



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

January 2020

Issue date: February 10, 2020

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 **January 1, 2020 through January 31, 2020**.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	IAB Investigations Resolved*	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
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
October 2019	6	53	6	1	0	0
November 2019	10	59	2	1	0	0
December 2019	6	58	6	1	0	0
January 2020	8	53	13	2	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	2
Informal Complaints ⁷	3
Administrative Investigations	3
Inquiries ⁸	0
TOTAL	8

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	1
BART Police Department	1
TOTAL	2

¹OIPA added a new data column to the October 2019 Monthly Report which will be populated going forward.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During January 2020, **1 Citizen Complaint** was received by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #20-02) (IA2020-003)	Officer #1: <ul style="list-style-type: none"> • Criminal (Fraud) • Conduct Unbecoming an Officer 	OIPA notified BPD which initiated an investigation.	31

During January 2020, **1 Citizen Complaint (Formal)** was received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-002)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing 	BPD initiated an investigation.	31

During January 2020, **3 Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-001)	Officer #1: <ul style="list-style-type: none"> • Performance of Duty 	Administratively Closed ¹⁰	40
2 (IA2020-005)	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated a Supervisor Referral. ¹¹	19
3 (IA2020-007)	Officer #1: <ul style="list-style-type: none"> • Courtesy 	BPD initiated a Supervisor Referral.	13

During January 2020, **2 Administrative Investigations** were initiated by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-006)	Officers #1-2: <ul style="list-style-type: none"> • Force • Force (Reporting) • Force (Report Preparation) • Policy/Procedure (AXON Camera) Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer Officer #2: <ul style="list-style-type: none"> • Force (Duty to Intercede and Report) • Performance of Duty 	BPD initiated an investigation.	14
2 (IA2020-008)	Officer #1: <ul style="list-style-type: none"> • Criminal • Conduct Unbecoming an Officer 	BPD initiated an investigation.	38

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During December 2019, **1 Administrative Investigation** was initiated by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-004)	Officer #1: <ul style="list-style-type: none"> • Force • Arrest/Detention • Policy/Procedure 	BPD initiated an investigation.	69

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During January 2020, **2 Citizen Complaints** were concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #19-15) (IA2019-054) †	Officers improperly detained complainant on the basis of race and sexual orientation, used excessive force during the contact, failed to summon mental health providers, made rude comments, and failed to provide identification to complainant upon request.	Officers #1-2: <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Force – Exonerated • Policy/Procedure (General Conduct) – Unfounded Officer #2: <ul style="list-style-type: none"> • Courtesy – Exonerated • Policy/Procedure (Mental Health Support) – Unfounded 	299	289
2 (OIPA #19-13) (IA2019-041) ‡	Officer improperly detained subject and used excessive force during the contact. Officer failed to properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Arrest/detention – Exonerated • Force – Exonerated • Policy/Procedure (AXON Camera) – Sustained 	321	286

During January 2020, **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 (IA2019-025)	Officer used unnecessary or excessive force during a contact.	Officer #1: <ul style="list-style-type: none"> • Force – Exonerated 	354	330

† This complaint remains on the list of open investigations in the IAB database pending presentation of the OIPA investigative report to the BPCRB in closed session.

‡ This complaint remains on the list of open investigations in the IAB database pending presentation of the OIPA investigative report to the BPCRB in closed session.

2 (IA2019-037)	Officer improperly investigated a meritless complaint of criminal activity.	Officer #1: • Policy/Procedure – Administratively Closed	329	304
3 (IA2019-065)	Employee treated complainant differently based on economic class.	Employee #1: • Bias-Based Policing – Administratively Closed	263	246
4 (IA2019-069)	Employee was rude and disrespectful and snatched complainant's property from hand.	Employee #1: • Conduct Unbecoming – Administratively Closed	251	234
5 (IA2019-074)	Officers used unnecessary or excessive force during a contact.	Officers #1-2: • Force – Exonerated	230	218
6 (IA2019-081)	Officers did not respond to a call for service.	Unknown Officers: • Performance of Duty – Administratively Closed	230	218

