



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

December 2019

Issue date: January 13, 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 **December 1, 2019 through December 31, 2019.**¹

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

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
December 2018	5	62		0	0	0
January 2019	15	64		1	0	0
February 2019	12	60		1	0	0
March 2019	14	57		1	0	0
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

TYPES OF CASES FILED

Citizen Complaints (Formal)	1
Informal Complaints ⁷	3
Administrative Investigations	2
Inquiries ⁸	0
TOTAL	6

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	1
BART Police Department	0
TOTAL	1

¹OIPA added a new data column to the October 2019 Monthly Report which will be populated going forward.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During December 2019, **1 Citizen Complaint** was received by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #19-54) (IA2019-128)	Officers #1-2: <ul style="list-style-type: none"> • Performance of Duty • Conduct Unbecoming an Officer Officer #2: <ul style="list-style-type: none"> • Arrest or Detention 	OIPA notified BPD which initiated an investigation.	40

During December 2019, **2 Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2019-127)	Officers #1-2: <ul style="list-style-type: none"> • Policy/Procedure 	BPD initiated a Supervisor Referral. ¹⁰	40
2 (IA2019-131)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated a Supervisor Referral.	30

During December 2019, **2 Administrative Investigations** were initiated by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2019-132)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	13
2 (IA2019-129)	Employee #1: <ul style="list-style-type: none"> • Policy/Procedure 	BPD initiated an investigation.	31

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During October 2019, **1 Informal Complaint** was received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2019-130)	Employee #1: <ul style="list-style-type: none"> • Courtesy 	BPD initiated an investigation.	74

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During December 2019, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #19-11) (IA2019-036) [†]	Officer improperly detained complainant, used excessive force during the contact, improperly handled complainant's property, and failed to properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Force – Exonerated • Arrest or Detention – Exonerated • Performance of Duty – Sustained • Policy/Procedure (AXON Camera) – Exonerated • Policy/Procedure (Property) – Exonerated 	301	254

During December 2019, **3 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 (IA2017-040)	Officer used unnecessary or excessive force during a contact.	Officers #1-2: <ul style="list-style-type: none"> • Force – Exonerated 	970	937 [‡]
2 (IA2019-024)	Officer harassed complainant and engaged in improper sexual relations.	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (Count 1) – Sustained • Conduct Unbecoming an Officer (Counts 2-3) – Not Sustained 	330	290
3 (IA2019-062)	Officers used unnecessary or excessive force during a contact.	Officers #1-2: <ul style="list-style-type: none"> • Force – Exonerated 	242	217

[†] This complaint remains on the list of open investigations in the IAB database pending presentation of the OIPA investigative report to the BPCRB in closed session. OIPA's investigative findings and disciplinary recommendations were delivered to the BPCRB in closed session at their regular meeting in November 2019, but the report was required to be presented again in December 2019 due to a lack of quorum during the closed session. In the intervening period, OIPA determined that the sustained allegation was more appropriately defined as Performance of Duty than Conduct Unbecoming an Officer, and the report was revised to reflect that determination.

[‡] This case was tolled pending civil litigation for 801 days from July 28, 2017 to October 7, 2019 and was completed within the statutory time limit imposed by Government Code §3304.

During December 2019, **3 Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2019-105)	Officer was rude to complainant.	Officer #1: • Courtesy – Supervisor Referral	129	115
2 (IA2019-127)	Officers improperly parked patrol vehicle.	Unknown Officers #1-2: • Policy/Procedure – Supervisor Referral	40	1
3 (IA2019-118)	Officers were rude and confrontational when communicating with complainant.	Officers #1-2: • Conduct Unbecoming an Officer – Supervisor Referral	70	26

DISCIPLINE ISSUED DURING REPORTING PERIOD

No discipline was issued by BPD during December 2019.

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	0
BPD-Initiated Appeals	0
Investigations Being Monitored	41
Investigations Reviewed During Current Month	10†

†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.¹¹

¹¹ 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 IA.

¹¹ 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.