



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

April 2021

Issue date: May 10, 2021

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, 2021 through April 30, 2021**.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	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
April 2020	6	44	18	1	1	0
May 2020	4	40	6	1	0	0
June 2020	7	44	4	0	0	0
July 2020	1	41	3	1	0	0
August 2020	9	43	5	1	0	0
September 2020	10	45	8	1	0	0
October 2020	10	48	9	2	0	0
November 2020	11	51	7	2	0	0
December 2020	7	55	4	1	0	0
January 2021	8	61	5	2	0	0
February 2021	5	61	4	1	0	0
March 2021	7	61	7	0	0	0
April 2021	13	65	9	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	11
Informal Complaints ⁷	0
Administrative Investigations	2
Inquiries ⁸	0
TOTAL	13

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	3
BART Police Department	8
TOTAL	11

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During April 2021, **3 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #21-04) (IA2021-027)	Officer #1: <ul style="list-style-type: none"> • Arrest or Detention • Performance of Duty 	OIPA initiated an investigation.	34
2 (OIPA #21-06) (IA2021-030)	Officers #1-4: <ul style="list-style-type: none"> • Bias-Based Policing • Arrest or Detention • Conduct Unbecoming an Officer • Performance of Duty 	OIPA initiated an investigation.	24
3 (OIPA #21-07) (IA2021-031)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing • Arrest or Detention • Conduct Unbecoming an Officer 	OIPA initiated an investigation.	21

During April 2021, **8 Citizen Complaints (Formal)** were received by BPD:

(IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-021)	Officer #1-2: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	39
2 (IA2021-022)	Officer #1: <ul style="list-style-type: none"> • Performance of Duty 	BPD initiated an investigation.	38
3 (IA2021-023)	Officer #1: <ul style="list-style-type: none"> • Courtesy 	BPD initiated a Supervisor Referral. ¹⁰	39
4 (IA2021-024)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing 	BPD initiated an investigation.	37
5 (IA2021-025)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated a Supervisor Referral.	33
6 (IA2021-026)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing • Performance of Duty 	BPD initiated an investigation.	32
7 (IA2021-028)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	27
8 (IA2021-029)	Officer #1: <ul style="list-style-type: none"> • Performance of Duty 	BPD initiated an investigation.	25

During April 2021, **2 Administrative Investigations** were initiated by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2021-032)	Officer #1: • Performance of Duty	BPD initiated an investigation.	21
2 (IA2021-033)	Unknown Officer(s): • Performance of Duty (Evidence Handling)	BPD initiated a Service Review.	19

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During April 2021, **2 Citizen Complaints** were concluded by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #19-42) (IA2020-044)	Officer rudely and improperly required complainant to wear face covering and harassed complainant in retaliation for filing a misconduct complaint.	Officer #1: • Policy/Procedure – Exonerated • Courtesy – Exonerated • Conduct Unbecoming an Officer – Unfounded	339	307
1 (OIPA #20-23)* (IA2020-058)	One officer improperly detained complainant and did not de-escalate to avoid using force. Two officers used excessive force and improperly searched complainant's property and both officers' conduct was based on complainant's race. One supervisor failed to conduct a required review of the use of force and arrived at the scene displaying an offensive image on a facemask.	Officer #1: • Policy/Procedure (De-escalation) – Sustained • Arrest or Detention – Exonerated Officers #1-2: • Force – Exonerated • Search/Seizure – Exonerated • Bias-Based Policing – Not Sustained Officer #3: • Performance of Duty – Sustained • Conduct Unbecoming an Officer – Exonerated	249	217

* This case was presented to the BPCRB as required on April 12, 2021. Though the BPCRB voted to agree with OIPA's findings and recommendations, the case remains on Internal Affairs' list of open investigations pending database entry by BPD or resolution of any appeal that may be lodged by the Chief of Police. The Chief is allowed up to 45 days after approval by the BPCRB to decide whether to appeal OIPA findings.

