



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

March 2021

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Issue date: April 12, 2021

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, 2021 through March 31, 2021**.<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 (IAB)).*

## QUANTITATIVE REPORT

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	Investigations Resolved	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
March 2020	9	54	11	1	0	0
April 2020	6	44	18	1	1	0
May 2020	4	40	6	1	0	0
June 2020	7	44	4	0	0	0
July 2020	1	41	3	1	0	0
August 2020	9	43	5	1	0	0
September 2020	10	45	8	1	0	0
October 2020	10	48	9	2	0	0
November 2020	11	51	7	2	0	0
December 2020	7	55	4	1	0	0
January 2021	8	61	5	2	0	0
February 2021	5	61	4	1	0	0
March 2021	7	61	7	0	0	0

## TYPES OF CASES FILED

Citizen Complaints (Formal)	5
Informal Complaints <sup>7</sup>	2
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>7</b>

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

OIPA	0
BART Police Department	5
<b>TOTAL</b>	<b>5</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During March 2021, **5 Citizen Complaints (Formal)** were received by BPD:

(IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-014)	Officer #1: • Force	BPD initiated an investigation.	42
2 (IA2021-015)	Officers #1-3: • Bias-Based Policing	BPD initiated an investigation.	42
3 (IA2021-017)	Officer #1: • Force	BPD initiated an investigation.	29
4 (IA2021-018)	Officer #1: • Force	BPD initiated an investigation.	27
5 (IA2021-020)	Officer #1: • Force	BPD initiated an investigation.	13

During March 2021, **2 Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2021-016)	Officer #1: • Performance of Duty	BPD initiated a Supervisor Referral. <sup>10</sup>	40
2 (IA2021-019)	Employee #1: • Conduct Unbecoming	BPD initiated an investigation.	24

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During March 2021, **4 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 (IA2018-043)	Officers improperly contacted complainant based on complainant's race and used excessive force during the detention and arrest.	Officers #1-2: • Force – Exonerated • Bias-Based Policing – Unfounded  Officer #2: • Conduct Unbecoming an Officer – Exonerated	1041	281*
2 (IA2020-039)	Employee did not systematically enforce the BART Proof of Payment Ordinance.	Employee #1: • Performance of Duty – Not Sustained	333	300
3 (IA2020-050)	Officers improperly detained complainant and used excessive force during the detention and arrest.	Officers #1-2: • Force – Exonerated • Arrest/Detention – Exonerated  Employee #1: • Force – Exonerated • Arrest/Detention – Exonerated	238	220
4 (IA2020-095)	Employee did not properly route a call for service and was unfamiliar with BPD policy.	Employee #1: • Performance of Duty – Supervisor Referral • Conduct Unbecoming – Supervisor Referral	104	84

During March 2021, **2 Informal Complaints** were concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2020-093)	Officer operated a BPD vehicle in an unsafe manner.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	115	96
2 (IA2021-016)	Officer requested unnecessary personal information from complainant.	Officer #1: • Performance of Duty – Supervisor Referral	40	12

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\* This investigation was tolled for 741 days due to litigation related to the contact.

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING PREVIOUS REPORTING PERIODS

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

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #20-14) (IA2020-026) <sup>†</sup>	Officer used excessive force during a contact and inappropriately threatened to use additional force. Two officers failed to properly document a law enforcement contact.	Officers #1-2: • Bias-Based Policing – Not Sustained • Arrest/Detention – Exonerated	250	218

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During March 2021, BPD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s) <sup>‡</sup>	Classification of Sustained Allegation(s)	Action Taken
1	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion <sup>11</sup>
2	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion
3	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion
4	Officers did not properly document a law enforcement contact.	Officers #1-2: • Policy/Procedure (AXON Camera)	Officers #1-2: • Letter of Discussion

<sup>†</sup>This complaint remained on the list of open investigations in the IAB database pending presentation of the OIPA investigative report to the BART Police Citizen Review Board in closed session. The chart on page 2 of this report has been updated to reflect the February 2021 completion.

