

# Office of the Independent Police Auditor

## Monthly Report

May 2015



June 8, 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 May 1, 2015 through May 31, 2015.<sup>1</sup>

**Quantitative Report**

|                | Number of Cases Filed <sup>2</sup> | Number of Open Cases <sup>3</sup> | Number of OIPA Investigations Concluded <sup>4</sup> | Number of Cases Appealed to OIPA <sup>5</sup> | Number of Cases Appealed by CRB <sup>6</sup> |
|----------------|------------------------------------|-----------------------------------|--|---|--|
| 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  | 1   | 1  |
| April 2015     | 13                                 | 68                                | 2  | 0   | 0  |
| May 2015       | 11*                                | 70                                | 3  | 0   | 0  |

\*This number includes one case that was initiated in a prior reporting period but not previously reported on. It is therefore included in this report.

**Types of Cases Filed**

|                                  |           |
|----------------------------------|-----------|
| Citizen Complaints (Formal)      | 7         |
| Informal Complaints <sup>7</sup> | 4         |
| Administrative Investigations    | 0         |
| <b>TOTAL</b>                     | <b>11</b> |

**Citizen Complaints Received per Department<sup>8</sup>**

|                        |          |
|------------------------|----------|
| OIPA                   | 3        |
| BART Police Department | 4        |
| <b>TOTAL</b>           | <b>7</b> |

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

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

| Complaint #<br>(OIPA Case #)<br>(IA Case #) | Nature of Allegations <sup>9</sup>                | Action Taken   | Number of Days Elapsed<br>Since Complaint Filed <sup>10</sup> |
|---|---|--|---|
| 1<br>(OIPA #15-31)<br>(IA2015-046)          | <u>BART Police Department</u><br>• Service Review | OIPA notified BPD,<br>which initiated an<br>investigation. | 33  |
| 2<br>(OIPA #15-32)<br>(IA2015-045)          | <u>Officer #1</u><br>• Performance of Duty        | OIPA notified BPD,<br>which initiated an<br>investigation. | 32  |

During the month of May 2015, 4 **Citizen Complaints (Formal)** were received by the BART Police Department (BPD):

| Complaint #<br>(IA Case #) | Nature of Allegations                      | Action Taken                       | Number of Days Elapsed<br>Since Complaint Filed |
|----------------------------|--|------------------------------------|---|
| 1<br>(IA2015-040)          | <u>Employee #1</u><br>• Policy/Procedure   | BPD initiated an<br>investigation. | 37  |
| 2<br>(IA2015-047)          | <u>Officers #1-2</u><br>• Force            | BPD initiated an<br>investigation. | 36  |
| 3<br>(IA2015-049)          | <u>Officer #1</u><br>• Performance of Duty | BPD initiated an<br>investigation. | 35  |
| 4<br>(IA2015-051)          | <u>Officer #1</u><br>• Policy/Procedure    | BPD initiated an<br>investigation. | 21  |

During the month of May 2015, 4 **Informal Complaints** were received by BPD:

| Complaint #<br>(IA Case #) | Nature of Allegations   | Action Taken                       | Number of Days Elapsed<br>Since Complaint Filed |
|----------------------------|---|------------------------------------|---|
| 1<br>(IA2015-042)          | <u>Officer #1</u><br>• Policy/Procedure<br>• Conduct Unbecoming an<br>Officer | BPD initiated an<br>investigation. | 32  |
| 2<br>(IA2015-043)          | <u>Officer #1</u><br>• Conduct Unbecoming an<br>Officer                       | BPD initiated an<br>investigation. | 32  |
| 3<br>(IA2015-044)          | <u>Officer #1</u><br>• Conduct Unbecoming an<br>Officer                       | BPD initiated an<br>investigation. | 34  |

|                   |   |                                 |    |
|-------------------|---|---------------------------------|----|
| 4<br>(IA2015-050) | <u>Officer #1</u><br>• Policy/Procedure | BPD initiated an investigation. | 13 |
|-------------------|---|---------------------------------|----|

**Complaints/Investigations Initiated During a Previous Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of April 2015, 1 **Citizen Complaint** was received by OIPA:

| Complaint #<br>(OIPA Case #)<br>(IA Case #) | Nature of Allegations                       | Action Taken   | Number of Days Elapsed<br>Since Complaint Filed |
|---|---|--|---|
| 1<br>(OIPA #15-27)<br>(IA2015-048)          | <u>Employee #1</u><br>• Performance of Duty | OIPA notified BPD, which initiated an investigation. | 40  |

