

Office of the Independent Police Auditor

Monthly Report

May 2013



June 10, 2013

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, 2013 through May 31, 2013.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
May 2012	10	54	0	0	0
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0
August 2012	13	60	0	0	0
September 2012	8	57	1	0	0
October 2012	9	49	0	0	0
November 2012	17	57	0	0	0
December 2012	12	52	2	0	0
January 2013	6	49	0	1	0
February 2013	9	46	0	0	0
March 2013	10	46	1	0	0
April 2013	11	49	1	1	0
May 2013	7	44	0	2	0

Types of Cases Filed/Re-opened

Citizen Complaints	5
Administrative Investigations	1
Comments of Non-Complaint	1
TOTAL	7

Citizen Complaints Received/Re-opened per Department

OIPA	2
BART Police Department	3
TOTAL	5

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of May 2013, 2 Citizen Complaints were received by OIPA:

Complaint # (IA Case #)	Nature of Allegations ⁷	Action Taken	Number of Days Elapsed Since Complaint Filed ⁸
1 (IA2013-038) OIPA #13-26	<u>Police Officer #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	26
2 (IA2013-037) OIPA #13-24	<u>Police Officer #1</u> • Courtesy • Conduct Unbecoming an Officer • Force	BART PD initiated an investigation.	33

During the month of May 2013, 3 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-042)	<u>Police Officer #1</u> • Force <u>Police Officer #2</u> • Force	BART PD initiated an investigation.	11
2 (IA2013-041)	<u>Police Officer #1</u> • Conduct Unbecoming an Officer <u>Police Officer #2</u> • Performance of Duty • Conduct Unbecoming an Officer	BART PD initiated an investigation.	17
3 (IA2013-039)	<u>Police Officer #1</u> • Performance of Duty • Conduct unbecoming an Officer	BART PD initiated an investigation.	20

During the month of May 2013, 1 Administrative Investigation was initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2013-040)	<u>Police Officer #1</u> • Policy/Procedure <u>Police Officer #2</u> • Policy/Procedure	BART PD initiated an investigation.	18

During the month of May 2013, 1 Comment of Non-Complaint was received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2013-036)	<u>Police Officer #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	39

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of May 2013, 11 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-034)	Officer acted inappropriately by honking horn at complainant and photographing her car.	<u>Unidentified Officer #1</u> • Conduct Unbecoming an Officer – Unfounded	62	24

2 (IA2013-033)	BART employee was discourteous when complainant asked for assistance with parking payment.	<u>Unidentified Officer #1</u> • Courtesy – Unfounded ⁹	66	28
3 (IA2013-024)	BART PD employee is tracking complainant through her cell phone, following her, and invading her privacy.	<u>Unidentified Officer #1</u> • Conduct Unbecoming an Officer – Unfounded ¹⁰	86	74
4 (IA2013-003)	Officers falsely detained complainant, threatened him with force, and had an inappropriate attitude.	<u>Police Officer #1</u> • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer – Unfounded • Courtesy – Unfounded <u>Police Officer #2</u> • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer – Unfounded • Courtesy – Unfounded <u>Police Officer #3</u> • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer – Unfounded • Courtesy – Unfounded	145	132
5 (IA2012-116)	Officer yelled at complainant and treated her poorly while taking her report of a crime.	<u>Police Officer #1</u> • Conduct Unbecoming an Officer – Unfounded • Courtesy – Unfounded	172	134
6 (IA2012-101)	Officer racially profiled complainant and improperly detained him for fare evasion.	<u>Police Officer #1</u> • Arrest or Detention – Exonerated • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded	205	194

