



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

September 2019

Issue date: October 21, 2019

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), 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 **September 1, 2019 through September 30, 2019.**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
September 2018	9	69	1	0	0
October 2018	10	69	1	0	0
November 2018	13	69	1	0	0
December 2018	5	62	0	0	0
January 2019	15	64	1	0	0
February 2019	12	60	1	0	0
March 2019	14	57	1	0	0
April 2019	14	57	0	0	0
May 2019	10	56	2	0	0
June 2019	9	61	1	0	0
July 2019	11	61	0	0	0
August 2019	9	62	1	0	0
September 2019	13	53	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	6
Informal Complaints ⁷	5
Administrative Investigations	0
Inquiries ⁸	2
TOTAL	13

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	3
BART Police Department	3
TOTAL	6

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During September 2019, **3 Citizen Complaints** were received by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #19-36) (IA2019-104)	Officer #1: • Courtesy	OIPA notified BPD which initiated a Supervisor Referral. ¹⁰	39
2 (OIPA #19-38) (IA2019-105)	Officer #1: • Courtesy	OIPA notified BPD which initiated a Supervisor Referral.	45
3 (OIPA #19-40) (IA2019-108)	Officers #1-2: • Force • Arrest/Detention • Policy/Procedure	OIPA initiated an investigation.	31

During September 2019, **2 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2019-098)	Officer #1: • Policy/Procedure (Handcuffing) • Force (2 counts) • Force (Reporting) • Performance of Duty • Policy/Procedure (AXON Camera) Officer #2: • Policy/Procedure (AXON Camera) Officer #3: • Performance of Duty Officer #4: • Force	BPD initiated an investigation.	48
2 (IA2019-101)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	50

During September 2019, **4 Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2019-100)	Officer #1: • Courtesy	BPD initiated a Supervisor Referral.	50
2 (IA2019-107)	Employee #1: • Performance of Duty	BPD initiated an investigation.	39
3 (IA2019-109)	Officer #1: • Performance of Duty	BPD initiated an investigation.	32
4 (IA2019-110)	Officer #1: • Courtesy	BPD initiated an investigation.	26

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During August 2019, **1 Citizen Complaint** was received by BPD but not previously reported:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2019-099)	Officer #1: • Force • Arrest/Detention • Policy/Procedure	BPD initiated an investigation.	52

During August 2019, **1 Informal Complaint** was received by BPD but not previously reported:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2019-102)	Officer #1: • Courtesy	BPD initiated a Supervisor Referral.	52

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During September 2019, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #18-44) (IA2018-095)	Officers improperly detained and arrested a subject and used excessive force during the arrest.	Officers #1-4: • Force – Exonerated • Officer #1-2: • Arrest/Detention – Exonerated	355	307

During September 2019, **8 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 (IA2019-008)	Officers used unnecessary or excessive force during a contact.	Officers #1-3: • Force – Administratively Closed ¹¹	276	231
2 (IA2019-012)	Officer did not take appropriate action during a call for service.	Officer #1: • Performance of Duty – Administratively Closed	265	220
3 (IA2019-014)	Officer improperly contacted complainant based on race and mental and physical disabilities.	Officer #1: • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded	263	230
4 (IA2019-019)	Officers used excessive force during a law enforcement contact.	Officers #1-2: • Force (Count 1) – Exonerated • Force (Count 2) – Not Sustained	276	235
5 (IA2019-039)	Employee was rude, unprofessional, and disrespectful to complainant.	Officer #1: • Conduct Unbecoming an Officer – Administratively Closed	213	189
6 (IA2019-043)	Officers used unnecessary or excessive force during a law enforcement contact.	Officer #1: • Conduct Unbecoming an Officer – Exonerated	250	205
7 (IA2019-066)	Officer inappropriately touched complainant during a law enforcement contact.	Officer #1: • Conduct Unbecoming an Officer – Administratively Closed	166	132
8 (IA2019-084)	Officer was rude and unprofessional during a call for service.	Officer #1: • Conduct Unbecoming an Officer – Administratively Closed	90	49

