



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

April 2016

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Issue date: May 9, 2016

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 BART Police Citizen Review Board (BPCRB). This report provides information for the period **April 1, 2016 through April 30, 2016.**<sup>1</sup>

## QUANTITATIVE REPORT

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
April 2015	13	68	2	0	0
May 2015	11	70	3	0	0
June 2015	17	75	0	0	0
July 2015	14	73	1	0	0
August 2015	19	75	2	0	0
September 2015	9	78	1	0	0
October 2015	14	79	2	0	0
November 2015	3	72	1	0	0
December 2015	16	78	1	0	0
January 2016	9	64	0	0	0
February 2016	14	63	0	0	0
March 2016	14	67	0	0	0
April 2016	10	63	0	0	0

<sup>2</sup>This number includes 2 cases that were initiated in a prior reporting period but not previously reported on. They are therefore included in this report.

### TYPES OF CASES FILED

Citizen Complaints (Formal)	7
Informal Complaints <sup>7</sup>	1
Administrative Investigations	2
<b>TOTAL</b>	<b>10</b>

### CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>8</sup>

OIPA	0
BART Police Department	7
<b>TOTAL</b>	<b>7</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During April 2016, **7 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2016-034)	Officer #1: • Bias-Based Policing • Courtesy	BPD initiated an investigation.	35
2 (IA2016-035)	Officer #1: • Bias-Based Policing • Courtesy	BPD initiated an investigation.	28
3 (IA2016-036)	Employee #1: • Courtesy	BPD initiated an investigation.	25
4 (IA2016-038)	BART Police Department: • Performance of Duty	BPD initiated an investigation.	41
5 (IA2016-039)	Officer #1: • Courtesy	BPD initiated an investigation.	19
6 (IA2016-040)	Officer #1: • Policy/Procedure  Officer #2: • Force • Arrest/Detention • Conduct Unbecoming an Officer	BPD initiated an investigation.	311*
7 (IA2016-041)	Employee #1: • Conduct Unbecoming • Courtesy	BPD initiated an investigation.	12

\*This complaint was initiated in July 2015 and was not forwarded to BPD Internal Affairs for investigation at that time. The complaint was discovered by Internal Affairs during a routine review of cases involving use of force.

During April 2016, **2 Administrative Investigations** were initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2016-042)	Officer #1: • Criminal • Conduct Unbecoming an Officer	BPD initiated an investigation.	12
2 (IA2016-043)	Officer #1: • Policy/Procedure • Courtesy	BPD initiated an investigation.	11

During April 2016, 1 **Informal Complaint** was received by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2016-037)	Officer #1: • Courtesy	BPD initiated an investigation.	24

### COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During April 2016, 11 **Citizen Complaints (Formal)** were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2015-079)	Officers used excessive force and did so on the basis of race. One officer made a false statement in a written report and did not properly document the law enforcement contact.	Officer #1: • Force – Unfounded • Bias-Based Policing – Unfounded  Officer #2: • Force – Unfounded • Bias-Based Policing – Unfounded • Policy/Procedure – Sustained • Truthfulness – Not Sustained	285	252
2 (IA2015-094)	Two officers improperly arrested complainant and three officers used excessive force during the arrest.	Officer #1: • Force – Not Sustained  Officers #1-2: • Arrest/Detention (Counts 1-2) – Unfounded  Officers #2-3: • Force – Unfounded	233	219
3 (IA2015-100)	Officer used excessive force when detaining complainant.	Officer #1: • Force (Count 1) – Sustained • Force (Count 2) – Not Sustained • Force (Count 3) – Exonerated	245	207

4 (IA2015-104)	Officer contacted complainant on the basis of race and harassed complainant. Two officers did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> <li>• Bias-Based Policing – Not Sustained</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Courtesy – Not Sustained</li> </ul> Officer #2: <ul style="list-style-type: none"> <li>• Policy/Procedure (Count 1) – Sustained</li> </ul> Officers #1-2: <ul style="list-style-type: none"> <li>• Policy/Procedure (Count 2) – Sustained</li> </ul>	224	191
5 (IA2015-108)	Officers improperly arrested subject.	Officer #1: <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> </ul> Officer #2: <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> </ul>	215	177
6 (IA2015-119)	Employee improperly cited complainant for illegal parking.	BART Police Department: <ul style="list-style-type: none"> <li>• Performance of Duty – Service Review<sup>9</sup></li> </ul>	203	165
7 (IA2015-120)	Officer polluted the environment and was rude and intimidating toward complainant.	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure – Exonerated</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> </ul>	178	140
8 (IA2015-121)	Officer insufficiently investigated criminal activity and did so on the basis of race.	Officer #1: <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Performance of Duty – Unfounded</li> </ul>	193	158
9 (IA2015-131)	Officer used excessive force against complainant.	Officer #1: <ul style="list-style-type: none"> <li>• Force – Unfounded</li> </ul>	223	185
10 (IA2015-134)	Officers maintain insufficient presence at a particular station and employees do not sufficiently enforce parking regulations.	BART Police Department: <ul style="list-style-type: none"> <li>• Performance of Duty – Service Review</li> </ul>	152	138

Also during the month of April 2016, BPD classified IA2015-127 as an **Inquiry** and **Administratively Closed** the complaint after the complainant would not provide information necessary to investigate the allegation.<sup>10</sup>

During April 2016, **3 Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complainant	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Address Complaint
1 (IA2016-006)	Officers did not properly investigate a crime and appeared inattentive.	Officers #1-3: <ul style="list-style-type: none"> <li>• Performance of Duty – Service Review</li> <li>• Conduct Unbecoming an Officer – Service Review</li> </ul>	116	88
2 (IA2016-020)	Officer did not properly document a traffic accident and was rude and unprofessional toward complainant.	Officer #1: <ul style="list-style-type: none"> <li>• Performance of Duty – Supervisory Referral</li> <li>• Courtesy – Supervisory Referral<sup>11</sup></li> </ul>	68	39
3 (IA2016-033)	Officer was condescending and uncompassionate toward complainant.	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Supervisory Referral</li> </ul>	382	354

#### DISCIPLINE ISSUED DURING REPORTING PERIOD

During April 2016, BPD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s)	Classification of Sustained Allegation(s)	Action Taken
1	Officer used excessive force and lacked self-control.	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> <li>• Conduct Unbecoming an Officer</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>• 3-day Suspension Held in Abeyance</li> </ul>
2	Officer submitted an inaccurate written report.	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>• Oral Counseling</li> </ul>
3	Officer did not properly report missing equipment.	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>• Oral Counseling</li> </ul>

## ADDITIONAL NOTES

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 BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following 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	6
Investigations Reviewed During Current Month	21*

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

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

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

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

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

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

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

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

<sup>8</sup> It is important to note that OIPA does not separate citizen complaints it receives into "Formal" and "Informal" classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

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<sup>9</sup> A Service Review refers to an instance 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.

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

<sup>11</sup> A Supervisory Referral refers to an instance involving an inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.