



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

November 2018

Issue date: December 10, 2018

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 **November 1, 2018 through November 30, 2018**.¹

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 ²	Open Cases ³	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
November 2017	11	32	0	1	0
December 2017	9	34	1	0	0
January 2018	7	32	0	0	0
February 2018	10	34	0	1	0
March 2018	6	35	1	0	0
April 2018	13	49	0	0	0
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

TYPES OF CASES FILED

Citizen Complaints (Formal)	9
Informal Complaints ⁷	4
Administrative Investigations	0
TOTAL	13

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁸

OIPA	2
BART Police Department	7
TOTAL	9

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During November 2018, **2 Citizen Complaints** were received by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #18-44) (IA2018-095)	Officers #1-4: <ul style="list-style-type: none"> • Force • Arrest or Detention 	OIPA initiated an investigation	40
2 (OIPA #18-45) (IA2018-103)	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Policy/Procedure • Performance of Duty 	OIPA notified BPD, which initiated an investigation.	21

During November 2018, **6 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2018-096)	Employee #1: <ul style="list-style-type: none"> • Courtesy 	BPD initiated an investigation.	40
2 (IA2018-099)	Officers #1-2: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	40
3 (IA2018-100)	Officers #1-4: <ul style="list-style-type: none"> • Force • Bias-Based Policing 	BPD initiated an investigation.	29
4 (IA2018-102)	Officer #1: <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer • Policy/Procedure 	BPD initiated an investigation.	35
5 (IA2018-104)	Officer #1: <ul style="list-style-type: none"> • Force • Bias-Based Policing • Search or Seizure • Conduct Unbecoming an Officer 	BPD initiated an investigation.	20
6 (IA2018-105)	Officers #1-2: <ul style="list-style-type: none"> • Bias-Based Policing • Policy/Procedure (Count 1) Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (Count 2) Officer #2: <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer 	BPD initiated an investigation.	13

During November 2018, **4 Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2018-097)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated a Supervisor Referral. ⁹	33
2 (IA2018-098)	Officers #1-2: • Conduct Unbecoming an Officer	BPD initiated a Supervisor Referral.	38
3 (IA2018-106)	Employee #1: • Conduct Unbecoming	BPD initiated a Supervisor Referral.	11
4 (IA2018-107)	Employee #1: • Performance of Duty	BPD initiated a Supervisor Referral.	10

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During October 2018, **1 Citizen Complaint (Informal)** was received by BPD but not previously reported:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2018-101)	Employee #1: • Conduct Unbecoming	BPD initiated an investigation.	52

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During November 2018, **1 Complaint Investigation** was concluded by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #18-15) (IA2018-028)	Officers used excessive force during detention and arrest.	Officers #1-2: • Force – Exonerated	234	202

During November 2018, **6 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 (IA2018-003)	Officer harassed complainant and contacted complainant in retaliation for submission of a prior complaint against officer.	Officer #1: <ul style="list-style-type: none"> • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer – Unfounded 	341	314
2 (IA2018-017)	Officers accosted subject and acted outside the bounds of their authority.	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Administratively Closed 	291	267
3 (IA2018-023)	Officers improperly placed subject on mental health hold.	Officers #1-2: <ul style="list-style-type: none"> • Performance of Duty – Sustained 	249	235
4 (IA2018-031)	Officers were rude and unprofessional and one officer improperly detained complainant.	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded Officer #2: <ul style="list-style-type: none"> • Arrest or Detention – Exonerated 	235	204
5 (IA2018-045)	Officer improperly detained complainant.	Officer #1: <ul style="list-style-type: none"> • Arrest or Detention – Exonerated 	185	161
6 (IA2018-092)	Officer was rude and unprofessional.	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Supervisor Referral 	49	19

During November 2018, **2 Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2018-059)	Employee was discourteous to complainant.	Employee #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Supervisor Referral 	144	131
2 (IA2018-089)	Employee was discourteous to complainant.	Employee #1: <ul style="list-style-type: none"> • Courtesy – Supervisor Referral 	54	22

During November 2018, **3 Administrative Investigations** were concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2017-111)	Officers used unnecessary or excessive force against subject.	Officers #1-2: • Force – Exonerated	395	363
2 (IA2018-026)	Officer was arrested for driving while intoxicated while off duty.	Officer #1: • Criminal Conduct – Sustained • Conduct Unbecoming an Officer – Sustained	240	202
3 (IA2018-057)	Officer used unnecessary or excessive force against subject and violated BPD policy regarding use of the baton.	Officer #1: • Force – Exonerated • Policy/Procedure – Exonerated	146	114

INVESTIGATIONS COMPLETED DURING A PRIOR REPORTING PERIOD

During October 2018, **1 Informal Complaint** was completed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
2 (IA2018-074)	Officer was rude to complainant.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	109	63

DISCIPLINE ISSUED DURING REPORTING PERIOD

During November 2018, 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
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: • Letter of Discussion
4	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion
5	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion
6	Officers did not properly document a law enforcement contact.	Officers #1-2: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion Officer #2: • Oral Counseling

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	9
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	25
Investigations Reviewed During Current Month	18†

†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.¹⁰

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 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 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 IA.

¹⁰ 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.