



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

January 2023

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Issue date: March 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 **January 1, 2023 through January 31, 2023**.<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>
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
January 2023	6	87	5	0	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 January 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 #23-01) (IA2023-002)	Officers #1-2: <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Arrest/Detention</li> </ul>	OIPA notified BPD which initiated an investigation.	63

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

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-001)	Officers #1-2: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	69
2 (IA2023-003)	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	64
3 (IA2023-004)	Officer #1: <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	45
4 (IA2023-005)	Employee #1: <ul style="list-style-type: none"> <li>• Courtesy</li> </ul>	BPD initiated an investigation.	44
5 (IA2023-006)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	46

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During January 2023, **5 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2022-004)	Officers used excessive force, one officer verbally humiliated complainant, and one officer improperly searched complainant.	Officers #1-3: <ul style="list-style-type: none"> <li>• Force – Exonerated</li> </ul> Officer #2: <ul style="list-style-type: none"> <li>• Performance of Duty – Exonerated</li> </ul> Officer #3: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	402	350

2 (IA2022-005)	Officer improperly detained and searched complainant and did so because of complainant's race and officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded*</li> <li>• Arrest/Detention – Sustained</li> <li>• Search/Seizure – Sustained</li> <li>• Policy/Procedure (Body Worn Camera) – Sustained</li> </ul>	223	177
3 (IA2022-006)	Officer cancelled complainant's pending medical care and smiled while doing so.	Officer #1: <ul style="list-style-type: none"> <li>• Performance of Duty – Not Sustained</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> </ul>	223	177
4 (IA2022-011)	Officers were rude to complainant.	Officers #1-2: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	375	330
5 (IA2022-012)	Officer was rude to complainant during a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	366	314

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During January 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 improperly detained and searched complainant and did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> <li>• Arrest/Detention – Sustained</li> <li>• Search/Seizure – Sustained</li> <li>• Policy/Procedure (Body Worn Camera) – Sustained</li> </ul>	Officers #1-2: <ul style="list-style-type: none"> <li>• Written Reprimand<sup>10</sup></li> </ul>

\* OIPA requested a change to this investigative finding from Unfounded to Not Sustained. BPD agreed to the change but has not yet updated its records as of February 27, 2023. There are more details in the Additional Notes section of this report, below.

†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
Investigations Reviewed During Current Month	11†

†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 generated the following recommendations for revisions or additional investigation. OIPA identified issues related primarily to the performance of the BPD Office of Internal Affairs (IA). Specifically, OIPA detected some inconsistencies associated with the accuracy of investigative findings and allegations, and the maintenance of records in a small number of IA cases reviewed.

### 1. BPD Agreed to Change Investigative Finding from Unfounded to Exonerated

In one instance, OIPA opined that Internal Affairs (IA) inaccurately determined that an allegation of Conduct Unbecoming an Officer (CUBO) was Unfounded when the accurate determination should have been Exonerated.

The BPD Policy Manual provides that a personnel complaint shall be classified with an outcome of Unfounded when the investigation discloses that the alleged acts did not occur or did not involve department members. However, when the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper the complaint shall be classified as Exonerated.

In IA case #IA2022-003, the subject officer did make the comments that were alleged by the complainant to be inappropriate, but IA determined that the officer's comments were not unbecoming and did not violate BPD policy.

OIPA conveyed its opinion to the Chief of Police that because the officer made the comments, a finding of Unfounded is inaccurate. OIPA requested that IA change the findings and notify both the complainant and the subject officer of the revised finding.

After being notified of OIPA's concerns, BPD Chief Ed Alvarez responded that IA would change the finding to Exonerated, notify the parties, and update the case file and IA database.

### 2. BPD Confirmed Delivery of Supervisor Referral to Officer Prior to Officer's Retirement

OIPA noted that IA resolved one complaint investigation as a Supervisor Referral (SR), which provides that in instances involving an Informal Complaint, an assigned supervisor will address the complaint informally with the involved employee and document the content of the conversation in a memorandum to the IA Unit.

In IA case #IA2022-092, OIPA noted that IA elected to handle the complaint via SR even though the subject officer had retired from the department.

After being advised of the concern by OIPA, Chief Alvarez advised OIPA that the SR had been delivered to the subject officer prior to the officer's retirement from the department.

Although this is a satisfactory outcome with regard to the delivery of the SR, it highlighted the fact that documentation, including the required SR memorandum, were not attached to the database more than one month after closure of the complaint. This is problematic because OIPA relies on the accuracy of the IA database for its required reporting and for its review of IA's work product. Additionally, if OIPA had not informed BPD of the missing documentation, the case may have remained closed with an incomplete documentary record.

After being advised of the issue by OIPA, IA subsequently uploaded the required documentation reflecting that the SR was properly issued and properly acknowledged by the subject officer.

### **3. BPD Corrected Inaccurate Allegations and Did Not Prematurely Close Complaint**

In IA case #IA2022-095, OIPA noted that the complainant alleged Bias-Based Policing and Rudeness, and the summary in the IA database indicated that the complaint would be administratively closed.

Of initial concern to OIPA was the fact that the IA database record for this complaint reflected no allegations of misconduct or policy violations despite clear written allegations submitted by the complainant alleging Racial Profiling/Bias-Based fare enforcement activity. As noted above, OIPA and the public rely on the accuracy of the IA database to reflect the number and nature of complaints received by IA.

The BPD policy manual provides that some allegations, after being received and documented may be summarily closed after 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 IA case file. Employees will be documented as witnesses only, not as subjects to the complaint, and IA will send a letter to the complainant notifying them that the case was closed following a preliminary investigation. A complaint may be closed in this manner under circumstances including but not limited to when the complaint lacks specificity and the complainant either refuses to cooperate or becomes unavailable to provide information necessary to investigate the incident.

Here, IA appeared to have documented leaving one voicemail message and sending one email to the complainant at the same time as the assigned investigator documented an intention to close the case administratively. The IA database record also reflected that the decision to administratively close the complaint of Bias-Based Policing was made without any effort to review available video evidence. OIPA believes that the available video may have enabled IA investigators to reach an investigative conclusion even without the complainant's further participation in the investigative process as the complainant had already provided certain details and information during the intake process.

OIPA recommended that in situations such as this, IA should accurately record all allegations and conduct a more thorough preliminary investigation to, minimally, attempt identify the involved officer or employee and obtain relevant body worn and/or fixed video camera footage before administratively closing any complaint. OIPA also recommended that IA supervisors provide additional guidance to IA investigators about mitigating the deficiencies noted above.

After OIPA conveyed these concerns to Chief Alvarez, IA updated the database to reflect an allegation of Bias-Based policing against one (as yet) unknown employee and mailed a letter to the complainant requesting an interview. BPD also advised OIPA that the initial entries in the IA

database should have noted that the complaint *may* have been a candidate for administrative closure pending additional investigation, and that additional clarifying language has now been added to the internal database.

#### **4. BPD Added Appropriate Allegations and Identified All Subject Employees**

Internal Affairs investigated one complaint (#IA2022-079) in which it was alleged that a Fare Inspection Officer used excessive force during a contact, but the investigation did not address additional allegations that the employee was disrespectful and rude and refused to provide identification upon request as required by BPD policy.

There were other BPD employees present during the contact who failed to activate their body worn cameras which should have generated additional allegations and investigation by IA (leading to the potential imposition of discipline), but the IA database did not reflect that these potential policy violations were detected, recorded, or addressed by IA.

After being informed of these concerns by OIPA, BPD responded by updating the IA database to reflect the appropriate allegations against all involved BPD employees and IA transmitted appropriate notifications to all subject employees.

#### **5. BPD Agreed to Change Investigative Finding from Unfounded to Not Sustained**

In Internal Affairs case #IA2022-005, the subject officer was alleged to have searched the complainant based on the complainant's race. It was OIPA's opinion that Internal Affairs relied too heavily on the officer's own assertion that race was not a factor in the officer's decision-making process while the officer disregarded available evidence and information indicating that the subject was not involved in any criminal activity.

OIPA suggested that a more appropriate finding given the absence of more determinative evidence and the absence of body worn camera video due to the officer's failure to record the law enforcement contact as required by policy should result in a finding of Not Sustained. Such a finding is appropriate, according to the BPD policy manual, when the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the subject of the complaint.

