Office of the Independent Police Auditor

Monthly Report

June 2013

July 8, 2013

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 June 1, 2013 through June 30, 2013.[1]

Quantitative Report

	Number of Cases Filed[2]	Number of Open Cases[3]	Number of OIPA Investigations Concluded[4]	Number of Cases Appealed to OIPA[5]	Number of Cases Appealed by CRB[6]
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0
August 2012	13	60	0	0	0
September 2012	8	57	1	0	0
October 2012	9	49	0	0	0
November 2012	17	57	0	0	0
December 2012	12	52	2	0	0
January 2013	6	49	0	1	0
February 2013	9	46	0	0	0
March 2013	10	46	1	0	0
April 2013	11	49	1	1	0
May 2013	7	44	0	2	0
June 2013	8*	40	0	0	0

*This number includes one case that was received in May 2013, but was not included in that month's report due to a delay in updating the BART Police Department's Internal Affairs Case database. The case has therefore been included here and is reported on below.

Types of Cases Filed

Citizen Complaints	5
Administrative Investigations	0
Comments of Non-Complaint	3
TOTAL	**8**

Citizen Complaints Received per Department

OIPA	0
BART Police Department	5
TOTAL	**5**

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of June 2013, 4 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations[7]	Action Taken	Number of Days Elapsed Since Complaint Filed[8]
1 (IA2013-049)	Police Officer #1 • Force • Conduct Unbecoming an Officer	BART PD initiated an investigation.	13
2 (IA2013-048)	Police Officer #1 • Force	BART PD initiated an investigation.	27
3 (IA2013-051)	Police Officer #1 • Force Police Officer #2 • Force • Conduct Unbecoming an Officer • Courtesy	BART PD initiated an investigation.	14
4 (IA2013-045)	Police Officer #1 • Conduct unbecoming an Officer	BART PD initiated an investigation.	27

During the month of June 2013, 3 Comments of Non-Complaint were received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2013-046)	Civilian #1 • Conduct Unbecoming an Officer	BART PD initiated an investigation.	26
2 (IA2013-044)	Police Officer #1 • Policy/Procedure Police Officer #2 • Policy/Procedure	BART PD initiated an investigation.	33
3 (IA2013-047)	Civilian #1 • Performance of Duty • Conduct Unbecoming an Officer	BART PD initiated an investigation.	26

Complaints/Investigations Initiated During Previous Reporting Period

Actions Taken/# of Days Elapsed

During the month of May 2013, 1 Citizen Complaint was received by the BART Police Department but was not previously reported on:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-050)	Civilian #1 • Criminal (Misdemeanor)	BART PD initiated an investigation.	55

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of June 2013, 4 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition[9]	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-038)	Complainant alleged that her shirt may have been inappropriately unbuttoned sometime during her arrest or incarceration.	Did not involve BART PD	54	28
2 (IA2012-055)	One officer contacted complainant partially due to complainant's ethnicity, made a racist remark, improperly issued a citation to complainant, and did not complete a required report. The first officer and another officer did not follow procedure in responding to complainant's allegations.	Officer #1 • Arrest/Detention – Sustained • Bias Based Policing – Not Sustained • Conduct Unbecoming an Officer – Not Sustained • Courtesy – Not Sustained • Policy/Procedure (Count 1) – Not Sustained • Policy/Procedure (Count 2) – Sustained	370	344

		Officer #2 • Policy/Procedure – Sustained		
3 (IA2012-113)	Complainant alleged he was improperly cited for fare evasion.	Officer #1 • Arrest/Detention – Exonerated	200	176
4 (IA2012-117)	Police who responded to a report of a disturbance on a train took insufficient action when they arrived.	Officer #1 • Performance of Duty – Exonerated Officer #2 • Performance of Duty – Exonerated	199	189

During the month of June 2013, 5 Administrative Investigations were concluded by the BART Police Department:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2013-040)	Officer did not provide required notification about the outcome of a BPD criminal case that was prosecuted.	Supervisory Referral[10]	46	14
2 (IA2012-096)	One officer made offensive comments to another officer. Other officers nearby did not report this misconduct.	Officer #1 • Workplace Discrimination (Count 1) – Sustained • Workplace Discrimination (Count 2) – Not Sustained • Workplace Discrimination (Count 3) – Unfounded Officer #2 • Failure to Report Misconduct – Unfounded	242	221

		Officer #3 • Failure to Report Misconduct – Unfounded		
3 (IA2012-056)	Officer drove recklessly and failed to notify BPD after an official contact by another law enforcement agency.	Officer #1 • Criminal – Sustained • Conduct Unbecoming an Officer – Sustained • Policy/Procedure – Sustained	371	336
4 (IA2013-035)	One officer made an offensive comment about another officer.	Officer #1 • Discrimination – Not Sustained • Conduct Unbecoming an Officer – Not Sustained • Courtesy – Not Sustained	375	358
5 (IA2012-050)	An officer insufficiently responded to a work assignment. Another officer discriminated against and mistreated the first officer.	Officer #1 • Performance of Duty – Sustained Officer #2 • Discrimination – Unfounded • Conduct Unbecoming an Officer – Not Sustained • Courtesy – Not Sustained	375	347

During the month of June 2013, 3 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2013-046)	Complainant alleged that civilian employee drove police vehicle unsafely.	Supervisory Referral	26	7
2 (IA2013-044)	Complainant alleged that two officers improperly used a highway carpool lane.	Supervisory Referral	33	14
3 (IA2013-047)	Civilian employee was disrespectful in responding to complainant's call for assistance while on a BART train.	Supervisory Referral	26	14

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 the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department'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	1
Complainant-Initiated Appeals	3
Investigations Being Monitored	10
Investigations Reviewed During Current Month	21*

*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.

[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 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.

[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 what the BART Police Department manual defines as "Comments of Non-Complaint;" these are comments "on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint." (BART Police Department Policy Manual, Policy 1020.1.1(e)). Finally, this total 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), Comments of Non-Complaint, 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 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. The 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 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).

[7] In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

[8] In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

[9] 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) <u>Unfounded</u> - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) <u>Exonerated</u> - 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) <u>Sustained</u> - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) <u>Not-Sustained</u> - 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)

[10] A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.