During September 2019, **5 Informal Complaints** were concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2019-064)	Officer refused to generate a police report upon request, was rude to complainant and refused to provide identification to complainant.	Officer #1: • Performance of Duty – Supervisor Referral	152	119
2 (IA2019-096)	Officers refused to communicate with partner transit and law enforcement agencies despite request by complainant.	Officers #1-2: • Conduct Unbecoming an Officer – Supervisor Referral	61	21
3 (IA2019-100)	Officer refused to generate a police report upon request, was rude to complainant and refused to provide identification to complainant.	Officer #1: • Performance of Duty – Supervisor Referral	50	17
4 (IA2019-102)	Employee provided insufficient and unprofessional customer service during fare evasion contact.	Employee #1: • Courtesy – Supervisor Referral	52	6
5 (IA2019-104)	Officer did not appear to want to be of assistance to complainant during a call for service.	Officer #1: • Courtesy – Supervisor Referral	47	8

During September 2019, **1 Administrative Investigation** was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2019-091)	Supervisor was rude to subordinate officer.	Officer #1: • Courtesy – Supervisor Referral	67	20

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING PREVIOUS REPORTING PERIODS

During August 2019, **1 Citizen Complaint (Formal)** was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2018-100)	Officers used excessive force during an arrest, failed to use de-escalation tactics, and did so based on race. One officer threatened to improperly cite and arrest a bystander.	<p>Officers #1-4:</p> <ul style="list-style-type: none"> • Force – Exonerated • Bias-Based Policing – Unfounded <p>Officer #1:</p> <ul style="list-style-type: none"> • Arrest or Detention – Unfounded <p>Officer #4:</p> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded <p>Officer #5:</p> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded 	344	291

During August 2019, **3 Informal Complaints** were concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2019-092)	Officer did not properly interact with a disabled person and was dismissive to complainant.	<p>Officer #1:</p> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Supervisor Referral 	66	7
2 (IA2019-094)	Employee expressed amusement and laughed about a subject's cognitive impairment.	<p>Employee #1:</p> <ul style="list-style-type: none"> • Conduct Unbecoming – Supervisor Referral 	61	8
3 (IA2019-097)	Employee improperly issued citation to complainant without issuing a warning.	<p>Employee #1:</p> <ul style="list-style-type: none"> • Performance of Duty – Supervisor Referral 	55	2

Also during the months of August and September 2019, BPD classified each of the following complaints as an **Inquiry** and administratively closed the complaints: #IA2019-106 (after determining that no BPD personnel were involved), #IA2019-103 (after determining that the complaint was appropriate for routing through the citation appeal process), and #IA2019-045 (after determining that no allegation of misconduct was articulated).¹²

DISCIPLINE ISSUED DURING REPORTING PERIOD

During September 2019, 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 used excessive force during an arrest.	Officer #1: • Force	Officer #1: • Oral Counseling
2	Officer created a hostile work environment by making a comment that targeted a specific race.	Officer #1: • Racial Animus	Officer #1: • Suspension Held in Abeyance
3	Officer failed to properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion
4	Officer failed to properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Letter of Discussion
5	Officer improperly ejected complainant from BART property and two officers failed to properly document a law enforcement contact.	Officers #1-2: • Policy/Procedure (AXON Camera) Officer #2: • Performance of Duty	Officer #1: • Letter of Discussion Officer #2: • Letter of Discussion
6	Officer used profanity during arrest.	Officer #1: • Conduct Unbecoming an Officer	Officer #1: • Non-Documented
7	Officers failed to properly document a law enforcement contact.	Officers #1-2: • Policy/Procedure (AXON Camera)	Officers #1-2: • Letter of Discussion
8	Officer failed to properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • 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	8
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	24
Investigations Reviewed During Current Month	29†

†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.¹³

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 OIPA 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 BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

⁹ 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.

¹⁰ 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.

¹¹ Administrative Closure is defined as follows in the BPD Policy Manual: 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.

¹² 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.

¹³ 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.