<sup>‡</sup>Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

## 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	5
Complainant-Initiated Appeals	1
BPD-Initiated Appeals	0
Investigations Being Monitored	62
Investigations Reviewed During Current Month	22†

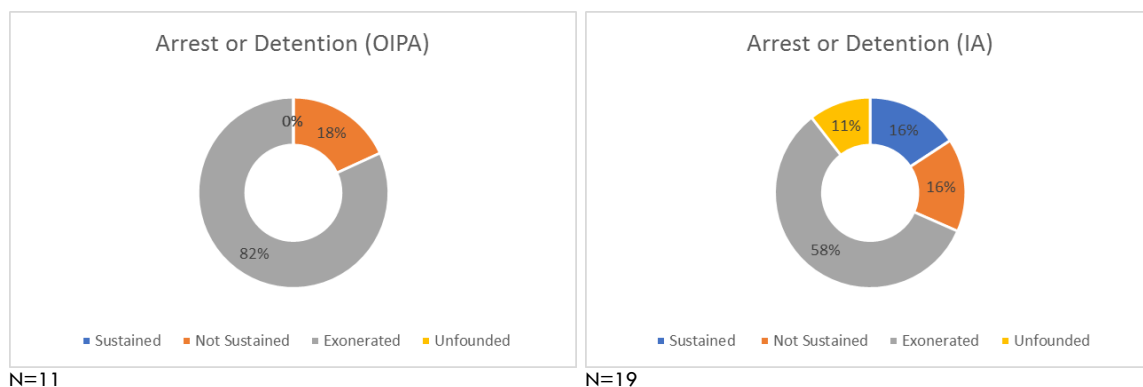
†This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

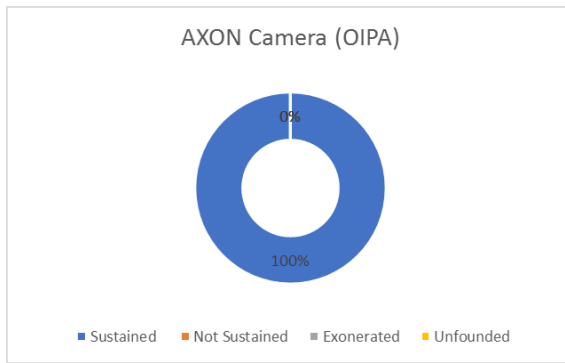
The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is addressed by BPD. The OIPA Monthly Report will reflect information regarding monitored or reviewed cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.<sup>12</sup>

### **Comparison of OIPA and BPD Internal Affairs Outcomes by Allegation**

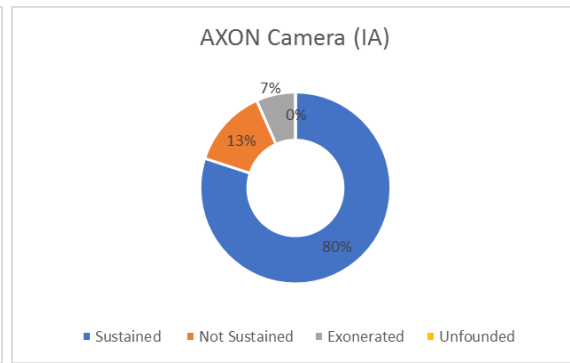
At the request of the BPCRB, OIPA will regularly include data comparisons in graphic form by reporting investigative outcomes for specific misconduct allegations and by displaying outcomes generated by both OIPA and the BPD Office of Internal Affairs.

