



Independent Civilian Oversight of BART Police

Compiled Monthly Reports for FY2024

Summary of the Required Data Categories in OIPA's Attached Reports:

1. Case Overview:
 - Number and types of cases filed
 - Number of open cases
 - Disposition of cases and actions taken (including recommendations for corrective or punitive actions, such as discipline and dismissals)
 - Independent investigations concluded by the Office of the Independent Police Auditor (OIPA)
2. Appeals Process:
 - Number of cases under appeal, whether by the public to OIPA or by BPCRB as per the appeals process outlined in Chapter 1-04(B).
3. Complaint Sources:
 - All complaints received by OIPA, BPD, BPCRB, DSO, and other District departments.
4. Timeliness:
 - Number of days elapsed from the date of complaint to the report submission to BPCRB.
5. Implementation of Recommendations:
 - Degree to which OIPA and BPCRB disciplinary recommendations have been implemented by BPD.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

July 2023

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**.¹ *(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).*

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
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 ⁷	1
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	19

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	4
BART Police Department	15
TOTAL	19

* 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: • Force • Arrest/Detention • Policy/Procedure • Performance of Duty • Search/Seizure	BPD initiated an investigation.	49
8 (IA2023-069)	Officers #1-2: • Conduct Unbecoming an Officer	BPD initiated an investigation.	49
9 (IA2023-070)	Officer #1: • Force	BPD initiated an investigation.	46
10 (IA2023-071)	Officers #1-2: • Conduct Unbecoming an Officer	BPD initiated an investigation.	45
11 (IA2023-073)	Officers #1-3: • Force	BPD initiated an investigation.	49
12 (IA2023-074)	Officer #1: • Force	BPD initiated an investigation.	48
13 (IA2023-075)	Officer #1: • Force • Conduct Unbecoming an Officer	BPD initiated an investigation.	44
14 (IA2023-076)	Officers #1-3: • Force	BPD initiated an investigation.	42
15 (IA2023-067)	Officers #1-2: • Conduct Unbecoming an Officer • Policy/Procedure Performance of Duty	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"> • Arrest/Detention – Exonerated • Force – Exonerated <p>Officers #1&3:</p> <ul style="list-style-type: none"> • Bias-Based Policing – Not Sustained <p>Officers #2&3:</p> <ul style="list-style-type: none"> • Policy/Procedure (Property Handling) <p>Officer #2:</p> <ul style="list-style-type: none"> • Policy/Procedure (Property Handling) – Exonerated <p>Officer #4:</p> <ul style="list-style-type: none"> • Policy/Procedure (Body Worn Camera) – Sustained <p>Officer #5:</p> <ul style="list-style-type: none"> • Policy/Procedure (Supervision) – Exonerated 	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.	<p>Officer #1:</p> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Sustained 	425	355
2 (IA2022-054)	Officer spoke harshly and aggressively to complainant during a contact.	<p>Officer #1:</p> <ul style="list-style-type: none"> • Courtesy – Unfounded 	417	347
3 (IA2022-055)	Officer was dishonest during the hiring process.	<p>Officer #1:</p> <ul style="list-style-type: none"> • 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. [†]	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 ¹⁰	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 ¹¹

[†] 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.

[‡]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 ¹²
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.¹³ The OIPA Monthly Report will reflect information regarding monitored cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during 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.

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.

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

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

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

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

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

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

⁷ The BART Police Department defines an Informal Complaint as, "A comment on the actions of a Department employee, where the reporting party expressly states that he or she does not feel that the matter should be formally investigated

with the understanding that an Informal Complaint does not hold the potential to result in disciplinary action against the employee.” (BART Police Department Policy Manual, Policy 1020.1.1(d)).

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

⁹ It is important to note that OIPA does not separate citizen complaints it receives into “Formal” and “Informal” classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ Administrative Closure is defined as follows in the BPD Policy Manual: Allegations that are received and documented; however, the Chief of Police or his/her designee determines, based on a preliminary investigation, that further investigation is not warranted. Under these circumstances, the complaint will be Administratively Closed and documented in a summary memorandum to the case file. Employees will be documented as witnesses only, not as subjects to the complaint. Internal Affairs will send a letter to the complainant notifying them that the case was closed following a preliminary investigation.

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

¹² 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.

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



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

August 2023

Issue date: October 16, 2023

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **August 1, 2023 through August 31, 2023.**¹ *(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).*

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
August 2022	10	85	17	2	0	0
September 2022	11	90	7	0	0	0
October 2022	5	82	13	1	0	0
November 2022	5	84	3	1	0	0
December 2022	5	86	3	0	0	0
January 2023	6	87	5	0	0	0
February 2023	12	91	9	1	0	0
March 2023	10	98	4	1	0	0
April 2023	12	99	10	1	0	0
May 2023	10	101	6	1	1	0
June 2023	7	103	6	1	2	0
July 2023	18	106	7	1	0	0
August 2023	18*	114†	8	1	0	0

TYPES OF CASES FILED

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

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	1
BART Police Department	17
TOTAL	18

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

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

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

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

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

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

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

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

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

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

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

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

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

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

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

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

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #22-35) (IA2022-080)	Officers improperly denied complainant an employment opportunity because of complainant's membership in a protected class and/or because of complainant's age.	Officers #1-3: • Policy/Procedure (Hiring Discrimination) – Exonerated	367	293

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

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2022-062)	Officer was rude and targeted and harassed complainant.	Officer #1: • Conduct Unbecoming an Officer (Count 1) – Not Sustained • Conduct Unbecoming an Officer (Count 1) – Exonerated	431	361
2 (IA2022-063)	Officers improperly detained and subjected complainant to a mental health hold.	Officer #1: • Arrest/Detention – Exonerated	425	355