After being informed of OIPA's opinion and concerns about the investigatory outcome, Chief Alvarez agreed to change the determination to Not Sustained<sup>‡</sup> and to update the records accordingly. These adjustments remained pending as of February 25, 2023.

#### **6. Policy Consideration – Definition of Bias-Based Policing Allegation as Compared with Racial Animus**

In an administrative investigation initiated by BPD, OIPA noted that the BPD initiated allegations of Bias-Based policing which were related to conduct that occurred amongst BPD employees and which was not related to the provision of law enforcement services. For this reason, OIPA suggested to the Chief that the appropriate allegations could have been Racial Animus, however the definition of bias-based policing in the BPD policy manual does not actually require that the conduct be related to policing or law enforcement activity. Though OIPA does not believe that the language in the BPD policy manual requires any adjustments to the allegations in this case, OIPA suggested that going forward BPD may consider applying allegations of Racial Animus where the conduct is unrelated to

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<sup>‡</sup> The BPD policy manual provides that a finding of Not Sustained is appropriate when the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the BPD employee.

the provision of law enforcement services and OIPA also suggested that BPD consider a policy revision incorporating this concept.

In summary, OIPA conveyed concerns and made recommendations related primarily and importantly to the following issues in connection with its review of Internal Affairs' performance during this period:

- Reaching findings of Unfounded is appropriate only when the alleged conduct did not occur and is inappropriate when the conduct occurred but was within policy.
- The importance of maintaining or updating the Internal Affairs database such that each record is accurate and complete and such that all relevant documentation is attached.
- Properly identifying, recording, and investigating all allegations lodged by a complainant or all allegations that may surface during the course of an investigation.

It's important to note that the process of review by OIPA provides for the detection of issues such as those identified above and allows both OIPA and BPD to thoughtfully address and rectify those issues in order to improve BPD's internal accountability systems.

Chief Ed Alvarez and Deputy Chief Kevin Franklin have been consistently attentive to OIPA's concerns and have made themselves available for comprehensive discussions about the particulars of each of the concerns raised herein.

OIPA will remain vigilant in its review of IA's work and will remain in close contact with Chief Alvarez to address any issues or concerns going forward. It is our expectation that by remaining watchful and attentive and by working to ensure that BPD's internal accountability measures, including IA investigative processes, are effective we can mitigate conditions that might allow for the type of systemic breakdowns that can undermine community trust and impede the performance of the Department.

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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>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> 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 2023

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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**.<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>
February 2022	6	81	9	1	0	0
March 2022	6	73	14	1	0	0
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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 <sup>7</sup>	1
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>12</b>

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

OIPA	2
BART Police Department	9
<b>TOTAL</b>	<b>11</b>

## 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"> <li>• Conduct Unbecoming an Officer</li> <li>• Policy/Procedure</li> <li>• Policy/Procedure (Body Worn Camera)</li> </ul>	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"> <li>• Force</li> <li>• Arrest/Detention</li> </ul> Officer #2: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	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"> <li>• Force</li> </ul>	BPD initiated an investigation.	63
2 (IA2023-008)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	62
3 (IA2023-010)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	56
4 (IA2023-011)	Officers #1-3: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	55
5 (IA2023-012)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	57
6 (IA2023-014)	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	53
7 (IA2023-015)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	47
8 (IA2023-017)	Officers #1-2: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	42
9 (IA2023-018)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> </ul> Employee #1: <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul>	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. <sup>10</sup>	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 <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>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." 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> 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.

<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 2023

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Issue date: May 8, 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 **March 1, 2023 through March 31, 2023**.<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>
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
March 2023	10	98	4	1	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	9
Informal Complaints <sup>7</sup>	0
Administrative Investigations	1
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>10</b>

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

OIPA	4
BART Police Department	5
<b>TOTAL</b>	<b>9</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During March 2023, **4 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #23-06) (IA2023-021)	Unknown Employee #1: • Unknown Allegation(s)	OIPA notified BPD which contacted complainant and determined there was no misconduct complaint. BPD initiated a Supervisor Referral. <sup>10</sup>	54
2 (OIPA #23-05) (IA2023-022)	Officers #1-5: • Bias-Based Policing • Conduct Unbecoming an Officer  Officers #1&5 • Arrest/Detention  Officers #2&5: • Force  Officer #5: • Search/Seizure • Policy Procedure (Body Worn Camera)	OIPA notified BPD which initiated an investigation.	55
3 (OIPA #23-07) (IA2023-024)	Officer #1: • Performance of Duty	OIPA notified BPD which initiated an investigation.	48
4 (OIPA #23-08) (IA2023-029)	Officer #1: • Conduct Unbecoming an Officer  Officer #2: • Arrest/Detention • Force	OIPA notified BPD which had already initiated an investigation after receiving the same complaint.	40

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

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-019)	Officer #1: • Arrest/Detention • Search/Seizure	BPD initiated an investigation.	61
2 (IA2023-020)	Employee #1: • Policy/Procedure • Performance of Duty	BPD initiated an investigation.	60
3 (IA2023-023)	Employee #1: • Performance of Duty • Bias-Based Policing	BPD initiated an investigation.	48

4 (IA2023-026)	Officers #1-2: • Performance of Duty • Bias-Based Policing	BPD initiated an investigation.	42
5 (IA2023-028)	Officer #1: • Search/Seizure	BPD initiated an investigation.	40

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

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2023-025)	Officer #1: • Conduct Unbecoming an Officer • Performance of Duty • Policy/Procedure	BPD initiated an investigation.	44

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During March 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 #18-08) (IA2018-001)*	Officer used excessive and unnecessary force and was untruthful when interviewed about the use of force. Supervisor returned officer to duty prematurely after critical incident and improperly promoted officer. Supervisor's public comments violated media relations policy.	Officer #1: • Force – Exonerated • Truthfulness – Exonerated  Officer #2: • Supervision – Exonerated • Policy/Procedure (Officer-Involved Shooting Media Relations) – Sustained	1876	1816†

\* The BPD Internal Affairs investigation of this officer-involved shooting remains open as of this reporting. BPD Policy 310.7 (Administrative Investigation) provides that “[i]n addition to all other investigations associated with an officer-involved shooting or death, this department will conduct an internal administrative investigation of BART PD officers to determine conformance with department policy. The investigation will be conducted under the supervision of the Internal Affairs Division and will be considered a confidential officer personnel file.

† Separate criminal investigations were conducted and completed by the Oakland Police Department (OPD) and Alameda County District Attorney’s Office (ACDA) regarding this officer-involved shooting. There were also civil proceedings that resolved on October 5, 2022. This OIPA investigation was tolled during those proceedings and resumed at the conclusion of the civil litigation. Tolling of this investigation was in reliance on Government Code section 3304(2)(F), also known as the California Peace Officers’ Bill of Rights, which provides, “If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.”

During March 2023, **2 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2023-013)	Officer inappropriately requested the name of a person in medical distress.	Officers #1-2: • Policy/Procedure – Supervisor Referral	83	21
2 (IA2022-016)	Officers witnessed a crime and failed to take law enforcement action.	Officers #1-2: • Performance of Duty – Administratively Closed <sup>11</sup>	398	332

### COMPLAINTS/INVESTIGATIONS CONCLUDED DURING A PRIOR REPORTING PERIOD BUT NOT PREVIOUSLY RECORDED BY INTERNAL AFFAIRS

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

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2022-056)	Officers did not wear face coverings as required	Officers #1-5: • Policy/Procedure – Supervisor Referral	282	208

### DISCIPLINE ISSUED DURING REPORTING PERIOD

During March 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 (AXON Camera)	Officer #1: • Oral Counseling <sup>12</sup>

### ADDITIONAL NOTES

‡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).

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	22
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 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.

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<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 IA.

