

Office of the Independent Police Auditor

Monthly Report

November 2015



December 14, 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 BART Police Citizen Review Board. This report provides information for the period November 1, 2015 through November 30, 2015.¹

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 BPCRB ⁶
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	0	1
April 2015	13	68	2	0	0
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

Types of Cases Filed

Citizen Complaints (Formal)	3
Informal Complaints ⁷	0
Administrative Investigations	0
TOTAL	3

Citizen Complaints Received per Department⁸

OIPA	0
BART Police Department	3
TOTAL	3

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of November 2015, 3 **Citizen Complaints (Formal)** were received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-122)	<u>Officer #1</u> • Bias-Based Policing	BPD initiated an investigation.	26
2 (IA2015-120)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	31
3 (IA2015-118)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	41

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of November 2015, 1 **Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Allegations	Disposition ⁹	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #15-44)*	Officers improperly detained subject on the basis of race and were rude toward subject.	<u>Officers #1-2</u> • Racial Profiling/Bias-Based Profiling – Unfounded • Courtesy – Unfounded	158	138

*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 November 2015, 8 **Citizen Complaints (Formal)** were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2015-045)	Officer cited complainant after inducing complainant to violate traffic law.	<u>Officer #1</u> • Arrest or Detention – Unfounded	220	192
2 (IA2015-036)	One officer did not properly investigate crime. Other officer did not sufficiently supervise subordinate officer.	<u>Officer #1</u> • Performance of Duty (Counts 1-2) – Sustained <u>Officer #2</u> • Performance of Duty – Sustained	229	198
3 (IA2015-041)	Officer was driving erratically.	<u>Officer #1</u> • Policy/Procedure – Exonerated	230	207
4 (IA2015-065)	Officer conspired to extort vendors and used or excessive force against complainant.	<u>Officer #1</u> • Force – Unfounded • Conduct Unbecoming an Officer – Unfounded	240	217
5 (IA2015-027)	Officers detained complainant without cause and used excessive force when doing so.	<u>Officer #1</u> • Arrest or Detention – Exonerated • Force (Count 1) – Exonerated • Force (Counts 2-4) – Unfounded <u>Officer #2</u> • Force (Count 1) – Exonerated • Force (Counts 2-3) – Unfounded	284	246
6 (IA2015-006)	Employee threatened to harm complainant.	<u>Employee #1</u> • Conduct Unbecoming an Officer – Not Sustained	324	286

7 (IA2014-156)	Officers and employee did not appropriately respond to complainant's request for service.	<u>Officers #1-2</u> <ul style="list-style-type: none"> • Performance of Duty – Sustained <u>Employee #1</u> <ul style="list-style-type: none"> • Performance of Duty – Sustained 	364	333
8 (IA2015-031)*	Officer was discourteous, did not take sufficient action in response to a call for service, and did not take action on the basis of race.	<u>Officer #1</u> <ul style="list-style-type: none"> • Courtesy – Unfounded • Bias-Based Policing – Not Sustained • Performance of Duty – Unfounded 	238	219

*As OIPA 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 OIPA's findings have also been finalized.

During the month of November 2015, 2 **Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2015-107)	Officers unnecessarily cited complainant.	<u>Officers #1-2</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Supervisory Referral¹⁰ 	75	55
2 (IA2015-099)	Officer intentionally intimidated complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Supervisory Referral 	110	85

During the month of November 2015, 1 **Administrative Investigation** was completed by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2015-067)	Officers targeted subject for law enforcement contact based on ethnicity.	<u>Officers #1-2</u> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded 	186	155

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BPD

During the month of November 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 used poor decision-making during arrest of complainant, acted unprofessionally, did not maintain proper focus on a detainee, and did not document incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> • Policy/Procedure • Conduct Unbecoming an Officer • Performance of Duty 	<u>Officer #1</u> Written Reprimand
2	One officer did not properly investigate crime. Other officer did not sufficiently supervise subordinate officer.	<u>Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty (Counts 1-2) <u>Officer #2</u> <ul style="list-style-type: none"> • Performance of Duty 	<u>Officer #1</u> Letter of Discussion <u>Officer #2</u> Informal Counseling
3	Officer did not properly document a law enforcement contact.	<u>Officer #1</u> <ul style="list-style-type: none"> • Policy/Procedure 	<u>Officer #1</u> Informal Counseling
4	Employee was confrontational and unhelpful to complainant.	<u>Employee #1</u> <ul style="list-style-type: none"> • Courtesy 	<u>Employee #1</u> Informal Counseling
5	Officers and employee did not appropriately respond to complainant's request for service.	<u>Officers #1-2</u> <ul style="list-style-type: none"> • Performance of Duty <u>Employee #1</u> <ul style="list-style-type: none"> • Performance of Duty 	<u>Officer #1</u> Letter of Discussion <u>Officer #2</u> Oral Counseling <u>Employee #1</u> 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	1
Complainant-Initiated Appeals	0
Investigations Being Monitored	16
Investigations Reviewed During Current Month	14*

*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 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 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 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 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.

⁹ 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)

¹⁰ For instances involving an Informal Complaint, the Internal Affairs Unit may address the issue through a Supervisor Referral. An assigned supervisor would then address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Unit.