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

DISCIPLINE ISSUED DURING REPORTING PERIOD

During August 2023, BPD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s) ‡	Classification of Sustained Allegation(s)	Action Taken
1	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera)	Officer #1: • Letter of Discussion ¹¹
2	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera)	Officer #1: • Letter of Discussion
3	Officer did not properly approve the release of a subject from custody.	Officer #1: • Policy/Procedure (Release of Subject from Custody)	Officer #1: • Written Reprimand ¹²

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and monitors and/or reviews complaint investigations conducted by BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	7
Complainant-Initiated Appeals	3
BPD-Initiated Appeals	0
Investigations Being Monitored	31
Investigations Reviewed During Current Month	17†

†This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

ISSUES DETECTED

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

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

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

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

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

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

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

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

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

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

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

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

DISCIPLINARY UPDATE

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

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

[§]A "Skelly" is a hearing which must be made available to BPD employees prior to the imposition of recommended discipline. Generally, A Skelly hearing must be provided in the case of termination, demotion, suspension, reduction in pay, or a transfer with an accompanying loss in pay. This pre-disciplinary process is intended to provide the employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials.

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

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

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

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

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

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

OIPA

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

Background

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

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

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

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

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

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

Investigation Results

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

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

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

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

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

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

TABLE OF OIPA FINDINGS - CASE #22-21

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

OIPA Findings Defined

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

Summary of Allegations and Findings:

1. Personal Relationship – Conflict of Interest

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

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

2. Sexual Harassment

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

3. Restructuring, Promotion, Reassignment

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

4. Special Parking Privileges

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

5. Work Schedule Adherence and Overtime Abuse

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

6. Supervision

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

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

7. Adherence to BPD Parking Policies

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

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

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

9. Conduct Unbecoming an Officer (Favoritism/Retaliation)

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

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

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

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

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

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

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

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

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

⁹ It is important to note that OIPA does not separate citizen complaints it receives into "Formal" and "Informal" classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ Administrative Closure is defined as follows in the BPD Policy Manual: Allegations that are received and documented; however, the Chief of Police or his/her designee determines, based on a preliminary investigation, that further investigation is not warranted. Under these circumstances, the complaint will be Administratively Closed and documented in a summary memorandum to the case file. Employees will be documented as witnesses only, not as subjects to the complaint. Internal Affairs will send a letter to the complainant notifying them that the case was closed following a preliminary investigation.

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

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

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



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

September 2023

Issue date: December 11, 2023

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **September 1, 2023 through September 30, 2023.**¹ *(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).*

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
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 ⁷	1
Administrative Investigations	1
Inquiries ⁸	1
TOTAL	10

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	3
BART Police Department	7
TOTAL	10

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.¹⁰

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
1 (OIPA #22-36) (IA2022-096)	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>Officer #1:</p> <ul style="list-style-type: none"> • Force – Sustained <p>• Officers #2&3:</p> <ul style="list-style-type: none"> • Force – Exonerated • Policy/Procedure (De-escalation) – Sustained <p>Officers #1&4:</p> <ul style="list-style-type: none"> • Policy/Procedure (Search Protocol) – Exonerated <p>Officers #1&3:</p> <ul style="list-style-type: none"> • Policy/Procedure (Search Documentation) – Sustained <p>Officers #1&4:</p> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Exonerated <p>Officer #3:</p> <ul style="list-style-type: none"> • Policy/Procedure (Report Writing) – Sustained 	450	354

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"> • Bias-Based Policing – Unfounded <p>Officer #1:</p> <ul style="list-style-type: none"> • Arrest/Detention – Exonerated <p>Officers #1 & 3:</p> <ul style="list-style-type: none"> • Search/Seizure – Unfounded <p>Officer #2:</p> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Exonerated 	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"> • Arrest/Detention – Exonerated • Force – Exonerated • Conduct Unbecoming an Officer – Unfounded • Bias-Based Policing – Unfounded 	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"> • Conduct Unbecoming an Officer – Unfounded • Performance of Duty – Unfounded 	440	356

<p>4 (IA2022-074)</p> <p>5 (IA2022-079)</p> <p>6 (IA2022-082)</p> <p>7 (IA2022-083)</p> <p>8 (IA2022-084)</p>	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
	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
	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 ¹¹

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

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

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a

citizen). This number also includes previously completed cases that have been re-opened during the current reporting period.

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

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

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

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

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

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

⁹ It is important to note that OIPA does not separate citizen complaints it receives into "Formal" and "Informal" classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ A Supervisor Referral refers to an instance involving an Inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

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

¹² 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

Issue date: December 11, 2023

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **October 1, 2023 through October 31, 2023.**¹ *(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).*

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
October 2022	5	82	13	1	0	0
November 2022	5	84	3	1	0	0
December 2022	5	86	3	0	0	0
January 2023	6	87	5	0	0	0
February 2023	12	91	9	1	0	0
March 2023	10	98	4	1	0	0
April 2023	12	99	10	1	0	0
May 2023	10	101	6	1	1	0
June 2023	7	103	6	1	2	0
July 2023	18	106	7	1	0	0
August 2023	18	114	8	1	0	0
September 2023	11	115	11	1	0	0
October 2023	4	106	14	2	0	0

TYPES OF CASES FILED

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

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	1
BART Police Department	3
TOTAL	4

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

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

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #23-36) (IA2023-103)	Officer #1: • Bias-Based Policing • Policy/Procedure	OIPA initiated an investigation.	53