During January 2020, **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 (IA2019-056)	Officer was disrespectful and dismissive toward complainant and did not take appropriate action in response to a report of criminal activity.	Officer #1: • Performance of Duty – Supervisor Referral	286	268
2 (IA2020-001)	Officer did not take appropriate action upon request from complainant.	Officer #1: • Performance of Duty – Reclassified as an Inquiry by BPD and administratively closed the complaint	40	1
3 (IA2019-118)	Officers were rude and confrontational when communicating with complainant.	Officers #1-2: • Conduct Unbecoming an Officer – Supervisor Referral	70	26

During January 2020, **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 (IA2019-050)	Officers and employees did not respond appropriately to a call for service.	Officer #1: • Performance of Duty – Reclassified as a Service Review ¹² by BPD	67	20
2 (IA2019-067)	Officer used excessive or unnecessary force during an arrest and failed to accurately document the use of force.	Officer #1: • Force – Sustained • Force (Reporting) – Sustained	270	253
3 (IA2019-077)	Officer failed to properly document a law enforcement contact.	Officer #1: • Policy/procedure (AXON Camera) – Sustained	270	253

Also, during the month of January 2020, BPD classified each of the following complaints as an **Inquiry** and administratively closed the complaints: #IA2019-116 (after the complainant abandoned the complaint process), and #IA2019-123 (after determining that no allegation of officer misconduct was articulated).

DISCIPLINE ISSUED DURING REPORTING PERIOD

During January 2020, 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: • Oral Counseling
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

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	42
Investigations Reviewed During Current Month	14†

† 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 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.

¹¹ 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.

¹² Service Review: When a citizen/customer raises a concern pertaining to a global practice throughout the Department such as Department policy, procedure and/or tactics. Depending on the circumstances, the concern may be evaluated and addressed through a Service Review conducted by Internal Affairs, a designated review committee, or a member of Command Staff. When appropriate, a Service Review could result in a change to Department policy, training and/or tactics.

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.



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BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

February 2020

Issue date: March 9, 2020

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 **February 1, 2020 through February 29, 2020.**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	IAB Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
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
October 2019	6	53	6	1	0	0
November 2019	10	59	2	1	0	0
December 2019	6	58	6	1	0	0
January 2020	8	53	13	2	0	0
February 2020	15	56	10*	0	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	10
Informal Complaints ⁷	3
Administrative Investigations	2
Inquiries ⁸	0
TOTAL	15

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	6
BART Police Department	4
TOTAL	10

* Two completed OIPA complaint investigations were removed from the list of open investigations in the IAB database having been presented to the BPCRB in closed session during their January 13, 2020 meeting.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During February 2020, **5 Citizen Complaints** were received by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #20-05) (IA2020-011)	Officer #1: • Courtesy	OIPA notified BPD which Administratively Closed ¹⁰ the investigation.	35
2 (OIPA #20-07) (IA2020-015)	Officers #1-2: • Force • Arrest/Detention	OIPA notified BPD which initiated an investigation.	26
3 (OIPA #20-06) (IA2020-019)	Officer #1: • Arrest/Detention • Search or Seizure • Policy/Procedure	OIPA notified BPD which initiated an investigation.	33
4 (OIPA #20-10) (IA2020-020)	Officers #1-2: • Force	OIPA notified BPD which initiated an investigation.	18
5 (OIPA #20-11) (IA2020-022)	Officer #1: • Force • Arrest/Detention • Bias-Based Policing • Search or Seizure	OIPA notified BPD which initiated an investigation.	17

During February 2020, **4 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-013)	Officer #1: • Conduct Unbecoming an Officer • Courtesy	BPD initiated an investigation.	26
2 (IA2020-014)	Officers #1-2: • Conduct Unbecoming an Officer	BPD initiated an investigation.	27
3 (IA2020-018)	Officers #1-2: • Policy/Procedure • Conduct Unbecoming an Officer	BPD initiated an investigation.	37
4 (IA2020-023)	Officers #1-2: • Bias-Based Policing	BPD initiated an investigation.	9