<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> 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

April 2023

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Issue date: June 12, 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 **April 1, 2023 through April 30, 2023**.<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>
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
March 2023	10	98	4	1	0	0
April 2023	12	99*	10	1	0	0

## TYPES OF CASES FILED

Citizen Complaints (Formal)	12
Informal Complaints <sup>7</sup>	0
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>12</b>

\* The BPD Internal Affairs investigation of a 2018 officer-involved shooting remained open as of March 30, 2018. BPD Policy 310.7 (Administrative Investigation) provides that “[i]n addition to all other investigations associated with an officer-involved shooting or death, this department will conduct an internal administrative investigation of BART PD officers to determine conformance with department policy. The investigation will be conducted under the supervision of the Internal Affairs Division and will be considered a confidential officer personnel file.” Separate criminal investigations were conducted and completed by the Oakland Police Department (OPD) and Alameda County District Attorney’s Office (ACDA) regarding this officer-involved shooting. There were also civil proceedings that resolved on October 5, 2022. A separate OIPA investigation was tolled during those proceedings and resumed at the conclusion of the civil litigation. OIPA completed its investigation in March 2023 and those findings are included in OIPA’s report for that period. Tolling of that OIPA investigation was in reliance on Government Code section 3304(2)(F), also known as the California Peace Officers’ Bill of Rights, which provides, “If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.” BPD elected to defer its investigation to OIPA and has now closed their internal review process by adopting the findings and recommendations of OIPA. The number of open IA investigations listed here now reflects that closure.

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

OIPA	4
BART Police Department	8
<b>TOTAL</b>	<b>12</b>

**COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD**

During April 2023, **4 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #23-11) (IA2023-033)	Unknown Officers #1-2: • Conduct Unbecoming an Officer	OIPA notified BPD which initiated an investigation.	66
2 (OIPA #23-13) (IA2023-038)	Employee #1: • Bias-Based Policing • Conduct Unbecoming an Officer	OIPA notified BPD which initiated an investigation.	49
3 (OIPA #23-10) (IA2023-039)	Officer #1: • Bias-Based Policing • Arrest/Detention • Courtesy	OIPA notified BPD which initiated an investigation.	67
4 (OIPA #23-09) (IA2023-044)	Officer #1: • Conduct Unbecoming an Officer	OIPA notified BPD which initiated an investigation.	69

During April 2023, **8 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-030)	Unknown Officers #1-3: • Performance of Duty	BPD initiated an investigation.	72
2 (IA2023-031)	Officers #1-2: • Policy/Procedure • Performance of Duty	BPD initiated an investigation.	69
3 (IA2023-032)	Officer #1: • Force	BPD initiated an investigation.	71
4 (IA2023-034)	Officers #1-2: • Force	BPD initiated an investigation.	61
5 (IA2023-036)	Officer #1: • Force • Policy/Procedure	BPD deferred the investigation to OIPA. <sup>†</sup>	60

<sup>†</sup> Complainant was frustrated by the IA process and OIPA, IA, and Interim Chief Franklin conferred and agreed to transfer the investigation to OIPA at complainant's request.

6 (IA2023-037)	Officers #1-2: • Bias-Based Policing • Arrest/Detention • Conduct Unbecoming an Officer	BPD deferred the investigation to OIPA.‡	60
7 (IA2023-040)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	45
8 (IA2023-041)	Officers #1-3: • Arrest/Detention	BPD initiated an investigation.	45

**COMPLAINTS/INVESTIGATIONS RECEIVED DURING PRIOR REPORTING PERIOD**

During March 2023, **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 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 #22-21)	OIPA completed an investigation into a whistleblower complaint that was forwarded by the BART Office of the Inspector General. [The details of the complaint will remain confidential to protect the involved parties from retaliation].	• There were no sustained allegations of misconduct.§	396	329

‡ Complainant was frustrated by the IA process and OIPA, IA, and Interim Chief Franklin conferred and agreed to transfer the investigation to OIPA at complainant’s request.

§ The investigation resulted in recommendations for improvements to the operations of the police department that were submitted to the BART General Manager on May 1<sup>st</sup>, 2023. The General Manager’s responses to those recommendations will be incorporated into a public report.

During April 2023, **11 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2022-022)	Officer contacted and harassed complainant based on complainant's race.	Officer #1: • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Not Sustained	421	359
2 (IA2022-024)	Officers taunted complainant.	Officers #1-2: • Conduct Unbecoming an Officer – Not Sustained	416	362
3 (IA2022-025)	Officers were dismissive and unhelpful to complainant because of complainant's race and one officer did not properly document a law enforcement contact.	Officers #1-2: • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Not Sustained  Officer #2: • Policy/Procedure (Body Worn Camera) – Sustained • Performance of Duty – Not Sustained	421	359
4 (IA2022-027)	Officers acted unprofessionally and used excessive force when they drew their weapons.	Officers #1-3: • Conduct Unbecoming an Officer – Unfounded  Officers #1-2: • Force – Exonerated  Officer #3: • Force – Unfounded	408	361
5 (IA2022-030)	Officer acted unprofessionally and did not properly handle a call for service.	Officer #1: • Performance of Duty – Not Sustained • Conduct Unbecoming an Officer – Not Sustained	396	342
6 (IA2022-031)	Officers used excessive force.	Officers #1-2: • Force – Exonerated	417	365
7 (IA2022-033)	Officer made an unprofessional comment and prevented complainant from recording the contact.	Officer #1: • Conduct Unbecoming an Officer (Comment) – Exonerated • Conduct Unbecoming an Officer (Recording) – Unfounded	388	334
8 (IA2022-036)	Officers did not provide adequate assistance to patron upon request.	Officers #1-2: • Performance of Duty – Exonerated	382	395
9 (IA2022-039)	Officers used excessive force during an arrest.	Officers #1-4: • Force – Exonerated	384	335

10 (IA2022-046)	Employee made an unprofessional comment during fare inspection.	Employee #1: • Conduct Unbecoming an Officer – Exonerated	388	334
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### COMPLAINTS/INVESTIGATIONS CONCLUDED DURING A PRIOR REPORTING PERIOD BUT NOT PREVIOUSLY RECORDED BY INTERNAL AFFAIRS

During March 2023, **1 Formal Complaint** was concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2022-018)	One officer unlawfully detained a subject, another officer was aggressive and threatening toward complainant, three officers used excessive force, and one officer unlawfully arrested complainant.	Officers #1-3: • Force – Exonerated  Officer #2: • Conduct Unbecoming an Officer – Not Sustained  Officer #3: • Arrest/Detention (Count 1) – Not Sustained • Arrest/Detention (Count 2) – Exonerated • Search/Seizure – Not Sustained	428	355

### DISCIPLINE ISSUED DURING REPORTING PERIOD

During April 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 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: • Resigned prior to termination pursuant to settlement agreement.††

\*\* 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).

†† OIPA reported in October 2022 that the subject officer in this case had been issued a “Skelly” Notice for formal discipline. The Skelly pre-discipline process is intended to provide the employee with an opportunity to present a written

## 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	25
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.

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>10</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

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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). The officer was terminated from employment in February 2023. In April 2023, the subject officer entered an agreement with the BART District under which the officer's status was changed from "termination" to "resignation." The BART Citizen Oversight Model Chapter 1-04(C) provides that OIPA shall be authorized to review any legal claims and/or lawsuits against BART that relate to the conduct of BPD personnel to ensure that all allegations of misconduct are thoroughly investigated by OIPA and/or BPD, and to identify any systemic issues regarding BPD practices and/or policies; that OIPA shall be authorized to review any significant settlements and adverse judgments involving BPD; that OIPA shall work with BPD to develop corrective action intended to remediate any systemic issues identified through review of any significant settlements or adverse judgments involving the BPD; and that OIPA shall publicly report its involvement in the review of legal claims, lawsuits and settlements in a manner consistent with all applicable confidentiality requirements. In keeping with the requirements of this chapter of the Model, OIPA reports that it had no involvement in the negotiation of this settlement agreement and was not consulted by the BART Office of General Counsel, the General Manager or Chief Alvarez.

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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> 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 2023

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Issue date: July 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 **May 1, 2023 through May 31, 2023**.<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>
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
March 2023	10	98	4	1	0	0
April 2023	12	99	10	1	0	0
May 2023	10	101	6	1	1	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	9
Informal Complaints <sup>7</sup>	0
Administrative Investigations	1
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>10</b>

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

OIPA	3
BART Police Department	6
<b>TOTAL</b>	<b>9</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During May 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 #23-17) (IA2023-045)	Officer #1: <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Racial Animus</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation which is being monitored by OIPA.*	61
2 (OIPA #23-16) (IA2023-051)	Officer #1: <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Conduct Unbecoming an Officer</li> <li>• Policy/Procedure</li> </ul>	OIPA initiated an investigation.	62

During April 2023, **6 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-049)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest/Detention</li> </ul>	BPD initiated an investigation.	46
2 (IA2023-048)	Officer #1: <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	51
3 (IA2023-047)	Officers #1-2: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	53
4 (IA2023-046)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	55
5 (IA2023-043)	Officers #1-3: <ul style="list-style-type: none"> <li>• Force</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	70
6 (IA2023-042)	Officers #1-2: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	70

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\* This misconduct complaint was received by the BART Police Citizen Review Board (BPCRB) via email but was forwarded directly to BPD and to other BART staff despite the language of the BART Citizen Oversight Model which requires that such complaints shall be immediately forwarded to OIPA for appropriate handling. Therefore, this complaint was actually received by both BPD and OIPA on May 10, 2023, and OIPA did not need to notify Internal Affairs as we normally would.