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

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

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

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

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

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

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

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During October 2023, **2 Citizen Complaints** were concluded by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #23-07) (IA2023-024)	Officer failed to appropriately respond to a call for service.	Officer #1: • Performance of Duty – Administratively Closed [†]	265	221

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

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

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

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

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

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

During October 2023, **1 Informal Complaint** was addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2023-097)	Employees failed to take fare evasion enforcement action.	Employee #1: • Conduct Unbecoming an Officer – Supervisor Referral. ¹¹	80	14

DISCIPLINE ISSUED DURING REPORTING PERIOD

During October 2023, BPD took the following actions in cases where one or more allegations of misconduct were sustained:

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

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

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

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

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and monitors and/or reviews complaint investigations conducted by BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	5
Complainant-Initiated Appeals	3
BPD-Initiated Appeals	0
Investigations Being Monitored	23
Investigations Reviewed During Current Month	17†

†This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

ISSUES DETECTED

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is handled by BPD.¹³ The OIPA Monthly Report will reflect information regarding monitored cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during this period did not generate any recommendations for revisions or additional investigation.

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

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

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

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

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

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

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

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

⁹ It is important to note that OIPA does not separate citizen complaints it receives into "Formal" and "Informal" classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ Administrative Closure is defined as follows in the BPD Policy Manual: Allegations that are received and documented; however, the Chief of Police or his/her designee determines, based on a preliminary investigation, that further investigation is not warranted. Under these circumstances, the complaint will be Administratively Closed and documented in a summary memorandum to the case file. Employees will be documented as witnesses only, not as subjects to the complaint. Internal Affairs will send a letter to the complainant notifying them that the case was closed following a preliminary investigation.

¹¹ A Supervisor Referral refers to an instance involving an Inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IAB.

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

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



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

November 2023

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.**¹ *(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).*

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
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 ⁷	0
Administrative Investigations	2
Inquiries ⁸	0
TOTAL	6

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	0
BART Police Department	4
TOTAL	4

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*

*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: • Bias-Based Policing – Administratively Closed ¹⁰ • Arrest/Detention – Administratively Closed	364	310
2 (IA2022-091)	Officer wrongfully arrested complainant.	Officer #1: • Arrest/Detention – Exonerated	402	339
3 (IA2022-088)	Officers used excessive force during a vehicle stop.	Officers #1-3: • Force – Exonerated • Detention – Exonerated • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded Officers #1-2: • Search/Seizure – Exonerated Officer #3: • Conduct Unbecoming an Officer (Unprofessionalism) – Unfounded	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 ¹¹ •
2	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera)	Officer #1: • Oral Counseling ¹²
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.¹³ 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

†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.

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

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

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

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

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

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

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

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

⁹ It is important to note that OIPA does not separate citizen complaints it receives into “Formal” and “Informal” classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ Administrative Closure is defined as follows in the BPD Policy Manual: Allegations that are received and documented; however, the Chief of Police or his/her designee determines, based on a preliminary investigation, that further investigation is not warranted. Under these circumstances, the complaint will be Administratively Closed and documented in a summary memorandum to the case file. Employees will be documented as witnesses only, not as subjects to the complaint. Internal Affairs will send a letter to the complainant notifying them that the case was closed following a preliminary investigation.

¹¹ Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the

employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual).

¹² 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.

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



OFFICE OF THE INDEPENDENT
POLICE AUDITOR
BAY AREA RAPID TRANSIT

MONTHLY REPORT

December 2023

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.**¹ *(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).*

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
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 ⁷	0
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	9

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	0
BART Police Department	9
TOTAL	9

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
1 (IA2023-003)	Officer was aggressive and threatening and did not return complainant's property.	Officer #1: • Conduct Unbecoming an Officer (Count 1) – Exonerated • Conduct Unbecoming an Officer (Count 2) – Not Sustained	400	334
2 (IA2023-005)	Employee was rude to complainant during a fare inspection operation.	Employee #1: • Conduct Unbecoming – Exonerated	380	332
3 (IA2023-006)	Officer used excessive force.	Officer #1: • Force – Exonerated	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
1 (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: • Force – Exonerated • Performance of Duty – Sustained Officers #1-3: • Policy/Procedure (Body Worn Camera) – Sustained	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 ¹⁰ •
2	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera)	Officer #1: • Oral Counseling ¹¹
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.¹² 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

*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.

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

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

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

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

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

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

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

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

⁹ It is important to note that OIPA does not separate citizen complaints it receives into “Formal” and “Informal” classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ 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).

¹¹ 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.

¹² 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

January 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 **January 1, 2024 through January 31, 2024.**¹ *(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).*

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
January 2023	6	87	5	0	0	0
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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
January 2024	5	107	10	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	5
Informal Complaints ⁷	0
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	5

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	2
BART Police Department	3
TOTAL	5

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During January 2024, **2 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #24-02) (IA2024-003)	Officers #1-2: • Arrest/Detention • Conduct Unbecoming an Officer	OIPA notified BPD which initiated an investigation.	129
2 (OIPA #24-04) (IA2024-005)	Officers #1-2: • Force • Arrest/Detention • Conduct Unbecoming an Officer	OIPA initiated an investigation.	104

During January 2024, **3 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2024-001)	Officers #1-2: • Conduct Unbecoming an Officer Officer #2: • Bias-Based Policing • Performance of Duty	BPD initiated an investigation.	132
2 (IA2024-002)	Officers #1-5: • Force	BPD initiated an investigation.	130

Also, on January 12, 2024, BPD received complaint #IA2024-004 alleging that an officer was texting while driving and BPD addressed the matter via a Supervisor Referral.¹⁰

