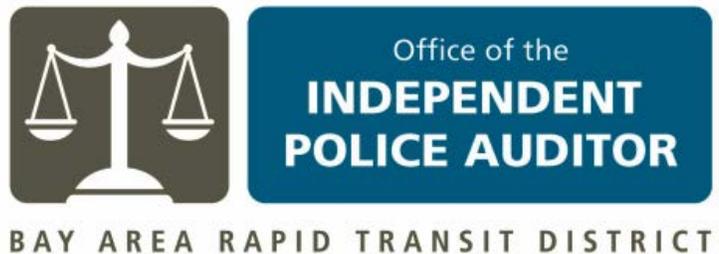


Office of the Independent Police Auditor

Monthly Report

October 2013



November 18, 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 October 1, 2013 through October 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
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	47	1	1	0
May 2013	7	42	0	2	0
June 2013	8	38	0	0	0
July 2013	15	44	1	1	0
August 2013	17	43	3	0	0
September 2013	14	44	0	0	0
October 2013	16*	51	1	0	0

*This number includes two cases that were initiated in prior reporting periods, but were not previously reported on. They are therefore included in this report.

Types of Cases Filed

Citizen Complaints	13
Administrative Investigations	1
Comments of Non-Complaint	2
TOTAL	16

Citizen Complaints Received per Department

OIPA	0
BART Police Department	13
TOTAL	13

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of October 2013, 12 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations ⁷	Action Taken	Number of Days Elapsed Since Complaint Filed ⁸
1 (IA2013-108)	<u>Officer #1</u> • Performance of Duty	BART PD initiated an investigation.	47
2 (IA2013-097)	<u>Officer #1</u> • Policy/Procedure	BART PD initiated an investigation.	46
3 (IA2013-103)	<u>Officer #1</u> • Force	BART PD initiated an investigation.	44
4 (IA2013-101)	<u>Officer #1</u> • Bias-Based Policing • Arrest or Detention	BART PD initiated an investigation.	42
5 (IA2013-098)	<u>Officer #1</u> • Performance of Duty	BART PD initiated an investigation.	40
6 (IA2013-102)	<u>Officer #1</u> • Force <u>Officer #2</u> • Force	BART PD initiated an investigation.	39
7 (IA2013-109)	<u>Officer #1</u> • Bias-Based Policing	BART PD initiated an investigation.	34
8 (IA2013-105)	<u>Officer #1</u> • Conduct Unbecoming an Officer • Performance of Duty <u>Officer #2</u> • Conduct Unbecoming an Officer • Performance of Duty <u>Officer #3</u> • Conduct Unbecoming an Officer • Performance of Duty	BART PD initiated an investigation.	27

9 (IA2013-106)	<u>Officer #1</u> <ul style="list-style-type: none"> • Criminal • Arrest or Detention <u>Officer #2</u> <ul style="list-style-type: none"> • Arrest or Detention • Supervision 	BART PD initiated an investigation.	27
10 (IA2013-107)	<u>Officer #1</u> <ul style="list-style-type: none"> • Arrest or Detention 	BART PD initiated an investigation.	27
11 (IA2013-110)	<u>Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty 	BART PD initiated an investigation.	25
12 (IA2013-111)	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BART PD initiated an investigation.	24

During the month of October 2013, 2 Comments of Non-Complaint were received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2013-104)	<u>Officer #1</u> <ul style="list-style-type: none"> • Courtesy 	BART PD initiated an investigation.	29
2 (IA2013-100)	<u>Civilian #1</u> <ul style="list-style-type: none"> • Courtesy 	BART PD initiated an investigation.	46

Complaints/Investigations Initiated During a Previous Reporting Period

Actions Taken/# of Days Elapsed

During the month of August 2013, 1 previously unreported Citizen Complaint was received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-099)	<u>Officer #1</u> <ul style="list-style-type: none"> • Force 	BART PD initiated an investigation.	88

