

# Office of the Independent Police Auditor

## Monthly Report

January 2012



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

February 13, 2012

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period January 1, 2012 through January 31, 2012. It is the intention of the OIPA to make this report and all subsequent reports in this series available at [www.bart.gov/policeauditor](http://www.bart.gov/policeauditor).<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded	Number of Cases Appealed to OIPA <sup>4</sup>	Number of Cases Appealed by CRB <sup>5</sup>
June 27, 2011 - October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0

**Types of Cases Filed**

Citizen Complaints	5
Administrative Investigations	0
Comments of Non-Complaint	1
<b>TOTAL</b>	<b>6</b>

**Citizen Complaints Received per Department**

OIPA	1
BART Police Department	4
<b>TOTAL</b>	<b>5</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed<sup>6</sup>**

During the month of January 2012, 1 Citizen Complaint was received by the OIPA:

Complaint #	Nature of Complaint	Action Taken	# of Days Elapsed Since Complaint Filed
1	Neglect of Duty	BART Police Department was notified and an investigation was initiated.	42

During the month of January 2012, 4 Citizen Complaints were received by the BART Police Department:

Complaint #	Nature of Complaint	Action Taken	# of Days Elapsed Since Complaint Filed
1	Force; Procedure	An investigation was initiated.	29
2	Courtesy; Conduct Unbecoming of an Officer	An investigation was initiated.	35
3	Conduct Unbecoming of an Officer	An investigation was initiated.	40
4	Bias Based Policing; Conduct Unbecoming of an Officer; Courtesy	An investigation was initiated.	102 <sup>7</sup>

During the month of January 2012, 1 Comment of Non-Complaint was received by the BART Police Department:

Comment #	Nature of Comment	Action Taken	# of Days Elapsed Since Comment Filed
1	Procedure	An investigation was initiated.	21

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of January 2012, 2 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition <sup>8</sup>	# of Days Elapsed Since Complaint Filed
1 (IA2011-034)	<u>Police Officer #1:</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Procedure</li> </ul>	<u>Police Officer #1:</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Sustained</li> <li>• Procedure – Exonerated</li> </ul>	257
2 (IA2011-031)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Truthfulness</li> <li>• Procedure</li> <li>• Force</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Truthfulness - Sustained</li> <li>• Procedure - Sustained</li> <li>• Force – Not-Sustained</li> </ul>	258

During the month of January 2012, 2 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	# of Days Elapsed Since Comment Filed
1 (IA2011-079)	Bias Based Policing	Supervisory Referral <sup>9</sup>	76
2 (IA2011-066)	Neglect of Duty	Supervisory Referral	105

<sup>1</sup> In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

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

---

<sup>4</sup> This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department's internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

<sup>5</sup> This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

<sup>6</sup> In all cases where it appears in this report, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

<sup>7</sup> This case was first received in November 2011; it was not entered into the IAPro database at that time, however, as the Office of Internal Affairs sought to obtain more information with regard to the details of the case. The case has since been entered into the database and, as such, is accounted for in this monthly report.

<sup>8</sup> In defining the "Disposition of Internal Investigations," the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>9</sup> In defining a "Supervisory Referral," the BART Police Department Manual indicates that an assigned supervisor will address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Section.

# Office of the Independent Police Auditor

## Monthly Report

February 2012



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

March 19, 2012

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period February 1, 2012 through February 29, 2012. It is the intention of the OIPA to make this report and all subsequent reports in this series available at [www.bart.gov/policeauditor](http://www.bart.gov/policeauditor).<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded	Number of Cases Appealed to OIPA <sup>4</sup>	Number of Cases Appealed by CRB <sup>5</sup>
June 27, 2011 – October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0

**Types of Cases Filed**

Citizen Complaints	8
Administrative Investigations	4
Comments of Non-Complaint	2
<b>TOTAL</b>	<b>14</b>

**Citizen Complaints Received per Department**

OIPA	1
BART Police Department	7
<b>TOTAL</b>	<b>8</b>

**Complaints/Investigations Initiated During Reporting Period<sup>6</sup>**

**Actions Taken/# of Days Elapsed<sup>7</sup>**

During the month of February 2012, 1 Citizen Complaint was received by the OIPA:

Complaint #	Nature of Complaint	Action Taken	# of Days Elapsed Since Complaint Filed
1	Conduct Unbecoming of an Officer	BART Police Department was notified and an investigation was initiated.	25

During the month of February 2012, 7 Citizen Complaints were received by the BART Police Department:

Complaint #	Nature of Complaint	Action Taken	# of Days Elapsed Since Complaint Filed
1	Procedure	An investigation was initiated.	21
2	Conduct Unbecoming an Officer	An investigation was initiated.	25
3	Force	An investigation was initiated.	33
4	Procedure	An investigation was initiated.	35
5	Force	An investigation was initiated.	40
6	Courtesy	An investigation was initiated.	40
7	Force	An investigation was initiated.	47

During the month of February 2012, 4 Administrative Investigations were generated by the BART Police Department:

Investigation #	Nature of Investigation	Action Taken	# of Days Elapsed Since Investigation Initiated
1	Procedure	An investigation was initiated.	20
2	Conduct Unbecoming an Officer	An investigation was initiated.	32



3	Conduct Unbecoming an Officer	An investigation was initiated.	33
4	Procedure	An investigation was initiated.	47

During the month of February 2012, 2 Comments of Non-Complaint were received by the BART Police Department:

Comment #	Nature of Comment	Action Taken	# of Days Elapsed Since Comment Filed
1	Procedure	An investigation was initiated.	20
2	Procedure	An investigation was initiated.	30

**Complaints/Investigations Concluded During Reporting Period**

Dispositions/# of Days Elapsed

During the month of February 2012, 5 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition <sup>8</sup>	# of Days Elapsed Since Complaint Filed
1 (IA2011-070)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>Conduct Unbecoming an Officer</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>Conduct Unbecoming an Officer</li> </ul>	<ul style="list-style-type: none"> <li>It was determined by BART PD that this complaint raised the same allegations that had already been investigated in Internal Affairs Case #06-C-004; BART PD therefore did not reach a disposition on Internal Affairs Case #2011-070</li> </ul>	250
2 (IA2011-029)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>Courtesy</li> <li>Conduct Unbecoming an Officer</li> <li>Bias-Based Policing</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>Courtesy – Unfounded</li> <li>Conduct Unbecoming an Officer – Unfounded</li> <li>Bias-Based Policing – Unfounded</li> </ul>	313

	<u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Courtesy (3 counts)</li> <li>• Conduct Unbecoming an Officer (3 counts)</li> <li>• Procedure (2 counts)</li> <li>• Bias-Based Policing</li> </ul>	<u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Courtesy (Count 1) – Exonerated</li> <li>• Courtesy (Count 2) – Not Sustained</li> <li>• Courtesy (Count 3) – Unfounded</li> <li>• Conduct Unbecoming an Officer (Count 1) – Exonerated</li> <li>• Conduct Unbecoming an Officer (Count 2) – Not Sustained</li> <li>• Conduct Unbecoming an Officer (Count 3) – Unfounded</li> <li>• Procedure (Count 1) – Sustained</li> <li>• Procedure (Count 2) – Unfounded</li> <li>• Bias-Based Policing – Unfounded</li> </ul>	
3 (IA2011-026)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Procedure</li> <li>• Arrest or Detention</li> <li>• Search or Seizure</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Arrest or Detention</li> <li>• Search or Seizure</li> <li>• Supervision</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Procedure – Exonerated</li> <li>• Arrest or Detention – Exonerated</li> <li>• Search or Seizure – Exonerated</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Search or Seizure – Exonerated</li> <li>• Supervision – Exonerated</li> </ul>	322
4 (IA2011-015)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Sustained</li> </ul>	382
5 (IA2011-023)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> <li>• Courtesy</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Neglect of Duty – Sustained</li> <li>• Courtesy – Exonerated</li> </ul>	406

	<u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> <li>• Courtesy (2 counts)</li> <li>• Procedure</li> </ul>	<u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Neglect of Duty – Sustained</li> <li>• Courtesy (Count 1) – Not Sustained</li> <li>• Courtesy (Count 2) – Exonerated</li> <li>• Procedure – Not Sustained</li> </ul>	
--	--	--	--

During the month of February 2012, 1 Administrative Investigation was concluded by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Disposition	# of Days Elapsed Since Investigation Initiated
1 (IA2011-044)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Supervision</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• No Finding</li> </ul>	244

During the month of February 2012, 4 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	# of Days Elapsed Since Comment Filed
1 (IA2012-005)	Procedure	Supervisory Referral <sup>9</sup>	56
2 (IA2011-076)	Courtesy; Conduct Unbecoming an Officer	Supervisory Referral	118
3 (IA2011-075)	Procedure; Courtesy	Supervisory Referral	119
4 (IA2011-064)	Procedure	Supervisory Referral	158

**Complaints/Investigations Concluded Prior to Current Reporting Period**

**Dispositions/# of Days Elapsed**

1 Citizen Complaint was closed during December 2011; however, it was not reported as such because its status was not fully updated in the BART Police Department’s Internal Affairs database until later. Therefore, it is being reported on here.