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During January 2024, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #22-36) (IA2023-039)	Officers improperly detained complainant based on complainant's race, extended the detention for an unreasonable duration, and one officer escalated the contact by being confrontational and antagonizing complainant. Two officers failed to properly activate body worn cameras.	<p>Officers #1-3:</p> <ul style="list-style-type: none"> • Arrest/Detention – Exonerated <p>Officers #1&3:</p> <ul style="list-style-type: none"> • Bias-Based Policing – Exonerated <p>Officers #2&3:</p> <ul style="list-style-type: none"> • Policy/Procedure (Body Worn Camera) – Sustained <p>Officer #3:</p> <ul style="list-style-type: none"> • Courtesy – Not Sustained 	368	275

During January 2024, **9 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2023-004)	Officer did not properly handle a call for service.	<p>Officer #1:</p> <ul style="list-style-type: none"> • Performance of Duty – Exonerated 	472	350

2 (IA2023-007)	Officers used excessive force.	Officers 1-4: • Force – Exonerated	462	353
3 (IA2023-008)	Officer used excessive force.	Officer #1: • Force – Exonerated	461	357
4 (IA2023-011)	Officers used excessive force.	Officer #1-3: • Force – Exonerated	454	346
5 (IA2023-012)	Officer improperly detained complainant and used excessive force during the detention.	Officer #1: • Force – Exonerated • Arrest/Detention – Exonerated	456	348
6 (IA2023-014)	Officer followed complainant's vehicle.	Officer #1: • Conduct Unbecoming an Officer – BPD initiated a Supervisor Referral ¹¹	452	347
7 (IA2023-017)	Officers stole complainant's property from vehicle after arresting complainant.	Officers #1-3: • Conduct Unbecoming an Officer – Unfounded Officers #2-3: • Policy/Procedure (Security of Vehicles and Property) – Not Sustained	441	337
8 (IA2023-027)	Officer used excessive force.	Officer #1: • Force – Exonerated	456	348
9 (IA2024-004)	Officer was operating a vehicle in an unsafe manner.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	122	15

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.	Officers #1&2: • Policy/Procedure (Body Worn Camera) – Sustained	Officer #1: • Letter of Discussion ¹² Officer #2: • Oral Counseling ¹³

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.¹⁴ 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 during this period did not generate any recommendations for revisions or additional investigation.

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

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

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

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

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

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

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

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

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

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¹⁰ A Supervisor Referral refers to an instance involving an Inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

¹¹ 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.

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

¹³ 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.

¹⁴ 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

February 2024

Issue date: June 10, 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 **February 1, 2024 through February 29, 2024.**¹ *(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).*

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
February 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
January 2024	5	107	10	1	0	0
February 2024	12	118	7	1	0	0

TYPES OF CASES FILED

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

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	2
BART Police Department	10
TOTAL	12

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During February 2024, **2 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #24-05) (IA2024-009)	Officers #1-3: • Policy/Procedure Officers #1-2: • Bias-Based Policing • Force Officer #3: • Performance of Duty	OIPA initiated an investigation.	124
2 (OIPA #24-06) (IA2024-012)	Officer #1: • Arrest/Detention • Policy/Procedure	OIPA notified BPD which initiated an investigation.	116

During February 2024, **10 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2024-006)	Officers #1-2: • Bias-Based Policing	BPD initiated an investigation.	128
2 (IA2024-007)	Officer #1: • Force	BPD initiated an investigation.	126
3 (IA2024-008)	Officer #1: • Force	BPD initiated an investigation.	126
4 (IA2024-010)	Officers #1-2: • Conduct Unbecoming an Officer	BPD initiated an investigation.	114
5 (IA2024-011)	Officers #1-2: • Bias-Based Policing • Force	BPD initiated an investigation.	107

6 (IA2024-013)	Officers #1-4: • Force	BPD initiated an investigation.	103
7 (IA2024-014)	Officers #1-2: • Bias-Based Policing • Force	BPD initiated an investigation.	102
8 (IA2024-015)	Officers #1-4: • Bias-Based Policing • Conduct Unbecoming an Officer	BPD initiated an investigation.	102
9 (IA2024-018)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	104
10 (IA2024-028)	Officer #1: • Force • Conduct Unbecoming an Officer	BPD initiated an investigation.	28

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During February 2024, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #23-16) (IA2023-039)	Supervisor improperly allowed an employee to apply for selection to a special assignment.	Officer #1: • Policy/Procedure (Favoritism) – Exonerated • Policy/Procedure (Application of Minimum Qualifications)	398	272

During February 2024, **6 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2022-087)	Officer was aggressive and unprofessional toward complainant during a consensual contact.	Officer #1: • Conduct Unbecoming an Officer – Not Sustained	585	475*
2 (IA2023-010)	Officers used excessive force.	Officers #1-2: • Force – Exonerated	483	353
3 (IA2023-015)	Officer used excessive force.	Officer #1: • Force – Exonerated	474	350
4 (IA2023-018)	Officers used excessive force.	Officer #1-3: • Force – Exonerated	469	364
5 (IA2023-020)	Employee was discourteous and refused to provide identifying information upon request.	Employee #1: • Conduct Unbecoming an Officer – Not Sustained	463	335
6 (IA2023-100)	Officers followed complainant's vehicle.	Officer #1: • Conduct Unbecoming an Officer – Not Sustained Officer #2: • Force – Exonerated	477	368

* Per the IA report, this investigation was tolled from February 21, 2023 to November 12, 2023 due to an officer's absence (264 days).

DISCIPLINE ISSUED DURING REPORTING PERIOD

During February 2024, 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: • Oral Counseling ¹⁰

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.¹¹ 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 during this period did generate some recommendations for revisions or additional investigation and these items will be compiled and included in a subsequent monthly report and will include responses from BPD.