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

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2023-055)	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure</li> <li>• Performance of Duty</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	51

### COMPLAINTS/INVESTIGATIONS RECEIVED DURING PRIOR REPORTING PERIOD

During April 2023, **1 Citizen Complaint** was received by OIPA but not previously reported:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #23-09) (IA2023-044)	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	OIPA notified BPD which initiated an investigation.	97

### COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During May 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 #22-25)	Officers used excessive force during an arrest.	Officer #1: <ul style="list-style-type: none"> <li>• Force – Exonerated</li> </ul> Officer #2 <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Force (De-escalation) – Sustained</li> </ul>	397	329

During May 2023, **4 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2022-035)	Officer arrested complainant based on complainant's race and officer used excessive force during the contact.	Officer #1: <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> </ul>	412	362
2 (IA2022-037)	Officer sexually assaulted and attempted to kill complainant.	Officer #1: <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	406	353
3 (IA2022-038)	One officer detained complainant because of complainant's race and one officer used unnecessary force during the detention.	Officer #1: <ul style="list-style-type: none"> <li>• Force – Unfounded</li> </ul> Officer #2: <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> </ul>	405	352
4 (IA2022-042)	Officer abused authority, profiled complainant, and intentionally used excessive force during an arrest.	Officer #1: <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> </ul>	402	361

**COMPLAINTS/INVESTIGATIONS CONCLUDED DURING A PRIOR REPORTING PERIOD BUT NOT PREVIOUSLY RECORDED BY INTERNAL AFFAIRS**

During March 2023, **1 Formal Complaint** was concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2022-019)	Officers racially profiled complainant and one officer did not properly document the law enforcement contact.	Officers #1-2: <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> </ul> Officer #2: <ul style="list-style-type: none"> <li>• Policy/Procedure (Body Worn Camera) – Not Sustained</li> </ul>	455	353

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During May 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 <sup>10</sup>
2	Officer did not apply required de-escalation tactics prior to using force.	Officer #1: • Force (De-escalation)	Officer #1: • Oral Counseling <sup>11</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	2
BPD-Initiated Appeals	0
Investigations Being Monitored	28
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.

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.

### Policy Change (BPD Policy 310 - Officer-Involved Shootings and Deaths):

In March 2023 OIPA completed its investigation into a 2018 BPD officer-involved shooting (OIS) that occurred near the west Oakland BART station. There were also civil proceedings related to the shooting that resolved on October 5, 2022. The OIPA investigation was tolled during those proceedings and resumed at the conclusion of the civil litigation. Tolling of that OIPA investigation was in reliance on Government Code section 3304(2)(F), also known as the California Peace Officers' Bill of Rights, which provides, "If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending." Separate criminal investigations were conducted and completed

†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).

by the Oakland Police Department (OPD) and Alameda County District Attorney's Office (ACDA). After OIPA completed its investigation in March 2023, those findings were included in OIPA's report for that period.

BPD Policy 310.7 (Administrative Investigation) provided at all relevant times that "[i]n addition to all other investigations associated with an officer-involved shooting or death, this department will conduct an internal administrative investigation of BART PD officers to determine conformance with department policy. The investigation will be conducted under the supervision of the Internal Affairs Division and will be considered a confidential officer personnel file."

The BPD Internal Affairs investigation of that OIS remained open as of March 30, 2018. BPD then elected to defer its investigation to OIPA and closed their internal review process by adopting the findings and recommendations of OIPA.

As a result of this process, BPD elected to codify its option to defer administrative OIS investigations to OIPA and has now revised its policy manual accordingly.

BPD Policy 310.7 now provides that "[i]n addition to all other investigations associated with an officer-involved shooting or death, this department will ensure that an administrative investigation of BART PD officers to determine conformance with department policy is completed. The investigation will be reviewed by the Internal Affairs Division and will be considered a confidential officer personnel file."

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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.

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<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> 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>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 2023

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Issue date: August 14, 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 **June 1, 2023 through June 30, 2023**.<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 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
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

### TYPES OF CASES FILED

Citizen Complaints (Formal)	13
Informal Complaints <sup>7</sup>	0
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>13</b>

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

OIPA	6
BART Police Department	7
<b>TOTAL</b>	<b>13</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During June 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 #23-19) (IA2023-057)	Officer #1: • Courtesy	OIPA notified BPD which BPD initiated an investigation.	67
2 (OIPA #23-16) (IA2023-051)	Officer #1: • Bias-Based Policing • Conduct Unbecoming an Officer • Policy/Procedure	OIPA initiated an investigation.	62

During June 2023, **3 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-050)	Officer #1: • Force	BPD initiated an investigation.	46
2 (IA2023-053)	Officer #1: • Bias-Based Policing • Conduct Unbecoming an Officer  Officer #2: • Policy/Procedure	BPD initiated an investigation.	59
3 (IA2023-056)	Officer #1: • Courtesy	BPD initiated an investigation.	53

## COMPLAINTS/INVESTIGATIONS RECEIVED DURING PRIOR REPORTING PERIOD

During April 2023, **2 Citizen Complaints** were received by BPD but not previously reported:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-052)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	109
2 (IA2023-058)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	109

During May 2023, **1 Citizen Complaint** was received by BPD but not previously reported:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-054)	Officer #1: • Force	BPD initiated an investigation.	100

### COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During June 2023, **3 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2022-045)	Officer improperly arrested complainant and mistreated complainant based on complainant's race and officers used excessive force during the contact.	Officers #1-2: • Force – Exonerated  Officer #2: • Bias-Based Policing – Unfounded • Arrest/Detention – Exonerated	418	351
2 (IA2022-049)	Officer failed to provide medical attention and improperly ejected complainant from BART property.	Officer #1: • Performance of Duty – Exonerated	408	341
3 (IA2022-051)	Officer mishandled complainant's property and used excessive force during an arrest.	Officer #1: • Force – Exonerated • Conduct Unbecoming an Officer – Not Sustained	409	363

During June 2023, **3 Administrative Investigations** were concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2022-040)	Officer used excessive force and failed to properly document a law enforcement contact and two officers did not take appropriate law enforcement action in connection with the contact.	Officer #1: <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Policy/Procedure (Body Worn Camera) – Sustained</li> </ul> Officers #1-2: <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> </ul>	439	394*
2 (IA2022-041)	Officers harassed a coworker.	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Sustained</li> </ul> Officers #1-2: <ul style="list-style-type: none"> <li>• Workplace Discrimination/Harassment – Not Sustained</li> </ul>	434	379
3 (IA2022-044)	Officers mishandled property and evidence.	Officers #1-2: <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> </ul> Officer #3: <ul style="list-style-type: none"> <li>• Performance of Duty – Not Sustained</li> </ul>	418	347

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During June 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: <ul style="list-style-type: none"> <li>• Policy/Procedure (Body Worn Camera)</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>• Letter of Discussion<sup>10</sup></li> </ul>

\* BPD reported that this case was tolled due to the subject officers' unavailability.

†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 did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera)	Officer #1: • Written Reprimand <sup>11</sup>
3	Officer mishandled property and evidence.	Officer #1: • Performance of Duty (Custody of Prisoners)	Officer #1: • Written Reprimand
4	Officer failed to employ required de-escalation tactics prior to using force.	Officer #1: • Force (De-escalation)	Officer #1: • Oral Counseling <sup>12</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	3
BPD-Initiated Appeals	0
Investigations Being Monitored	28
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.

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 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.

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<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> 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>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

July 2023

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Issue date: September 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 **July 1, 2023 through July 31, 2023**.<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 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
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

### TYPES OF CASES FILED

Citizen Complaints (Formal)	18
Informal Complaints <sup>7</sup>	1
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>19</b>

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

OIPA	4
BART Police Department	15
<b>TOTAL</b>	<b>19</b>

\* OIPA completed case #22-34 in July 2023 but the case remains active in the Internal Affairs database pending a decision by Interim Chief Franklin regarding whether to appeal the findings, which were supported by the BPCRB at their August 2023 regular meeting.



## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During July 2023, **3 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #23-27) (IA2023-065)	Officer #1: • Bias-Based Policing	OIPA notified BPD which BPD initiated an investigation.	57
2 (OIPA #23-28) (IA2023-068)	Officers #1-2: • Performance of Duty  Officer #2: • Courtesy	OIPA notified BPD which BPD initiated an investigation.	50
3 (OIPA #23-30) (IA2023-072)	Officer #1: • Courtesy	OIPA notified BPD which BPD initiated an investigation.	45

During July 2023, **15 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-059)	Officers #1-2: • Performance of Duty	BPD initiated an investigation.	70
2 (IA2023-060)	Officers #1-2: • Bias-Based Policing • Performance of Duty	BPD initiated an investigation.	67
3 (IA2023-061)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	66
4 (IA2023-062)	Officer #1: • Force	BPD initiated an investigation.	63
5 (IA2023-063)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	63
6 (IA2023-064)	Officers #1-3: • Conduct Unbecoming an Officer	BPD initiated an investigation.	58

7 (IA2023-066)	Officers #1-4: <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest/Detention</li> <li>• Policy/Procedure</li> <li>• Performance of Duty</li> <li>• Search/Seizure</li> </ul>	BPD initiated an investigation.	49
8 (IA2023-069)	Officers #1-2: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	49
9 (IA2023-070)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	46
10 (IA2023-071)	Officers #1-2: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	45
11 (IA2023-073)	Officers #1-3: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	49
12 (IA2023-074)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	48
13 (IA2023-075)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	44
14 (IA2023-076)	Officers #1-3: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	42
15 (IA2023-067)	Officers #1-2: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Policy/Procedure</li> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	51

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During July 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 #22-34) (IA2022-076)	Officers improperly detained complainant based on complainant's race, improperly handcuffed complainant, used excessive force during the detention, and were discourteous. Officers also failed to care for complainant's property during the detention and one officer failed to properly supervise other officers.	<p>Officers #1-3:</p> <ul style="list-style-type: none"> <li>• Arrest/Detention – Exonerated</li> <li>• Force – Exonerated</li> </ul> <p>Officers #1&amp;3:</p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Not Sustained</li> </ul> <p>Officers #2&amp;3:</p> <ul style="list-style-type: none"> <li>• Policy/Procedure (Property Handling)</li> </ul> <p>Officer #2:</p> <ul style="list-style-type: none"> <li>• Policy/Procedure (Property Handling) – Exonerated</li> </ul> <p>Officer #4:</p> <ul style="list-style-type: none"> <li>• Policy/Procedure (Body Worn Camera) – Sustained</li> </ul> <p>Officer #5:</p> <ul style="list-style-type: none"> <li>• Policy/Procedure (Supervision) – Exonerated</li> </ul>	347	280

During July 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 (IA2022-052)	Officer improperly contacted complainant for a traffic violation and ran a records check during the contact.	Officer #1: • Conduct Unbecoming an Officer – Sustained	425	355
2 (IA2022-054)	Officer spoke harshly and aggressively to complainant during a contact.	Officer #1: • Courtesy – Unfounded	417	347
3 (IA2022-055)	Officer was dishonest during the hiring process.	Officer #1: • Truthfulness – Unfounded	420	360

4 (IA2022-057)	Officer was dishonest during the hiring process.	Officer #1: • Truthfulness – Unfounded	420	360
4 (IA2022-057)	Officers refused to take action after complainant reported a crime and officers improperly cited complainant.	Officers #1-2: • Performance of Duty – Unfounded	402	355
5 (IA2022-058)	Officer used excessive force and profanities during detention for fare evasion. <sup>†</sup>	Officer #1: • Force – Exonerated • Conduct Unbecoming an Officer – No finding reached	420	360
6 (IA2022-059)	Officers improperly contacted complainant based on complainant's race used excessive force during detention for fare evasion. One officer improperly touched complainant during a search.	Officers #1-2: • Force – Exonerated • Bias-Based Policing – Unfounded  Officer #2: • Conduct Unbecoming an Officer – Not Sustained	398	350
7 (IA2022-060)	Officer failed to take enforcement action.	Officer #1: • Performance of Duty – Administratively Closed <sup>10</sup>	398	350

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During July 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 <sup>11</sup>

<sup>†</sup> The complainant alleged that two officers used excessive force during the detention, but IA only reached a finding as to one of the officers who used force during the arrest and did not address the allegation of Conduct Unbecoming an Officer in the final report.

<sup>‡</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 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 document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera)	Officer #1: • Oral Counseling <sup>12</sup>
4	Officer improperly contacted complainant for a traffic violation and ran a records check during the contact.	Officer #1: • Conduct Unbecoming an Officer	Officer #1: • Non-Documented

## 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	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.

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 generated the following recommendations for revisions or additional investigation.

OIPA identified one intake interview that was conducted by an IA investigator which included an exchange that OIPA characterized as dissuasive. OIPA has consistently conveyed to IA leadership that it is inappropriate in most instances to respond to a complainant's concerns by offering any justifications for the conduct in question. BPD responded that IA leadership would discuss OIPA's input with the investigator. It remains our intention to provide feedback to IA leadership that will improve the quality of its investigations, improve the experience for complainants, and mitigate the perception that IA investigations are not objective.

OIPA identified one complaint that was received by IA during this period which was classified as an "Informal Complaint" by IA personnel. After reviewing the available information and evidence, OIPA inquired as to the reasons that the complaint, which included potentially serious policy violations, was classified as "Informal." Informal complaints are typically addressed via a Supervisor referral involving a documented discussion with the involved employee. BPD replied that the case will be reclassified as a Formal Complaint which will be fully investigated by IA.

OIPA's review of IA data for inclusion in this report also revealed a number of minor clerical errors, which BPD has committed to resolving. 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.

## Policy/Procedure Recommendations

### **NEW PROCESS RE DISCIPLINE ISSUANCE DATE**

While reviewing data for inclusion in OIPA's monthly reports, we noted that disciplinary documentation (the letters issued to personnel when discipline is imposed) included inconsistent information about the duration of time that the disciplinary documentation would remain in an employees' file.

For example, some employees received correspondence stating that the discipline would remain active, for the purpose of adhering to collectively bargained progressive discipline structure, for a period of one year from the date of issuance of the letter, some employees received correspondence stating that the discipline would remain active for one year from the date of the underlying incident, and other employees were informed that the discipline would remain active in the file for one year from the date that an investigation into the matter was completed.

Because the progressive discipline system relies on the proper maintenance of imposed disciplinary records, and because employees should be able to rely on the consistency of the disciplinary structure, OIPA recommended that BPD maintain each record for the required period of time beginning from the date of issuance. OIPA also intended to remove the discretion of IA personnel regarding determining which starting date was appropriate on a case-by-case basis. The existence of this discretion may create the perception that some employees are treated differently than others due to the nature of their relationship with IA personnel. The recommended revision to this practice was also intended to ensure that repeated policy violations by the same officer will result in appropriately escalated discipline such that the imposition of discipline has the desired effect of preventing future policy violations.

OIPA appreciates the prompt and appropriate action taken by Interim Chief Franklin.

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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

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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> 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

August 2023

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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.**<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 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 <sup>7</sup>	0
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>18</b>

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

OIPA	1
BART Police Department	17
<b>TOTAL</b>	<b>18</b>

\* 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: <ul style="list-style-type: none"> <li>• Policy/Procedure</li> <li>• Conduct Unbecoming an Officer</li> </ul>	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: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	68
2 (IA2023-078)	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	67
3 (IA2023-080)	Officers #1-2: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	61
4 (IA2023-082)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> </ul>	BPD initiated an investigation.	59
5 (IA2023-083)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> <li>• Policy/Procedure (AXON camera)</li> </ul>	BPD initiated an investigation.	61
6 (IA2023-084)	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	60
7 (IA2023-085)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> <li>• Bias-Based Policing</li> <li>• Policy/Procedure (AXON camera)</li> </ul> Officer #2: <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	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 <sup>10</sup>	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 <sup>11</sup>
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 <sup>12</sup>

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.<sup>13</sup> 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.<sup>§</sup>

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.

