



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

May 2021

Issue date: July 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 **May 1, 2021 through May 31, 2021**.¹ (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 ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
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
April 2021	13	65*	9	1	0	0
May 2021	9	69	4	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	6
Informal Complaints ⁷	0
Administrative Investigations	3
Inquiries ⁸	0
TOTAL	9

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	1
BART Police Department	6
TOTAL	7†

* This total included one investigation that was completed by OIPA in April 2021 and endorsed by majority vote of the BART Police Citizen Review Board on April 12, 2021. The Chief conveyed his decision not to appeal the findings on May 27, 2021 and the case was then removed from the list of open investigations.

† OIPA and BPD received multiple complaints about a single incident that was publicized on the internet. BPD deferred the investigation to OIPA resulting in a total of 6 investigations initiated during the reporting period.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During May 2021, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #21-10) (IA2021-043)	Officers #1-2: • Force • Arrest or Detention	OIPA initiated an investigation.	46

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

(IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-035)	Officers #1-4: • Force	BPD initiated an investigation.	67
2 (IA2021-038)	Officer #1: • Arrest or Detention • Conduct Unbecoming an Officer	BPD initiated an investigation.	60
3 (IA2021-041)	Officer #1: • Bias-Based Policing	BPD initiated an investigation.	50
4 (IA2021-042)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	50
5 (IA2021-044)	Officers #1-3: • Bias-Based Policing	BPD initiated a Supervisor Referral.	45

During May 2021, **1 Administrative Investigation** was initiated by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2021-037)	Officer #1: • Force	BPD initiated an investigation.	62

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During April 2021, **2 Administrative Investigations** were initiated by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-039)	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) • Performance of Duty • Conduct Unbecoming an Officer 	BPD initiated an investigation.	82
2 (IA2021-034)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	81

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During May 2021, **1 Appeal** was concluded by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Appeal Filed	Days Taken to Complete Investigation
1 (OIPA #20-20) (IA2014-123)	Officer included false information in a written report.	Officer #1: <ul style="list-style-type: none"> • Truthfulness – Not Sustained 	387	319

During May 2021, **3 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 (IA2020-042)	Officers improperly detained complainant based on complainant's race, used excessive force during the detention, and were not appropriately sympathetic to complainant.	Officers #1-2: <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Force – Exonerated Officers #2-3: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded 	404	352
2 (IA2020-046)	Officer improperly contacted complainant based on complainant's race and was condescending during the contact.	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing – Not Sustained • Conduct Unbecoming an Officer – Not Sustained 	399	347

3 (IA2020-037)	Officer improperly contacted complainant based on complainant's race and harassed complainant.	Officer #1: • Bias-Based Policing – Administratively Closed • Conduct Unbecoming an Officer – Administratively Closed	395	335
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During May 2021, **1 Informal Complaint** was concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2021-019)	Employee did not properly respond to complainant's request for service. [‡]	Employee #1: • Conduct Unbecoming – Supervisor Referral. ¹⁰	115	46

DISCIPLINE ISSUED DURING REPORTING PERIOD

During May 2021, 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 (AXON Camera)	Officer #1: • Letter of Discussion ¹¹
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: • Oral Counseling

[‡] BPD documented that the complainant in this case "...wanted to make a complaint against [the BPD employee]" but also noted that the complainant did not want an investigation to ensue. Internal Affairs defined the communication as a "Comment of Non-Complaint," which is applicable when the reporting party expressly states that they do not want to make a complaint. In this instance, the reporting party requested that the matter be resolved via Supervisor Referral.

§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	8
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	63
Investigations Reviewed During Current Month	11†

†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 generated one recommendation for an adjustment to the IAPro database to more accurately reflect specific allegations lodged by a complainant.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 IAB.

¹¹ 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)

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.