(Complaints resolved between 1/1/20 and 12/31/20):

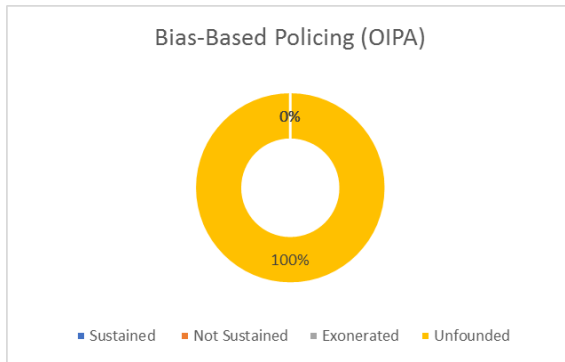




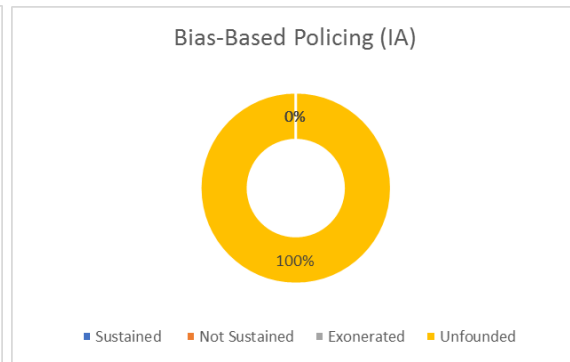
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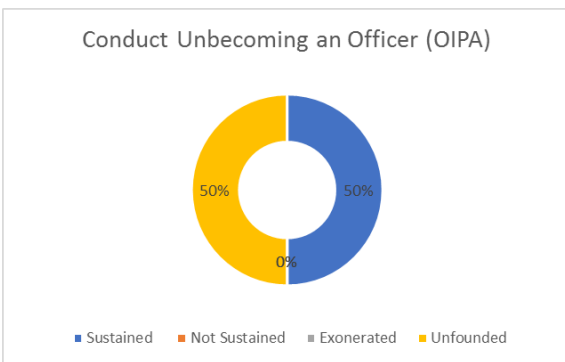
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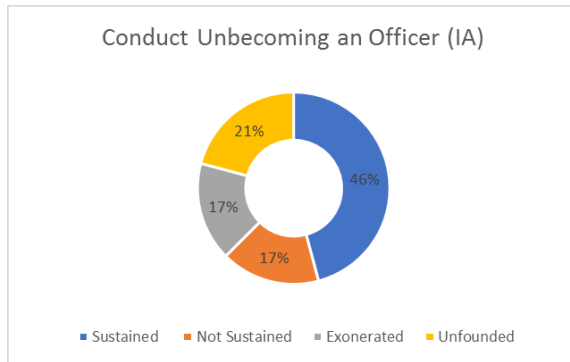
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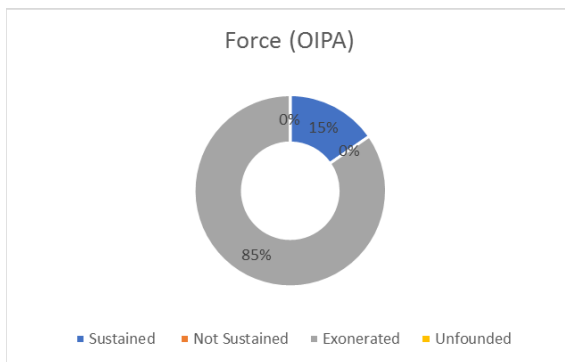
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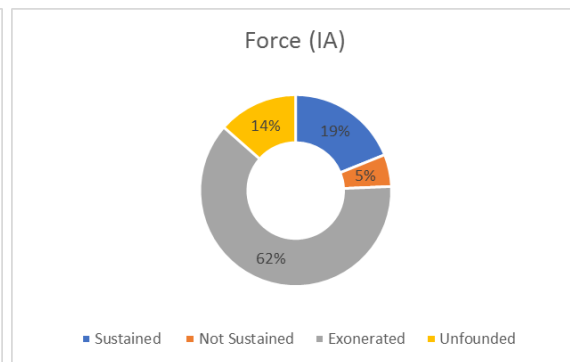