† 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).

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

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

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

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

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

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

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

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

⁹ It is important to note that OIPA does not separate citizen complaints it receives into “Formal” and “Informal” classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ 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.

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



OFFICE OF THE INDEPENDENT
POLICE AUDITOR
BAY AREA RAPID TRANSIT

MONTHLY REPORT

March 2024

Issue date: June 10, 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 **March 1, 2024 through March 31, 2024.**¹ *(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).*

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
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
January 2024	5	107	10	1	0	0
February 2024	12	118	7	1	0	0
March 2024	12	116	9	2	0	0

TYPES OF CASES FILED

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

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	3
BART Police Department	9
TOTAL	12

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During March 2024, **3 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #24-13) (N/A)	Officer #1: • Policy/Procedure • Workplace Discrimination • Performance of Duty • Conduct Unbecoming an Officer • Workplace Harassment	OIPA initiated an investigation.	76
2 (OIPA #24-15) (IA2024-030)	Officer #1: • Conduct Unbecoming an Officer	OIPA initiated an investigation.	74
3 (OIPA #24-12) (IA2024-021)	Officers #1-2: • Policy/Procedure (Body Worn Camera) • Arrest/Detention • Force • Policy/Procedure (Report Writing) • Policy/Procedure (Improper Citation)	OIPA notified BPD which initiated an investigation.	76

During March 2024, **9 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2024-016)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	101
2 (IA2024-017)	Officer #1: • Conduct Unbecoming an Officer • Bias-Based Policing • Arrest/Detention	BPD initiated an investigation.	101
3 (IA2024-019)	Officers #1-2: • Force	BPD initiated an investigation.	94

4 (IA2024-020)	Officers #1-2: • Conduct Unbecoming an Officer	BPD initiated an investigation.	87
5 (IA2024-022)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	83
6 (IA2024-023)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	84
7 (IA2024-024)	Officers #1-2: • Force	BPD initiated an investigation.	84
8 (IA2024-025)	Officer #1: • Policy/Procedure • Performance of Duty • Conduct Unbecoming an Officer	BPD initiated an investigation.	80
9 (IA2024-030)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	76

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During March 2024, **2 Citizen Complaints** were concluded by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #23-14) (IA2023-036 & IA2023-037)*	Officers improperly detained complainant, improperly enforced fare evasion laws, discriminated against complainant, used unnecessary force, and failed to provide a business card upon request.	<p>Officers #1-3:</p> <ul style="list-style-type: none"> • Arrest/Detention – Exonerated • Force – Unfounded • Courtesy – Unfounded <p>Officers #2-3:</p> <ul style="list-style-type: none"> • Bias-Based Policing – Exonerated <p>Officer #1:</p> <ul style="list-style-type: none"> • Policy/Procedure (Failure to Provide Business Card) – Exonerated • Policy/Procedure (Failure to Provide Name) – Unfounded 	424	328

* These two IA complaint investigations were consolidated, and IA deferred both investigations to OIPA at the request of the complainant.

During March 2024, **5 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2023-019)	Officer unlawfully arrested complainant and conducted an illegal search.	Officer #1: • Arrest/Detention – Exonerated • Search/Seizure – Exonerated	460	372
2 (IA2023-023)	Employee refused to provide service to complainant based on complainant's race.	Employee #1: • Bias-Based Policing – Unfounded • Performance of Duty – Unfounded	455	353
3 (IA2023-026)	Officers failed to provide assistance to complainant due to complainant's race and subject's race.	Officers #1-2: • Performance of Duty – Exonerated Officer #1: • Bias-Based Policing – Unfounded Officer #2: • Bias-Based Policing – Not Sustained	441	358
4 (IA2023-031)	Officers failed to properly address a fare evasion and failed to properly document enforcement activities.	Officers #1-2: • Performance of Duty – Sustained • Policy/Procedure (Body Worn Camera) – Sustained	441	364
5 (IA2023-038)	Employee cited complainant for illegal parking and harassed complainant because of complainant's race.	Employee #1: • Conduct Unbecoming an Officer – Unfounded • Bias-Based Policing – Unfounded	413	337

During March 2024, **2 Administrative Investigations** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-017)	Officer-Involved Shooting investigation.	Officers #1-2: • Force – Exonerated	1577	1490†
2 (IA2023-035)	Officers used excessive force.	Officers 1-2: • Force – Exonerated	441	347

DISCIPLINE ISSUED DURING REPORTING PERIOD

During March 2024, 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 ¹⁰ •
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: • Written Reprimand ¹¹

†Per the IA report, this investigation was tolled from January 7, 2021 to May 8, 2023 due to civil litigation (851 days).

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

4	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera)	Officer #1: • Letter of Discussion ¹²
5	Officers did not properly respond to a fare evader and did not properly document a law enforcement contact.	Officers #1-2: • Performance of Duty • Policy/Procedure (Body Worn Camera)	Officer #1: • Oral Counseling ¹³

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and monitors and/or reviews complaint investigations conducted by BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	8
Complainant-Initiated Appeals	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.

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.¹⁴ 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 during this period did generate some recommendations for revisions or additional investigation and these items will be compiled and included in a subsequent monthly report and will include responses from BPD.

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

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

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

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

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

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

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

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

⁹ It is important to note that OIPA does not separate citizen complaints it receives into "Formal" and "Informal" classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ 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).

¹¹ 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.

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

¹³ 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.

