

Office of the Independent Police Auditor

Monthly Report

October 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 Citizen Review Board. This report provides information for the period October 1, 2015 through October 31, 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 CRB ⁶
October 2014	14	78	0	0	0
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

Types of Cases Filed

Citizen Complaints (Formal)	12
Informal Complaints ⁷	1
Administrative Investigations	1
TOTAL	14

Citizen Complaints Received per Department⁸

OIPA	3
BART Police Department	9
TOTAL	12

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of October 2015, 3 **Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations ⁹	Action Taken	Number of Days Elapsed Since Complaint Filed ¹⁰
1 (OIPA #15-68) (IA2015-111)	<u>Officers #1-2</u> • Performance of Duty • Conduct Unbecoming an Officer	OIPA notified BPD, which initiated an investigation.	62
2 (OIPA #15-75) (IA2015-114)	<u>Officer #1</u> • Performance of Duty	OIPA notified BPD, which initiated an investigation.	54
3 (OIPA #15-81) (IA2015-117)	<u>BART Police Department</u> • Service Review ¹¹	OIPA notified BPD, which initiated an investigation.	45

During the month of October 2015, 9 **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 (IA2015-106)	<u>Officer #1</u> • Force • Arrest or Detention • Policy/Procedure <u>Officers #2-3</u> • Force	BPD initiated an investigation.	69
2 (IA2015-108)	<u>Officers #1-2</u> • Arrest or Detention	BPD initiated an investigation.	68
3 (IA2015-110)	<u>Employee #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	66
4 (IA2015-112)	<u>Officer #1</u> • Conduct Unbecoming an Officer • Courtesy	BPD initiated an investigation.	61
5 (IA2015-113)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	53

6 (IA2015-115)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	54
7 (IA2015-116)	<u>Officer #1</u> • Performance of Duty • Conduct Unbecoming an Officer • Courtesy	BPD initiated an investigation.	47
8 (IA2015-119)	<u>Officer #1</u> • Performance of Duty • Conduct Unbecoming an Officer • Courtesy	BPD initiated an investigation.	56
9 (IA2015-121)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	46

During the month of October 2015, 1 **Informal Complaint** was received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-105)	<u>Employee #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	74

During the month of October 2015, 1 **Administrative Investigation** was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2015-123)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	48

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of October 2015, 2 **Citizen Complaints** were concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Allegations	Disposition ¹²	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #14-78)	Officers improperly detained subject based on subject's race, and one officer did not properly document incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> • Racial Profiling/Bias-Based Profiling – Unfounded • Arrest or Detention – Exonerated • Policy/Procedure – Sustained <u>Officers #2-3</u> <ul style="list-style-type: none"> • Racial Profiling/Bias-Based Profiling – Unfounded • Arrest or Detention – Exonerated 	385	323 [†]
2 (OIPA #15-04)	Officers improperly detained subjects on the basis of race, used excessive force, and were aggressive toward subjects.	<u>Officers #1-2</u> <ul style="list-style-type: none"> • Unnecessary or Excessive Use of Force – Exonerated • Racial Profiling/Bias-Based Profiling – Unfounded • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer – Unfounded 	319	274

[†]It is OIPA's position that the applicable statute of limitations governing this investigation was tolled from March 13, 2015 through August 2, 2015 due to the unavailability of a subject officer.

During the month of October 2015, 9 **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 (IA2015-111)	Officers did not provide sufficient assistance and were condescending to complainant.	<u>Officers #1-2</u> • Performance of Duty – Supervisory Referral ¹³	62	14
2 (IA2015-034)	Officer was untruthful during courtroom testimony and detained complainant without justification.	<u>Officer #1</u> • Truthfulness – Unfounded • Arrest or Detention – Exonerated	238	186
3 (IA2015-014)	Officer cited complainant on the basis of race, did not cite other individuals engaged in identical conduct, and did not properly document the contact.	<u>Officer #1</u> • Bias-Based Policing – Unfounded • Performance of Duty – Not Sustained • Policy/Procedure – Sustained	294	234
4 (IA2015-007)*	Officers improperly contacted subjects on the basis of race, used excessive force, and were aggressive toward subjects. One officer used unnecessary force when contacting an uninvolved subject.	<u>Officers #1-2</u> • Force and Conduct – Exonerated • Force – Unfounded • Bias-Based Policing – Unfounded	319	259
5 (IA2015-015)	Employee was confrontational and unhelpful to complainant.	<u>Employee #1</u> • Courtesy – Sustained	298	232

6 (IA2015-002)	Officers improperly detained subjects on the basis of race and were intimidating toward subjects.	<u>Officers #1-2</u> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer – Unfounded 	333	258
7 (IA2015-039)	Employee was rude and impatient when contacting complainant.	<u>Employee #1</u> <ul style="list-style-type: none"> • Courtesy – Supervisory Referral 	228	155
8 (IA2014-136)	Employee issued a citation without justification, did not follow proper procedure in doing so, was rude to complainant, and offered preferential treatment to another individual.	<u>Employee #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained • Courtesy – Not Sustained • Policy/Procedure – Not Sustained • Policy/Procedure – Sustained 	417	351
9 (IA2013-125)	Officer targeted subject for law enforcement contact based on ethnicity.	<u>Officer #1</u> <ul style="list-style-type: none"> • Bias-Based Policing – Not Sustained 	756	702 [†]

* As OIPA also completed an investigation into this case during the reporting period, it will only be counted as closed once in calculating the “Number of Open Cases” in the Quantitative Report on Page 2.

†It is BPD’s position that the applicable statute of limitations governing this investigation was tolled from June 10, 2014 through September 9, 2015 due to the unavailability of a subject officer.

During the month of October 2015, 1 **Informal Complaint** was 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 (IA2015-105)	Officer was accusatory toward complainant and inappropriately contacted complainant’s supervisor.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Supervisory Referral 	74	5

Also during the month of October 2015, BPD classified IA2015-021 as an Inquiry and administratively closed the complaint after making the determination that the misconduct alleged did not involve any BPD employees.¹⁴ Additionally, BPD classified IA2015-048 as an Inquiry and administratively closed it after making the determination that the sole concern at issue was a parking dispute which would be handled by the established citation dispute process.

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BPD

During the month of October 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	Employee did not follow proper procedure when issuing a parking citation.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
2	Officer did not properly document incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Written Reprimand

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	2
Complainant-Initiated Appeals	0
Investigations Being Monitored	16
Investigations Reviewed During Current Month	25*

*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 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 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 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 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.

¹⁰ 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).

¹¹ 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.

¹² 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)

¹³ A Supervisory 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.

¹⁴ Administrative Closure refers to allegations that are received and documented; however the Chief of Police or his/her designee determines, based on a preliminary investigation, that further investigation is not warranted. Under these circumstances, the complaint will be Administratively Closed and documented in a summary memorandum to the case file. Employees will be documented as witnesses only, not as subjects to the complaint. Internal Affairs will send a letter to the complainant notifying them that the case was closed following a preliminary investigation.