During February 2020, **1 Informal Complaint** was received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-016)	Employee #1: • Conduct Unbecoming	BPD initiated a Supervisor Referral. ¹¹	25

During February 2020, **2 Administrative Investigations** were initiated by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-017)	Officers #1-2: • Force	BPD initiated an investigation.	23
2 (IA2020-021)	Officers #1-2: • Performance of Duty • Policy/Procedure	BPD initiated an investigation.	18

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During January 2020, **2 Formal Complaints** were received by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #20-03) (IA2020-010)	Officers #1-3: • Performance of Duty	BPD Reclassified as an Informal Complaint and Initiated an Investigation.	41
2 (OIPA #20-03) (IA2020-009)	Officer #1: • Performance of Duty	OIPA notified BPD which initiated an investigation.	38

During January 2020, **1 Informal Complaint** was received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
3 (IA2020-012)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated a Supervisor Referral.	47

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During February 2020, **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 (IA2019-052)	One officer used unnecessary or excessive force during a contact and two officers were rude to complainant.	Officers #1-2: • Force – Unfounded Officer #1: • Conduct Unbecoming an Officer – Not Sustained Officer #2: • Conduct Unbecoming an Officer – Sustained	328	316
2 (IA2019-071)	Officer was dismissive about complainant's call for service and treated complainant improperly based on race or physical disability.	Officer #1: • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded •	273	244
3 (IA2019-078)	Officer treated complainant differently based on gender identity.	Officer #1: • Bias-Based Policing – Administratively Closed ¹²	252	234
4 (IA2019-087)	Officer provided insufficient information to complainant.	Officer #1: • Performance of Duty – Administratively Closed	223	206
5 (IA2019-128)	Officers were unprofessional and did not take appropriate law enforcement action and one officer improperly detained complainant.	Officers #1-2: • Performance of Duty – Administratively Closed • Conduct Unbecoming an Officer – Administratively Closed Officer #2: • Arrest/Detention – Administratively Closed	96	63
6 (IA2020-003)	Officer is engaged in criminal fraud.	Officer #1: • Criminal – Administratively Closed • Conduct Unbecoming an Officer – Administratively Closed	59	25

During February 2020, **3 Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-007)	Officer was discourteous to complainant and refused to summon a supervisor as requested.	Officer #1: • Courtesy – Supervisor Referral	41	6
2 (IA2020-012)	Officer spoke to subject using an unprofessional tone of voice.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	47	21
3 (IA2019-131)	Officer refused to provide identification to complainant.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	86	54

During February 2020, **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 (IA2019-050)	Officer did not properly investigate reported criminal activity.	Officer #1: • Performance of Duty – Sustained • Conduct Unbecoming an Officer – Sustained • Policy/Procedure – Sustained	346	313

DISCIPLINE ISSUED DURING REPORTING PERIOD

During February 2020, 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 meet Departmental expectations during a law enforcement contact.	Officer #1: • Performance of Duty	Officer #1: • Non-Documented

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.

