



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

July 2019

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Issue date: September 9, 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 **July 1, 2019 through July 31, 2019**.<sup>1</sup>

**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 <sup>2</sup>	Open Cases <sup>3</sup>	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
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
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

## TYPES OF CASES FILED

Citizen Complaints (Formal)	7
Informal Complaints <sup>7</sup>	2*
Administrative Investigations	2
Inquiries <sup>8</sup>	1
<b>TOTAL</b>	<b>12</b>

## CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>9</sup>

OIPA	1
BART Police Department	6
<b>TOTAL</b>	<b>7</b>

\* One Formal Complaint was received by OIPA and was reclassified as an Informal Complaint by BPD after discussion with the complainant.

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During July 2019, **6 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2019-078)	Officer #1: • Bias-Based Policing	BPD initiated an investigation.	69
2 (IA2019-080)	Officer #1: • Bias-Based Policing	BPD initiated an investigation.	70
3 (IA2019-082)	Officer #1: • Force	BPD initiated an investigation.	66
4 (IA2019-084)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	48
5 (IA2019-087)	Officer #1: • Performance of Duty	BPD initiated an investigation.	41
6 (IA2019-088)	Officer #1: • Courtesy	BPD initiated an investigation.	41

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

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2019-085)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated a Supervisor Referral. <sup>10</sup>	47

## COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During June 2019, **1 Citizen Complaint (Formal)** was received by OIPA but not previously reported:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #19-23) (IA2019-081)	Officer #1: • Performance of Duty	OIPA notified BPD which initiated an investigation.	76

During June 2019, **1 Informal Complaint** was received by BPD but not previously reported:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2019-083)	Officer #1: • Bias-Based Policing	BPD initiated an investigation.	74

During June 2019, **1 Administrative Investigation** was initiated by BPD but not previously reported:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2019-079)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest or Detention</li> <li>• Conduct Unbecoming an Officer</li> <li>• Policy/Procedure (Documentation)</li> <li>• Policy/Procedure (TASER)</li> </ul>	BPD initiated an investigation.	74

During May 2019, **1 Administrative Investigation** was initiated by BPD but not previously reported:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2019-077)	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure (AXON Camera)</li> </ul>	BPD initiated an investigation.	116

Also, during the month of July 2019, BPD classified the following OIPA intake as an **Inquiry** and administratively closed the complaint: #IA2019-086 (after the complainant withdrew the complaint).<sup>11</sup>

### COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During July 2019, **5 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 (IA2018-081)	Officer acted unprofessionally and failed to conduct a thorough investigation related to a call for service.	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Performance of Duty – Unfounded</li> </ul>	347	299

2 (IA2018-090)†	Officers improperly contacted complainant based on complainant's race and one officer made a rude comment during the detention.	Officers #1-2: • Bias-Based Policing – Unfounded • Policy/Procedure – Exonerated  Officer #2: • Policy/Procedure (AXON Camera) – Sustained	327	247
3 (IA2018-108)	Employee improperly contacted complainant based on race.	Employee #1: • Bias-Based Policing – Administratively Closed <sup>12</sup>	276	217
4 (IA2019-006)	Officer failed to conduct a thorough investigation.	Officer #1: • Performance of Duty – Not Sustained	237	188
5 (IA2019-055)	Employee failed to provide sufficient assistance during a call for service.	Employee #1: • Performance of Duty – Administratively Closed	141	92

During July 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 (IA2019-075)	Employee was rude and disrespectful to complainant.	Employee #1: • Conduct Unbecoming – Supervisor Referral	75	6
2 (IA2019-076)	Officers were rude to arrestee and to bystanders during a law enforcement contact.	Employee #1: • Conduct Unbecoming – Supervisor Referral	75	5
3 (IA2019-085)	Officer grabbed complainant unnecessarily.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	47	3

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\*This investigation was deferred to OIPA and was and completed in June 2019 (OIPA Case #18-40). It remained pending for Internal Affairs (IA) prior to presentation of the report by OIPA to the BART Police Citizen Review Board in closed session at its July 2019 regular meeting and has now been marked as completed by IA.

During July 2019, **1 Administrative Investigation** was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2018-113)	Officer used unnecessary or excessive force, failed to document all TASER activations, failed to activate body camera in a timely manner, and used inappropriate language during a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Conduct Unbecoming an Officer – Sustained</li> <li>• Policy/Procedure (TASER) – Not Sustained</li> <li>• Policy/Procedure (AXON Camera) – Not Sustained</li> </ul>	257	203

Also, during the month of July 2019, BPD classified the following each of the following cases as an **Inquiry** and administratively closed the complaints: #IA2019-015 (after a misunderstanding was clarified) and #IA2019-038 (after IA investigators provided additional contextual information which caused the complainant to withdraw the complaint).

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During July 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	Officer failed to properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure (AXON Camera)</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>• Non-documented</li> </ul>
2	Officer failed to properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure (AXON Camera)</li> </ul>	Offices #1: <ul style="list-style-type: none"> <li>• Letter of Discussion</li> </ul>

## 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	21
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 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.<sup>13</sup>

<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 also made aware of additional complaints about the BART Police Department 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 OIPA 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> 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.

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<sup>9</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>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> Administrative 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.

<sup>13</sup> 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.