Office of the
INDEPENDENT
POLICE AUDITOR

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

June 2017

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Issue date: July 10, 2017

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 BART Police Citizen Review Board (BPCRB). This report provides information for the period **June 1, 2017 through June 30, 2017.**[1]

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

## QUANTITATIVE REPORT

| | Cases Filed[2] | Open Cases[3] | OIPA Investigations Concluded[4] | Cases Appealed to OIPA[5] | Cases Appealed by BPCRB[6] |
|---|---|---|---|---|---|
| June 2016 | 17 | 68 | 0 | 0 | 0 |
| July 2016 | 7 | 68 | 0 | 0 | 0 |
| August 2016 | 9 | 61 | 0 | 0 | 0 |
| September 2016 | 9 | 57 | 0 | 0 | 0 |
| October 2016 | 6 | 51 | 0 | 0 | 0 |
| November 2016 | 13 | 55 | 1 | 0 | 0 |
| December 2016 | 9 | 57 | 0 | 0 | 0 |
| January 2017 | 6 | 52 | 0 | 0 | 0 |
| February 2017 | 7 | 41 | 0 | 0 | 0 |
| March 2017 | 9 | 43 | 0 | 0 | 0 |
| April 2017 | 8 | 42 | 1 | 0 | 0 |
| May 2017 | 13 | 47 | 1 | 0 | 0 |
| June 2017 | 11 | 44 | 0 | 0 | 0 |

### TYPES OF CASES FILED

| | |
|---|---|
| Citizen Complaints (Formal) | 8 |
| Informal Complaints[7] | 2 |
| Administrative Investigations | 1 |
| **TOTAL** | **11** |

### CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT[8]

| | |
|---|---|
| OIPA | 0 |
| BART Police Department | 8 |
| **TOTAL** | **8** |

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During June 2017, **8 Citizen Complaints (Formal)** were received by BPD:

| Complaint # (IA Case #) | Nature of Complaint | Action Taken | Days Elapsed Since Complaint Filed |
|---|---|---|---|
| 1 (IA2017-042) | Officer #1:<br>• Force<br>• Conduct Unbecoming an Officer | BPD initiated an investigation. | 39 |
| 2 (IA2017-043) | Officer #1:<br>• Performance of Duty | BPD initiated an investigation. | 38 |
| 3 (IA2017-044) | Officers #1-2:<br>• Force | BPD initiated an investigation. | 39 |
| 4 (IA2017-045) | Officers #1-2:<br>• Arrest or Detention | BPD initiated an investigation. | 35 |
| 5 (IA2017-048) | Officer #1:<br>• Bias-Based Policing<br>• Conduct Unbecoming an Officer | BPD initiated an investigation. | 25 |
| 6 (IA2017-049) | Officers #1-2:<br>• Force | BPD initiated an investigation. | 30 |
| 7 (IA2017-050) | Unknown BPD Officer #1:<br>• Conduct Unbecoming an Officer | BPD categorized the complaint as an Inquiry. | 15 |
| 8 (IA2017-051) | Employee #1:<br>• Conduct Unbecoming an Officer | BPD categorized the complaint as an Inquiry. | 25 |

During June 2017, **2 Informal Complaints** were received by BPD:

| Complaint # (IA Case #) | Nature of Allegations | Action Taken | Days Elapsed Since Investigation Initiated |
|---|---|---|---|
| 1 (IA2017-046) | Officer #1:<br>• Conduct Unbecoming an Officer | BPD initiated an investigation. | 34 |
| 2 (IA2017-047) | Officer #1:<br>• Conduct Unbecoming an Officer | BPD initiated an investigation. | 32 |

During June 2017, **1 Administrative Investigation** was initiated by BPD:

| Investigation # (IA Case #) | Nature of Investigation | Action Taken | Days Elapsed Since Investigation Initiated |
|---|---|---|---|
| 1 (IA2017-057) | Employee #1:<br>• Workplace Discrimination/Harassment<br>• Conduct Unbecoming an Officer | BPD initiated an investigation. | 18 |

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During June 2017, **10 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 (IA2016-101)** | Officers intimidated complainant and mocked complainant based on disability. | Officers #1-3:<br>• Bias-Based Policing – Unfounded<br>• Arrest or Detention – Exonerated<br>• Conduct Unbecoming an Officer – Unfounded | 242 | 218 |
| **2 (IA2016-107)** | Officers used excessive force on complainant and improperly applied handcuffs, causing pain. | Officers #1-2:<br>• Force – Unfounded<br>• Policy/Procedure – Unfounded | 232 | 205 |
| **3 (IA2016-111)** | Officer used excessive force during arrest of subject, verbally threatened subject and unnecessarily pointed Taser at subject. | Officer #1:<br>• Force (Count 1) – Exonerated<br>• Force (Counts 2-5) – Unfounded<br>• Conduct Unbecoming an Officer (Count 1) – Exonerated<br>• Conduct Unbecoming an Officer (Count 2) – Unfounded | 221 | 176 |
| **4 (IA2016-112)** | Officer improperly ejected complainant from premises, threatened to arrest complainant, and threatened to steal complainant's property. | Officer #1:<br>• Conduct Unbecoming an Officer (Count 1) – Unfounded<br>• Conduct Unbecoming an Officer (Count 2) – Not Sustained | 207 | 175 |
| **5 (IA2016-118)** | Officer contacted complainant based on race and officers took complainant's money and property. | Officers #1-4:<br>• Bias-Based Policing – Unfounded<br>• Conduct Unbecoming an Officer – Unfounded | 194 | 167 |
| **6 (IA2017-003)** | Officers used excessive force while detaining complainant. | Officers #1-2:<br>• Force (Count 1) – Exonerated<br><br>Officer #2:<br>• Force (Count 2) – Unfounded | 166 | 134 |