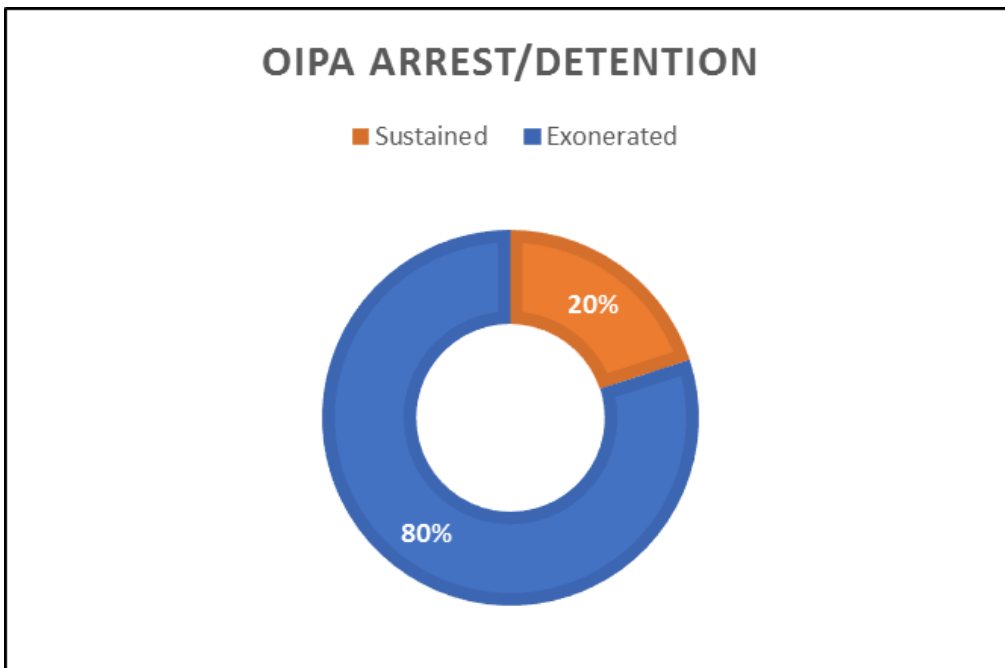
Investigations Being Conducted	11
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	47
Investigations Reviewed During Current Month	15†

†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

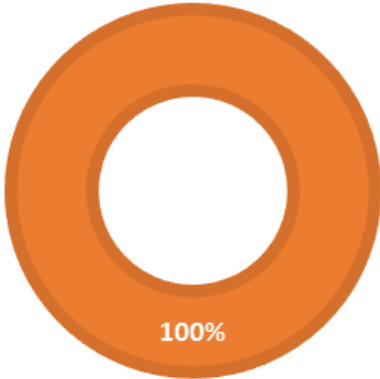
2019 INVESTIGATIVE FINDINGS – OIPA

Investigative findings for complaints completed by OIPA between January 1, 2019 and December 31, 2019.



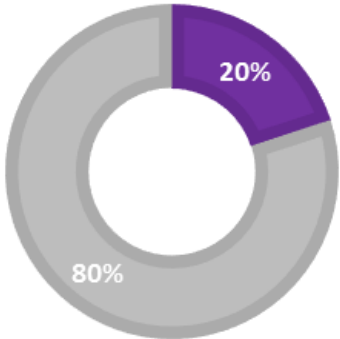
OIPA AXON CAMERA

■ Sustained



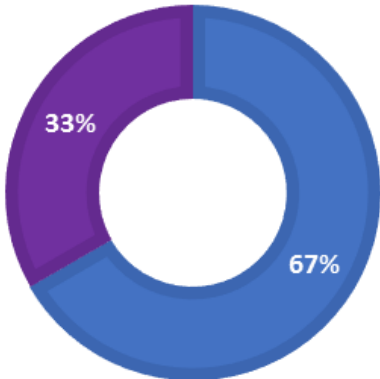
OIPA RACIAL PROFILING/BIAS-BASED POLICING