7 (IA2012-091)	Officer tailgated complainant and drove erratically.	<u>Police Officer #1</u> • Conduct Unbecoming an Officer – Not Sustained	227	187
8 (IA2012-090)	Officer used excessive force by punching a subject while taking him into custody.	<u>Police Officer #1</u> • Force – Exonerated	227	201
9 (IA2012-086)	Officer targeted complainant for no reason, used excessive force by choking him, and was unprofessional.	<u>Police Officer #1</u> • Force – Unfounded • Bias-based Policing – Unfounded • Courtesy – Unfounded	231	191
10 (IA2012-081)	Officers detained complainant due to his race.	<u>Police Officer #1</u> • Bias-based Policing – Unfounded <u>Police Officer #2</u> • Bias-based Policing – Unfounded	268	228
11 (IA2012-003) ¹¹	Officers failed to pursue individuals who had battered the complainant, laughed at the complainant, and failed to make a restroom facility available to the complainant.	<u>Police Officer #1</u> • Neglect of Duty – Unfounded • Policy/ Procedure – Exonerated • Conduct Unbecoming an Officer – Not Sustained <u>Police Officer #2</u> • Neglect of Duty – Unfounded • Policy/ Procedure – Exonerated • Conduct Unbecoming an Officer – Not Sustained	525	485

		<p><u>Police Officer #3</u></p> <ul style="list-style-type: none"> • Neglect of Duty – Unfounded • Policy/ Procedure – Exonerated • Conduct Unbecoming an Officer – Not Sustained <p><u>Police Officer #4</u></p> <ul style="list-style-type: none"> • Neglect of Duty – Unfounded • Conduct Unbecoming an Officer – Unfounded • Conduct Unbecoming an Officer – Not Sustained <p><u>Police Officer #5</u></p> <ul style="list-style-type: none"> • Neglect of Duty – Unfounded • Policy/ Procedure – Exonerated • Conduct Unbecoming an Officer – Not Sustained <p><u>Police Officer #6</u></p> <ul style="list-style-type: none"> • Neglect of Duty – Unfounded • Policy/ Procedure – Exonerated • Conduct Unbecoming an Officer – Not Sustained 		
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		<p><u>Civilian Employee #1</u></p> <ul style="list-style-type: none"> • Neglect of Duty – Unfounded • Policy/ Procedure – Exonerated • Conduct Unbecoming an Officer – Not Sustained <p><u>Civilian Employee #2</u></p> <ul style="list-style-type: none"> • Neglect of Duty – Unfounded • Policy/ Procedure – Exonerated • Conduct Unbecoming an Officer – Not Sustained <p><u>Civilian Employee #3</u></p> <ul style="list-style-type: none"> • Neglect of Duty – Unfounded • Policy/ Procedure – Exonerated • Conduct Unbecoming an Officer – Not Sustained <p><u>Civilian Employee #4</u></p> <ul style="list-style-type: none"> • Neglect of Duty – Unfounded • Policy/ Procedure – Exonerated • Conduct Unbecoming an Officer – Not Sustained 		
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During the month of May 2013, 1 Comment of Non-Complaint was addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2013-036)	Officer was observed talking on his cellular phone while driving a marked patrol car.	Supervisory Referral ¹²	39	20

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 the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department’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	1
Complainant-Initiated Appeals	3
Investigations Being Monitored	10
Investigations Reviewed During Current Month	26*

*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.

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 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.

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 what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)). Finally, this total 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), Comments of Non-Complaint, 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 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. The 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 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).

⁷ 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.

⁸ 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).

⁹ The allegation in this case was determined to be Unfounded against any BART Police Department officers as the complainant indicated, after the investigation had commenced, that the accused was not a police department employee.

¹⁰ The allegation in this case was determined to be Unfounded against any BART Police Department officers as the complainant indicated, after the investigation had commenced, that the accused was not a police department employee.

¹¹ It is noted that the initial IA investigation into this case was concluded on March 29, 2012 and was reported on in the April 2012 series of these monthly reports. However, at the request of OIPA, IA subsequently reopened the case and conducted further investigation. The dates shown here reflect the reclosing of the investigation, and therefore account for the total aggregate time elapsed from the initiation of the complaint to the completion of the subsequent investigation.

¹² A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.