

# Office of the Independent Police Auditor

Monthly Report

February 2015



March 9, 2015

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 February 1, 2015 through February 28, 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 CRB <sup>6</sup>
February 2014	11	55	0	0	0
March 2014	19	65	0	0	0
April 2014	18	68	1	0	0
May 2014	12	57	0	0	0
June 2014	11	61	0	0	0
July 2014	10	67	0	0	1
August 2014	20	75	2	0	0
September 2014	12	72	0	0	0
October 2014	14	78	0	0	0
November 2014	17	84	1	0	0
December 2014	11	84	1	0	0
January 2015	11	87	2	0	0
February 2015	9*	78	3	0	0

\*This number includes two 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)	4
Informal Complaints <sup>7</sup>	4
Administrative Investigations	1
<b>TOTAL</b>	<b>9</b>

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

OIPA	0
BART Police Department	4
<b>TOTAL</b>	<b>4</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of February 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 (IA2015-008)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	34
2 (IA2015-011)	<u>BART Police Department</u> • Policy/Procedure	BPD initiated an investigation.	31
3 (IA2015-015)	<u>Civilian #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	18

During the month of February 2015, 4 Informal Complaints were received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-010)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	24
2 (IA2015-012)	<u>Civilian #1</u> • Performance of Duty • Courtesy	BPD initiated an investigation.	33
3 (IA2015-013)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	24
4 (IA2015-016)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	14

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

**Actions Taken/# of Days Elapsed**

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

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-014)	<u>Officer #1</u> • Bias-Based Policing	BPD initiated an investigation.	41

During the month of December 2014, 1 Administrative Investigation was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2014-168)	<u>Officer #1</u> • Racial Animus • Conduct Unbecoming an Officer	BPD initiated an investigation.	68

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of February 2015, 3 Citizen Complaints were concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Allegations	Disposition <sup>9</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #14-27)	Officer harassed complainant and did so based on race.	<u>Unidentified Officer</u> • Racial Profiling/Bias-Based Profiling – Not Sustained • Conduct Unbecoming an Officer – Not Sustained	355	341

2 (OIPA #14-28)	Officer stopped complainant based on ethnicity and improperly issued a citation. Officer was also intimidating and discourteous.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Profiling – Unfounded</li> <li>• Arrest or Detention – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Courtesy – Sustained</li> </ul>	355	345
3 (OIPA #14-37)	Officers unjustifiably detained complainant, were intimidating and discourteous, used unnecessary force, and mistreated complainant based on a perceived mental health condition.	<i>Complaint did not involve BPD.</i>	320	303

During the month of February 2015, 7 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 (IA2013-123)*	BART personnel failed to properly respond to a crime report made by complainant and inappropriately dismissed complainant.	<u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul> <u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Exonerated</li> </ul> <u>Officer #3</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Exonerated</li> </ul>	472	444

<p>2 (IA2014-062)</p>	<p>Officers improperly requested complainant's charges against an individual be dropped, improperly dismissed a citation against the individual, and improperly identified the violation alleged by complainant.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Exonerated</li> <li>• Policy/Procedure – Sustained</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Policy/Procedure – Not Sustained</li> </ul>	<p>301</p>	<p>270</p>
<p>3 (IA2014-075)<sup>†</sup></p>	<p>Officers used excessive force when arresting complainant, insulted complainant, and did not report the use of force as required.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force (Count 1) – Not Sustained</li> <li>• Force (Count 2) – Unfounded</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Force (Count 1) – Exonerated</li> <li>• Force (Count 2) – Unfounded</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul>	<p>270</p>	<p>239</p>
<p>4 (IA2014-081)</p>	<p>Officer used excessive force against an individual and unnecessarily pointed a gun at the individual's canine.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	<p>258</p>	<p>227</p>
<p>5 (IA2014-101)</p>	<p>Employee improperly issued parking citations and was discourteous to complainant.</p>	<p><u>Employee #1</u></p> <ul style="list-style-type: none"> <li>• Courtesy – Sustained</li> <li>• Procedure – Not Sustained</li> </ul>	<p>207</p>	<p>176</p>

6 (IA2014-157)	Officer improperly targeted and detained individuals on various occasions.	<i>Complaint was administratively closed by BPD.</i> <sup>10</sup>	98	71
7 (IA2014-099)	Officer improperly confiscated complainant's property.	<u>BART Police Department</u> • Search/Seizure – Service Review <sup>11</sup>	205	178

\*Due to a subject officer in this case being on extended leave, the investigation was tolled from July 12, 2014 to October 28, 2014.

