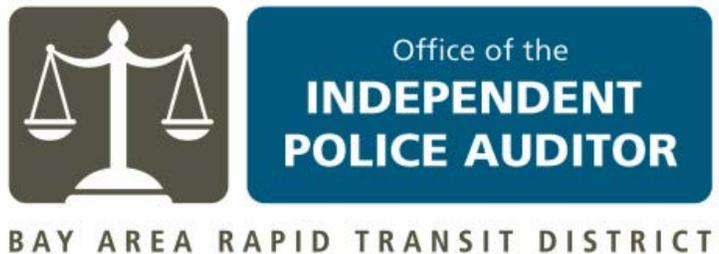


Office of the Independent Police Auditor

Monthly Report

April 2013



May 13, 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 April 1, 2013 through April 30, 2013.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
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	0*	0	0
November 2012	17	57	0	0	0
December 2012	12	52	2	0	0
January 2013	6	49	0	1	0
February 2013	9	46	0	0	0
March 2013	10	46	1	0	0
April 2013	11 [†]	49	1	1	0

* OIPA previously reported one closed case in October 2012. However, further work was completed on the case during this month, and the case is therefore listed as closed in April 2013 instead. The Number of Open Cases is not affected by this change.

† This number includes one citizen complaint that was re-opened during the reporting period. That complaint is detailed further below.

Types of Cases Filed/Re-opened

Citizen Complaints	10
Administrative Investigations	1
Comments of Non-Complaint	0
TOTAL	11

Citizen Complaints Received/Re-opened per Department

OIPA	0
BART Police Department	10
TOTAL	10

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of April 2013, 9 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations ⁷	Action Taken	Number of Days Elapsed Since Complaint Filed ⁸
1 (IA2013-026)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer • Performance of Duty <u>Police Officer #2</u> <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer • Performance of Duty 	BART PD initiated an investigation.	39
2 (IA2013-033)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Courtesy 	BART PD initiated an investigation.	38
3 (IA2013-027)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Courtesy • Policy/Procedure 	BART PD initiated an investigation.	35
4 (IA2013-034)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BART PD initiated an investigation.	34
5 (IA2013-028)	<u>Civilian Employee #1</u> <ul style="list-style-type: none"> • Policy/Procedure 	BART PD initiated an investigation.	33
6 (IA2013-029)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Bias-Based Policing • Conduct Unbecoming an Officer 	BART PD initiated an investigation.	33
7 (IA2013-030)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Policy/Procedure 	BART PD initiated an investigation.	31

<p style="text-align: center;">8 (IA2013-031)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Force • Bias-Based Policing • Conduct Unbecoming an Officer <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> • Force • Bias-Based Policing • Conduct Unbecoming an Officer <p><u>Police Officer #3</u></p> <ul style="list-style-type: none"> • Policy/Procedure 	<p>BART PD initiated an investigation.</p>	<p style="text-align: center;">31</p>
<p style="text-align: center;">9 (IA2013-032)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Arrest or Detention 	<p>BART PD initiated an investigation.</p>	<p style="text-align: center;">27</p>

During the month of April 2013, 1 Citizen Complaint was re-opened by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
<p style="text-align: center;">1 (IA2013-015)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer • Policy/Procedure • Courtesy 	<p>BART PD re-opened this investigation.</p>	<p style="text-align: center;">76</p>

During the month of April 2013, 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 (IA2013-035)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Workplace Discrimination/Harassment • Conduct Unbecoming an Officer 	BART PD initiated an investigation.	319

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of April 2013, 1 Citizen Complaint was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Allegations	Disposition ⁹	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA 12-61)	Officer detained complainant based on his race and secured complainant's handcuffs too tightly.	<u>Unidentified Officer #1</u> <ul style="list-style-type: none"> • Unnecessary or Excessive Use of Force – Unfounded • Racial Profiling – Unfounded 	215	202

During the month of April 2013, 6 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-078)	Officers acted inappropriately in asking visually-impaired complainant whether he could describe a suspect.	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Policy/Procedure – Sustained • Conduct Unbecoming an Officer – Unfounded <u>Police Officer #2</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded 	243	213
2 (IA2012-077)	An employee improperly eavesdropped on complainant's phone conversations.	<u>Employee #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded 	249	213
3 (IA2012-058)	Officer racially profiled complainant, used force to take him down, and acted unprofessionally toward him during an arrest.	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Force – Unfounded • Bias-Based Policing – Not-Sustained • Conduct Unbecoming an Officer - Unfounded 	324	296

<p>4 (IA2012-044)</p>	<p>Complainant observed officers detain and search complainant based on his race.</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Arrest or Detention – Unfounded • Search or Seizure – Unfounded • Conduct Unbecoming an Officer – Unfounded <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Arrest or Detention – Exonerated • Search or Seizure – Unfounded • Conduct Unbecoming an Officer – Unfounded <p><u>Police Officer #3</u></p> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Arrest or Detention – Unfounded • Search or Seizure – Exonerated • Conduct Unbecoming an Officer – Unfounded 	<p>342</p>	<p>301</p>
<p>5 (IA2012-066)</p>	<p>Officer pushed complainant and handcuffed him too tightly during an arrest. Officer then kneeled on complainant's back.</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Force (Count 1) – Exonerated • Force (Count 2) – Not Sustained 	<p>272</p>	<p>231</p>
<p>6 (IA2012-108)</p>	<p>Officer illegally searched complainant and was unprofessional during an arrest.</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Search/Seizure – Exonerated • Conduct Unbecoming an Officer – Not Sustained 	<p>163</p>	<p>142</p>

During the month of April 2013, 1 Administrative Investigation was concluded by the BART Police Department:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2012-057)	Officer showed lack of concern for subjects involved in a fight and failed to follow up on a report of an injury.	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty – Sustained • Conduct Unbecoming an Officer – Sustained • Courtesy – Sustained 	315	289

During the month of April 2013, 1 Comment of Non-Complaint was 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 (IA2013-025)	Complainant was concerned about the lack of police presence at BART stations.	Policy/Procedure – Service Review ¹⁰	55	15

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	1
Investigations Being Monitored	17
Investigations Reviewed During Current Month	19*

*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.

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 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.

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 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)). Finally, this total 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), Comments of Non-Complaint, 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 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. The 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 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).

⁷ In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

⁸ 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).

⁹ 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)

¹⁰ A service review refers to an instance when a complainant's concern is not about the conduct of any particular employee, but rather about how police services are/were rendered in general.