Complaint # (IA Case #)	Nature of Complaint	Disposition	# of Days Elapsed Since Complaint Filed
1 (IA2010-082)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Courtesy</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Courtesy</li> </ul> <u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Courtesy</li> <li>• Neglect of Duty</li> </ul> <u>Police Officer #4</u> <ul style="list-style-type: none"> <li>• Courtesy</li> <li>• Neglect of Duty</li> </ul> <u>Police Officer #5 (Unable to be identified)</u> <ul style="list-style-type: none"> <li>• Search or Seizure</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Courtesy – Not Sustained</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Courtesy – Not Sustained</li> </ul> <u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Courtesy – Not Sustained</li> <li>• Neglect of Duty – Sustained</li> </ul> <u>Police Officer #4</u> <ul style="list-style-type: none"> <li>• Courtesy – Unfounded</li> <li>• Neglect of Duty – Not Sustained</li> </ul> <u>Police Officer #5 (Unable to be identified)</u> <ul style="list-style-type: none"> <li>• Search or Seizure – Unfounded</li> </ul>	444

Data regarding 1 Administrative Investigation that was concluded by the BART Police Department in January 2012 was not available in time for that month’s report. Therefore, it is being reported on here.

Investigation # (IA Case #)	Nature of Investigation	Disposition	# of Days Elapsed Since Investigation Initiated
1 (IA2011-014)	<u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Procedure</li> </ul>	<u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Not Sustained</li> </ul>	418

---

<sup>1</sup> In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

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

<sup>4</sup> This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

<sup>5</sup> This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

<sup>6</sup> Prior to the current report, 2 Citizen Complaints and 1 Comment of Non-Complaint were mistakenly included in the “Number of Open Cases.” A review of the BART Police Department’s Internal Affairs database indicates that these cases had, in fact, been completed prior to the initiation of this series of monthly reports (which covers data back to June 27, 2011). It appears that an audit conducted by the BART Police Department’s Office of Internal Affairs in October 2011 led them to reopen these cases in their database in order to affirm that the involved parties had received appropriate notification of the outcomes of their respective cases; although the cases were marked as re-opened for this purpose, they were not marked as re-closed until recently. OIPA has now removed them from the “Number of Open Cases” and is not aware of any other similarly-situated cases awaiting re-closing.

<sup>7</sup> In all cases where it appears in this report, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

<sup>8</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>9</sup> In defining a “Supervisory Referral,” the BART Police Department Manual indicates that an assigned supervisor will address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Section.

# Office of the Independent Police Auditor

## Monthly Report

March 2012



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

April 9, 2012

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period March 1, 2012 through March 31, 2012. It is the intention of the OIPA to make this report and all subsequent reports in this series available at [www.bart.gov/policeauditor](http://www.bart.gov/policeauditor).<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded	Number of Cases Appealed to OIPA <sup>4</sup>	Number of Cases Appealed by CRB <sup>5</sup>
June 27, 2011 – October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0
March 2012	7	61	0	1	0

**Types of Cases Filed**

Citizen Complaints	6
Administrative Investigations	1
Comments of Non-Complaint	0
<b>TOTAL</b>	<b>7</b>

**Citizen Complaints Received per Department**

OIPA	1
BART Police Department	5
<b>TOTAL</b>	<b>6</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed<sup>6</sup>**

During the month of March 2012, 1 Citizen Complaint was received by the OIPA:

Complaint #	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1	Conduct Unbecoming an Officer; Courtesy; Procedure; Policy Complaint	BART Police Department was notified and an investigation was initiated.	27

During the month of March 2012, 5 Citizen Complaints were received by the BART Police Department:

Complaint #	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1	Procedure	An investigation was initiated.	19
2	Biased Based Policing; Conduct Unbecoming an Officer; Courtesy	An investigation was initiated.	31
3	Biased Based Policing; Conduct Unbecoming	An investigation was initiated.	33
4	Workplace Discrimination/Harassment; Conduct Unbecoming an Officer; Courtesy	An investigation was initiated.	33
5	Force	An investigation was initiated.	33

During the month of March 2012, 1 Administrative Investigation was generated by the BART Police Department:

Investigation #	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1	Conduct Unbecoming an Officer; Courtesy	An investigation was initiated.	10



**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of March 2012, 3 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition <sup>7</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2011-052)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest or Detention</li> <li>• Conduct Unbecoming an Officer</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	229	218
2 (IA2011-028)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Criminal (2 counts)</li> <li>• Conduct Unbecoming an Officer</li> <li>• Procedure (2 counts)</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Criminal (Count 1) – Not Sustained</li> <li>• Criminal (Count 2) – Not Sustained</li> <li>• Conduct Unbecoming an Officer – Sustained</li> <li>• Procedure (Count 1) – Sustained</li> <li>• Procedure (Count 2) – Sustained</li> </ul>	336	317
3 (IA2011-021)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> <li>• Procedure</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Sustained</li> <li>• Courtesy – Sustained</li> <li>• Procedure – Exonerated</li> </ul>	361	337

---

<sup>1</sup> In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

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

<sup>4</sup> This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

<sup>5</sup> This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

<sup>6</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

<sup>7</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

# Office of the Independent Police Auditor

## Monthly Report

April 2012



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

May 14, 2012

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period April 1, 2012 through April 30, 2012. It is the intention of the OIPA to make this report and all subsequent reports in this series available at [www.bart.gov/policeauditor](http://www.bart.gov/policeauditor).<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded	Number of Cases Appealed to OIPA <sup>4</sup>	Number of Cases Appealed by CRB <sup>5</sup>
June 27, 2011 – October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0
March 2012	7	61	0	1	0
April 2012	6	55	0	1	0

**Types of Cases Filed**

Citizen Complaints	5
Administrative Investigations	0
Comments of Non-Complaint	1
<b>TOTAL</b>	<b>6</b>

**Citizen Complaints Received per Department**

OIPA	0
BART Police Department	5
<b>TOTAL</b>	<b>5</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed<sup>6</sup>**

During the month of April 2012, 5 Citizen Complaints were received by the BART Police Department:

Complaint #	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1	Arrest or Detention; Performance of Duty; Procedure	An investigation was initiated.	25
2	Bias-Based Policing	An investigation was initiated.	28
3	Bias-Based Policing	An investigation was initiated.	29
4	Arrest or Detention	An investigation was initiated.	32
5	Arrest or Detention	An investigation was initiated.	42

During the month of April 2012, 1 Comment of Non-Complaint was received by the BART Police Department:

Comment #	Nature of Comment	Action Taken	# of Days Elapsed Since Comment Filed
1	Courtesy	An investigation was initiated.	16

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of April 2012, 10 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition <sup>7</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2011-047)	<u>Police Officer #1</u> • Force • Procedure	<u>Police Officer #1</u> • Force – Unfounded • Procedure – Exonerated	259	228
2 (IA2011-046)	<u>Police Officer #1</u> • Performance of Duty  <u>Police Officer #2</u> • Performance of Duty	<u>Police Officer #1</u> • Performance of Duty – Exonerated  <u>Police Officer #2</u> • Performance of Duty – Exonerated	271	244
3 (IA2011-037)	<u>Police Officer #1</u> • Force • Conduct Unbecoming an Officer • Courtesy	<u>Police Officer #1</u> • Force – Unfounded • Conduct Unbecoming an Officer – Unfounded • Courtesy – Unfounded	329	298
4 (IA2011-033)	<u>Police Officer #1</u> • Conduct Unbecoming an Officer (2 counts) • Courtesy (2 counts)	<u>Police Officer #1</u> • Conduct Unbecoming an Officer (Count 1) – Unfounded • Conduct Unbecoming an Officer (Count 2) – Unfounded • Courtesy (Count 1) – Unfounded • Courtesy (Count 2) – Unfounded	347	313

	<u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> </ul>	<u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Courtesy – Not Sustained</li> </ul>		
5 (IA2011-030)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Courtesy – Not Sustained</li> </ul>	356	325
6 (IA2011-025)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Search or Seizure</li> <li>• Conduct Unbecoming an Officer (2 counts)</li> <li>• Courtesy (2 counts)</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Search or Seizure – Exonerated</li> <li>• Conduct Unbecoming an Officer (Count 1) – Not Sustained</li> <li>• Conduct Unbecoming an Officer (Count 2) – Unfounded</li> <li>• Courtesy (Count 1) – Not Sustained</li> <li>• Courtesy (Count 2) – Unfounded</li> </ul>	374	343
7 (IA2011-027)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Policy Complaint</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Policy Complaint</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Policy Complaint – Exonerated</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Policy Complaint – Exonerated</li> </ul>	375	335