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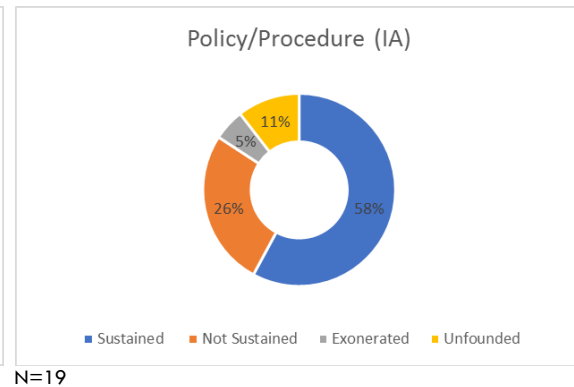
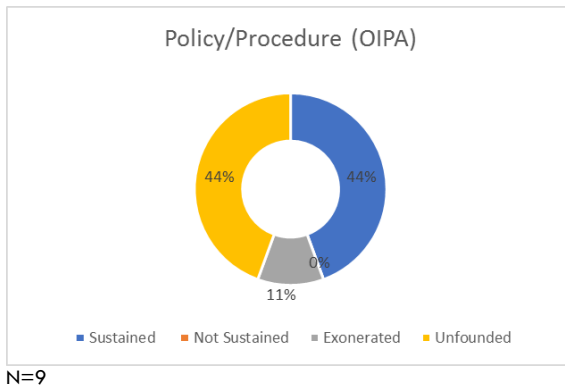
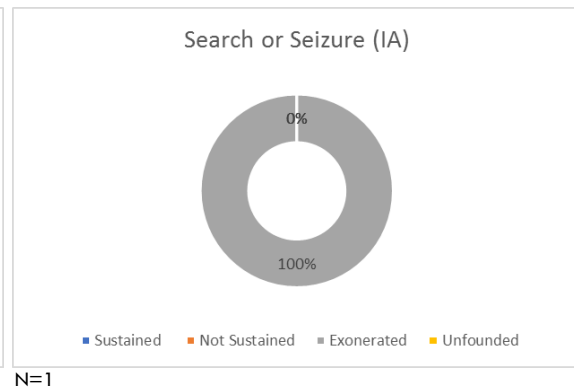
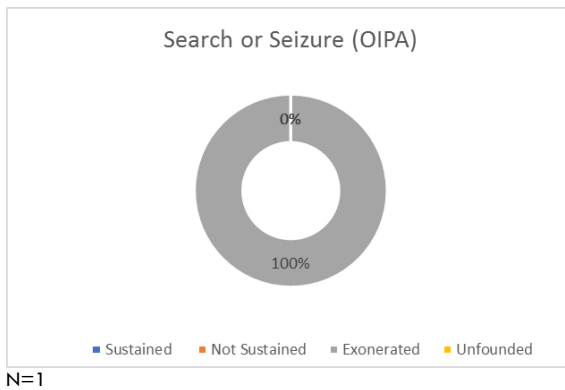
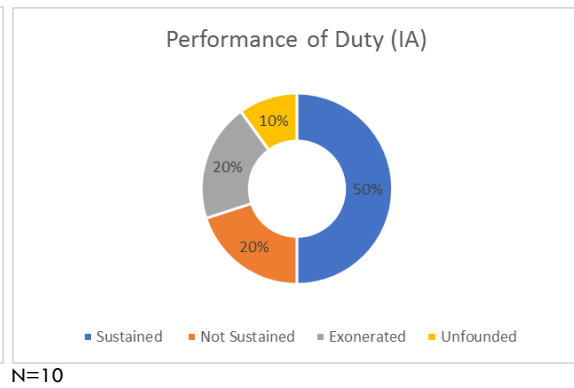
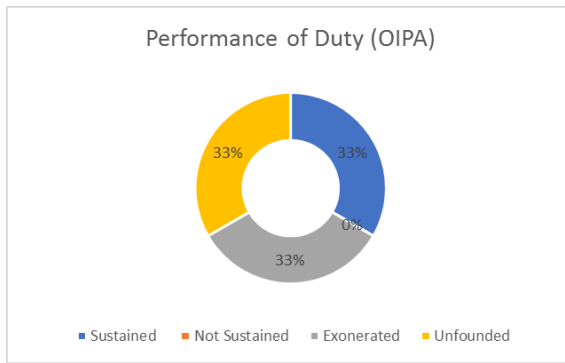
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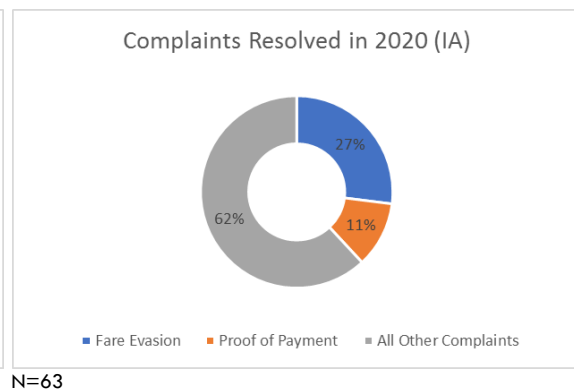
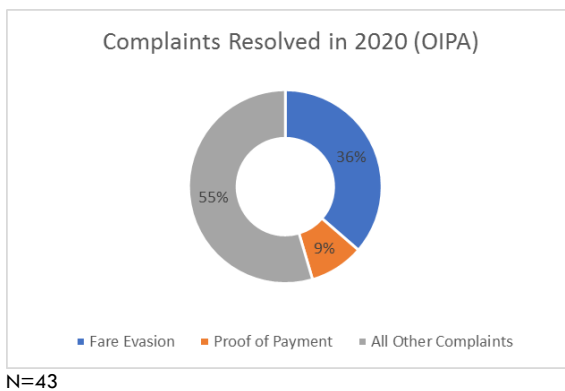
N=13