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<sup>§</sup>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.

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## Conflict-of-Interest and Other Allegations Unsubstantiated

## Office of the Independent Police Auditor

**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**

<b>ALLEGATIONS</b>	<b>FINDINGS</b>
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.

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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.

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<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> 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> 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> 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 2023

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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 **September 1, 2023 through September 30, 2023.**<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 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
September 2023	11	115	11	1	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	7
Informal Complaints <sup>7</sup>	1
Administrative Investigations	1
Inquiries <sup>8</sup>	1
<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 September 2023, **3 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #23-35) (IA2023-092)	Officers #1-3: • Bias-Based Policing	OIPA notified BPD which BPD initiated an investigation.	88
2 (OIPA #23-32) (IA2023-094)	Officer #1: • Bias-Based Policing • Courtesy • Performance of Duty	OIPA notified BPD which BPD initiated an investigation.	87
3 (OIPA #23-33) (IA2023-096)	Officers #1-4: • Bias-Based Policing • Force • Conduct Unbecoming an Officer	OIPA notified BPD which BPD initiated an investigation.	82

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

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-089)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	101
2 (IA2023-090)	Officer #1: • Bias-Based Policing	BPD initiated an investigation.	98
3 (IA2023-091)	Officers #1-3: • Conduct Unbecoming an Officer  Officers #1 & 4: • Performance of Duty	BPD initiated an investigation.	99
4 (IA2023-093)	Officer #1: • Force  Officer #2: • Conduct Unbecoming an Officer	BPD initiated an investigation.	87

5 (IA2023-098)	Officers #1-3: • Force • Conduct Unbecoming an Officer	BPD initiated an investigation.	79
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During September 2023, **1 Administrative Investigation** was initiated by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2023-095)	Officers #1-2: • Force • Performance of Duty • Policy/Procedure (AXON Camera) • Policy/Procedure (Report Preparation)  Officer #2: • Arrest/Detention • Conduct Unbecoming an Officer	BPD initiated an investigation.	81

Also, during the month of September 2023, BPD received complaint #IA2023-097 alleging that BPD personnel failed to detain fare evaders and BPD addressed the matter via a Supervisor Referral.<sup>10</sup>

### COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During August 2023, **1 Citizen Complaint** was received by BPD but not previously reported:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-088)	Officer #1: • Courtesy • Conduct Unbecoming an Officer	BPD initiated an investigation.	104

**COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD**

During September 2023, **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
<p><b>1</b> (OIPA #22-36) (IA2022-096)</p>	<p>Officers improperly detained complainant and used excessive force during the detention based on complainant's race, failed to employ required de-escalation tactics, conducted an improper search, failed to properly document the search, and coerced complainant into signing a citation.</p>	<p>Officer #1:  <ul style="list-style-type: none"> <li>• Force – Sustained</li> </ul>                     Officers #2&amp;3:  <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Policy/Procedure (De-escalation) – Sustained</li> </ul>                     Officers #1&amp;4:  <ul style="list-style-type: none"> <li>• Policy/Procedure (Search Protocol) – Exonerated</li> </ul>                     Officers #1&amp;3:  <ul style="list-style-type: none"> <li>• Policy/Procedure (Search Documentation) – Sustained</li> </ul>                     Officers #1&amp;4:  <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Exonerated</li> </ul>                     Officer #3:  <ul style="list-style-type: none"> <li>• Policy/Procedure (Report Writing) – Sustained</li> </ul> </p>	<p>450</p>	<p>354</p>

During September 2023, **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 (IA2022-067)	Officers harassed subject based on race, unlawfully searched and handcuffed the subject, and aggressively grabbed subject's property.	<p>Officers #1-3:</p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> </ul> <p>Officer #1:</p> <ul style="list-style-type: none"> <li>• Arrest/Detention – Exonerated</li> </ul> <p>Officers #1 &amp; 3:</p> <ul style="list-style-type: none"> <li>• Search/Seizure – Unfounded</li> </ul> <p>Officer #2:</p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Exonerated</li> </ul>	466	365
2 (IA2022-071)	Officer regularly harassed complainant, unlawfully detained complainant, used excessive force during the detention, and did so based on complainant's race.	<p>Officer #1:</p> <ul style="list-style-type: none"> <li>• Arrest/Detention – Exonerated</li> <li>• Force – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Bias-Based Policing – Unfounded</li> </ul>	454	370
3 (IA2022-073)	Officers did not properly respond to a call for service and officers attempted to make complainant participate in the improper arrest of another subject.	<p>Officer #1:</p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Performance of Duty – Unfounded</li> </ul>	440	356

4 (IA2022-074)	Officer improperly documented a reported crime.	Officer #1: • Performance of Duty – Exonerated	444	348
	Employee used excessive force during a Proof of Payment Ordinance enforcement operation and employees failed to provide identifying information as required upon request. Employees failed to properly document fare enforcement activities.	Employees #1-3: • Conduct Unbecoming – Not Sustained • Policy/Procedure (AXON Camera) – Not Sustained  Employee #4: • Conduct Unbecoming – Exonerated • Force – Exonerated	423	347
6 (IA2022-082)	Officers harassed subject because of subject's race and officers used excessive force during a detention for fare evasion.	Officers #1-2: • Force – Exonerated • Bias-Based Policing – Unfounded	467	377
	Officers used excessive force, verbally abused, and sexually assaulted complainant because of complainant's race.	Officers #1-2: • Force – Exonerated • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded	451	375
8 (IA2022-084)	Officer used excessive force during an arrest.	Officer #1: • Force – Exonerated	413	337

9 (IA2022-078)	Officers took law enforcement action based on complainant's race.	Officers #1-4: • Bias-Based Policing – Unfounded	443	371
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During September 2023, **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 (IA2022-075)	Officer used excessive force and failed to properly document a law enforcement contact and two officers did not take appropriate law enforcement action in connection with the contact.	Officer #1: • Policy/Procedure (Body Worn Camera) – Sustained • Performance of Duty (Vehicle Pursuit) – Sustained	439	352

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During September 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 <sup>11</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 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 document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera)	Officer #1: Letter of Discussion
4	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera)	Officer #1: Letter of Discussion
5	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera)	Officer #1: 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	7
Complainant-Initiated Appeals	3
BPD-Initiated Appeals	0
Investigations Being Monitored	33
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.<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 this period did not generate any 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



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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 IA.

<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

October 2023

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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.**<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 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 <sup>7</sup>	0
Administrative Investigations	1
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>4</b>

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

OIPA	1
BART Police Department	3
<b>TOTAL</b>	<b>4</b>

## 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: <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Policy/Procedure</li> </ul>	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: <ul style="list-style-type: none"> <li>• Courtesy</li> </ul>	BPD initiated an investigation.	66
2 (IA2023-101)	Officers #1-2: <ul style="list-style-type: none"> <li>• Force</li> </ul>	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: <ul style="list-style-type: none"> <li>• Policy/Procedure (Documentation)</li> <li>• Arrest/Detention</li> </ul>	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 <sup>†</sup>	265	221

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\*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.

<sup>†</sup>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.

<p><b>2</b> (OIPA #23-04) (IA2023-016)</p>	<p>Officers improperly detained and cited complainant based on complainant's race and used excessive force during the detention.</p>	<p>Officers #1-2:</p> <ul style="list-style-type: none"> <li>• Arrest/Detention – Exonerated</li> <li>• Force – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> <li>• Conduct Unbecoming an Officer – Exonerated</li> </ul>	<p>290</p>	<p>197</p>
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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
<p><b>1</b> (IA2021-081)</p>	<p>Officers used excessive force during a detention for fare evasion.</p>	<p>Officers #1-3:</p> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> </ul>	<p>789</p>	<p>744<sup>‡</sup></p>
<p><b>2</b> (IA2022-072)</p>	<p>Officers detained complainant for fare evasion because of complainant's race, used excessive force during the detention, and failed to properly document the contact.</p>	<p>Officers #1-2:</p> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> </ul> <p>Officer #1:</p> <ul style="list-style-type: none"> <li>• Policy/Procedure (Documentation) – Not Sustained</li> </ul> <p>Officer #3:</p> <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> </ul>	<p>448</p>	<p>396</p>
<p><b>3</b> (IA2022-077)</p>	<p>Officers used excessive force during a vehicle stop.</p>	<p>Officers #1-2:</p> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>•</li> </ul>	<p>437</p>	<p>371</p>