<p style="text-align: center;">8 (IA2011-022)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Neglect of Duty (2 counts)</li> <li>• Procedure</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> <li>• Procedure</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Neglect of Duty (Count 1) – Not Sustained</li> <li>• Neglect of Duty (Count 2) – Not Sustained</li> <li>• Procedure – Not Sustained</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Neglect of Duty – Not Sustained</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Unfounded</li> <li>• Procedure – Not Sustained</li> </ul>	<p style="text-align: center;">383</p>	<p style="text-align: center;">357</p>
<p style="text-align: center;">9 (IA2011-019)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing (2 counts)</li> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> <li>• Procedure/Policy</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing (Count 1) – Not Sustained</li> <li>• Bias Based Policing (Count 2) – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Unfounded</li> <li>• Procedure/Policy – Not Sustained</li> </ul>	<p style="text-align: center;">406</p>	<p style="text-align: center;">366</p>



	<u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> <li>• Procedure/Policy</li> </ul> <u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> <li>• Procedure/Policy</li> </ul>	<u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Unfounded</li> <li>• Procedure/Policy – Not Sustained</li> </ul> <u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Unfounded</li> <li>• Procedure/Policy – Not Sustained</li> </ul>		
10 (IA2011-016)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Truthfulness</li> <li>• Conduct Unbecoming an Officer</li> <li>• Procedure (2 counts)</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Truthfulness – Sustained</li> <li>• Conduct Unbecoming an Officer – Sustained</li> <li>• Procedure (Count 1) – Sustained</li> <li>• Procedure (Count 2) – Sustained</li> </ul>	430	399*

\*The one year limitation on completing the investigation into this incident was tolled from May 5, 2011 until October 18, 2011 pursuant to a waiver made by the involved officer. Accounting for this tolling period, the number of days taken to complete the investigation would be reduced to 233.

During the month of April 2012, 1 Administrative Investigation was concluded by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Disposition	# of Days Elapsed Since Investigation Initiated	# of Days Taken to Complete Investigation
1 (IA2011-082)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Truthfulness</li> <li>• Procedure/Policy (3 counts)</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Truthfulness – Sustained</li> <li>• Procedure/Policy (Count 1) – Sustained</li> <li>• Procedure/Policy (Count 2) – Sustained</li> <li>• Procedure/Policy (Count 3) – Sustained</li> </ul>	153	113

**Complaints/Investigations Concluded Prior to Current Reporting Period**

Dispositions/# of Days Elapsed

1 Citizen Complaint was closed during March 2012 without being reported as such because its status was not fully updated in the BART Police Department’s Internal Affairs database until later. Therefore, it is being reported on here.

Complaint # (IA Case #)	Nature of Complaint	Disposition	# of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-003)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> </ul> <u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Neglect of Duty – Unfounded</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Neglect of Duty – Unfounded</li> </ul> <u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Neglect of Duty – Unfounded</li> </ul>	133	87

	<u>Police Officer #4</u> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> </ul>	<u>Police Officer #4</u> <ul style="list-style-type: none"> <li>• Neglect of Duty – Unfounded</li> </ul>		
	<u>Police Officer #5</u> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> </ul>	<u>Police Officer #5</u> <ul style="list-style-type: none"> <li>• Neglect of Duty – Unfounded</li> </ul>		
	<u>Police Officer #6</u> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> </ul>	<u>Police Officer #6</u> <ul style="list-style-type: none"> <li>• Neglect of Duty – Unfounded</li> </ul>		
	<u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> </ul>	<u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Neglect of Duty – Unfounded</li> </ul>		
	<u>Civilian #2</u> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> </ul>	<u>Civilian #2</u> <ul style="list-style-type: none"> <li>• Neglect of Duty – Unfounded</li> </ul>		
	<u>Civilian #3</u> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> </ul>	<u>Civilian #3</u> <ul style="list-style-type: none"> <li>• Neglect of Duty – Unfounded</li> </ul>		
	<u>Civilian #4</u> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> </ul>	<u>Civilian #4</u> <ul style="list-style-type: none"> <li>• Neglect of Duty – Unfounded</li> </ul>		

<sup>1</sup> In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

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

<sup>4</sup> This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

---

<sup>5</sup> This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

<sup>6</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

<sup>7</sup> In defining the "Disposition of Internal Investigations," the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

# Office of the Independent Police Auditor

## Monthly Report

May 2012



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

June 11, 2012

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period May 1, 2012 through May 31, 2012. It is the intention of the OIPA to make this report and all subsequent reports in this series available at [www.bart.gov/policeauditor](http://www.bart.gov/policeauditor).<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
June 27, 2011 – October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0
March 2012	7	61	0	1	0
April 2012	6	55	0	1	0
May 2012	10	54	0	0	0

**Types of Cases Filed**

Citizen Complaints	8
Administrative Investigations	0
Comments of Non-Complaint	2
<b>TOTAL</b>	<b>10</b>

**Citizen Complaints Received per Department**

OIPA	2
BART Police Department	6
<b>TOTAL</b>	<b>8</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed<sup>7</sup>**

During the month of May 2012, 2 Citizen Complaints were received by OIPA:

Complaint #	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (OIPA #12-26)	Excessive Force	OIPA notified BART PD; OIPA initiated an investigation.	31
2 (OIPA #12-30) (IA2012-039)	Conduct Unbecoming an Officer; Courtesy	OIPA notified BART PD, which initiated an investigation.	21

During the month of May 2012, 6 Citizen Complaints were received by the BART Police Department:

Complaint #	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2012-041)	Conduct Unbecoming an Officer; Courtesy	An investigation was initiated.	11
2 (IA2012-040)	Conduct Unbecoming an Officer; Courtesy	An investigation was initiated.	12
3 (IA2012-038)	Force; Conduct Unbecoming an Officer; Courtesy	An investigation was initiated.	17
4 (IA2012-036)	Arrest or Detention; Procedure	An investigation was initiated.	34
5 (IA2012-035)	Bias-based Policing; Conduct Unbecoming an Officer; Courtesy	An investigation was initiated.	35
6 (IA2012-033)	Bias-based Policing; Conduct Unbecoming an Officer; Courtesy	An investigation was initiated.	40

During the month of May 2012, 2 Comments of Non-Complaint were received by the BART Police Department:

Comment #	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2012-037)	Courtesy	An investigation was initiated.	24
2 (IA2012-032)	Courtesy	An investigation was initiated.	41

**Complaints/Investigations Concluded During Reporting Period**

Dispositions/# of Days Elapsed

During the month of May 2012, 5 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition <sup>8</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2011-058)	<u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> <li>• Procedure</li> </ul>	<u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Unfounded</li> <li>• Procedure – Unfounded</li> </ul>	256	236
2 (IA2011-056)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest or Detention</li> <li>• Search or Seizure</li> <li>• Conduct Unbecoming an Officer</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> <li>• Arrest or Detention – Unfounded</li> <li>• Search or Seizure – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	259	239



<p>3 (IA2011-053)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Neglect of Duty – Unfounded</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Courtesy – Not Sustained</li> </ul>	<p>266</p>	<p>249</p>
<p>4 (IA2011-054)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> </ul> <p><u>Police Officer #3</u></p> <ul style="list-style-type: none"> <li>• Neglect of Duty</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Neglect of Duty – Unfounded</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Neglect of Duty – Unfounded</li> </ul> <p><u>Police Officer #3</u></p> <ul style="list-style-type: none"> <li>• Neglect of Duty – Unfounded</li> </ul>	<p>282</p>	<p>242</p>
<p>5 (IA2011-048)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Procedure</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Procedure</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Procedure – Not Sustained</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Procedure – Not Sustained</li> </ul>	<p>272</p>	<p>252</p>

\*In addition to the 5 complaints listed in the table above, BART PD determined that IA2011-057 was a complaint that involved the same issue as IA2011-055. Therefore, on May 11, 2012, BART PD merged both complaints into IA2011-055 and closed out IA2011-057. This raises the total number of Citizen Complaints closed during the reporting period from 5 to 6.

During the month of May 2012, 2 Administrative Investigations were concluded by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2012-019)	<u>Police Officer #1</u> • Procedure	<u>Police Officer #1</u> • Procedure – Supervisory Referral <sup>9</sup>	104	85
2 (IA2011-069)	<u>Police Officer #1</u> • Truthfulness • Conduct Unbecoming an Officer • Courtesy	<u>Police Officer #1</u> • Truthfulness – Unfounded • Conduct Unbecoming an Officer – Sustained • Courtesy – Sustained	232	215

During the month of May 2012, 3 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2012-034)	Courtesy	Supervisory Referral	44	25
2 (IA2012-014)	Conduct Unbecoming an Officer	Supervisory Referral	109	88
3 (IA2012-015)	Procedure	Supervisory Referral	114	76

<sup>1</sup> In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

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

---

by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

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

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

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

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

<sup>7</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

<sup>8</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>9</sup> In defining a “Supervisory Referral,” the BART Police Department Manual indicates that an assigned supervisor will address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Section.