During April 2021, **6 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 (IA2020-036)	Officers improperly detained complainant based on a false report and officers refused to address the complainant's concerns about the false reporting. One officer did not properly document the contact.	<p>Officers #1-5:</p> <ul style="list-style-type: none"> • Performance of Duty (Response to False Report) – Unfounded • Performance of Duty (Intake – False Report) – Exonerated <p>Officers #1-4</p> <ul style="list-style-type: none"> • Arrest or Detention – Exonerated <p>Officer #1:</p> <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) – Sustained 	375	357
2 (IA2020-035)	Officer was verbally aggressive and unprofessional, knocked complainant's items to the ground and used racial slurs and two officers did not properly document a law enforcement contact. Supervisor failed to intercede and address complaints of misconduct.	<p>Officer #1:</p> <ul style="list-style-type: none"> • Bias-Based Policing – Not Sustained • Conduct Unbecoming an Officer (Knocking Object) – Unfounded • Performance of Duty – Sustained • Conduct Unbecoming an Officer (Verbal) – Sustained • Policy/Procedure (AXON Camera) – Sustained • Policy/Procedure (AXON Camera) – Not Sustained <p>Officer #2:</p> <ul style="list-style-type: none"> • Performance of Duty – Sustained <p>Officer #3:</p> <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) – Not Sustained 	379	361
3 (IA2020-037)	Officers did not properly address complainant's request to make an arrest and did not review available information or collect a statement from complainant. One officer did not properly document a law enforcement contact.	<p>Officers #1-2:</p> <ul style="list-style-type: none"> • Performance of Duty – Exonerated <p>Officer #2:</p> <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) – Exonerated 	375	355

4 (IA2020-051)	Employee improperly contacted complainant based on complainant's race.	Employee #1: • Bias-Based Policing – Unfounded	262	242
5 (IA2021-023)	Officer was unprofessional during interaction with complainant.	Officer #1: • Courtesy – Supervisor Referral	34	21
6 (IA2021-025)	Officer was hostile and unprofessional during interaction with complainant.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	33	12

During April 2021, **2 Informal Complaints** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-071)	Officers did not properly address a reported crime.	Officers #1-2: • Conduct Unbecoming an Officer – Supervisor Referral Officer #3: • Conduct Unbecoming an Officer – Released from Duty Prior to Finding	206	188
2 (IA2020-090)	Officer was unprofessional during interaction with complainant.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	148	124

DISCIPLINE ISSUED DURING REPORTING PERIOD

During April 2021, 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 was verbally aggressive and unprofessional and did not properly document a law enforcement contact. Supervisor failed to intercede and address complaints of misconduct.	Officer #1: <ul style="list-style-type: none"> • Performance of Duty • Policy/Procedure (AXON Camera) Officer #2: <ul style="list-style-type: none"> • Performance of Duty 	Officer #1: <ul style="list-style-type: none"> • Oral Counseling¹¹ Officer #2: <ul style="list-style-type: none"> • Oral Counseling
2	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Oral Counseling
3	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion¹²
4	Officer was involved in preventable traffic collision.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion
5	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion
6	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion
7	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion

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

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	7
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	65
Investigations Reviewed During Current Month	15 [†]

[†]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 addressed by BPD. The OIPA Monthly Report will reflect information regarding monitored or reviewed cases with detail not to exceed that which is allowable under state law.

The investigations reviewed by OIPA during the period generated one recommendation for additional investigation related to a use of force that is currently under review by BPD as part of the Department's Supervisor Use of Force review process. OIPA recommended that the contact be investigated by Internal Affairs to ensure a thorough and complete analysis of the force applications. Internal Affairs has now initiated an investigation.¹³

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

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

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

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

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

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

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

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

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

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

¹¹ Oral Counseling (third level of pre-discipline): An oral counseling may be the next step of the informal process. It is documented in a memorandum to the employee entitled "Oral Counseling." Prior to issuance, the supervisor should discuss the performance or infraction in detail with the employee. The purpose of the discussion is for the employee to be made aware of the unacceptable behavior. An employee who is covered by a collective bargaining agreement and who may be issued an Oral Counseling is entitled to appropriate association representation. An Oral Counseling is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to progressive discipline.

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

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