



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

May 2019

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Issue date: June 10, 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 **May 1, 2019 through May 31, 2019.**<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.**

## 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 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
April 2019	14	57	0	0	0
May 2019	10	56	2	0	0

## TYPES OF CASES FILED

Citizen Complaints (Formal)	8
Informal Complaints <sup>7</sup>	0
Administrative Investigations	2
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>10</b>

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

OIPA	2
BART Police Department	6
<b>TOTAL</b>	<b>8</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During May 2019, **1 Citizen Complaint** was received by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #19-19) (IA2019-060)	Officers #1-2: <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest or Detention</li> <li>• Policy/Procedure (AXON Camera)</li> <li>• Conduct Unbecoming an Officer</li> </ul>	OIPA initiated an investigation.	35

During May 2019, **6 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2019-058)	Employees #1-2: <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	38
2 (IA2019-061)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest or Detention</li> </ul>	BPD initiated an investigation.	30
3 (IA2019-062)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest or Detention</li> </ul>	BPD initiated an investigation.	25
4 (IA2019-064)	Officer #1: <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	19
5 (IA2019-065)	Employee #1: <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> </ul>	BPD initiated an investigation.	18
6 (IA2019-066)	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	33

During May 2019, **2 Administrative Investigations** were initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2019-063)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	25
2 (IA2019-067)	Officer #1: <ul style="list-style-type: none"> <li>• Force</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	25

## COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During April 2019, **1 Citizen Complaint** was received by OIPA but not previously reported:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #19-19) (IA2019-059)	Unknown Officer #1: • Performance of Duty	OIPA notified BPD, which initiated an investigation.	60

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During May 2019, **2 Citizen Complaints (Formal)** were concluded by OIPA:

Complaint # (IA Case #)	Nature of Complaint <sup>10</sup>	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #18-16) (IA2018-032)*	Officer did not properly investigate a reported crime, treated complainant like a suspect, and did so on the basis of complainant's race and/or religion	Officer #1: • Bias-Based Policing – Not Sustained • Performance of Duty – Exonerated • Conduct Unbecoming an Officer – Exonerated	416	406**
2 (OIPA #18-39) (IA2018-085)	One officer improperly detained a subject, one officer inappropriately prevented complainant from assisting detainee, and both officers used excessive force during detention and arrest.	Officer #1: • Conduct Unbecoming an Officer – Exonerated  Officer #2: • Arrest or Detention – Exonerated  Officers #1-2: • Force – Exonerated	255	222

\*This case was deferred to OIPA by BPD and was investigated and completed in May 2019. It remains pending for Internal Affairs prior to presentation of the report to the BART Police Citizen Review Board in closed session at its June 2019 regular meeting.

\*\*The subject officer was on Industrial Injury Leave from BPD from the time the complaint was filed until retirement and was unable to participate in an OIPA interview during the Industrial Injury Leave. The one-year statute of limitations for completing this investigation was tolled for the entire duration of the Leave pursuant to California Government Code §3304 2(E).

During May 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 (IA2018-049)	Officers were rude and unprofessional, failed to identify themselves, did not properly address reported criminal activity, and did not properly document a law enforcement contact.	Officers #1-3: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Performance of Duty – Unfounded</li> <li>• Policy/Procedure (AXON Camera) – Exonerated</li> </ul>	357	332
2 (IA2018-075)	Officers did not properly document a law enforcement contact after telling complainant they would do so.	Officers #1-2: <ul style="list-style-type: none"> <li>• Performance of Duty – Unfounded</li> </ul>	284	273
3 (IA2018-091)	One officer improperly applied ammonia inhalant, one officer improperly searched complainant, and three officers used excessive force during the contact.	Officer #1 <ul style="list-style-type: none"> <li>• Policy/Procedure – Exonerated</li> </ul> Officer #2: <ul style="list-style-type: none"> <li>• Search or Seizure – Exonerated</li> </ul> Officers #1-3: <ul style="list-style-type: none"> <li>• Force – Unfounded</li> </ul>	234	201
4 (IA2018-099)	Officers contacted complainant on the basis of complainant's race and used excessive force during arrest.	Officers #1-2: <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Force – Exonerated</li> </ul>	234	223
5 (IA2018-103)	Officer did not protect victim of alleged crime by arresting subject and improperly deducted funds from subject's fare media card. Two officers did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> </ul> Officers #1-2: <ul style="list-style-type: none"> <li>• Policy/Procedure (AXON Camera) – Sustained</li> </ul>	203	192
6 (IA2018-104)	Officer harassed subject, used unnecessary force during a detention, and did so on the basis of the subject's race.	Unknown Officer #1: <ul style="list-style-type: none"> <li>• Bias-Based Policing – Administratively Closed<sup>11</sup></li> <li>• Force – Administratively Closed</li> <li>• Conduct Unbecoming an Officer – Administratively Closed</li> </ul>	202	191

7 (IA2019-009)	Employee improperly contacted complainant because of complainant's race.	Employee #1: • Bias-Based Policing – Unfounded	138	103
8 (IA2019-020)	Employee improperly contacted complainant because of complainant's race and stood intimidatingly over complainant during contact.	Employee #1: • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded	110	76
9 (IA2019-048)	Officers improperly instructed complainant to stop video recording a law enforcement contact.	Officers #1-2: • Policy/Procedure (Conduct) – Administratively Closed	65	34

During May 2019, **1 Informal Complaint** was addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2019-049)	Officer improperly grabbed complainant.	Officer #1: • Conduct Unbecoming an Officer – Supervisory Referral	59	29

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING PREVIOUS REPORTING PERIODS

During April 2019, **1 Informal Complaint** was addressed by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2019-051)	Two employees used profanity during a personal conversation which was overheard by complainant and one officer improperly defended the conduct of the two employees.	Employees #1-2: • Conduct Unbecoming – Supervisor Referral  Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	56	1

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During May 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	Officer failed to properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion
2	Officers failed to properly document a law enforcement contact.	Officers #1-2: • Policy/Procedure (AXON Camera)	Officers #1-2: • Letter of Discussion
3	Officer failed to properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion
4	Officer failed to properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #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	19
Investigations Reviewed During Current Month	20 <sup>†</sup>

<sup>†</sup>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.<sup>12</sup>

<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.

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<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> The Nature of Complaint section is intended to reflect as accurately as possible the specific allegations of misconduct or policy violations as conveyed by the complainant. The Nature of Complaint is not intended to indicate that the subject officer did, in fact, engage in the alleged conduct.

<sup>11</sup> Administrative Closure is defined as follows in the BPD Policy Manual: 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> 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.