# Office of the Independent Police Auditor

## Monthly Report

June 2012



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

July 9, 2012

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period June 1, 2012 through June 30, 2012. It is the intention of the OIPA to make this report and all subsequent reports in this series available at [www.bart.gov/policeauditor](http://www.bart.gov/policeauditor).<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
June 27, 2011 – October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0
March 2012	7	61	0	1	0
April 2012	6	55	0	1	0
May 2012	10	54	0	0	0
June 2012	13	61	0	0	0

**Types of Cases Filed**

Citizen Complaints	6
Administrative Investigations	3
Comments of Non-Complaint	4
<b>TOTAL</b>	<b>13</b>

**Citizen Complaints Received per Department**

OIPA	1
BART Police Department	5
<b>TOTAL</b>	<b>6</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed<sup>7</sup>**

During the month of June 2012, 1 Citizen Complaint was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (OIPA #12-38) (IA2012-053)	Arrest or Detention; Discourtesy	OIPA notified BART PD, which initiated an investigation.	10

During the month of June 2012, 5 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2012-054)	Procedure (Driving)	An investigation was initiated.	10
2 (IA2012-051)	Bias-Based Policing; Arrest or Detention	An investigation was initiated.	12
3 (IA2012-047)	Criminal (Misdemeanor)	An investigation was initiated.	25
4 (IA2012-046)	Force; Procedure	An investigation was initiated.	27
5 (IA2012-044)	Bias-Based Policing; Arrest or Detention; Search or Seizure	An investigation was initiated.	34

During the month of June 2012, 3 Administrative Investigations were initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2012-052)	Workplace Discrimination/Harassment; Conduct Unbecoming an Officer; Courtesy	BART PD initiated an investigation.	14
2 (IA2012-050)	Workplace Discrimination/Harassment; Courtesy	BART PD initiated an investigation.	17

3 (IA2012-042)	Force; Reporting Misconduct; Procedure/Policy	BART PD initiated an investigation.	38
-------------------	--	-------------------------------------	----

During the month of June 2012, 4 Comments of Non-Complaint were received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2012-049)	Courtesy	An investigation was initiated.	14
2 (IA2012-048)	Procedure (Driving)	An investigation was initiated.	16
3 (IA2012-045)	Courtesy	An investigation was initiated.	28
4 (IA2012-043)	Procedure	An investigation was initiated.	38

### **Complaints/Investigations Concluded During Reporting Period**

#### **Dispositions/# of Days Elapsed**

During the month of June 2012, 1 Citizen Complaint was concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition <sup>8</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2011-063)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Discourtesy</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Discourtesy</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Discourtesy – Unfounded</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Discourtesy – Unfounded</li> </ul>	271	257

	<u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Discourtesy</li> </ul>	<u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Discourtesy – Unfounded</li> </ul>		
	<u>Police Officer #4</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Discourtesy</li> <li>• Failure to Identify</li> </ul>	<u>Police Officer #4</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Discourtesy – Unfounded</li> <li>• Failure to Identify – Unfounded</li> </ul>		

During the month of June 2012, 2 Administrative Investigations were concluded by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2012-008)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Procedure</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Procedure – Unfounded</li> </ul>	159	128
2 (IA2011-039)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Force</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> </ul>	372	353

During the month of June 2012, 3 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2012-043)	Procedure	Supervisory Referral	38	7



2 (IA2012-032)	Courtesy	Supervisory Referral	69	31
3 (IA2012-002)	Conduct Unbecoming an Officer; Courtesy	Supervisory Referral	182	144

<sup>1</sup> In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

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

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

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

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

<sup>7</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

<sup>8</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

# Office of the Independent Police Auditor

## Monthly Report

July 2012



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

August 13, 2012

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period July 1, 2012 through July 31, 2012. It is the intention of the OIPA to make this report and all subsequent reports in this series available at [www.bart.gov/policeauditor](http://www.bart.gov/policeauditor).<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
June 27, 2011 – October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0
March 2012	7	61	0	1	0
April 2012	6	55	0	1	0
May 2012	10	54	0	0	0
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0

**Types of Cases Filed**

Citizen Complaints	3
Administrative Investigations	2
Comments of Non-Complaint	2
<b>TOTAL</b>	<b>7</b>

**Citizen Complaints Received per Department**

OIPA	0
BART Police Department	3
<b>TOTAL</b>	<b>3</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed<sup>7</sup>**

During the month of July 2012, 3 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2012-058)*	Force; Bias Based Policing; Conduct Unbecoming an Officer; Courtesy; Procedure	An investigation was initiated.	51
2 (IA2012-055)	Bias Based Policing; Arrest or Detention; Conduct Unbecoming an Officer; Courtesy; Procedure	An investigation was initiated.	41
3 (IA2012-059)	Bias Based Policing; Arrest or Detention; Performance of Duty; Conduct Unbecoming an Officer; Courtesy	An investigation was initiated.	27

\*The Department's Office of Internal Affairs (IA) did not receive sufficient information until this month to determine that the allegations giving rise to this complaint had initially been raised on June 23, 2012 (which is why it is listed as received in this report). After making such a determination, IA will use June 23, 2012 as the date this complaint was received, as is indicated by the Number of Days Elapsed Since Complaint Filed.

During the month of July 2012, 2 Administrative Investigations were initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2012-056)	Criminal; Conduct Unbecoming an Officer	BART PD initiated an investigation.	42
2 (IA2012-057)	Performance of Duty; Conduct Unbecoming an Officer; Courtesy	BART PD initiated an investigation.	42

During the month of July 2012, 2 Comments of Non-Complaint were received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2012-060)	Performance of Duty	An investigation was initiated.	24
2 (IA2012-062)	Performance of Duty; Courtesy	An investigation was initiated.	14

**Complaints/Investigations Concluded During Reporting Period**

Dispositions/# of Days Elapsed

During the month of July 2012, 4 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition <sup>8</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2011-062)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Excessive Use of Force</li> <li>• Use of Force Reporting</li> <li>• Conduct Unbecoming an Officer</li> <li>• Unprofessional Conduct</li> <li>• Handling of Prisoners</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Excessive Use of Force – Unfounded</li> <li>• Use of Force Reporting – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Unprofessional Conduct – Unfounded</li> <li>• Handling of Prisoners – Unfounded</li> </ul>	314	281

	<p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Unprofessional Conduct</li> <li>• Handling of Prisoners</li> </ul> <p><u>Civilian #1</u></p> <ul style="list-style-type: none"> <li>• Excessive Use of Force</li> <li>• Use of Force Reporting</li> <li>• Conduct Unbecoming an Officer</li> <li>• Handling of Prisoners</li> </ul>	<p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Unprofessional Conduct – Unfounded</li> <li>• Handling of Prisoners – Unfounded</li> </ul> <p><u>Civilian #1</u></p> <ul style="list-style-type: none"> <li>• Excessive Use of Force – Unfounded</li> <li>• Use of Force Reporting – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Handling of Prisoners – Unfounded</li> </ul>		
2 (IA2011-065)	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Excessive/Improper Use of Force</li> <li>• Unlawful Detention</li> <li>• Notifying Dispatch of Status</li> <li>• Violating Department Safety Standards</li> <li>• Vehicle Pursuit Policy</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Excessive/Improper Use of Force – Sustained</li> <li>• Unlawful Detention – Not Sustained</li> <li>• Notifying Dispatch of Status – Not Sustained</li> <li>• Violating Department Safety Standards – Sustained</li> <li>• Vehicle Pursuit Policy – Unfounded</li> </ul>	290	256
3 (IA2011-072)	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Discourtesy/Conduct Unbecoming an Officer</li> <li>• Performance of Duty</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Discourtesy/Conduct Unbecoming an Officer – Unfounded</li> <li>• Performance of Duty – Not Sustained</li> </ul>	273	242

	<u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Discourtesy/Conduct Unbecoming an Officer</li> </ul>	<u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Discourtesy/Conduct Unbecoming an Officer – Unfounded</li> </ul>		
4 (IA2012-007)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Excessive Force</li> <li>• Discourtesy</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Excessive Force – Unfounded</li> <li>• Discourtesy – Unfounded</li> </ul>	187	145

During the month of July 2012, 2 Administrative Investigations were concluded by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2011-051)*	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct, Sleeping on Duty, Intoxicants</li> </ul> <u>Police Officer #2 (retired)</u> <ul style="list-style-type: none"> <li>• Truthfulness</li> </ul> <u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Supervision: Reporting/Addressing Misconduct</li> </ul> <u>Police Officer #4</u> <ul style="list-style-type: none"> <li>• Supervision: Reporting/Addressing Misconduct</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct, Sleeping on Duty, Intoxicants – Not Sustained</li> </ul> <u>Police Officer #2 (retired)</u> <ul style="list-style-type: none"> <li>• Truthfulness – Not Sustained</li> </ul> <u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Supervision: Reporting/Addressing Misconduct – Not Sustained</li> </ul> <u>Police Officer #4</u> <ul style="list-style-type: none"> <li>• Supervision: Reporting/Addressing Misconduct – Not Sustained</li> </ul>	392	339

2 (IA2012-027)	<u>Civilian #1</u> • Unprofessional Conduct	<u>Civilian #1</u> • Unprofessional Conduct – Not Sustained	136	102
-------------------	--	--	-----	-----

\*This complaint was closed in June 2012 but was not recorded as such in time for that month's report. It has therefore been included here.

