

Office of the Independent Police Auditor

Monthly Report

March 2015



April 13, 2015

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 March 1, 2015 through March 31, 2015.¹

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
March 2014	19	65	0	0	0
April 2014	18	68	1	0	0
May 2014	12	57	0	0	0
June 2014	11	61	0	0	0
July 2014	10	67	0	0	1
August 2014	20	75	2	0	0
September 2014	12	72	0	0	0
October 2014	14	78	0	0	0
November 2014	17	84	1	0	0
December 2014	11	84	1	0	0
January 2015	11	87	2	0	0
February 2015	9	78	3	0	0
March 2015	11	67	0	0*	1

*A previous version of this report mistakenly indicated 1 appeal received by OIPA in March 2015.

Types of Cases Filed

Citizen Complaints (Formal)	7
Informal Complaints ⁷	3
Administrative Investigations	1
TOTAL	11

Citizen Complaints Received per Department⁸

OIPA	2
BART Police Department	5
TOTAL	7

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of March 2015, 2 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations ⁹	Action Taken	Number of Days Elapsed Since Complaint Filed ¹⁰
1 (OIPA #15-16) (IA2015-025)	<u>Officer #1</u> • Courtesy	OIPA notified BPD, which initiated an investigation.	20
2 (OIPA #15-17) (IA2015-022)	<u>Officer #1</u> • Racial Profiling/Bias-Based Policing • Courtesy	OIPA initiated an investigation and notified BPD, which also initiated an investigation.	20

During the month of March 2015, 5 Citizen Complaints (Formal) were received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-017)	<u>Officers #1-2</u> • Force	BPD initiated an investigation.	32
2 (IA2015-019)	<u>Officer #1</u> • Force • Racial Profiling/Bias-Based Policing • Conduct Unbecoming an Officer	BPD initiated an investigation.	29
3 (IA2015-020)	<u>Officer #1</u> • Courtesy	BPD initiated an investigation.	20
4 (IA2015-021)	<u>Officer #1</u> • Search or Seizure	BPD initiated an investigation.	32
5 (IA2015-027)	<u>Officers #1-2</u> • Force	BPD initiated an investigation.	39

During the month of March 2015, 3 Informal Complaints were received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-018)	<u>Officers #1-2</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	21
2 (IA2015-023)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	20
3 (IA2015-024)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	18

During the month of March 2015, 1 Administrative Investigation was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2015-026)	<u>Officer #1</u> • Workplace Discrimination/Harassment • Conduct Unbecoming an Officer • Courtesy	BPD initiated an investigation.	18

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of March 2015, 15 Citizen Complaints (Formal) were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2014-069)	Officers used excessive force in detaining complainant. One officer made inappropriate physical contact with complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force (Count 1) – Exonerated • Force (Count 2) – Unfounded • Conduct Unbecoming an Officer – Unfounded <u>Officer #2</u> <ul style="list-style-type: none"> • Force – Unfounded 	322	290
2 (IA2014-076)	Officer used excessive force in detaining complainant, did not detain others involved in incident, and did not record incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Unfounded • Performance of Duty – Exonerated • Policy/Procedure – Sustained 	304	264
3 (IA2014-088)	Officers did not report alleged misconduct and did not record incident as required. One officer improperly detained complainant, used excessive force, and did not document the use of force as required.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Sustained • Arrest or Detention – Exonerated • Policy/Procedure (Counts 1-3) – Sustained <u>Officer #2</u> <ul style="list-style-type: none"> • Policy/Procedure (Count 1) – Exonerated • Policy/Procedure (Count 2) – Not Sustained 	263	224

<p>4 (IA2014-090)</p>	<p>Officer contacted complainant due to his ethnicity, behaved aggressively, and did not record incident as required.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Not Sustained • Policy/Procedure – Sustained 	<p>251</p>	<p>217</p>
<p>5 (IA2014-106)</p>	<p>Officer used excessive force during contact with complainants.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> • Force (Counts 1-2) – Unfounded 	<p>233</p>	<p>193</p>
<p>6 (IA2014-115)</p>	<p>Officers used excessive force in detaining complainant and did not record incident as required.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> • Force (Count 1) – Exonerated • Force (Count 2) – Not Sustained • Force (Counts 3-4) – Unfounded • Policy/Procedure – Sustained <p><u>Officer #2</u></p> <ul style="list-style-type: none"> • Force (Count 1) – Not Sustained • Force (Counts 2-3) – Unfounded • Policy/Procedure – Sustained 	<p>210</p>	<p>193</p>
<p>7 (IA2014-116)</p>	<p>Officer detained complainant based on complainant's race, used excessive force, and improperly searched complainant.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> • Force – Unfounded • Bias-Based Policing – Unfounded • Search or Seizure – Exonerated 	<p>211</p>	<p>191</p>