N=37



The following charts reflect the percentage of resolved allegations that were related to a contact for fare evasion or violation of the BART Proof of Payment Ordinance.





## **BPD Supervisor Use of Force Reports (SUFRs) and OIPA Review of Contacts**

OIPA's review of SUFRs during this reporting period, which are generated as required by BPD Policy 300 (Use of Force), prompted OIPA to recommend review by BPD Command Staff and the Office of Internal Affairs in some instances. OIPA also generated recommendations based on review of contacts that did not include a use of force.

These referrals were related to:

- Improper application and enforcement of the BART Proof of Payment (PoP) Ordinance
  - Some sworn BPD officers have initiated detentions by asking riders for proof of payment absent reasonable suspicion in violation of Constitutional protections from such detentions
  - This application of the PoP Ordinance does not reflect the systematic approach to enforcement that was proposed by BPD when the BART Board of Directors voted to approve the Ordinance
  - This practice may exacerbate existing racially disparate outcomes by allowing officers to decide whom to detain based solely on the officer's perceptions about who may be using the system without carrying valid proof of payment
    - Assertions that the racially disparate outcomes of contacts related to PoP enforcement mirror those of fare evasion enforcement are undermined by the absence of data and documentation about the subjects of "sweeps" and ejections that do not result in the issuance of a civil citation
  - BPD command staff distributed a new bulletin via email to all BPD personnel advising them of key points and requirements for initiating a lawful detention based on suspected PoP violations
- Late or failed AXON body-worn camera activations
  - Including late activations reported as "timely" by officers and reviewing supervisors
  - In one instance, discipline has yet to be issued in connection with this policy violation despite clear written instructions to the officer's supervising Lieutenant
- Discipline not timely issued as required for an AXON body-worn camera policy violation
  - The progressive discipline system under which the Department operates requires the timely imposition of discipline so that subsequent violations may be appropriately addressed

In response to OIPA's concerns related to the actual and potential policy violations listed above, BPD has committed to examining the quality and scope of training for officers and supervisors while concurrently reviewing specific contacts flagged by OIPA.

OIPA will continue to monitor the efforts of the Department as they implement improvements.

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<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 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.

<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 IAB.

<sup>11</sup> Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

<sup>12</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.