During the month of July 2012, 4 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2012-037)	Courtesy	Supervisory Referral	87	49
2 (IA2012-045)	Courtesy	Supervisory Referral	63	25
3 (IA2012-048)	Procedure	Supervisory Referral	51	28
4 (IA2012-049)	Courtesy	Supervisory Referral	49	8

**Complaints/Investigations Concluded During Previous Reporting Period**

Dispositions/# of Days Elapsed

During the month of June 2012, 1 Appeal of Internal Affairs Investigation Findings was completed by OIPA. This was mistakenly left out of the June report and is therefore included here:

Appeal # (OIPA Case #)	Nature of Initial Complaint (with Findings)	Disposition	Number of Days Elapsed Since Appeal Filed	Number of Days Taken to Complete Appeal
1 (OIPA 12-14)	<ul style="list-style-type: none"> <li>• Manipulation of facts/evidence and a train operator – Unfounded</li> <li>• Unprofessional conduct – Not Sustained</li> </ul>	OIPA did not disagree with the Internal Affairs findings in this case	161	92



---

<sup>1</sup> In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

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

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

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

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

<sup>7</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

<sup>8</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

# Office of the Independent Police Auditor

## Monthly Report

August 2012



September 10, 2012

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period August 1, 2012 through August 31, 2012.<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
June 27, 2011 – October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0
March 2012	7	61	0	1	0
April 2012	6	55	0	1	0
May 2012	10	54	0	0	0
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0
August 2012	12	60	0	0	0

**Types of Cases Filed**

Citizen Complaints	6
Administrative Investigations	1
Comments of Non-Complaint	5
<b>TOTAL</b>	<b>12</b>

**Citizen Complaints Received per Department**

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

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed<sup>7</sup>**

During the month of August 2012, 3 Citizen Complaints were received by the OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (OIPA 12-43) (IA2012-074)	Failure to Enforce Rules on BART Trains	OIPA notified BART PD, which initiated an investigation.	38
2 (OIPA 12-47) (IA2012-065)	Improper Issuance of a Citation	OIPA notified BART PD, which initiated an investigation.	27
3 (OIPA 12-49) (IA2012-071)	Neglect of Duty; Conduct Unbecoming an Officer	OIPA notified BART PD, which initiated an investigation.	17

During the month of August 2012, 3 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2012-068)	Use of Force; Conduct Unbecoming an Officer	An investigation was initiated.	24
2 (IA2012-072)	Conduct Unbecoming an Officer	An investigation was initiated.	13
3 (IA2012-073)	Courtesy	An investigation was initiated.	15

During the month of August 2012, 1 Administrative Investigation was initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2012-066)	Use of Force	BART PD initiated an investigation.	27

During the month of August 2012, 5 Comments of Non-Complaint were received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2012-069)	Performance of Duty	An investigation was initiated.	24
2 (IA2012-067)	Neglect of Duty	An investigation was initiated.	25
3 (IA2012-064)	Performance of Duty; Courtesy	An investigation was initiated.	34
4 (IA2012-063)	Courtesy	An investigation was initiated.	34
5 (IA2012-061)	Neglect of Duty	An investigation was initiated.	40

**Complaints/Investigations Concluded During Reporting Period**

Dispositions/# of Days Elapsed

During the month of August 2012, 5 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition <sup>8</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-018)	<u>Police Officer #1</u> • Performance of Duty	<u>Police Officer #1</u> • Performance of Duty – Not Sustained	196	170
2 (IA2011-080)	<u>Police Officer #1</u> • Courtesy • Procedure	<u>Police Officer #1</u> • Courtesy – Not Sustained • Procedure – Not Sustained	294	283

3 (IA2011-078)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Use of Force</li> <li>• Conduct Unbecoming an Officer</li> <li>• Use of Force Reporting</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Use of Force – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Use of Force Reporting – Unfounded</li> </ul>	287	252
4 (IA2011-074)	<u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> <li>• Uniform Regulations</li> <li>• Citation Procedures (Mailing Parking Citations)</li> </ul>	<u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Courtesy – Not Sustained</li> <li>• Uniform Regulations – Unfounded</li> <li>• Citation Procedures (Mailing Parking Citations) – Sustained</li> </ul>	294	273
5 (IA2011-060)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest or Detention</li> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> <li>• Procedure</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Sustained</li> <li>• Conduct Unbecoming an Officer – Sustained</li> <li>• Courtesy – Sustained</li> <li>• Procedure – Sustained</li> </ul>	344	317

During the month of August 2012, 5 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2012-067)	Neglect of Duty	Supervisory Referral	25	12
2 (IA2012-064)	Performance of Duty; Courtesy	Supervisory Referral	34	7
3 (IA2012-063)	Courtesy	Supervisory Referral	34	3

4 (IA2012-061)	Neglect of Duty	Supervisory Referral	40	28
5 (IA2012-060)	Performance of Duty	Supervisory Referral	52	40

<sup>1</sup> In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

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

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

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

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

<sup>7</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

<sup>8</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

# Office of the Independent Police Auditor

Monthly Report  
September 2012



October 8, 2012



This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period September 1, 2012 through September 30, 2012.<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
June 27, 2011 – October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0
March 2012	7	61	0	1	0
April 2012	6	55	0	1	0
May 2012	10	54	0	0	0
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0
August 2012	13*	60*	0	0	0
September 2012	8	57	1	0	0

\*The Number of Cases Filed has been adjusted up by one from what was previously reported on the August 2012 report due to an error in the Internal Affairs case database that has since been corrected. The case that was not previously reported on in the August 2012 report is noted below. The Number of Open Cases for August 2012 did not change, however, due to a second error involving a closed case that was not previously marked as closed in the Internal Affairs case database. That error has also been corrected and the closed case that was not previously reported on is also noted below.

**Types of Cases Filed**

Citizen Complaints	5
Administrative Investigations	0
Comments of Non-Complaint	3
<b>TOTAL</b>	<b>8</b>

**Citizen Complaints Received per Department**

OIPA	0
BART Police Department	5
<b>TOTAL</b>	<b>5</b>

**Complaints/Investigations Initiated During a Previous Reporting Period**

Actions Taken/# of Days Elapsed

During the month of August 2012, 1 Citizen Complaint was received by the BART Police Department that was not previously reported on due to an error in the Internal Affairs database that has since been corrected:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>7</sup>
1 (IA2012-070)	Performance of Duty; Conduct Unbecoming an Officer; Courtesy	BART PD initiated an investigation.	58

**Complaints/Investigations Initiated During Reporting Period**

Actions Taken/# of Days Elapsed

During the month of September 2012, 5 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2012-080)	Arrest or Detention; Conduct Unbecoming an Officer; Courtesy	BART PD initiated an investigation.	15
2 (IA2012-079)	Performance of Duty	BART PD initiated an investigation.	20
3 (IA2012-081)	Bias Based Policing	BART PD initiated an investigation.	23
4 (IA2012-078)	Policy Complaint	BART PD initiated an investigation.	26
5 (IA2012-077)	Procedure	BART PD initiated an investigation.	32

During the month of September 2012, 3 Comments of Non-Complaint were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2012-082)	Performance of Duty	BART PD initiated an investigation.	10
2 (IA2012-076)	Performance of Duty	BART PD initiated an investigation.	27
3 (IA2012-075)	Performance of Duty; Courtesy	BART PD initiated an investigation.	35

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of September 2012, 1 Citizen Complaint was concluded by the OIPA:

