

# Office of the Independent Police Auditor

## Monthly Report

December 2015



January 11, 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. This report provides information for the period December 1, 2015 through December 31, 2015.<sup>1</sup>

### **Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by BPCRB <sup>6</sup>
December 2014	11	84	1	0	0
January 2015	11	87	2	0	0
February 2015	9	78	3	0	0
March 2015	11	67	0	0	1
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

\*This number includes 6 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)	13
Informal Complaints <sup>7</sup>	2
Administrative Investigations	1
<b>TOTAL</b>	<b>16</b>

### **Citizen Complaints Received per Department<sup>8</sup>**

OIPA	2
BART Police Department	11
<b>TOTAL</b>	<b>13</b>

### Complaints/Investigations Initiated During Reporting Period

#### Actions Taken/# of Days Elapsed

During the month of December 2015, 2 **Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations <sup>9</sup>	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>10</sup>
1 (OIPA #15-94) (IA2015-139)	<u>Officer #1</u> • Performance of Duty	OIPA notified BPD, which initiated an investigation.	13
2 (OIPA #15-90) (IA2015-134)	<u>BART Police Department</u> • Performance of Duty	OIPA notified BPD, which initiated an investigation.	34

During the month of December 2015, 5 **Citizen Complaints (Formal)** were received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-133)	<u>Officer #1</u> • Force	BPD initiated an investigation.	20
2 (IA2015-128)	<u>Officer #1</u> • Bias-Based Policing	BPD initiated an investigation.	28
3 (IA2015-137)	<u>Unidentified Officer(s)</u> • Performance of Duty	BPD initiated an investigation.	13
4 (IA2015-124)	<u>Employee #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	40
5 (IA2015-129)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	30

During the month of December 2015, 2 **Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-136)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	13
2 (IA2015-138)	<u>Officer #1</u> • Conduct Unbecoming an Officer • Policy/Procedure	BPD initiated an investigation.	11

During the month of December 2015, 1 **Administrative Investigations** was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2015-135)	<u>Officer #1</u> • Force	BPD initiated an investigation.	17

### **Complaints/Investigations Initiated During Previous Reporting Periods**

#### **Actions Taken/# of Days Elapsed**

During the month of September 2015, 1 **Citizen Complaint (Formal)** was received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-131)	<u>Officer #1</u> • Force	BPD initiated an investigation.	104

During the month of October 2015, 3 **Citizen Complaints (Formal)** were received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-125)	<u>Officer #1</u> • Bias-Based Policing • Force • Arrest/Detention • Conduct Unbecoming an Officer	BPD initiated an investigation.	87
2 (IA2015-126)	<u>Officer #1</u> • Arrest/Detention • Conduct Unbecoming an Officer	BPD initiated an investigation.	96
3 (IA2015-127)	<u>Officer #1</u> • Force	BPD initiated an investigation.	100

During the month of November 2015, 2 **Citizen Complaints (Formal)** were initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2015-130)	<u>Officer #1</u> • Arrest/Detention	BPD initiated an investigation.	56
2 (IA2015-132)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	48

### **Complaints/Investigations Concluded During Reporting Period**

#### **Dispositions/# of Days Elapsed**

During the month of December 2015, 1 **Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Allegations	Disposition <sup>11</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #15-21)	Officer was discourteous, did not take sufficient action in response to a call for service, and omitted to take action on the basis of race, age, and gender.	<u>Officer #1</u> • Racial Profiling/Bias-Based Profiling – Unfounded • Performance of Duty – Unfounded • Courtesy – Unfounded	266	240

During the month of December 2015, 3 **Citizen Complaints (Formal)** were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2015-009)	Officers used excessive force when taking complainant into custody, and one officer did not appropriately retrieve complainant's property.	<u>Officers #1-4</u> • Force – Unfounded  <u>Officer #5</u> • Force – Unfounded • Performance of Duty – Sustained	348	320
2 (IA2015-049)	Officers mishandled complainant's property and removed complainant from BART property without justification.	<u>Officers #1-2</u> • Policy/Procedure (Counts 1-2) – Unfounded	252	226
3 (IA2015-117)	BPD officers do not sufficiently patrol trains.	<u>BART Police Department</u> • Performance of Duty – Service Review <sup>12</sup>	70	29

During the month of December 2015, 3 **Administrative Investigations** were completed by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2014-034)	Officer committed a traffic violation.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	726	712*
2 (IA2015-069)	Officer did not appropriately respond to complainant's request for service and did not properly monitor voicemail and email.	<u>Officer #1</u> • Performance of Duty – Sustained • Policy/Procedure – Sustained	186	145

3 (IA2015-088)	Officer did not properly report a use of force.	<u>Officer #1</u> • Policy/Procedure – Sustained	157	131
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\*The statute of limitations with regard to this investigation was tolled from January 22, 2014, until October 6, 2015 because the subject officer was on extended leave during the course of the investigation. The subject officer subsequently retired from service prior to the completion of the investigation.

### **Complaints/Investigations Concluded During Previous Reporting Periods**

#### **Dispositions/# of Days Elapsed**

During the month of November 2015, 1 **Citizen Complaint (Formal)** was concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2015-033)	Officers mocked complainant, treated complainant differently on the basis of complainant's primary language, and did not properly document a detention.	<u>Officers #1-2</u> • Bias-Based Policing – Not Sustained • Conduct Unbecoming an Officer – Not Sustained • Policy/Procedure – Not Sustained	266	215

During the month of November 2015, 1 **Informal Complaint** was concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2015-113)	Officer harassed complainant.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral <sup>13</sup>	81	29

During the month of October 2015, 1 **Administrative Investigation** was concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2014-163)	Officer was discourteous and intimidating to employee and inappropriately video recorded interaction with employee. Employee was rude to BART patrons and to an officer.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul> <u>Employee #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer (Counts 1-3) – Not Sustained</li> <li>• Conduct Unbecoming an Officer (Count 4) – Sustained</li> </ul>	397	303

#### **Discipline Issued During Reporting Period**

##### Sustained Allegations/Resulting Action Taken by BPD

During the month of December 2015, BART PD 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 did not appropriately retrieve complainant's property.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	<u>Officer #1</u> Informal Counseling
2	Officer did not appropriately respond to complainant's request for service and did not properly monitor voicemail and email.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Policy/Procedure</li> </ul>	<u>Officer #1</u> Informal Counseling

#### **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 conversation 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	11
Investigations Reviewed During Current Month	26*

\*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 received 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.

<sup>9</sup> 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.

<sup>10</sup> 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).

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<sup>11</sup> 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)

<sup>12</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>13</sup> For instances involving an Informal Complaint, the Internal Affairs Unit may address the issue through a Supervisor Referral. An assigned supervisor would then address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Unit.