



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

August 2021

Issue date: September 13, 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 **August 1, 2021 through August 31, 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
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
May 2021	9	69	4	1	0	0
June 2021	5	74	1	1	0	0
July 2021	10	81	3	0	0	0
August 2021	4	78	7	1	0	0

TYPES OF CASES FILED

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

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	0
BART Police Department	4
TOTAL	4

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During August 2021, **4 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-058)	Officers #1-2: <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer Officers #1-3 <ul style="list-style-type: none"> • Performance of Duty Officer #2: <ul style="list-style-type: none"> • Bias-Based Policing 	BPD initiated an investigation.	42
2 (IA2021-059)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	28
3 (IA2021-060)	Officer #1: <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer 	BPD initiated an investigation.	30
4 (IA2021-061)	Officer #1: <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer 	BPD initiated an investigation.	25

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During August 2021, **5 Citizen Complaints** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-062)	Officer detained complainant because of complainant's race and the officer was hostile during the contact.	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded 	361	327

2 (IA2020-063)	Officer unlawfully searched complainant's belongings and improperly handcuffed complainant. Officer also did not properly wear a facemask during the contact.	Officer #1: • Arrest or Detention – Exonerated • Search or Seizure – Unfounded* • Conduct Unbecoming an Officer – Exonerated	360	320
3 (IA2020-082)	Employee acted aggressively toward complainant and did so because of complainant's race.	Employee #1: • Conduct Unbecoming – Sustained • Bias-Based Policing – Unfounded	300	260
4 (IA2020-091)	Officer used excessive force during a search of complainant.	Officer #1: • Force – Exonerated	288	256
5 (IA2021-001)	Officers unlawfully detained complainant and used excessive force during the contact.	Employee #1: • Force – Unfounded • Arrest/Detention – Exonerated	254	260

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING PREVIOUS REPORTING PERIODS

During July 2021, 1 **Citizen Complaint** was concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-052)	Officer improperly contacted and humiliated complainant and officer was not wearing a face mask as required during the contact.	Officer #1: • Performance of Duty – Supervisor Referral. ¹⁰	59	14

*Pursuant to the authority provided to OIPA in the BART Citizen Oversight Model, Chapter 1-03(D)(ii), OIPA notified BPD that the Independent Police Auditor is requiring additional follow-up to determine whether a finding of Unfounded is appropriate in this instance. Because the IA investigation established that the act which provide the basis for the allegation did occur, but was justified, lawful, and proper, Exonerated is a more accurate finding than Unfounded, which provides that the allegation is “not true” or that the complaint was “frivolous.” A finding of Unfounded is typically and historically applied when it can be established, for example, that the subject officer was not present or when the complaint is not based in reality.

DISCIPLINE ISSUED DURING REPORTING PERIOD

During August 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	Employee acted aggressively toward complainant.	Employee #1: • Conduct Unbecoming an Officer	Employee #1: • Non-Documented
2	Officer was involved in a preventable traffic collision.	Officer #1: • Policy/Procedure	Officer #1: • Supervisor Addressed Through Training
3	Officer was involved in a preventable traffic collision.	Officer #1: • Policy/Procedure	Officer #1: • Oral Counseling ¹¹
4	Officer was involved in a preventable traffic collision.	Officer #1: • Policy/Procedure	Officer #1: • Letter of Discussion ¹²

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	8
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	65
Investigations Reviewed During Current Month	11†

†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.

One investigation reviewed by OIPA during the period generated a recommendation for an adjustment to an investigative determination in which BPD reached a finding of Unfounded where the facts and evidence appear to support a finding of Exonerated. OIPA

†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).

also requested review of an entry in the Iapro database to determine whether a Formal Complaint would be more appropriately categorized as an Administrative Investigation because there is no evidence clearly indicating that the subject lodged a complaint alleging misconduct by the responding officer and because the misconduct investigation was initiated by a supervisor.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.