¹⁴ 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

April 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 **April 1, 2024 through April 30, 2024.**¹ *(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).*

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
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
January 2024	5	107	10	1	0	0
February 2024	12	118	7	1	0	0
March 2024	11	116	9	2	0	0
April 2024	9	115	9	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	7
Informal Complaints ⁷	0
Administrative Investigations	1
Inquiries ⁸	1
TOTAL	9

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	4
BART Police Department	5
TOTAL	9

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During April 2024, **3 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #24-19) (IA2024-027)	Officers #1-2: • Performance of Duty	OIPA initiated an investigation.	126
2 (OIPA #24-22) (IA2024-036)	Officer #1: • Conduct Unbecoming an Officer • Performance of Duty	OIPA initiated an investigation.	110
3 (OIPA #24-20) (IA2024-032)	Officer #1: • Conduct Unbecoming an Officer (Illegal Parking)	OIPA forwarded the complaint o BPD, who categorized the complaint as an Inquiry.	119

During April 2024, **5 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2024-026)	Officer #1: • Conduct Unbecoming an Officer • Arrest/Detention	BPD initiated an investigation.	132
2 (IA2024-029)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	129
3 (IA2024-034)	Officers #1-2: • Force	BPD initiated an investigation.	115
4 (IA2024-033)	Officer #1: • Force	BPD initiated an investigation.	112
5 (IA2024-035)	Officers #1-2: • Force	BPD initiated an investigation.	104

During April 2024, **1 Administrative Investigation** was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2024-031)	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (Retaliation) • Policy/Procedure (Rumors and Bullying) • Conduct Unbecoming an Officer 	BPD initiated an investigation.	118

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During March 2024, **1 Citizen Appeal** was concluded by OIPA but not previously reported:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Appeal Received	Days Taken to Complete Review
1 (OIPA #22-16) (IA2022-020)	OIPA examined whether BPD properly resolved allegations that officers improperly ejected complainant from the system based on complainant's disability.	Officers #1-2: <ul style="list-style-type: none"> • Policy/Procedure – Exonerated (OIPA Concurred) • Bias-Based Policing – Unfounded (OIPA Concurred) 	438	301

During April 2024, **6 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2023-021)	Fare Inspectors improperly removed complainant from a train.	Employees #1-2: • No findings*	516	392
2 (IA2023-032)	Officer detained complainant based on complainant's race used excessive force during the detention.	Officer #1: • Force – Exonerated • Bias-Based Policing – Unfounded	498	383
3 (IA2023-040)	Officers harassed complainant, one officer grabbed complainant's property, and one officer was overly aggressive.	Officers #1-3: • Force – Unfounded • Conduct Unbecoming an Officer – Unfounded	472	348

* The Chief of Police determined that this complaint should be categorized as a Service Review, yet Internal Affairs completed the investigation, noting that no subject employees were identified by the complainant and determining that there were no policy violations by any BPD employees. BPD also examined the policies and procedures related to the fare inspection process and identified an issue wherein passengers who use the mobile Clipper application cannot have their fare payment verified if the smartphone battery is depleted.

4 (IA2023-041)	Officers improperly arrested subject, used excessive force during the arrest, and celebrated inappropriately during the contact.	Officers #1-3: • Force – Exonerated • Conduct Unbecoming an Officer – Unfounded Officers #1-2: • Arrest/Detention – Exonerated	472	361
	Officers improperly detained complainant and used excessive force during the detention.	Officers #1-2: • Force – Exonerated • Detention – Exonerated	469	358
	Officer used excessive force during a detention and another officer inappropriately touched the complainant during a search.	Officer #1: • Conduct Unbecoming an Officer – Unfounded Officer #2: • Force – Exonerated	469	358

BPD also closed case # IA2024-032, after categorizing the complaint regarding an officer's illegal parking as an Inquiry.

During April 2024, **2 Administrative Investigations** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2023-025)	Officers provided insufficient protective equipment to other officers and one officer joked inappropriately about the distribution process.	Officer #1: <ul style="list-style-type: none"> • Performance of Duty – Not Sustained • Conduct Unbecoming an Officer – Not Sustained Officer #2: <ul style="list-style-type: none"> • Performance of Duty – Exonerated 	506	396
2 (IA2023-055)	Officer misused sick leave and compensatory time off.	Officer 1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Sustained • Policy/Procedure – Sustained 	450	328

DISCIPLINE ISSUED DURING REPORTING PERIOD

During April 2024, 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"> • Policy/Procedure (Body Worn Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion¹⁰
2	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (Body Worn Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion

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

3	Officer misused sick leave and compensatory time off.	Officer #1: • Policy/Procedure • Conduct Unbecoming an Officer	Officer #1: Written Reprimand ¹¹
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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	10
Complainant-Initiated Appeals	2
BPD-Initiated Appeals	0
Investigations Being Monitored	27
Investigations Reviewed During Current Month	21 [†]

[†]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.¹² 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 during this period did generate some recommendations for revisions or additional investigation and these items will be compiled and included in a subsequent monthly report and will include responses from BPD.

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

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

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

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA's findings are required by the BART Citizen Oversight Model to be submitted to the BART Police

Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA's investigative jurisdiction.

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

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

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

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

⁹ It is important to note that OIPA does not separate citizen complaints it receives into "Formal" and "Informal" classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ 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).

¹¹ 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.