Complaint # (OIPA Case #)	Nature of Complaint	Disposition <sup>8</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA 11-09)	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Racial/Bias Based Profiling</li> </ul> <p><u>Police Officer #2 (Retired)</u></p> <ul style="list-style-type: none"> <li>• Racial/Bias Based Profiling</li> </ul> <p><u>Police Officer #3</u></p> <ul style="list-style-type: none"> <li>• Racial/Bias Based Profiling</li> </ul> <p><u>Police Officer #4</u></p> <ul style="list-style-type: none"> <li>• Racial/Bias Based Profiling</li> </ul> <p><u>Police Officer #5</u></p> <ul style="list-style-type: none"> <li>• Racial/Bias Based Profiling</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Racial/Bias Based Profiling – Unfounded</li> </ul> <p><u>Police Officer #2 (Retired)</u></p> <ul style="list-style-type: none"> <li>• Racial/Bias Based Profiling – Unfounded</li> </ul> <p><u>Police Officer #3</u></p> <ul style="list-style-type: none"> <li>• Racial/Bias Based Profiling – Unfounded</li> </ul> <p><u>Police Officer #4</u></p> <ul style="list-style-type: none"> <li>• Racial/Bias Based Profiling – Unfounded</li> </ul> <p><u>Police Officer #5</u></p> <ul style="list-style-type: none"> <li>• Racial/Bias Based Profiling – Unfounded</li> </ul>	340	309

	<u>Police Officer #6</u> <ul style="list-style-type: none"> <li>• Racial/Bias Based Profiling</li> </ul>	<u>Police Officer #6</u> <ul style="list-style-type: none"> <li>• Racial/Bias Based Profiling – Unfounded</li> </ul>	340	309
--	---	---	-----	-----

During the month of September 2012, 5 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-021)	<u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Discrimination</li> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> </ul>	<u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Discrimination – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Unfounded</li> </ul>	215	181
2 (IA2012-020)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Excessive Use of Force</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Excessive Use of Force</li> </ul> <u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Excessive Use of Force</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Excessive Use of Force – Unfounded</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Excessive Use of Force – Unfounded</li> </ul> <u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Excessive Use of Force – Unfounded</li> </ul>	215	201
3 (IA2011-081)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Bias Based Policing</li> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Bias Based Policing – Unfounded</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Courtesy – Not Sustained</li> </ul>	304	278

<p>4 (IA2011-077)</p>	<p><u>Police Officer #1 (Retired)</u></p> <ul style="list-style-type: none"> <li>• Annoying/Harassing Phone Calls</li> <li>• Conduct Unbecoming an Officer</li> </ul>	<p><u>Police Officer #1 (Retired)</u></p> <ul style="list-style-type: none"> <li>• Annoying/Harassing Phone Calls – Sustained</li> <li>• Conduct Unbecoming an Officer – Sustained</li> </ul>	<p>321</p>	<p>300</p>
<p>5 (IA2011-073)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Illegal Arrest/Detention</li> <li>• Use of Force</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Illegal Arrest/Detention – Unfounded</li> <li>• Use of Force – Exonerated</li> </ul>	<p>329</p>	<p>299</p>

During the month of September 2012, 1 Administrative Investigation was concluded by the BART Police Department:

<p>Comment # (IA Case #)</p>	<p>Nature of Comment</p>	<p>Disposition</p>	<p>Number of Days Elapsed Since Investigation Initiated</p>	<p>Number of Days Taken to Complete Investigation</p>
<p>1 (IA2011-049)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Supervision</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul> <p><u>Civilian #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> <li>• Supervision – Sustained</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> </ul> <p><u>Civilian #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> </ul>	<p>398</p>	<p>365</p>

During the month of September 2012, 5 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2012-076)	Performance of Duty	Supervisory Referral	27	15
2 (IA2012-075)	Performance of Duty; Courtesy	Supervisory Referral	35	18
3 (IA2012-069)	Performance of Duty	Supervisory Referral	60	30
4 (IA2012-065)	Arrest or Detention; Performance of Duty	Supervisory Referral	54	43
5 (IA2012-017)	Performance of Duty	Service Review <sup>9</sup>	223	199

**Complaints/Investigations Concluded During a Previous Reporting Period**

Dispositions/# of Days Elapsed

During the month of August 2012, 1 Comment of Non-Complaint was addressed by the BART Police Department that was not previously reported on due to a delay in obtaining finalized information about the completion of the case:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2012-062)	Performance of Duty; Courtesy	Supervisory Referral	70	17

<sup>1</sup> In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-

---

Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

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

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

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

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

<sup>7</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

<sup>8</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>9</sup> Per the BART Police Department, a “Service Review” may occur when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.

# Office of the Independent Police Auditor

## Monthly Report

October 2012



November 13, 2012



This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period October 1, 2012 through October 31, 2012.<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
June 27, 2011 – October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0
March 2012	7	61	0	1	0
April 2012	6	55	0	1	0
May 2012	10	54	0	0	0
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0
August 2012	13	60	0	0	0
September 2012	8	57	1	0	0
October 2012	9	49	1	0	0

**Types of Cases Filed**

Citizen Complaints	7
Administrative Investigations	0
Comments of Non-Complaint	2
<b>TOTAL</b>	<b>9</b>

**Citizen Complaints Received per Department**

OIPA	2
BART Police Department	5
<b>TOTAL</b>	<b>7</b>

**Complaints/Investigations Initiated During Reporting Period**

Actions Taken/# of Days Elapsed

During the month of October 2012, 2 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>7</sup>
1 (OIPA 12-61) (IA2012-084)	Unnecessary or Excessive Use of Force; Racial Profiling	OIPA initiated an investigation	34
2 (OIPA 12-62) (IA2012-089)*	Conduct Unbecoming an Officer	OIPA notified BART PD, which initiated an investigation	20

\*The BART PD later reclassified this matter as a Comment of Non-Complaint.

During the month of October 2012, 5 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2012-091)	Conduct Unbecoming an Officer	BART PD initiated an investigation	18
2 (IA2012-090)	Force	BART PD initiated an investigation	18
3 (IA2012-086)	Force; Bias-Based Policing	BART PD initiated an investigation	22
4 (IA2012-085)	Performance of Duty	BART PD initiated an investigation	32
5 (IA2012-087)*	Bias-Based Policing	BART PD initiated an investigation	47

\*This complaint was received toward the end of the previous reporting period (September). It was not added to the Internal Affairs case database in time for that report, however, so it has been included here.

During the month of October 2012, 2 Comments of Non-Complaint were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2012-088)	Courtesy	BART PD initiated an investigation	19
2 (IA2012-083)	Performance of Duty; Courtesy	BART PD initiated an investigation	33

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of October 2012, 1 Citizen Complaint was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA 12-61)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Force</li> <li>• Racial Profiling</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Force – N/A (Officer not BART PD officer)</li> <li>• Racial Profiling – N/A (Officer not BART PD officer)</li> </ul>	34	14

During the month of October 2012, 12 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition <sup>8</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-023)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Courtesy – Not Sustained</li> </ul>	249	221
2 (IA2012-013)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Procedure/Detention</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Procedure/Detention</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Procedure/Detention – Exonerated</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Procedure/Detention – Exonerated</li> </ul>	264	236
3 (IA2012-016)	<u>Police Officer #1 (Identity Unknown)</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> </ul>	<u>Police Officer #1 (Identity Unknown)</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Unfounded</li> </ul>	274	249
4 (IA2012-006)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Courtesy – Not Sustained</li> </ul>	279	245
5 (IA2012-004)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Detention/Search</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Detention/Search</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Detention/Search – Exonerated</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Detention/Search – Exonerated</li> </ul>	303	282

<p>6 (IA2012-001)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Illegal/Improper Search/Seizure</li> <li>• Courtesy/Conduct Unbecoming an Officer</li> <li>• Exceeding Peace Officer Powers</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Exceeding Peace Officer Powers</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Illegal/Improper Search/Seizure – Exonerated</li> <li>• Courtesy/Conduct Unbecoming an Officer – Unfounded</li> <li>• Exceeding Peace Officer Powers – Unfounded</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Exceeding Peace Officer Powers – Unfounded</li> </ul>	<p>314</p>	<p>275</p>
<p>7 (IA2012-010)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Use of Force</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Use of Force</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Use of Force – Exonerated</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Use of Force – Exonerated</li> </ul>	<p>320</p>	<p>294</p>
<p>8 (IA2011-083)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Discourtesy</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Discourtesy – Not Sustained</li> </ul>	<p>337</p>	<p>315</p>
<p>9 (IA2011-068)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Performance of Duty</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Performance of Duty – Exonerated</li> </ul>	<p>376</p>	<p>331</p>

	<p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Performance of Duty</li> </ul> <p><u>Police Officer #3</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Performance of Duty</li> </ul> <p><u>Police Officer #4</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Performance of Duty</li> </ul> <p><u>Police Officer #5</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Performance of Duty</li> </ul> <p><u>Police Officer #6 (Retired)</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Performance of Duty</li> </ul>	<p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Performance of Duty – Exonerated</li> </ul> <p><u>Police Officer #3</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Performance of Duty – Exonerated</li> </ul> <p><u>Police Officer #4</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Performance of Duty – Exonerated</li> </ul> <p><u>Police Officer #5</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Performance of Duty – Exonerated</li> </ul> <p><u>Police Officer #6 (Retired)</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Performance of Duty – Exonerated</li> </ul>		
<p>10 (IA2011-085)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias Based Policing – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Not Sustained</li> </ul>	<p>376</p>	<p>350</p>

