



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

May 2016

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Issue date: June 13, 2016

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 BART Police Citizen Review Board (BPCRB). This report provides information for the period **May 1, 2016 through May 31, 2016**.<sup>1</sup>

## QUANTITATIVE REPORT

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
May 2015	11	70	3	0	0
June 2015	17	75	0	0	0
July 2015	14	73	1	0	0
August 2015	19	75	2	0	0
September 2015	9	78	1	0	0
October 2015	14	79	2	0	0
November 2015	3	72	1	0	0
December 2015	16	78	1	0	0
January 2016	9	64	0	0	0
February 2016	14	63	0	0	0
March 2016	14	67	0	0	0
April 2016	10	63	0	0	0
May 2016	8	62	0	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	7
Informal Complaints <sup>7</sup>	0
Administrative Investigations	1
<b>TOTAL</b>	<b>8</b>

### CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>8</sup>

OIPA	2
BART Police Department	5
<b>TOTAL</b>	<b>7</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During May 2016, 2 **Citizen Complaints** were received by OIPA:

Investigation # (IA Case #)	Nature of Allegations <sup>9</sup>	Action Taken	Days Elapsed Since Complaint Filed <sup>10</sup>
1 (OIPA #16-21) (IA2016-043)	Officer #1: • Conduct Unbecoming an Officer	OIPA notified BPD, which initiated an investigation.	13
2 (OIPA #16-20) (IA2016-046)	Officer #1: • Performance of Duty	OIPA notified BPD, which initiated an investigation.	17

During May 2016, 5 **Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2016-040)	Officer #1: • Bias-Based Policing • Conduct Unbecoming an Officer	BPD initiated an investigation.	18
2 (IA2016-047)	Officer #1: • Performance of Duty • Conduct Unbecoming an Officer	BPD initiated an investigation.	35
3 (IA2016-048)	Employee #1: • Performance of Duty	BPD initiated an investigation.	31
4 (IA2016-049)	Officer #1: • Courtesy • Conduct Unbecoming an Officer	BPD initiated an investigation.	28
5 (IA2016-050)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	39

During May 2016, 1 **Administrative Investigation** was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2016-045)	Officer #1: • Courtesy	BPD initiated an investigation.	39

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During May 2016, **7 Citizen Complaints (Formal)** were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2015-090)	Officers did not provide subject with appropriate medical attention, two officers did not properly investigate a crime and removed money from subject's wallet, one officer was rude to medical staff, and one officer did not properly document the law enforcement contact.	<p>Officers #1-2:</p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer (Count 1) – Unfounded</li> <li>• Performance of Duty (Count 1) – Exonerated</li> </ul> <p>Officer #1:</p> <ul style="list-style-type: none"> <li>• Performance of Duty (Count 2) – Sustained</li> <li>• Conduct Unbecoming an Officer (Count 2) – Sustained</li> </ul> <p>Officer #2:</p> <ul style="list-style-type: none"> <li>• Performance of Duty (Count 2) – Unfounded</li> </ul> <p>Officer #3:</p> <ul style="list-style-type: none"> <li>• Supervision – Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul>	298	274
2 (IA2015-106)	Two officers improperly arrested subject and used excessive force during the arrest. Too many officers were involved in effecting the arrest.	<p>Officers #1-2:</p> <ul style="list-style-type: none"> <li>• Arrest/Detention – Exonerated</li> </ul> <p>Officer #1:</p> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> </ul> <p>Officer #2:</p> <ul style="list-style-type: none"> <li>• Force – Not Sustained</li> </ul> <p>BART Police Department:</p> <ul style="list-style-type: none"> <li>• Policy/Procedure – Exonerated</li> </ul>	251	219
3 (IA2015-110)	Employee used a vehicle to intentionally cut off complainant, and employee verbally berated complainant.	<p>Employee #1:</p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming – Not Sustained</li> <li>• Courtesy – Sustained</li> </ul>	248	206

4 (IA2015-114)	Officer did not properly investigate a crime.	Officer #1: • Performance of Duty – Unfounded	234	206
5 (IA2015-129)	Officer did not properly investigate a crime.	Officer #1: • Performance of Duty – Sustained	210	177
6 (IA2015-130)	Officer improperly arrested complainant.	Officer #1: • Arrest/Detention – Exonerated	203	165

Also during the month of May 2016, BPD classified IA2016-013 as an **Inquiry** and **Administratively Closed** the complaint after the complainant would not provide information necessary to investigate the allegation.<sup>11</sup>

During May 2016, **2 Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complainant	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Address Complaint
1 (IA2016-037)	Officer was dismissive toward complainant.	Officer #1: • Courtesy – Supervisory Referral <sup>12</sup>	59	34
2 (IA2016-044)	Officer improperly arrested complainant.	Officers #1-2: • Arrest/Detention – Supervisory Referral	60	33

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During May 2016, 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	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Counts 1-2)	Officer #1: • Oral Counseling
2	Officer did not properly investigate a crime.	Officer #1: • Performance of Duty	Officer #1: • Letter of Discussion

## 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 conference 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	0
Complainant-Initiated Appeals	0
Investigations Being Monitored	8
Investigations Reviewed During Current Month	19*

\*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 BART Police Citizen Review 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 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> 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.

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<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> 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.

<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.