| | | | | |
|---|---|---|---|---|
| **7 (IA2017-015)** | Officer threatened complainant and mistreated complainant based on race. | Officer #1:<br>• Bias-Based Policing – Unfounded<br>• Conduct Unbecoming an Officer – Unfounded | 118 | 94 |
| **8 (IA2017-024)** | Officers did not properly investigate complainant's call for service. | Officers #1-2:<br>• Conduct Unbecoming an Officer – Supervisory Referral[9] | 81 | 43 |
| **9 (IA2017-035)** | Officers did not properly investigate complainant's call for service. | Officers #1-2:<br>• Performance of Duty – Supervisory Referral | 61 | 49 |
| **10 (IA2017-037)** | Officers used personal phones while on duty. | Officers #1-2:<br>• Conduct Unbecoming an Officer – Administratively Closed[10] | 55 | 16 |

During June 2017, **2 Administrative Investigations** were concluded by BPD:

| Investigation # (IA Case #) | Nature of Complaint | Disposition | Days Elapsed Since Complaint Filed | Days Taken to Address Complaint |
|---|---|---|---|---|
| **1 (IA2016-104)** | Officer violated District substance abuse policy and reported for duty while impaired. | Officer #1:<br>• Policy/Procedure (Count 1) – Sustained<br>• Policy/Procedure (Count 2) – Not Sustained | 238 | 211 |
| **2 (IA2016-119)** | Officer was arrested for driving under the influence. | Officer #1:<br>• Criminal Conduct – Sustained<br>• Conduct Unbecoming an Officer – Sustained | 252 | 225 |

During June 2017, **1 Informal Complaint** was addressed by BPD:

| Complaint # (IA Case #) | Nature of Complaint | Disposition | Days Elapsed Since Complaint Filed | Days Taken to Complete Investigation |
|---|---|---|---|---|
| **1 (IA2017-041)** | Employee was rude to complainant on the phone. | Employee #1:<br>• Conduct Unbecoming an Officer – Supervisory Referral | 40 | 14 |

Also during the month of June 2017, BPD initially classified the following case as an **Inquiry** and Administratively Closed the complaint: IA2017-050 (No misconduct was alleged by the complainant).

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During June 2017, 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:<br>• Policy/Procedure | Officer #1:<br>• Supervisor Addressed Through Training |

## 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 | 1 |
| Complainant-Initiated Appeals | 0 |
| BPD-Initiated Appeals | 1 |
| Investigations Being Monitored | 20 |
| Investigations Reviewed During Current Month | 24† |

†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 should the Chief of Police disagree with the investigative findings and recommendations of OIPA and the BPCRB, the Chief of Police may appeal to the BART General Manager (GM) in a confidential personnel meeting. The GM shall then make a final decision, which the Chief shall implement. The chart above will henceforth reflect BPD-initiated appeals.

- In June 2017, the findings and recommendations reached in November 2016 by OIPA with which the BPCRB agreed regarding OIPA Case #16-25 were overturned pursuant to this appeal process.

The Model also 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 henceforth reflect additional information regarding monitored cases with detail not to exceed that which is allowable under state law. Notably, the majority of investigations reviewed by OIPA during the period did not raise any concerns or generate any recommendations for revisions or follow-up.

- OIPA made recommendations for revisions to the investigative findings reached by BPD regarding Case #IA2016-081. Discussions regarding the recommendations and the response by BPD are ongoing as of the finalization of this Monthly Report.

- OIPA recommendations regarding improved review by BPD of all available documents and regarding timely correspondence with complainants were well-received by BPD regarding Case #IA2017-018. No follow-up was recommended or required by OIPA.

- Regarding Case #IA2015-119, OIPA suggested that a plain reading of the initial complaint should have resulted in a specific allegation of misconduct instead of being adjudicated solely as a Service Review. No follow-up was recommended or required by OIPA.

- OIPA suggested that minimal additional investigation would have been appropriate in Case #IA2015-080 to further explore and explain a minor discrepancy about the timing of BPD contact with the complainant. No follow-up was recommended or required by OIPA.

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[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] 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 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.

[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 in 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.