<p>11 (IA2012-009)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Unlawful Arrest/Detention</li> <li>• Excessive Force</li> <li>• Use of Force Reporting</li> <li>• Unprofessional Conduct/Conduct Unbecoming an Officer (Count 1)</li> <li>• Conduct Unbecoming an Officer (Count 2)</li> <li>• Handcuffing Policy</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Unlawful Arrest/Detention – Unfounded</li> <li>• Excessive Force – Not Sustained</li> <li>• Use of Force Reporting – Not Sustained</li> <li>• Unprofessional Conduct/Conduct Unbecoming an Officer (Count 1) – Not Sustained</li> <li>• Conduct Unbecoming an Officer (Count 2) – Unfounded</li> <li>• Handcuffing Policy – Not Sustained</li> </ul>	<p>272</p>	<p>258</p>
	<p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Unlawful Arrest/Detention</li> <li>• Excessive Force</li> <li>• Use of Force Reporting</li> <li>• Conduct Unbecoming an Officer</li> <li>• Handcuffing Policy</li> </ul>	<p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Unlawful Arrest/Detention – Unfounded</li> <li>• Excessive Force – Not Sustained</li> <li>• Use of Force Reporting – Not Sustained</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Handcuffing Policy – Not Sustained</li> </ul>		
	<p><u>Police Officer #3</u></p> <ul style="list-style-type: none"> <li>• Unlawful Arrest/Detention</li> </ul>	<p><u>Police Officer #3</u></p> <ul style="list-style-type: none"> <li>• Unlawful Arrest/Detention – Unfounded</li> </ul>		
	<p><u>Police Officer #4</u></p> <ul style="list-style-type: none"> <li>• Unlawful Arrest/Detention</li> </ul>	<p><u>Police Officer #4</u></p> <ul style="list-style-type: none"> <li>• Unlawful Arrest/Detention – Unfounded</li> </ul>		

	<u>Police Officer #5</u> <ul style="list-style-type: none"> <li>• Unlawful Arrest/Detention</li> <li>• Complaint Acceptance</li> </ul>	<u>Police Officer #5</u> <ul style="list-style-type: none"> <li>• Unlawful Arrest/Detention – Unfounded</li> <li>• Complaint Acceptance – Sustained</li> </ul>		
--	--	--	--	--

During the month of October 2012, 2 Administrative Investigations were concluded by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2012-011)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Consumption of Alcohol While On-Duty</li> <li>• Supervision</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Consumption of Alcohol While On-Duty</li> </ul> <u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Consumption of Alcohol While On-Duty</li> </ul> <u>Police Officer #4</u> <ul style="list-style-type: none"> <li>• Consumption of Alcohol While On-Duty</li> </ul> <u>Police Officer #5</u> <ul style="list-style-type: none"> <li>• Consumption of Alcohol While On-Duty</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Consumption of Alcohol While On-Duty – Unfounded</li> <li>• Supervision – Sustained</li> </ul> <u>Police Officer #2</u> <ul style="list-style-type: none"> <li>• Consumption of Alcohol While On-Duty – Unfounded</li> </ul> <u>Police Officer #3</u> <ul style="list-style-type: none"> <li>• Consumption of Alcohol While On-Duty – Unfounded</li> </ul> <u>Police Officer #4</u> <ul style="list-style-type: none"> <li>• Consumption of Alcohol While On-Duty – Unfounded</li> </ul> <u>Police Officer #5</u> <ul style="list-style-type: none"> <li>• Consumption of Alcohol While On-Duty – Unfounded</li> </ul>	271	232



	<u>Police Officer #6</u> <ul style="list-style-type: none"> <li>• Consumption of Alcohol While On-Duty</li> </ul>	<u>Police Officer #6</u> <ul style="list-style-type: none"> <li>• Consumption of Alcohol While On-Duty – Unfounded</li> </ul>		
2 (IA2012-052)	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Discrimination/ Harassment</li> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> </ul>	<u>Police Officer #1</u> <ul style="list-style-type: none"> <li>• Discrimination/ Harassment – Sustained</li> <li>• Conduct Unbecoming an Officer – Sustained</li> <li>• Courtesy – Sustained</li> </ul>	141	127

During the month of October 2012, 4 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2012-088)	Courtesy	Supervisory Referral <sup>9</sup>	19	6
2 (IA2012-089)	Conduct Unbecoming an Officer	Supervisory Referral	20	3
3 (IA2012-083)	Performance of Duty; Courtesy	Supervisory Referral	33	11
4 (IA2012-082)	Performance of Duty (Civilian)	Supervisory Referral	46	10

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

Investigations Being Conducted	1
Complainant-Initiated Appeals	1
Investigations Being Monitored	11
Investigations Reviewed During Current Month	23*

\*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.

<sup>1</sup> In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

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

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

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

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

<sup>7</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

<sup>8</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

---

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>9</sup> In defining a "Supervisory Referral," the BART Police Department Manual indicates that an assigned supervisor will address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Section.

# Office of the Independent Police Auditor

Monthly Report

November 2012



December 10, 2012

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period November 1, 2012 through November 30, 2012.<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0
March 2012	7	61	0	1	0
April 2012	6	55	0	1	0
May 2012	10	54	0	0	0
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0
August 2012	13	60	0	0	0
September 2012	8	57	1	0	0
October 2012	9	49	1	0	0
November 2012	17*	57	0	0	0

\*This number includes one Administrative Investigation with an initiation date in October 2012. The case was not previously reported on but is accounted for below.

**Types of Cases Filed**

Citizen Complaints	5
Administrative Investigations	5
Comments of Non-Complaint	7
<b>TOTAL</b>	<b>17</b>

**Citizen Complaints Received per Department**

OIPA	0
BART Police Department	5
<b>TOTAL</b>	<b>5</b>

**Complaints/Investigations Initiated During Reporting Period**

Actions Taken/# of Days Elapsed

During the month of November 2012, 5 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>7</sup>
1 (IA2012-106)	Conduct Unbecoming an Officer	BART PD initiated an investigation	11
2 (IA2012-105)	Performance of Duty	BART PD initiated an investigation	11
3 (IA2012-102)	Courtesy	BART PD initiated an investigation	14
4 (IA2012-101)	Arrest or Detention; Bias-Based Policing; Conduct Unbecoming an Officer	BART PD initiated an investigation	23
5 (IA2012-099)	Bias-Based Policing; Performance of Duty; Conduct Unbecoming an Officer; Courtesy	BART PD initiated and investigation	32

During the month of November 2012, 4 Administrative Investigations were initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2012-104)	Procedure	BART PD initiated an investigation	33
2 (IA2012-103)	Procedure	BART PD initiated an investigation	33
3 (IA2012-096)	Workplace Discrimination/Harassment	BART PD initiated an investigation	32

4 (IA2012-094)	Criminal; Conduct Unbecoming an Officer	BART PD initiated an investigation	35
-------------------	--	---------------------------------------	----

During the month of November 2012, 7 Comments of Non-Complaint were received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2012-107)	Bias-Based Policing	BART PD initiated an investigation	11
2 (IA2012-100)	Performance of Duty	BART PD initiated an investigation	29
3 (IA2012-098)	Force; Performance of Duty	BART PD initiated an investigation	31
4 (IA2012-097)	Performance of Duty; Courtesy	BART PD initiated an investigation	34
5 (IA2012-095)	Procedure	BART PD initiated an investigation	35
6 (IA2012-093)	Performance of Duty	BART PD initiated an investigation	39
7 (IA2012-092)	Conduct Unbecoming an Officer	BART PD initiated an investigation	39

### **Complaints/Investigations Initiated During a Previous Reporting Period**

#### **Actions Taken/# of Days Elapsed**

During the month of October 2012, 1 Administrative Investigation was initiated by the BART Police Department that was not previously reported on; it was discovered during an internal review of reports related to the underlying incident that a potential claim of misconduct had arisen:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2012-109)	Force	BART PD initiated an investigation	44

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of November 2012, 4 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition <sup>8</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-047)	<u>Police Officer #1</u> • Theft	<u>Police Officer #1</u> • Theft – Unfounded	179	165
2 (IA2012-031)	<u>Police Officer #1</u> • Performance of Duty  <u>Police Officer #2</u> • Untruthfulness • Performance of Duty	<u>Police Officer #1</u> • Performance of Duty – Sustained  <u>Police Officer #2</u> • Untruthfulness – Unfounded • Performance of Duty – Exonerated	235	209
3 (IA2012-025)	<u>Police Officer #1</u> • Unlawful/Improper Detention • Performance of Duty  <u>Police Officer #2</u> • Unlawful/Improper Detention • Performance of Duty	<u>Police Officer #1</u> • Unlawful/Improper Detention – Not Sustained • Performance of Duty – Unfounded  <u>Police Officer #2</u> • Unlawful/Improper Detention – Not Sustained • Performance of Duty – Unfounded	264	240
4 (IA2012-024)	<u>Police Officer #1</u> • Conduct Unbecoming an Officer • Policy/Procedure	<u>Police Officer #1</u> • Conduct Unbecoming an Officer – Unfounded • Policy/Procedure – Unfounded	266	242



During the month of November 2012, 5 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2012-100)	Performance of Duty	Supervisory Referral <sup>9</sup>	29	18
2 (IA2012-097)	Performance of Duty; Courtesy	Supervisory Referral	34	21
3 (IA2012-095)	Procedure	Supervisory Referral	35	3
4 (IA2012-093)	Performance of Duty	Supervisory Referral	39	19
5 (IA2012-092)	Conduct Unbecoming an Officer	Supervisory Referral	39	4

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

Investigations Being Conducted	1
Complainant-Initiated Appeals	1
Investigations Being Monitored	12
Investigations Reviewed During Current Month	23*

\*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.

