



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

January 2021

Issue date: February 8, 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 **January 1, 2021 through January 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
January 2020	8	53	13	2	0	0
February 2020	15	56	10	0	0	0
March 2020	9	54	11	1	0	0
April 2020	6	44	18	1	1	0
May 2020	4	40	6	1	0	0
June 2020	7	44	4	0	0	0
July 2020	1	41	3	1	0	0
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

TYPES OF CASES FILED

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

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	2
BART Police Department	6
TOTAL	8

* The number of open cases reported here reflects the addition of cases that had not been added to the reporting database prior to the preparation of the December 2020 report.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During January 2021, **2 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #21-02) (IA2021-007)	Officers #1-2: <ul style="list-style-type: none"> • Force • Arrest/Detention • Conduct Unbecoming an Officer 	OIPA notified BPD which initiated an investigation.	13
2 (OIPA #21-01) (IA2021-008)	Officers #1-3: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Performance of Duty 	OIPA notified BPD which initiated an investigation.	28

During January 2021, **6 Citizen Complaints (Formal)** were received by BPD:

(IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-001)	Officers #1-2: <ul style="list-style-type: none"> • Arrest/Detention 	BPD initiated an investigation.	37
2 (IA2021-002)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing • Conduct Unbecoming an Officer 	BPD initiated an investigation.	35
3 (IA2021-003)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	32
4 (IA2021-004)	Officers #1-4: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	34
5 (IA2021-005)	Officer #1: <ul style="list-style-type: none"> • Performance of Duty 	BPD initiated an investigation.	17
6 (IA2021-006)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	19

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During December 2020, **2 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-095)	Employee #1: <ul style="list-style-type: none"> • Performance of Duty • Conduct Unbecoming 	BPD initiated an investigation.	41
1 (IA2020-096)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	41

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During January 2021, **2 Citizen Complaints** were concluded by OIPA†:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #20-07)	Officer improperly detained and cited subject based on subject's race and used excessive force during the detention.	Officers #1-2: <ul style="list-style-type: none"> • Arrest/Detention – Sustained • Arrest/Detention (Citation) – Unfounded • Force – Sustained • Bias-Based Policing – Unfounded 	361	328
2 (OIPA #20-11)	Officer improperly detained and cited subject based on subject's race and used excessive force during the detention.	Officer #1: <ul style="list-style-type: none"> • Arrest/Detention – Exonerated • Arrest/Detention (Citation) – Sustained • Force – Exonerated • Bias-Based Policing – Not Sustained 	353	317

During January 2021, **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 (IA2020-024)	Officer aggressively confronted complainant, issued conflicting commands, used excessive force during the contact, threatened complainant and witness with a Taser, and improperly threatened to charge the complainant with assaulting the officer.	Officer #1: <ul style="list-style-type: none"> • Force – Exonerated • Arrest/Detention – Exonerated • Conduct Unbecoming an Officer (Deploy Taser) – Exonerated • Conduct Unbecoming an Officer (Ineffective Communication) – Unfounded 	339	310

† Both OIPA #20-07 and OIPA #20-11 were completed in January 2021 and presented to the BPCRB at their regular meeting during the same month. Memoranda documenting the results of the investigation, the recommended discipline, and the results of the BPCRB vote supporting those findings and recommendations were transmitted to the BPD Chief of Police on January 12, 2021. OIPA was notified on January 21, 2021 that the Chief of Police intends to appeal OIPA's findings to the BART General Manager (GM) pursuant to the appeal process provided by the BART Citizen Oversight Model. The required appeal meeting and decision memorandum from the GM remain pending as of this publication.

2 (IA2020-031)	Officer directed profanities toward complainant.	Officer #1: • Conduct Unbecoming an Officer – Sustained	331	306
3 (IA2020-038)	Officer did not take appropriate law enforcement action.	Officer #1: • Performance of Duty – Administratively Closed ¹⁰ • Arrest/Detention – Exonerated • Conduct Unbecoming an Officer (Deploy Taser) – Exonerated Conduct Unbecoming an Officer (Ineffective Communication) – Unfounded	339	310

DISCIPLINE ISSUED DURING REPORTING PERIOD

During January 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	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion ¹¹
2	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion
3	Officer did not properly document a law enforcement contact.	Officer #1: • Conduct Unbecoming an Officer	Officer #1: • Oral Counseling ¹²
4	Officer used excessive force during an unlawful detention and citation and did not properly supervise a trainee during the contact.	Officer #1: • Force • Supervision • Arrest/Detention	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

‡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).

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	2
Investigations Being Monitored	60
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.

The BPD Internal Affairs investigations, Supervisor Use of Force Reports (SUFRRs), officer contacts, and body-worn camera recordings reviewed by OIPA during the period generated recommendations for policy/practice revisions and requests for additional action.¹³

BPD Supervisor Use of Force Reports

OIPA review of SUFRs during this reporting period, which are generated as required by BPD Policy 300 (Use of Force), prompted OIPA to recommend review by BPD Command Staff and the Office of Internal Affairs in some instances.

These referrals were related to:

- Excessive force
- Late or failed AXON camera activations
- Incomplete supervisory reviews
- Improper application and enforcement of the BART Proof of Payment (PoP) Ordinance

In response to OIPA's concerns related to the actual and potential policy violations listed above, BPD continues to examine the quality and scope of training for new supervisors while concurrently reviewing specific contacts flagged by OIPA.

As previously reported here, BPD command staff have committed to improve data collection efforts to better document the underlying reason for a contact that results in an arrest. Improved data collection is expected to facilitate more effective analysis of contact outcomes related to low level criminal activity and the manner in which enforcement contributes to racially disparate outcomes.

I will continue to identify areas for improvement and to flag conduct that warrants further action or review and I will determine whether the frequency of these lapses declines.

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.

¹⁰Administrative Closure is defined as follows in the BPD Policy Manual: 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 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)

¹² 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.

¹³ OIPA may submit recommendations to IAB 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.