†As OIPA is also investigating this case, it will not be taken out of the "Number of Open Cases" column in the Quantitative Report on Page 2 until OIPA's findings have also been finalized.

During the month of February 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 (IA2014-067)	Officer used excessive force to take an individual into custody.	<u>Officer #1</u> • Force – Exonerated	290	270
2 (IA2014-100)	Officer made inappropriate statements to a detainee. Another officer failed to take appropriate action in response to the statements.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Sustained  <u>Officer #2</u> • Supervision – Sustained	201	174
3 (IA2014-105)	Officer improperly detained an individual and did so based on race. Officers used unnecessary force against the individual.	<u>Officer #1</u> • Force – Exonerated • Bias-Based Policing – Not Sustained • Arrest or Detention – Exonerated  <u>Officers #2-3</u> • Force – Exonerated	204	192

During the month of February 2015, 4 Informal Complaints were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2014-159)	Officers did not take action in response to complaints about homeless individuals.	<u>Unidentified Officers</u> • Performance of Duty – Supervisory Referral <sup>12</sup>	84	59
2 (IA2015-005)	Officer was discourteous in responding to complaint about illegal parking.	<u>Officer #1</u> • Courtesy – Supervisory Referral	48	16
3 (IA2015-010)	Officer was speeding while driving patrol vehicle.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	24	13
4 (IA2015-012)	Employee was rude and did not follow up on complaint about access to a restroom.	<u>Employee #1</u> • Performance of Duty – Supervisory Referral • Courtesy – Supervisory Referral	33	22

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

Dispositions/# of Days Elapsed

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

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2014-005)	Officer used excessive force. Officers did not record incident as required.	<u>Officer #1</u> • Force – Exonerated  <u>Officers #2-3</u> • Policy – Sustained	412	364



During the month of September 2014, 1 Informal Complaint was addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2014-107)*	Employee was impolite in giving parking instructions to complainant. Also, parking rules in place are inefficient.	<u>Employee #1</u> • Courtesy – Supervisory Referral	193	18

\*Although this case was completed in September 2014, further action was taken to review the parking rules at issue to determine any areas for improvement. The additional time needed to conduct this review led to the delay in reporting this case as complete.

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

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

During the month of February 2014, 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	Involved officers: did not properly conduct required inspections; did not accurately complete required documentation; did not properly supervise employees; made disparaging remarks toward other employees; did not cooperate with an investigation as required; acted insubordinately during an investigation.	<u>Officer #1</u> • Performance of Duty • Conduct Unbecoming an Officer • Policy/Procedure • Supervision  <u>Officer #2</u> • Policy/Procedure  <u>Officer #3</u> • Policy/Procedure  <u>Officer #4</u> • Policy/Procedure  <u>Officer #5</u> • Insubordination • Conduct Unbecoming an Officer • Policy/Procedure	<u>Officer #1</u> Demotion (in abeyance)  <u>Officer #2</u> 1-day Suspension (in abeyance)  <u>Officer #3</u> Written Reprimand  <u>Officer #4</u> Written Reprimand  <u>Officer #5</u> Pay-step Reduction

2	Officer did not properly update dispatch of his status and did not record incident as required.	<u>Officer #1</u> • Policy/Procedure (Counts 1-2)	<u>Officer #1</u> Oral Counseling
3	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Oral 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	10
Complainant-Initiated Appeals	0
Investigations Being Monitored	13
Investigations Reviewed During Current Month	27*

\*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 Citizen 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 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. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

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<sup>6</sup> 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).

<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 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>10</sup> The BART Police Department Manual defines “Administrative Closure” as, “Allegations that are received and documented; however the Chief of Police or his/her designee determines, based on a preliminary investigation, that further investigation is not warranted. Under these circumstances, the complaint will be Administratively Closed and documented in a summary memorandum to the case file. Employees will be documented as witnesses only, not as subjects to the complaint. Internal Affairs will send a letter to the complainant notifying them that the case was closed following a preliminary investigation.” (BART Police Department Policy Manual, Policy 1020.1.1(i))

<sup>11</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>12</sup> A Supervisory 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.