



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

September 2021

Issue date: October 18, 2021

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, 2021 through September 30, 2021**. ¹ *(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).*

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
September 2020	10	45	8	1	0	0
October 2020	10	48	9	2	0	0
November 2020	11	51	7	2	0	0
December 2020	7	55	4	1	0	0
January 2021	8	61	5	2	0	0
February 2021	5	61	4	1	0	0
March 2021	7	61	7	0	0	0
April 2021	13	65	9	1	0	0
May 2021	9	69	4	1	0	0
June 2021	5	74	1	1	0	0
July 2021	10	81	3	0	0	0
August 2021	4	78	7	1	0	0
September 2021	10	81	8	2	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	9
Informal Complaints ⁷	0
Administrative Investigations	1
Inquiries ⁸	0
TOTAL	10

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	1
BART Police Department	8
TOTAL	9

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During September 2021, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #21-18) (IA2021-071)	Officer #1: <ul style="list-style-type: none"> • Force • Bias-Based Policing • Policy/Procedure • Supervision • Conduct Unbecoming an Officer 	OIPA initiated an investigation.	20

During September 2021, **8 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2021-063)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	46
2 (IA2021-064)	Officers #1-2: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	32
3 (IA2021-065)	Officers #1-2: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	28
4 (IA2021-066)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing 	BPD initiated an investigation.	26
5 (IA2021-067)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing 	BPD initiated an investigation.	26
6 (IA2021-068)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	34
7 (IA2021-069)	Employee #1: <ul style="list-style-type: none"> • Bias-Based Policing 	BPD initiated an investigation.	21
8 (IA2021-070)	Officers #1-2: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	24

During September 2021, **1 Administrative Investigation** was initiated by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2021-062)	Officers #1-2: <ul style="list-style-type: none"> • Force Officer #2: <ul style="list-style-type: none"> • Performance of Duty 	BPD initiated an investigation.	46

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During September 2021, **1 Citizen Complaint** 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 #20-29) (IA2020-077)	Two officers improperly detained complainant, three officers used excessive force during the detention, one officer did not properly document the contact, and one supervisor failed to properly document the use of force and did not address the complainant's concerns about the contact.	Officers #1-2: <ul style="list-style-type: none"> • Force – Exonerated • Arrest/Detention – Exonerated Officer #2: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) – Sustained Officer #3: <ul style="list-style-type: none"> • Force – Unfounded Officer #4: <ul style="list-style-type: none"> • Policy/procedure (Reporting Use of Force) – Sustained • Conduct Unbecoming an Officer – Exonerated 	343	303

During September 2021, **2 Citizen Complaints** were concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-047)	Officer detained complainant because of complainant's race and harassed complainant by initiating several contacts over a period of time. Officer also did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Not Sustained • Policy/Procedure (AXON Camera) – Not Sustained 	493	467*

* This case was originally Administratively Closed by BPD Internal Affairs on May 13, 2021. OIPA determined that the Administrative Closure was inappropriate due to the inability to resolve all allegations via review of available video. OIPA requested the completion of an investigative report, which was finalized by BPD on September 22, 2021.

2 (IA2020-075)	Employee targeted complainant for Proof of Payment enforcement because of complainant's race and employee was rude to complainant during the contact.	Unknown BPD Employee #1: <ul style="list-style-type: none"> • Bias-Based Policing – Administratively Closed • Conduct Unbecoming an Officer – Administratively Closed 	360	313
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During September 2021, **2 Administrative Investigations** were concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2020-060)	Officer used profanity and acted unprofessionally during a law enforcement contact and officer did not document the detention.	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Sustained Officer #2: <ul style="list-style-type: none"> • Policy/Procedure (Reporting Use of Force) – Sustained 	402	357
2 (IA2020-061)	Officer used profanity and acted unprofessionally during a law enforcement contact and officer did not properly document the detention.	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Sustained • Policy/Procedure (AXON Camera) – Sustained • Performance of Duty (Documentation) – Sustained 	396	351

Also, during the month of September 2021, BPD classified of the following complaint as an **Inquiry** and administratively closed the complaint: #IA2020-092 (after determining that no BPD personnel were involved).¹⁰

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING PREVIOUS REPORTING PERIODS

During August 2021, **1 Citizen Complaint** 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 #20-26) (IA2020-069)	Officers did not properly respond to a call for service, did not properly advise the reporting party about the enforcement action, and one officer's inaction was due to complainant's race and gender.	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Exonerated • Performance of Duty – Exonerated Officer #2: <ul style="list-style-type: none"> • Arrest or Detention – Exonerated • Bias-Based Policing – Unfounded 	369	314

DISCIPLINE ISSUED DURING REPORTING PERIOD

During September 2021, 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 respond to a call for service.	Officer #1: <ul style="list-style-type: none"> • Performance of Duty 	Officer #1: <ul style="list-style-type: none"> • Oral Counseling¹¹
2	Officers did not properly document a law enforcement contact.	Officers #1-2: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officers #1-2: <ul style="list-style-type: none"> • Letter of Discussion¹²
3	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officers#1: <ul style="list-style-type: none"> • Letter of Discussion

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

†Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

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	7
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	67
Investigations Reviewed During Current Month	7†

† 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 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 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.

¹¹ Oral Counseling (third level of pre-discipline): An oral counseling may be the next step of the informal process. It is documented in a memorandum to the employee entitled "Oral Counseling." Prior to issuance, the supervisor should discuss the performance or infraction in detail with the employee. The purpose of the discussion is for the employee to be made aware of the unacceptable behavior. An employee who is covered by a collective bargaining agreement and who may be issued an Oral Counseling is entitled to appropriate association representation. An Oral Counseling is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to progressive discipline.

¹² Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual)

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.