During the month of July 2013, 1 previously unreported 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 (IA2013-112)	<u>Officer #1</u> • Force	BART PD initiated an investigation.	110

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of October 2013, 1 Appeal initiated by a complainant was concluded by OIPA:

Appeal # (OIPA Case #) (IA Case #)	Nature of Allegations in Original Complaint	OIPA Disposition	Number of Days Elapsed Since Appeal Filed	Number of Days Taken to Complete Appeal
1 (OIPA #13-38) (IA2012-096)	Officer made a discriminatory remark toward another officer on three occasions. Two other officers who were present on one of the occasions did not report the remark.	<u>Officer #1</u> <ul style="list-style-type: none"> • Workplace Discrimination (Count 1) – Sustained • Workplace Discrimination (Count 2) – Not Sustained • Workplace Discrimination (Count 3) – Not Sustained <u>Officer #2</u> <ul style="list-style-type: none"> • Failure to Report Misconduct – Unfounded <u>Officer #3</u> <ul style="list-style-type: none"> • Failure to Report Misconduct – Unfounded 	138	92

During the month of October 2013, 7 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition ⁹	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-026)	Officers arrested complainant without justification, threatened complainant, and used excessive force.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Exonerated • Conduct Unbecoming an Officer – Unfounded • Detention/Arrest – Exonerated <u>Officer #2</u> <ul style="list-style-type: none"> • Force – Exonerated • Conduct Unbecoming an Officer – Unfounded • Detention/Arrest – Exonerated 	228	194
2 (IA2013-028)	Complainant was improperly issued a parking citation.	<u>Civilian #1</u> <ul style="list-style-type: none"> • Policy/Procedure – Exonerated 	222	189
3 (IA2013-050)	Employee stole items from a storage unit and made offensive remarks about the owner of the items on the internet.	<u>Civilian #1</u> <ul style="list-style-type: none"> • Criminal – Not Sustained • Conduct Unbecoming an Officer – Not Sustained 	188	147
4 (IA2013-042)	Officers used excessive force when detaining complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Exonerated <u>Officer #2</u> <ul style="list-style-type: none"> • Force – Exonerated 	172	144
5 (IA2013-058)	Two officers (unable to be identified) were observed using foul language while in uniform.	<u>Unknown</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained 	119	99
6 (IA2013-083)	There is insufficient presence by BART PD at three BART Stations.	<u>BART Police Department</u> <ul style="list-style-type: none"> • Policy/Procedure – Service Review¹⁰ 	78	41

7 (IA2013-095)	Complainant was improperly issued a citation for fare evasion. Complainant later withdrew the complaint.	<u>Officer #1</u> • Arrest or Detention – Administrative Closure ¹¹	49	23
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During the month of October 2013, 2 Comments of Non-Complaint were 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 (IA2013-100)	Employee was rude to patrons when giving them parking instructions at a BART station.	<u>Civilian #1</u> • Courtesy – Supervisory Referral ¹²	46	27
2 (IA2013-087)	Employee was rude to complainant when giving parking instructions at a BART station and improperly issued a ticket.	<u>Civilian #1</u> • Courtesy – Supervisory Referral • Policy/Procedure – Supervisory Referral	76	56

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BART PD

During the month of October 2013, 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	One officer discriminated against a second officer on the basis of gender.	<u>Officer #1</u> • Workplace Discrimination / Harassment	<u>Officer #1</u> Letter of Discussion

2	Officer did not complete a required report regarding a contact with an individual.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
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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 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	0
Investigations Being Monitored	7
Investigations Reviewed During Current Month	30*

*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 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 A service review refers to an instance when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.

¹¹ Administrative closure refers to an instance when, based on a preliminary investigation of allegations, the Department determines that further investigation is not warranted. Such a determination may be made when, for instance, a complaint fails to articulate conduct that violates a policy and could lead to discipline, even if the conduct is proven to have occurred; or when the complainant refuses to cooperate or provide information necessary to investigate the incident.

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.