8 (IA2014-117)	Officer improperly searched and detained complainant, used excessive force, and exhibited unprofessional behavior.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Exonerated • Arrest or Detention – Exonerated • Search or Seizure – Unfounded • Conduct Unbecoming an Officer (Count 1) – Unfounded • Conduct Unbecoming an Officer (Count 2) – Sustained 	200	183
9 (IA2014-120)*	Employee exhibited unprofessional behavior, did not follow required standards of conduct, and gave false information.	<u>Employee #1</u> <ul style="list-style-type: none"> • Truthfulness – Sustained • Conduct Unbecoming an Officer – Sustained • Policy/Procedure – Sustained 	200	161
10 (IA2014-125)	Complainant was concerned about whether BPD would maintain awareness of a patron who harassed complainant.	<u>BART Police Department</u> <ul style="list-style-type: none"> • Service Review¹¹ 	178	139
11 (IA2014-129)	Unidentified officer was rude to complainant.	<u>Unidentified Officer #1</u> <ul style="list-style-type: none"> • Courtesy – Not Sustained 	210	171
12 (IA2014-131)	Officers did not act in response to complainant's report of a crime and exhibited unprofessional behavior.	<u>Officers #1-2</u> <ul style="list-style-type: none"> • Performance of Duty – Unfounded • Conduct Unbecoming an Officer – Unfounded 	175	136
13 (IA2014-132)	Officer exhibited unprofessional behavior toward complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded 	168	129
14 (IA2014-133)	Complainant was concerned about BPD's method of parking enforcement.	<u>BART Police Department</u> <ul style="list-style-type: none"> • Service Review 	178	139

15 (IA2015-011)	Complainant was concerned about BPD's treatment of homeless individuals.	<u>BART Police Department</u> • Service Review	66	26
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*The involved member in this case is a volunteer with BPD.

During the month of March 2015, 5 Informal Complaints were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2015-004)	Officer exhibited unprofessional behavior toward complainant.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral ¹²	84	51
2 (IA2015-013)	Officer's response to complainant's call for service was insufficient.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral	59	20
3 (IA2015-016)	Officer was disinterested in complainant's report of a crime.	<u>Officer #1</u> • Policy/Procedure – Supervisory Referral	49	21
4 (IA2015-018)	Officers exhibited unprofessional behavior toward complainant.	<u>Officers #1-2</u> • Conduct Unbecoming an Officer – Supervisory Referral	21	4
5 (IA2015-023)	Officer was driving patrol vehicle in an inappropriate manner.	<u>Officer #1</u> • Policy/Procedure – Supervisory Referral	20	1

During the month of March 2015, 2 Administrative Investigations were completed by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2014-019)*	Officer gave false information and completed an inaccurate report.	<u>Officer #1</u> • Truthfulness – Sustained • Policy/Procedure – Sustained	432	412
2 (IA2014-097)	Officer exhibited unprofessional behavior.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Sustained	260	240

*The statute of limitations with regard to this investigation was tolled for a substantial amount of time because the subject officer was on extended leave during the course of the investigation. The subject officer subsequently retired prior to the completion of the investigation.

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BPD

During the month of March 2015, BART PD 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 improperly identified the violation alleged by complainant.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
2	Employee was discourteous to complainant.	<u>Employee #1</u> • Courtesy	<u>Employee #1</u> Oral Counseling
3	Officer did not report the use of force as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
4	Officer failed to take appropriate action in response to another officer's inappropriate statements made to a detainee.	<u>Officer #1</u> • Supervision	<u>Officer #1</u> Informal Counseling

5	Officer gave false information and completed an inaccurate report.	<u>Officer #1</u> • Truthfulness • Policy/Procedure	<u>Officer #1</u> <i>No action taken – Subject officer retired prior to issuance of discipline.</i>
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Additional Notes

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 BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with BPD’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	11
Complainant-Initiated Appeals	1
Investigations Being Monitored	12
Investigations Reviewed During Current Month	33*

*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 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 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 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 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.

¹⁰ 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).

¹¹ A service review refers to an instance when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.

¹² 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.