



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

April 2020

Issue date: May 11, 2020

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1 -05 (B), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **April 1, 2020 through April 30, 2020.**¹

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

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	IAB Investigations Resolved*	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
April 2019	14	57		0	0	0
May 2019	10	56		2	0	0
June 2019	9	61		1	0	0
July 2019	11	61		0	0	0
August 2019	9	62		1	0	0
September 2019	13	53		1	0	0
October 2019	6	53	6	1	0	0
November 2019	10	59	2	1	0	0
December 2019	6	58	6	1	0	0
January 2020	8	53	13	2	0	0
February 2020	15	56	10	0	0	0
March 2020	9	54	11	1	0	0
April 2020	6	44	18 [†]	1	1	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	4
Informal Complaints ⁷	1
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	5

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	2
BART Police Department	2
TOTAL	4

*OIPA added a new data column to the October 2019 Monthly Report which will be populated going forward.

[†] This total includes 3 open BPD cases not previously included in the OIPA Monthly Report.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During April 2020, **2 Citizen Complaints** were received by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #20-17) (IA2020-036)	Officers #1-4: <ul style="list-style-type: none"> • Arrest/Detention • Performance of Duty 	OIPA notified BPD which initiated an investigation.	11
2 (OIPA #20-18) (IA2020-037)	Officers #1-3: <ul style="list-style-type: none"> • Performance of Duty 	OIPA notified BPD which initiated an investigation.	11

During April 2020, **2 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-033)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	40
2 (IA2020-035)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing • Conduct Unbecoming an Officer Officer #2: <ul style="list-style-type: none"> • Performance of Duty Officers #1 & 3: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	BPD initiated an investigation.	19

During April 2020, **1 Informal Complaint** was received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-034)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	19

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During April 2020, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #19-19) (IA2019-060)	Officers used excessive force when they improperly detained subject and officers did not properly document a law enforcement contact.	Officers #1-2: <ul style="list-style-type: none"> • Force – Exonerated • Arrest or Detention – Not Sustained • Policy /Procedure (AXON Camera) – Sustained 	371	331

During April 2019, **7 Citizen Complaints (Formal)** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2019-070)	Officer contacted complainant based on complainant's race.	Officer #1: <ul style="list-style-type: none"> • Performance of Duty – Not Sustained 	340	329
2 (IA2019-088)	Officer improperly detained subject and was rude and disrespectful during the contact.	Officer #1: Courtesy – Administratively Closed ¹⁰	340	329
3 (IA2019-089)	Officers improperly arrested a subject and used excessive force, and one officer was discourteous during the contact.	Officer #1: <ul style="list-style-type: none"> • Arrest or Detention – Unfounded Officer #1: <ul style="list-style-type: none"> • Force – Exonerated Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Exonerated Officer #2: <ul style="list-style-type: none"> • Force – Unfounded 	272	255
4 (IA2019-101)	Officer used excessive force when he pointed his firearm at complainant.	Officer #1: <ul style="list-style-type: none"> • Force – Administratively Closed 	253	218

5 (IA2019-113)	One officer contacted complainant because of complainant's race and acted aggressively during the contact and two officers did not properly document a law enforcement contact.	Officers #1-2: • Policy/Procedure (AXON Camera) – Exonerated Officer #1: • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Not Sustained	210	182
6 (IA2020-014)	Officers were disrespectful to complainant when they improperly applied handcuffs.	Officers #1-2: • Conduct Unbecoming an Officer – Administratively Closed	210	182
7 (IA2019-099)	Officers used excessive force when they improperly contacted complainant for proof of payment.	Officers #1-2: Force – Administratively Closed	255	241

During April 2020, **6 Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2019-107)	Employee harassed complainant by requesting proof of payment.	Employee #1: • Conduct unbecoming an Officer – Administratively Closed	242	214
2 (IA2019-109)	Employee did not provide adequate assistance to complainant.	Employee #1: • Performance of Duty – Unfounded	235	207
3 (IA2019-122)	Employee did not provide adequate assistance to complainant.	Employee #1: • Performance of Duty – Supervisor Referral ¹¹	182	148
4 (IA2019-130)	Employee humiliated complainant during fare inspection process.	Employee #1: Courtesy – Supervisor Referral	193	158
5 (IA2020-029)	Officer used unprofessional language during a law enforcement contact.	Officer #1: Conduct Unbecoming an Officer – Supervisor Referral	59	40

6 (IA2020-034)	Officer used unprofessional language and attempted to intimidate complainant.	Officer #1: Conduct Unbecoming an Officer – Supervisor Referral	19	1
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During April 2020, **1 Administrative Investigation** was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2019-132)	Officer used profanity and acted unprofessionally during an interaction with an employee.	Officer #1: • Conduct Unbecoming an Officer – Sustained	132	99

DISCIPLINE ISSUED DURING REPORTING PERIOD

During April 2020, 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 acted inappropriately on District property.	Officer #1: • Conduct Unbecoming an Officer	Officer #1: • Written Reprimand
2	Officer did not take proper law enforcement action in response to a request for service.	Officer #1: • Policy/Procedure • Performance of Duty • Conduct Unbecoming an Officer	Officer #1: • Written Reprimand
3	Officer acted unprofessionally during a law enforcement contact.	Officer #1: • Conduct Unbecoming an Officer	Officer #1: • Non-Documented
4	Officer did not provide proper care of subject, did not communicate effectively with other BPD personnel, and did not properly document the law enforcement contact.	Officer #1: • Conduct Unbecoming an Officer	Officer #1: • Oral Counseling
5	Officer did not provide proper care to subject, did not communicate effectively with other BPD personnel, and did not properly document the law enforcement contact.	Officer #1: • Conduct Unbecoming an Officer	Officer #1: • Oral Counseling

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

6	Officer slept while on duty.	Officer #1: • Conduct Unbecoming an Officer	Officer #1: • Suspension (1 day)
7	Officers did not properly document a law enforcement contact.	Officers #1-2: • Policy/Procedure (AXON Camera)	Officer #1: • Oral Counseling Officer #2: • Letter of Discussion

ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (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 chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	9
Complainant-Initiated Appeals	1
BPD-Initiated Appeals	0
Investigations Being Monitored	48
Investigations Reviewed During Current Month	16†

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

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is handled by BPD. The OIPA Monthly Report will reflect information regarding monitored cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.¹²

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

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

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

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

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

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

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

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

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

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

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

¹² OIPA may submit recommendations to IA regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.