¹² 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

May 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 **May 1, 2024 through May 31, 2024.**¹ *(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).*

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
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
January 2024	5	107	10	1	0	0
February 2024	12	118	7	1	0	0
March 2024	11	116	9	2	0	0
April 2024	9	115	9	1	0	0
May 2024	16	123	8	0	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	16
Informal Complaints ⁷	0
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	16

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	8
BART Police Department	8
TOTAL	16

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During May 2024, **8 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #24-17) (IA2024-037)	Officers #1-3: • Arrest/Detention • Force • Policy/Procedure • Performance of Duty	OIPA initiated an investigation.	116
2 (OIPA #24-27) (IA2024-038)	Officers #1-2: • Force • Arrest/Detention	OIPA initiated an investigation.	123
3 (OIPA #24-26) (IA2024-040)	Unknown Officer(s): • Policy/Procedure	OIPA initiated an investigation.	110
4 (OIPA #24-23) (IA2024-048)	Officers #1-4: • Policy/Procedure • Arrest/Detention • Courtesy	OIPA initiated an investigation.	111
5 (OIPA #24-31) (IA2024-051)	Officers #1-2: • Policy/Procedure • Bias-Based Policing • Force • Performance of Duty	OIPA initiated an investigation.	101
6 (OIPA #24-30) (IA2024-044)	Officer #1: • Policy/Procedure	OIPA forwarded the complaint to BPD, which initiated an investigation.	104
7 (OIPA #24-28) (IA2024-045)	Officers #1-2: • Bias-Based Policing • Force	OIPA initiated an investigation.	108
8 (OIPA #24-25) (IA2024-041)	Officer #1: • Policy/Procedure	OIPA forwarded the complaint to BPD, which initiated an investigation.	129

During May 2024, **8 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2024-039)	Officer #1: • Force	BPD initiated an investigation.	112
2 (IA2024-041)	Officer #1: • Policy/Procedure (Improper Citation) • Policy/Procedure (Axon Camera)	BPD initiated an investigation.	129
3 (IA2024-042)	Officer #1: • Force	BPD initiated an investigation.	129
4 (IA2024-043)	Officers #1-3: • Force	BPD initiated an investigation.	108
5 (IA2024-046)	Officer #1: • Conduct Unbecoming an Officer • Performance of Duty	BPD initiated an investigation.	102
6 (IA2024-047)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	101
7 (IA2024-049)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	102
8 (IA2024-050)	Officer #1: • Force	BPD initiated an investigation.	101

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During May 2024, **8 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2023-056)	Officer was rude to complainant.	Officer #1: • Conduct Unbecoming an Officer – Exonerated	441	324

2 (IA2023-053)	Officer acted unprofessionally and detained complainant based on complainant's race. Another officer failed to provide a badge number upon request.	Officer #1: • Conduct Unbecoming an Officer (Identification Information) – Unfounded Officer #2 • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer (Unprofessionalism) – Unfounded	451	334
3 (IA2023-057)	Officer was disrespectful to complainant and threatened to issue a citation.	Officer #1: • Conduct Unbecoming an Officer – Not Sustained	459	355
4 (IA2023-048)	Officer was rude to complainant because of complainant's race and officer failed to properly document the contact.	Officer #1: • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded • Policy/Procedure (Axon Camera) – Not Sustained	478	370
5 (IA2023-047)	Officer used excessive or unnecessary force.	Officer #1: • Force – Administratively Closed ¹⁰	480	355
6 (IA2023-046)	Officer used excessive force during a detention and inappropriately touched the complainant during a search.	Officer #1: • Conduct Unbecoming an Officer – Unfounded • Force – Unfounded	482	357
7 (IA2023-028)	Officer used excessive force during a detention and inappropriately touched the complainant during a search.	Officer #1: • Conduct Unbecoming an Officer – Unfounded • Force – Unfounded	482	357

8 (IA 2023-009)	Officer was verbally abusive and aggressive, failed to provide identification upon request, and failed to properly document a law enforcement contact. Two other officers failed to properly document the contact.	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (Count 1) – Sustained • Conduct Unbecoming an Officer (Count 2) – Not Sustained Officers #1-2: <ul style="list-style-type: none"> • Policy/Procedure (Axon Camera) – Sustained Officer #3: <ul style="list-style-type: none"> • Policy/Procedure (Axon Camera) – Not Sustained 	579	457*

DISCIPLINE ISSUED DURING REPORTING PERIOD

During May 2024, BPD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s) †	Classification of Sustained Allegation(s)	Action Taken
1	Officers did not properly document a law enforcement contact.	Officers #1-2: <ul style="list-style-type: none"> • Policy/Procedure (Body Worn Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion¹¹

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.

*IA determined that this investigation was tolled for 264 due to an officer's 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).

Investigations Being Conducted	13
Complainant-Initiated Appeals	2
BPD-Initiated Appeals	0
Investigations Being Monitored	27
Investigations Reviewed During Current Month	25†

†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.¹² 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 during this period did generate some recommendations for revisions or additional investigation and these items will be compiled and included in a subsequent report.

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

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

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

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

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

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

⁷ The BART Police Department defines an Informal Complaint as, “A comment on the actions of a Department employee, where the reporting party expressly states that he or she does not feel that the matter should be formally investigated with the understanding that an Informal Complaint does

not hold the potential to result in disciplinary action against the employee.” (BART Police Department Policy Manual, Policy 1020.1.1(d)).

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

⁹ It is important to note that OIPA does not separate citizen complaints it receives into “Formal” and “Informal” classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ Administrative Closure is defined as follows in the BPD Policy Manual: Allegations that are received and documented; however, the Chief of Police or his/her designee determines, based on a preliminary investigation, that further investigation is not warranted. Under these circumstances, the complaint will be Administratively Closed and documented in a summary memorandum to the case file. Employees will be documented as witnesses only, not as subjects to the complaint. Internal Affairs will send a letter to the complainant notifying them that the case was closed following a preliminary investigation.