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

<p><b>4</b> <b>(IA2022-081)</b></p>	<p>Officers improperly detained a subject and used excessive force during the detention.</p>	<p>Officers #1-2: • Force – Exonerated • Arrest/Detention – Exonerated</p>	<p>419</p>	<p>351</p>
<p><b>5</b> <b>(IA2022-085)</b></p>	<p>Officers intimidated complainant during a fare inspection contact and one officer did not properly document the contact.</p>	<p>Officers #1-2: • Conduct Unbecoming an Officer – Unfounded  Officer #2: • Policy/Procedure (AXON Camera) – Sustained</p>	<p>412</p>	<p>351</p>
<p><b>6</b> <b>(IA2022-086)</b></p>	<p>Officers used excessive force during a detention for a code of conduct violation.</p>	<p>Officers #1-2: • Force – Exonerated</p>	<p>398</p>	<p>349</p>
<p><b>7</b> <b>(IA2022-089)</b></p>	<p>Officers unlawfully detained complainant and took complainant’s property.</p>	<p>Officers #1-2: • Conduct Unbecoming an Officer – Unfounded  Officer #2: • Arrest/Detention – Exonerated</p>	<p>370</p>	<p>317</p>
<p><b>8</b> <b>(IA2022-094)</b></p>	<p>Officers improperly cited complainant for fare evasion.</p>	<p>Officers #1-2: • Conduct Unbecoming an Officer – Unfounded</p>	<p>376</p>	<p>315</p>
<p><b>9</b> <b>(IA2022-095)</b></p>	<p>Officer took law enforcement action based on complainant’s race.</p>	<p>Officer #1: • Bias-Based Policing – Administratively Closed<sup>10</sup></p>	<p>356</p>	<p>311</p>
<p><b>10</b> <b>(IA2023-034)</b></p>	<p>Officers used excessive force during the detention of a person experiencing a mental health crisis.</p>	<p>Officers #1-2: • Force – Exonerated</p>	<p>429</p>	<p>370</p>

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: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Supervisor Referral.<sup>11</sup></li> </ul>	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: <ul style="list-style-type: none"> <li>• Policy/Procedure (Body Worn Camera)</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>• Letter of Discussion<sup>12</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>	Officer #1: <ul style="list-style-type: none"> <li>• Letter of Discussion</li> <li>•</li> </ul>
3	Officer improperly initiated a vehicle pursuit and failed to properly document the activity.	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure (Body Worn Camera)</li> <li>• Performance of Duty (Vehicle Pursuit &amp; Off property Traffic Enforcement)</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>• Suspension (1 Day/10 hours)**</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).

\*\* 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	<p>Officer #1 did not properly document a law enforcement contact.</p> <p>Officer #2 used unnecessary force, failed to properly document a search, and failed to apply required de-escalation tactics.</p>	<p>Officer #1:</p> <ul style="list-style-type: none"> <li>• Policy/Procedure (Search Documentation)</li> <li>• Policy/Procedure (Report Writing)</li> </ul> <p>Officer #2:</p> <ul style="list-style-type: none"> <li>• Force (Unnecessary)</li> <li>• Force (De-escalation)</li> <li>• Policy/Procedure (Search Documentation)</li> </ul>	<p>Officer #1:</p> <ul style="list-style-type: none"> <li>• Letter of Discussion</li> </ul> <p>Officer #2:</p> <ul style="list-style-type: none"> <li>• Letter of Discussion</li> </ul>
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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.<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 this period did not generate any 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.

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<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> 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 2023

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Issue date: January 8, 2024

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, 2023 through November 30, 2023.**<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 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
November 2023	6	109	3	0	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	4
Informal Complaints <sup>7</sup>	0
Administrative Investigations	2
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>6</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 November 2023, **3 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-104)	Officer #1: • Courtesy	BPD initiated an investigation.	68
2 (IA2023-105)	Officer #1: • Force	BPD initiated an investigation.	68
3 (IA2023-108)	Employee #1: • Courtesy	BPD initiated an investigation.	49

During November 2023, **2 Administrative Investigations** were initiated by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2023-106)	Officer #1: • Policy/Procedure	BPD initiated an investigation.	62
2 (IA2023-109)	Officer #1: • Policy/Procedure	BPD initiated an investigation.	49

## COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During August 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 (IA2023-107)	Officer #1: • Force	BPD initiated an investigation.	144*

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\*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.

**COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD**

During November 2023, **3 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2023-002)	Officers used excessive force during a detention for fare evasion.	Officers #1-3: <ul style="list-style-type: none"> <li>• Bias-Based Policing – Administratively Closed<sup>10</sup></li> <li>• Arrest/Detention – Administratively Closed</li> </ul>	364	310
2 (IA2022-091)	Officer wrongfully arrested complainant.	Officer #1: <ul style="list-style-type: none"> <li>• Arrest/Detention – Exonerated</li> </ul>	402	339
3 (IA2022-088)	Officers used excessive force during a vehicle stop.	Officers #1-3: <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Detention – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul> Officers #1-2: <ul style="list-style-type: none"> <li>• Search/Seizure – Exonerated</li> </ul> Officer #3: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer (Unprofessionalism) – Unfounded</li> </ul>	437	371

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During November 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 <sup>11</sup> •
2	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera)	Officer #1: • Oral Counseling <sup>12</sup>
3	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera)	Officer #1: • 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.<sup>13</sup> The OIPA Monthly Report will reflect information regarding monitored cases, investigations, and contacts with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA

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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).

during this period generated the following recommendations for revisions or additional investigation.

In connection with one Internal Affairs (IA) complaint investigation, OIPA noted that IA personnel changed the allegations from what was identified in an OIPA intake memo but did not contact OIPA for discussion. Chief Franklin advised OIPA that he would instruct IA staff to review OIPA intake memos more carefully and to contact OIPA to discuss any approach to the investigation that does not incorporate the allegations identified by OIPA.

In another instance, IA identified only two officers as subjects, though other officers used force during the contact. Additionally, there was no clear discussion or analysis in the final IA report regarding whether the deployment of a TASER was appropriate during this detention/arrest. Further, there was no analysis about whether de-escalation efforts were applied as required by Policy 300. Notably, when Policy 300 is implicated, all uses of force by all officers are typically reviewed and analyzed to reach a fair, thorough, and objective outcome. Chief Franklin agreed to revisit the investigative approach with the IA team.

OIPA identified one instance in which an officer reported conducting a welfare check on a passenger prior to initiating a detention and arrest for penal code violations. OIPA opined that the officer initiated the detention absent the required reasonable suspicion of criminal activity. The Chief of Police and a Deputy Chief reviewed the contact and agreed that the detention was improper and issued a disciplinary Letter of Discussion to the involved officer. A BPD supervisor also reviewed the applicable policy language with the involved officer.

However, OIPA and BPD disagreed about whether the issuance of the discipline should be recorded in the Internal Affairs database. It is OIPA's opinion that the progressive discipline structure requires the maintenance of records for all issued discipline such that any subsequent policy violations may be properly and appropriately addressed. Any omission is particularly troubling because the subject officer has repeatedly disregarded instructions related to the proper development of reasonable suspicion in connection with the enforcement of the BART Proof of Payment Ordinance. To date, the fact that the discipline was issued is not reflected in the IA database.

OIPA reviewed one IA investigation in which IA personnel identified two subject officers and investigated whether those officers used excessive force. OIPA found that more than two officers used force during the contact and that it would be appropriate to address the other officers' use of force in the final investigative report. OIPA also noted that one officer's TASER deployment was not properly examined as required by BPD policy and there was no discussion in the report about whether the involved officers properly applied de-escalation tactics as required by BPD Policy 300.

The Chief of Police agreed to revisit the approach to this investigation via discussion with IA personnel.

Related to OIPA monitoring of IA investigations, OIPA investigators have identified issues regarding specific investigations and OIPA requested that these issues be promptly addressed. OIPA has identified that in some instances IA investigators and the IA supervisor have not incorporated the OIPA-identified allegations and/or subject officers, which information is included in OIPA intake memos that are transmitted to BPD in connection with all monitored investigations. The Chief of Police has committed to issuing a reminder to IA personnel about the value of reviewing OIPA intake memos prior to initiating an



investigation and the chief will further advise IA personnel and leadership to contact OIPA in the event that there is disagreement about the appropriate allegations or about the identification of subject officers.

