



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

March 2019

Issue date: April 8, 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 **March 1, 2019 through March 31, 2019.**¹

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 ²	Open Cases ³	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
March 2018	6	35	1	0	0
April 2018	13	49	0	0	0
May 2018	6	51	1	0	0
June 2018	10	56	0	0	0
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

TYPES OF CASES FILED

Citizen Complaints (Formal)	5
Informal Complaints ⁷	4
Administrative Investigations	1
Inquiries ⁸	4
TOTAL	14

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	4
BART Police Department	1
TOTAL	5

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During March 2019, **4 Citizen Complaints** were received by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #19-10) (IA2019-034)	Officer #1: <ul style="list-style-type: none"> • Force • Policy/Procedure • Conduct Unbecoming an Officer 	OIPA initiated an investigation.	26
2 (OIPA #19-11) (IA2019-036)	Officer #1: <ul style="list-style-type: none"> • Force • Policy/Procedure • Arrest or Detention 	OIPA initiated an investigation.	21
3 (OIPA #19-12) (IA2019-037)	Officer #1: <ul style="list-style-type: none"> • Performance of Duty 	OIPA notified BPD, which initiated an investigation.	21
4 (OIPA #19-13) (IA2019-041)	Officer #1: <ul style="list-style-type: none"> • Force • Policy/Procedure 	OIPA initiated an investigation.	13

During March 2019, **1 Citizen Complaint (Formal)** was received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2019-039)	Employee #1: <ul style="list-style-type: none"> • Conduct Unbecoming 	BPD initiated an investigation.	17

During March 2019, **4 Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2019-029)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated a Supervisor Referral. ¹⁰	31
2 (IA2019-030)	Officers #1-2: <ul style="list-style-type: none"> • Policy/Procedure 	BPD initiated a Supervisor Referral.	30
3 (IA2019-035)	Employee #1: <ul style="list-style-type: none"> • Conduct Unbecoming 	BPD initiated a Supervisor Referral.	26
4 (IA2019-040)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated a Supervisor Referral.	12

During March 2019, **1 Administrative Investigation** was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2019-042)	Officer #1: <ul style="list-style-type: none"> • Performance of Duty • Policy/Procedure • Conduct Unbecoming an Officer 	BPD initiated an investigation.	10

Also during the month of March 2019, BPD classified each of the following intakes as an **Inquiry** and administratively closed the complaints: #IA2019-031 (after determining that the complaint was based on a misunderstanding), #IA2019-032 (after determining that no BPD personnel were involved), #IA2019-033 (after the complainant withdrew the complaint).¹¹

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During March 2019, **1 Citizen Complaint (Formal)** was initiated by BPD but not previously reported:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2019-019)	Officers #1-2: <ul style="list-style-type: none"> • Force Officer #2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	52

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During March 2019, **1 Citizen Complaint Investigation** was concluded by OIPA:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (OIPA #18-38) (IA2018-084)*	One officer improperly detained a subject, used profane language, and failed to properly document a law enforcement contact, and two officers used excessive or unnecessary force during arrest.	Officers #1-2: <ul style="list-style-type: none"> • Force – Exonerated Officer #2: <ul style="list-style-type: none"> • Arrest/Detention – Exonerated • Conduct Unbecoming an Officer – Sustained • Policy/Procedure (AXON Camera) – Sustained 	192	158

* This case remains listed as open for the BPD Internal Affairs pending presentation of the OIPA investigative findings to the BART Police Citizen Review Board and transmission of findings to the BPD Chief.

During March 2019, **9 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 (IA2018-027)	One employee requested proof of payment based on complainant's race and one employee mocked a patron during a contact.	Employee #1: <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded Employee #1: <ul style="list-style-type: none"> • Conduct Unbecoming – Sustained 	353	320
2 (IA2018-035)	Officer detained complainant based on race, grabbed complainant, and was rude and unprofessional during the contact.	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded 	343	308
3 (IA2018-044)	Officer failed to provide sufficient protection after being called for service and officer improperly inquired whether complainant was mentally disabled or intoxicated.	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Supervisor Referral 	304	286
4 (IA2018-054)	Officers threatened and intimidated complainant.	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained 	272	253
5 (IA2018-064)	Officer used unnecessary force during a detention, used insulting language, and failed to properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Force – Unfounded • Courtesy – Sustained • Policy/Procedure (AXON Camera – Sustained 	241	210
6 (IA2018-066)	Officer observed complainant with heightened scrutiny because of complainant's race.	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded 	241	213
7 (IA2018-079)	Officer was rude to complainant and improperly placed complainant on a psychiatric hold.	Officer #1: <ul style="list-style-type: none"> • Performance of Duty – Exonerated • Conduct Unbecoming an Officer – Unfounded 	228	214

8 (IA2019-004)	Officers improperly detained complainant used excessive force, and damaged complainant's property.	Officers #1-4: • Conduct Unbecoming an Officer – Administratively Closed	91	72
9 (IA2019-011)	Employees improperly requested proof of payment from subject.	Employees #1-2: • Conduct Unbecoming an Officer – Unfounded	94	81

During March 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 (IA2019-002)	Officers and employee did not respond appropriately to a call for service	Officers #1-2: • Performance of Duty – Supervisor Referral Employee #1: • Performance of Duty – Supervisor Referral	91	59
2 (IA2019-029)	Officer inappropriately invaded complainant's personal space.	Officer #1: • Conduct Unbecoming an Officer – Administratively Closed	31	1
3 (IA2019-030)	Officers recklessly operated patrol vehicle.	Officers #1-2: • Policy/Procedure – Supervisor Referral	30	22
4 (IA2019-018)	Officer recklessly operated patrol vehicle.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	31	3
5 (IA2019-022)	Employee was rude to complainant and refused to provide identification.	Employee #1: • Conduct Unbecoming – Supervisor Referral	25	6
6 (IA2019-023)	Officer did not take appropriate enforcement action during a call for service.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	25	6

During February 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 (IA2018-063)	Officer created a hostile work environment by making an inappropriate statement regarding race.	Officer #1: • Racial Animus – Sustained	214	197

Also during the month of March 2019, BPD classified case #IA2019-028, received in February 2019, as an **Inquiry** and Administratively Closed the investigation:

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING PREVIOUS REPORTING PERIODS

During February 2019, **1 Citizen Complaint (Formal)** was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2016-071)	Officers improperly detained subjects, used excessive force during an arrest, and did so based on race. Officers failed to identify themselves as requested.	Officers #1-4: <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer – Unfounded Officer #1: <ul style="list-style-type: none"> • Force – Exonerated Officer #2: <ul style="list-style-type: none"> • Force – Sustained 	983	944 [†]

During February 2018, **1 Informal Complaint** was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2019-027)	Officer was verbally aggressive during a contact.	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Supervisor Referral 	41	2

[†] This investigation was tolled for an extended period of time pending litigation (642 days from January 18, 2017 through October 22, 2018).

DISCIPLINE ISSUED DURING REPORTING PERIOD

During March 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	Employee failed to provide identification upon request.	Employee #1: • Conduct Unbecoming	Employee #1: • Oral Counseling
2	Officers failed to properly document a law enforcement contact.	Officers #1-2: • Policy/Procedure (AXON Camera) Officer #2: • Arrest or Detention	Officer #1: • Written Reprimand Officer #2: • Non-Documented
3	Employee did not respond appropriately to a call for service.	Employee #1: • Performance of Duty	Employee #1: • Non-Documented
4	Officers failed to properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Employee #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 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	8
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	26
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.

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.¹²

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.

¹⁰ 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.

¹¹ 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.

¹² 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.