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

¹² 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

June 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 **June 1, 2024 through June 30, 2024.**¹ *(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA)).*

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
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
January 2024	5	107	10	1	0	0
February 2024	12	118	7	1	0	0
March 2024	11	116	9	2	0	0
April 2024	9	115	9	1	0	0
May 2024	16	123	8	0	0	0
June 2024	8	123	8	1	0	0

TYPES OF CASES FILED

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

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	5
BART Police Department	3
TOTAL	8

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During June 2024, **5 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #24-34) (IA2024-055)	Officers #1-3: <ul style="list-style-type: none"> • Bias-Based Policing • Force • Policy/Procedure • Performance of Duty 	OIPA initiated an investigation.	91
2 (OIPA #24-35) (IA2024-056)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing • Policy/Procedure • Arrest/Detention 	OIPA initiated an investigation.	90
3 (OIPA #24-36) (IA2024-057)	Unknown Officer(s): <ul style="list-style-type: none"> • Policy/Procedure • Arrest/Detention 	OIPA initiated an investigation.	80
4 (OIPA #24-32) (IA2024-060)	Officers #1-3: <ul style="list-style-type: none"> • Performance of Duty • Arrest/Detention • Policy/Procedure Officers #1-2: <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer 	BPD initiated an investigation.	77
5 (OIPA #24-29) (IA2024-064)	Unknown Officer(s): <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Performance of Duty • Policy Procedure 	OIPA forwarded the complaint to BPD, which initiated an investigation.	88

During June 2024, **3 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2024-052)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	96

2 (IA2024-058)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing • Policy/Procedure (Axon Camera) • Conduct Unbecoming an Officer • Policy/Procedure • Arrest/Detention 	BPD initiated an investigation.	77
3 (IA2024-059)	Officers #1-3: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	77

During May 2024, **2 Citizen Complaints (Formal)** were received by BPD but not previously reported:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2024-053)	Officer #1: <ul style="list-style-type: none"> • Truthfulness • Performance of Duty • Conduct Unbecoming an Officer • Policy/Procedure (Axon Camera) 	BPD initiated an investigation.	101
2 (IA2024-054)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing • Policy/Procedure (Axon Camera) • Conduct Unbecoming an Officer • Policy/Procedure • Arrest/Detention 	BPD initiated an investigation.	77

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During June 2024, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #23-31) (IA2023-079)	Officers engaged in bullying, intimidating, and threatening behavior and spoke about other BART employees in a derogatory manner. One officer engaged in favoritism and released confidential, protected information.	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Sustained • Policy/Procedure (Rumors/Bullying) – Sustained Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (Release of Confidential Personnel Information) – Sustained • Workplace Discrimination / Harassment – Not Sustained • Favoritism – Exonerated • Supervision – Not Sustained 	392	296

During June 2024, **7 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2023-059)	Officers did not properly respond to a crime.	Officers #1-2: <ul style="list-style-type: none"> • Performance of Duty – Unfounded 	434	346

2 (IA2023-060)	Officers refused to provide requested assistance because of complainant's race.	Officers #1-2: • Bias-Based Policing – Unfounded • Performance of Duty – Exonerated	431	341
3 (IA2023-062)	Officers used excessive force and failed to provide medical attention.	Officers #1-5: • Performance of Duty – Unfounded Officers #1-2: • Force – Exonerated Officer #3: • Force – Not Sustained	413	331
4 (IA2023-063)	Officer was aggressive and intimidating and threatened physical harm.	Officer #1: • Force – Exonerated • Conduct Unbecoming an Officer – Exonerated	427	345
5 (IA2023-064)	Officers were physically and verbally aggressive.	Officers #1-3: • Force – Exonerated • Conduct Unbecoming an Officer – Unfounded	422	340
6 (IA2023-067)	Officers did not document the handcuffing of a Welfare Check subject.	Officer #1: • Policy/Procedure (Documentation) – Sustained	415	327
7 (IA2023-047)	Officers used excessive force.	Officers #1-2: • Force – Administratively Closed ¹⁰	482	357

DISCIPLINE ISSUED DURING REPORTING PERIOD

During June 2024, 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: • Oral Counseling ¹¹
2	Officer engaged in bullying, dissemination of rumors/gossip, and other generally unacceptable conduct including speaking disparagingly about BPD employees and others.	Officer #1: • Policy/Procedure (Rumors/Bullying) • Conduct Unbecoming an Officer	Officer #1: • Oral Counseling
3	Officer refused to provide identification upon request and failed to properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera) • Conduct Unbecoming an Officer	Officer #1: • Written Reprimand ¹²

In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and monitors and/or reviews complaint investigations conducted by BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	17
Complainant-Initiated Appeals	2
BPD-Initiated Appeals	0
Investigations Being Monitored	31
Investigations Reviewed During Current Month	22†

*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 number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

ISSUES DETECTED

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is handled by BPD.¹³ The OIPA Monthly Report will reflect information regarding monitored cases, investigations, and contacts with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during this period did generate some recommendations for revisions or additional investigation and these items will be compiled and included in a subsequent report.

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

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

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

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

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

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

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

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

⁹ It is important to note that OIPA does not separate citizen complaints it receives into “Formal” and “Informal” classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

¹⁰ Administrative Closure is defined as follows in the BPD Policy Manual: Allegations that are received and documented; however, the Chief of Police or his/her designee determines, based on a preliminary investigation, that further investigation is not warranted. Under these circumstances, the complaint will be Administratively Closed and documented in a summary memorandum to the case file. Employees will be documented as witnesses only, not as subjects to the complaint. Internal Affairs will send a letter to the complainant notifying them that the case was closed following a preliminary investigation.

¹¹ 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.

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

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