One IA investigative report included inaccurate findings and questionable analyses. Although it appeared appropriate for IA not to sustain the allegations against the officers for the alleged misconduct, there were issues with the contents of the report.

IA's analysis properly reasoned a sustained finding for not performing investigative duties properly, but IA reached a "not sustained" finding in the final report. OIPA advised BPD that Not Sustained is an inconsistent and inaccurate outcome if the officers did not perform their duties as required. In the final report, IA wrote that the subject officers "**should have** off boarded the juveniles to validate their fare and determine whether a violation of BART Ordinance 2017-2.5.1 had occurred." (emphasis added). This reflects a finding of fact that the officers did **not** perform their duties as required, in violation of BPD policy.

The report included no articulation or factual finding that it "could not be determined whether the misconduct alleged by the complainant did or did not occur," which is the requirement for reaching a not sustained finding.

In the same investigative report, IA reached a finding of "not sustained" in connection with an allegation of Conduct Unbecoming an Officer (CUBO). The finding was not justified by the analysis because IA determined that "BWC footage does not support [complainant's] allegation that [subject officer] criticized and opined about the complainant's political beliefs. OIPA recommended that BPD consider whether it's appropriate to change this finding to "exonerated" since the alleged interaction did occur, even if the conduct was not violative of law or policy. The IA report did not articulate why a "not sustained" CUBO finding would be appropriate.

Lastly, OIPA identified a preliminary allegation of Policy/Procedure in the intake memo to IA, but that allegation is missing from the IAPro record and was not addressed in the final investigative report.

BPD agreed to review the report and the findings to determine whether revisions are appropriate.

In another investigative report completed by IA, the investigator reached a finding of "not sustained" for a non-activation of a body-worn camera (BWC). IA relied on an image from another officer's BWC in which it appears that the subject officer may have attempted to activate the camera. However, there was no video recorded by the subject officer and there was no explanation or investigation related to whether the lack of video might have been the result of a technical error or malfunction. Absent a determination that the unit malfunctioned, this is a clear policy violation regardless of whether the officer appeared to have attempted to activate her camera. OIPA recommended that BPD and IA review the report and the analyses and revise the finding to "sustained" for the non-activation.

BPD agreed to review the report and the findings to determine whether revisions are appropriate.

During this reporting period, BPD included in their Watch Commanders' Daily Log that officers contacted a transient subject for a welfare check on a Daly City bound train. The log entry noted that the subject did not have proof of payment and was detained. He was later taken to Santa Rita Jail in connection with other penal code violations and warrants.

After OIPA asked BPD to review the contact, a BPD Deputy Chief replied that the involved officers properly developed reasonable suspicion to request proof of payment, as required by the BPD Proof of Payment policy, when the subject improperly answered a question about his destination.

The involved officer reported asking the subject "...the standard welfare check questions and discovered he did not have a BART ticket in violation of PUC 99170(a)(6)." BPD has recently started using the cited Penal Code section to enforce the requirement to provide proof of payment in some counties, but the law still requires the development of specific and articulable reasonable suspicion. In this instance, further review revealed that the reasonable suspicion was deemed to be established when the subject stated that they were traveling to a destination which the train had already passed. OIPA requested that BPD advise Watch Commanders and supervisors that log entries absent any articulation of the reasonable suspicion should be more carefully reviewed and that Watch Commanders should be sure to include details about reasonable suspicion in the log entries to potentially obviate the need for deeper examination and review by OIPA staff.

This has been an infrequent, but recurring issue and the majority of OIPA-reviewed BPD proof of payment requests are compliant with the law and with BPD policy requirements.

### **Whistleblower Investigation Recommendations**

OIPA reported in September 2023 regarding allegations received from an anonymous whistleblower alleging 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.

As was also reported in September, despite our determination that BPD personnel did not engage in conflict-of-interest violations or other BPD policy violations 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 offered several recommendations for improvement to the BART General Manager, Robert Powers. Again, these were not disciplinary recommendations, but suggestions intended to improve the police department's performance, practices, and culture.

Because the GM did not fully respond to two requests for responses regarding whether to accept and implement the recommendations, and in the interest of moving forward to address the problems uncovered during the investigation, OIPA submitted its recommendations to Chief Franklin on October 11, 2023 for his review and committed to generating a public report to memorialize the BPD response to the recommendations.

To date, Chief Franklin has not responded to OIPA regarding whether he agrees that the recommendations will ameliorate existing problems within the department and has not committed to implementing any recommendations, including those identified by the General Manager as potentially amenable.

A more detailed report about the process and the District's response to the recommendations is forthcoming.

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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> 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

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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**

# **MONTHLY REPORT**

December 2023

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Issue date: February 12, 2024

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, 2023 through December 31, 2023.**<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 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
November 2023	6	109	3	0	0	0
December 2023	9	114	4	0	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	9
Informal Complaints <sup>7</sup>	0
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>9</b>

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

OIPA	0
BART Police Department	9
<b>TOTAL</b>	<b>9</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

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

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-110)	Officer #1: • Force	BPD initiated an investigation.	73
2 (IA2023-111)	Employee #1: • Bias-Based Policing	BPD initiated an investigation.	69
3 (IA2023-112)	Officer #1: • Force	BPD initiated an investigation.	66
4 (IA2023-113)	Officers #1-5: • Force	BPD initiated an investigation.	62
5 (IA2023-114)	Officers #1-2: • Conduct Unbecoming an Officer • Policy/Procedure (Body Worn Camera)	BPD initiated an investigation.	62
6 (IA2023-115)	Officers #1-4: • Force	BPD initiated an investigation.	53
7 (IA2023-116)	Officers #1-2: • Force	BPD initiated an investigation.	51
8 (IA2023-117)	Officer #1: • Force	BPD initiated an investigation.	46
9 (IA2023-118)	Officers #1-3: • Performance of Duty	BPD initiated an investigation.	45

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During December 2023, **3 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
<b>1</b> (IA2023-003)	Officer was aggressive and threatening and did not return complainant's property.	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer (Count 1) – Exonerated</li> <li>• Conduct Unbecoming an Officer (Count 2) – Not Sustained</li> </ul>	400	334
<b>2</b> (IA2023-005)	Employee was rude to complainant during a fare inspection operation.	Employee #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming – Exonerated</li> </ul>	380	332
<b>3</b> (IA2023-006)	Officer used excessive force.	Officer #1: <ul style="list-style-type: none"> <li>• Force – Exonerated</li> </ul>	382	329

During December 2023, **1 Administrative Investigation** was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
<b>1</b> (IA2022-090)	Officer used excessive force and two officers did not take appropriate law enforcement action in connection with the contact and officers failed to properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Performance of Duty – Sustained</li> </ul> Officers #1-3: <ul style="list-style-type: none"> <li>• Policy/Procedure (Body Worn Camera) – Sustained</li> </ul>	411	343



## DISCIPLINE ISSUED DURING REPORTING PERIOD

During December 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 <sup>10</sup> •
2	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera)	Officer #1: • Oral Counseling <sup>11</sup>
3	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera)	Officer #1: • 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.<sup>12</sup> The OIPA Monthly Report will reflect information regarding monitored cases, investigations, and contacts with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA

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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).

during this period did not generate any recommendations for revisions or additional investigation.

OIPA reported in October 2023 that two subject officers were issued discipline in connection with an OIPA determination that the officers violated BPD policies. OIPA found that the officers used unnecessary force, failed to properly document the use of force, generated an insufficient report, and failed to de-escalate the contact prior to using force.

The OIPA findings and disciplinary recommendations were endorsed by a majority vote of the BPRCB, and the chief was promptly advised of the outcomes. Due to a delay in issuing the discipline to the officers, the officers' attorneys argued that the disciplinary memoranda must be removed from the officers' personnel files. This opinion was supported by the BART Office of General Counsel, and the disciplinary documentation was removed from the officers' files.

Although the officers received the Letters of Discussion proscribed by OIPA and the BPCRB, the absence of that documentation in the officers' files requires that subsequent disciplinary actions in connection with any sustained findings in the future may not be cumulatively applied as contemplated by the existing progressive discipline structure.

Given that the subject officers did not agree that discipline was appropriate in this instance, OIPA remains hopeful that they will avoid engaging in similar activity in the future and that other officers will not be deterred from acting similarly.

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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>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> 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>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.