISSUED DURING REPORTING PERIOD

During October 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 ¹²
2	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera)	Officer #1: • Letter of Discussion •
3	Officer improperly initiated a vehicle pursuit and failed to properly document the activity.	Officer #1: • Policy/Procedure (Body Worn Camera) • Performance of Duty (Vehicle Pursuit & Off property Traffic Enforcement)	Officer #1: • Suspension (1 Day/10 hours)**

§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).

** This one-day suspension was issued to the subject officer in September 2023, but was not previously reported. The date of the suspension has not been scheduled.

4	Officer #1 did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Search Documentation) • Policy/Procedure (Report Writing)	Officer #1: • Letter of Discussion
	Officer #2 used unnecessary force, failed to properly document a search, and failed to apply required de-escalation tactics.	Officer #2: • Force (Unnecessary) • Force (De-escalation) • Policy/Procedure (Search Documentation)	Officer #2: • Letter of Discussion

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	5
Complainant-Initiated Appeals	3
BPD-Initiated Appeals	0
Investigations Being Monitored	23
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 allowable under state law. The investigations reviewed by OIPA during this period did not generate any 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 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 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.

¹² 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).

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.