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of May 2015, 3 **Citizen Complaints** were concluded by OIPA:

| Complaint #<br>(OIPA Case #) | Nature of Allegations  | Disposition <sup>11</sup>  | Number of Days Elapsed Since Complaint Filed | Number of Days Taken to Complete Investigation |
|------------------------------|--|--|--|--|
| 1<br>(OIPA #14-67)           | Officers used excessive force when detaining complainant, did not report their use of force, and belittled complainant. One officer did not record incident as required. | <u>Officer #1</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force (Counts 1-2) – Unfounded</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul><br><u>Officer #2</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force (Count 1) – Exonerated</li> <li>• Unnecessary or Excessive Use of Force (Count 2) – Unfounded</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Policy/Procedure (Counts 1-2) – Sustained</li> </ul> | 243  | 208  |
| 2<br>(OIPA #14-73)           | Officer initiated contact with complainant regarding BART fare solely because of complainant’s race.   | <u>Officer #1 (Unidentified)</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Policing – Not Sustained</li> </ul>  | 226  | 194  |

|                     |  |   |     |     |
|---------------------|--|---|-----|-----|
| 3<br>(OIPA #14-74)* | Officers improperly facilitated a citizens' arrest against complainant and did so because of complainant's race. | <u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Policing – Unfounded</li> <li>• Policy/Procedure – Unfounded</li> </ul><br><u>Officers #3-5</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Policing – Unfounded</li> <li>• Policy/Procedure – Exonerated</li> </ul> | 216 | 203 |
|---------------------|--|---|-----|-----|

\* As BPD is also investigating this case, it will not be taken out of the "Number of Open Cases" column in the Quantitative Report on Page 2 until BPD's findings have also been finalized.

During the month of May 2015, 2 **Citizen Complaints (Formal)** were concluded by BPD:

| Complaint #<br>(IA Case #) | Nature of Allegations  | Disposition   | Number of Days Elapsed Since Complaint Filed | Number of Days Taken to Complete Investigation |
|----------------------------|--|---|--|--|
| 1<br>(IA2014-126)          | Officer was unprofessional toward complainant, did not properly investigate a crime in which complainant was victimized, and did not properly dispose of property. | <u>Officer #1</u> <ul style="list-style-type: none"> <li>• Courtesy – Not Sustained</li> <li>• Performance of Duty – Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul> | 236  | 215  |
| 2<br>(IA2014-138)*         | Officer contacted complainant regarding payment of BART fare, but not other patrons, because of complainant's race.  | <u>Officer #1</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Not Sustained</li> </ul>   | 224  | 203  |

\* As OIPA also closed this case during the reporting period, it has been removed from the "Number of Open Cases" column in the Quantitative Report on Page 2 only in order to avoid double-counting.

During the month of May 2015, 6 **Informal Complaints** were addressed by BPD:

| Complaint #<br>(IA Case #) | Nature of Complaint  | Disposition  | Number of Days Elapsed Since Complaint Filed | Number of Days Taken to Address Complaint |
|----------------------------|--|--|--|---|
| 1<br>(IA2015-028)          | Officer improperly detained complainant and did not address other parties who complainant reported as being involved in criminal activity. | <u>Officer #1</u><br><ul style="list-style-type: none"> <li>• Arrest or Detention – Supervisory Referral<sup>12</sup></li> <li>• Performance of Duty – Supervisory Referral</li> </ul> | 66   | 45  |
| 2<br>(IA2015-030)          | Officer did not assist complainant as requested.   | <u>Officer #1</u><br><ul style="list-style-type: none"> <li>• Performance of Duty – Supervisory Referral</li> </ul>  | 53   | 38  |
| 3<br>(IA2015-032)          | Officer unnecessarily issued complainant a citation.   | <u>Officer #1</u><br><ul style="list-style-type: none"> <li>• Arrest or Detention – Supervisory Referral</li> </ul>  | 48   | 28  |
| 4<br>(IA2015-042)          | Officer was using a cellular phone while driving a patrol car.   | <u>Officer #1</u><br><ul style="list-style-type: none"> <li>• Policy/Procedure – Supervisory Referral</li> <li>• Conduct Unbecoming an Officer – Supervisory Referral</li> </ul>       | 32   | 21  |
| 5<br>(IA2015-043)          | Officer did not take complainant seriously when complainant reported a crime.  | <u>Officer #1</u><br><ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Supervisory Referral</li> </ul>  | 32   | 7   |
| 6<br>(IA2015-044)          | Officer was sarcastic toward complainant, who had called for police service.   | <u>Officer #1</u><br><ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Supervisory Referral</li> </ul>  | 34   | 10  |

## Discipline Issued During Reporting Period

### Sustained Allegations/Resulting Action Taken by BPD

During the month of May 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 exhibited unprofessional behavior.                            | <u>Officer #1</u><br>• Conduct Unbecoming an Officer | <u>Officer #1</u><br>Oral Counseling      |
| 2      | Officer did not record incident as required.                          | <u>Officer #1</u><br>• Policy/Procedure              | <u>Officer #1</u><br>Informal Counseling  |
| 3      | Officer exhibited unprofessional behavior.                            | <u>Officer #1</u><br>• Conduct Unbecoming an Officer | <u>Officer #1</u><br>Letter of Discussion |
| 4      | Officer did not correctly apply a policy regarding ridership on BART. | <u>Officer #1</u><br>• Policy/Procedure              | <u>Officer #1</u><br>Informal Counseling  |

### 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               | 7   |
| Complainant-Initiated Appeals                | 1   |
| Investigations Being Monitored               | 10  |
| Investigations Reviewed During Current Month | 20* |

\*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.

<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 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.

<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 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. The 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 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).

<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> 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>9</sup> 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.

<sup>10</sup> 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).

<sup>11</sup> 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) Unfounded – The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated – 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) Sustained – The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained – 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)

<sup>12</sup> 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.