<sup>1</sup> In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-

---

Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

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

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

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

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

<sup>7</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

<sup>8</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>9</sup> In defining a “Supervisory Referral,” the BART Police Department Manual indicates that an assigned supervisor will address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Section.

# Office of the Independent Police Auditor

Monthly Report

December 2012



January 14, 2013

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period December 1, 2012 through December 31, 2012.<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0
March 2012	7	61	0	1	0
April 2012	6	55	0	1	0
May 2012	10	54	0	0	0
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0
August 2012	13	60	0	0	0
September 2012	8	57	1	0	0
October 2012	9	49	1	0	0
November 2012	17	57	0	0	0
December 2012	12	53	2	0	0

**Types of Cases Filed**

Citizen Complaints	8
Administrative Investigations	0
Comments of Non-Complaint	4
<b>TOTAL</b>	<b>12</b>

**Citizen Complaints Received per Department**

OIPA	3
BART Police Department	5
<b>TOTAL</b>	<b>8</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of December 2012, 3 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>7</sup>
1 (OIPA 12-67) (IA2012-112)*	Performance of Duty	OIPA notified BART PD, which initiated an investigation	34
2 (OIPA 12-68) (IA2012-120)*	Policy Complaint	OIPA notified BART PD, which initiated an investigation	34
3 (OIPA 12-69) (IA2012-117)	Performance of Duty	OIPA notified BART PD, which initiated an investigation	24

\*These two complaints received by OIPA were later determined to be Comments of Non-Complaint by the BART Police Department.

During the month of December 2012, 5 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2012-108)	Performance of Duty	BART PD initiated an investigation	44
2 (IA2012-116)	Conduct Unbecoming an Officer	BART PD initiated an investigation	25
3 (IA2012-115)	Force; Conduct Unbecoming an Officer	BART PD initiated an investigation	25
4 (IA2012-113)	Arrest or Detention	BART PD initiated an investigation	25
5 (IA2012-119)	Force; Conduct Unbecoming an Officer	BART PD initiated and investigation	23

During the month of December 2012, 4 Comments of Non-Complaint were received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2012-118)	Conduct Unbecoming an Officer	BART PD initiated an investigation	21
2 (IA2012-110)	Procedure	BART PD initiated an investigation	39
3 (IA2012-114)	Courtesy	BART PD initiated an investigation	31
4 (IA2012-111)	Conduct Unbecoming an Officer	BART PD initiated an investigation	26

**Complaints/Investigations Concluded During Reporting Period**

Dispositions/# of Days Elapsed

During the month of December 2012, 1 Citizen Complaint was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Complaint	Disposition <sup>8</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA 12-26)	<u>Police Officer #1</u> • Unnecessary or Excessive Use of Force  <u>Police Officer #2</u> • Unnecessary or Excessive Use of Force	<u>Police Officer #1</u> • Unnecessary or Excessive Use of Force – Not Sustained  <u>Police Officer #2</u> • Unnecessary or Excessive Use of Force – Not Sustained	257	218

During the month of December 2012, 1 Appeal of Internal Affairs Investigation Findings was concluded by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Internal Affairs Disposition	OIPA Determination	Number of Days Elapsed Since Appeal Filed	Number of Days Taken to Complete Appeal
1 (OIPA 12-20) (IA2011-023)	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Discourtesy (Hovering over Complainant) – Exonerated</li> <li>• Discourtesy (Rude Behavior) – Not Sustained</li> <li>• Threatening Behavior – Not Sustained</li> <li>• Failure to Identify – Not Sustained</li> <li>• Neglect of Duty/Report Writing – Sustained</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Discourtesy (Hovering over Complainant) – Exonerated</li> <li>• Neglect of Duty/Report Writing – Sustained</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Discourtesy (Hovering over Complainant) – Affirmed</li> <li>• Discourtesy (Rude Behavior) – Affirmed</li> <li>• Threatening Behavior – <i>Disagree: Exonerated</i></li> <li>• Failure to Identify – Affirmed</li> <li>• Neglect of Duty/Report Writing – Affirmed</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Discourtesy (Hovering over Complainant) – Affirmed</li> <li>• Neglect of Duty/Report Writing – Affirmed</li> </ul>	263	244

During the month of December 2012, 8 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-054)	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> </ul>	199	182

<p>2 (IA2012-022)</p>	<p><u>Civilian #1</u></p> <ul style="list-style-type: none"> <li>• Battery</li> <li>• BART Operations Rules and Procedures</li> <li>• Bias-Based Policing</li> </ul> <p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Unlawful Arrest/Detention</li> </ul>	<p><u>Civilian #1</u></p> <ul style="list-style-type: none"> <li>• Battery – Not Sustained</li> <li>• BART Operations Rules and Procedures – Sustained</li> <li>• Bias-Based Policing – Unfounded</li> </ul> <p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Unlawful Arrest/Detention – Exonerated</li> </ul>	<p>313</p>	<p>279</p>
<p>3 (IA2012-028)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> <li>• Courtesy</li> <li>• Arrest/Detention</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Arrest/Detention</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Courtesy – Not Sustained</li> <li>• Arrest/Detention – Exonerated</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Arrest/Detention – Exonerated</li> </ul>	<p>277</p>	<p>249</p>
<p>4 (IA2012-030)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Off-Property Traffic Stops</li> <li>• Unlawful Detention/Arrest</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Off-Property Traffic Stops – Exonerated</li> <li>• Unlawful Detention/Arrest – Unfounded</li> </ul>	<p>273</p>	<p>232</p>



<p>5 (IA2012-029)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Detention/Arrest and Search/Seizure</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Detention/Arrest and Search/Seizure</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Detention/Arrest and Search/Seizure – Exonerated</li> </ul> <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Detention/Arrest and Search/Seizure – Exonerated</li> </ul>	<p>274</p>	<p>254</p>
<p>6 (IA2012-035)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Courtesy/Conduct Unbecoming an Officer</li> <li>• Policy/Procedure (Failure to Provide Name/Badge Number upon Request)</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Courtesy/Conduct Unbecoming an Officer – Not Sustained</li> <li>• Policy/Procedure (Failure to Provide Name/Badge Number upon Request) – Sustained</li> </ul>	<p>252</p>	<p>232</p>
<p>7 (IA2012-051)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Arrest/Detention</li> <li>• Bias-Based Policing</li> </ul>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> <li>• Arrest/Detention – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> </ul>	<p>201</p>	<p>175</p>
<p>8 (IA2012-084)</p>	<p>Not Applicable</p>	<p>Incident Purged – Did Not Involve BART Police Department</p>	<p>N/A</p>	<p>N/A</p>

During the month of December 2012, 7 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2012-110)	Procedure	Supervisory Referral <sup>9</sup>	39	14
2 (IA2012-106)	Conduct Unbecoming an Officer	Supervisory Referral	46	21
3 (IA2012-098)	Force	Supervisory Referral	66	25
4 (IA2012-107)	Bias-Based Policing	Supervisory Referral	46	7
5 (IA2012-120)	Policy Complaint	Service Review	34	16
6 (IA2012-105)	Performance of Duty	Supervisory Referral	46	14
7 (IA2012-111)	Conduct Unbecoming an Officer	Supervisory Referral	26	1

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

Investigations Being Conducted	0
Complainant-Initiated Appeals	0
Investigations Being Monitored	15
Investigations Reviewed During Current Month	27*

\*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.

<sup>1</sup> In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action,

---

such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

<sup>2</sup> This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

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

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

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

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

<sup>7</sup> In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

<sup>8</sup> In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

<sup>9</sup> In defining a “Supervisory Referral,” the BART Police Department Manual indicates that an assigned supervisor will address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Section.