



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

January 2019

Issue date: February 11, 2019

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 **January 1, 2019 through January 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	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
January 2018	7	32	0	0	0
February 2018	10	34	0	1	0
March 2018	6	35	1	0	0
April 2018	13	49	0	0	0
May 2018	6	51	1	0	0
June 2018	10	56	0	0	0
July 2018	8	54	0	0	0
August 2018	14	64	1	0	0
September 2018	9	69	1	0	0
October 2018	10	69	1	0	0
November 2018	13	69	1	0	0
December 2018	5	62	0	0	0
January 2019	15	64	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	12
Informal Complaints ⁷	2
Administrative Investigations	1
TOTAL	15

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁸

OIPA	2
BART Police Department	10
TOTAL	12

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During January 2019, **2 Citizen Complaints** were received by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #19-02) (IA2019-012)	Officer #1: • Performance of Duty	OIPA notified BPD, which initiated an investigation.	13
	Officers #1-3: • Conduct Unbecoming an Officer	OIPA notified BPD, which initiated an investigation.	34
2 (OIPA #19-01) (IA2019-005)	Officers #1-2: • Search or Seizure		
	Officer #2: • Arrest or Detention		
	Officer #3 • Performance of Duty		

During January 2019, **10 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2019-001)	Officer #1: • Force	BPD initiated an investigation.	40
	Officers #1-3: • Conduct Unbecoming an Officer	BPD initiated an investigation.	35
2 (IA2019-003)	Officer #2: • Performance of Duty		
	Officer #3: • Force • Reporting Misconduct		
3 (IA2019-004)	Unknown Officers #1-4: • Force	BPD initiated an investigation.	35
4 (IA2019-006)	Officer #1: • Performance of Duty	BPD initiated an investigation.	27

5 (IA2019-007)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	35
6 (IA2019-008)	Unknown Officer #1: • Force	BPD initiated an investigation.	24
7 (IA2019-009)	Employee #1: • Bias-Based Policing	BPD initiated an investigation.	19
8 (IA2019-011)	Employee #1: • Bias-Based Policing	BPD initiated an investigation.	38
9 (IA2019-013)	Officer #1: • Performance of Duty • Policy/Procedure	BPD initiated an investigation.	13
10 (IA2019-014)	Officer #1: • Bias-Based Policing • Conduct Unbecoming an Officer	BPD initiated an investigation.	11

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

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2019-002)	Officers #1-2: • Performance of Duty	BPD initiated a Supervisor Referral. ⁹	38
2 (IA2019-010)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated a Supervisor Referral.	30

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During December 2018, **1 Administrative Investigation** was initiated by BPD but not previously reported:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2018-113)	Officer #1: • Force • Policy/Procedure • Axon Camera • Conduct Unbecoming an Officer	BPD initiated an investigation.	47

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

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

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (OIPA #18-17) (IA2018-033)	One officer improperly detained a subject, two officers did not properly document a law enforcement contact, and four officers used excessive force during an arrest.	Officers #1-4: • Force – Exonerated Officer #3: • Arrest or Detention – Sustained Officers #3-4: • AXON Camera Violation – Sustained	294	260

During January 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 (IA2018-016)	Officers improperly cited complainant for fare evasion.	Officers #1-4: • No allegations listed – Handled as Service Review	350	310
2 (IA2018-039)	Officer targeted a subject for law enforcement action base on subject's race.	Officer #1: • Bias-Based Policing – Unfounded	272	257
3 (IA2018-046)	Officers improperly detained complainant based on complainant's race and inappropriately inquired regarding his parole status.	Officer #1: • Bias-Based Policing – Not Sustained • Conduct Unbecoming an Officer – Exonerated Officer #2: • No allegations listed	247	236

During January 2019, **7 Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2018-051)	Employee did not properly respond to call for service.	Employee #1: • Courtesy – Supervisor Referral	228	216
2 (IA2018-052)	Officer treated complainant dismissively during phone conversation.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	224	212
3 (IA2018-053)	Employee blocked complainant from using a parking spot.	Unknown Employee #1: • Courtesy – Supervisor Referral	241	214
4 (IA2018-080)	Employee refused to provide identification upon request.	Employees #1-2: • Conduct Unbecoming – Supervisor Referral	147	135
5 (IA2018-087)	Employees were rude.	Unknown Employee #1: • Conduct Unbecoming – Supervisor Referral	125	98
6 (IA2018-097)	Officer was rude to complainant.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	96	62
7 (IA2019-010)	Officer recklessly operated patrol vehicle.	Unknown Employee #1: • Courtesy – Supervisor Referral	30	18

Also during the month of January 2019, BPD classified IA2018-071 as an **Inquiry** and administratively closed the complaint after making the determination that the complainant was satisfied with the dismissal of an improperly issued parking citation.¹⁰

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING PREVIOUS REPORTING PERIODS

During December 2018, **1 Informal Complaint** was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2018-073)	Officer rudely gestured with a flashlight and yelled at a subject.	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Supervisor Referral 	172	133

DISCIPLINE ISSUED DURING REPORTING PERIOD

During January 2019, 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	One officer used excessive force, improperly reported the force, and spoke disparagingly about the subject of the force. One officer did not properly review the use of force.	Officer #1: <ul style="list-style-type: none"> • Force • Performance of Duty • Conduct Unbecoming an Officer Officer #2: <ul style="list-style-type: none"> • Performance of Duty 	Officer #1: <ul style="list-style-type: none"> • Written Reprimand Officer #2: <ul style="list-style-type: none"> • Oral Counseling
2	Officer operated a motor vehicle while intoxicated.	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion
3	Officer used profanity toward multiple subjects and did not properly document law enforcement contacts.	Officer #1: <ul style="list-style-type: none"> • Performance of Duty 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion
4	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion
5	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Written Reprimand
6	Officer improperly accessed database.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure 	Officer #1: <ul style="list-style-type: none"> • Written Reprimand

7	Officers did not properly document a law enforcement contact.	Officers #1-2: • Policy/Procedure (AXON Camera)	Officers #1-2: • Letter of Discussion
8	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion

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	7
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	20
Investigations Reviewed During Current Month	17 [†]

[†]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

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 OIPA 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 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.

⁹ 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.

¹⁰ Administrative Closure refers to 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.

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.