■ Not-Sustained ■ Unfounded



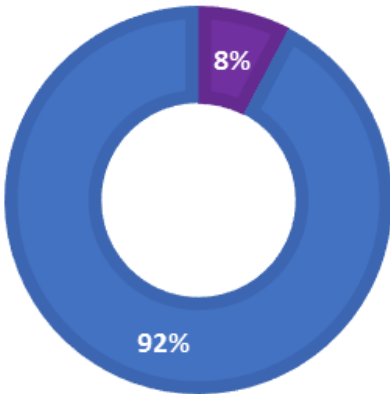
OIPA CONDUCT UNBECOMING

■ Exonerated ■ Not-Sustained



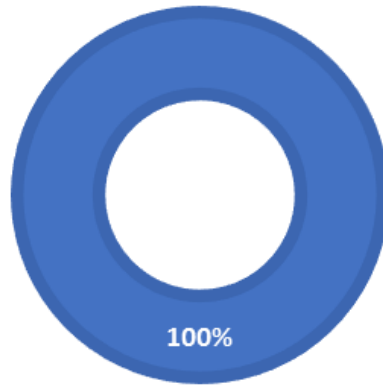
OIPA FORCE

■ Not-Sustained ■ Exonerated



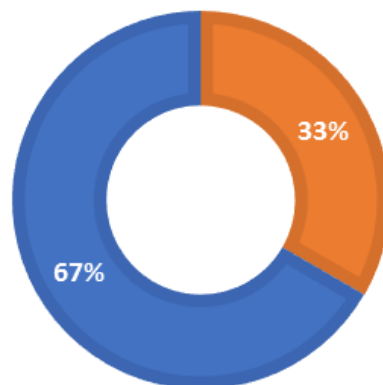
OIPA PERFORMANCE OF DUTY

■ Exonerated



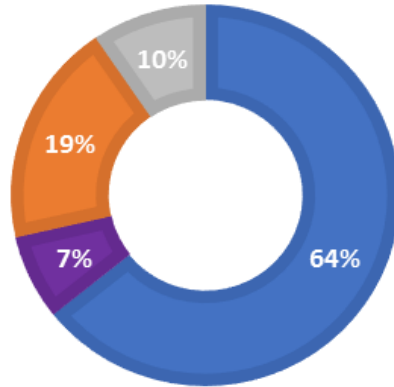
OIPA POLICY/PROCEDURE

■ Sustained ■ Exonerated



OIPA TOTAL FINDINGS

■ Exonerated
 ■ Not-Sustained
 ■ Sustained
 ■ Unfounded



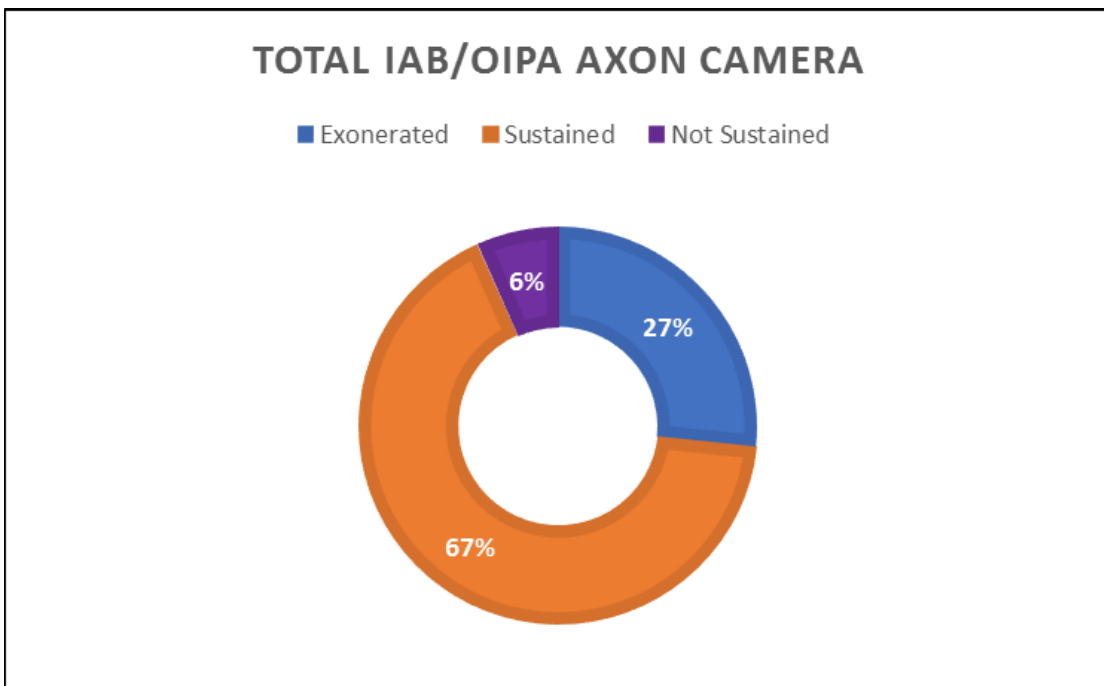
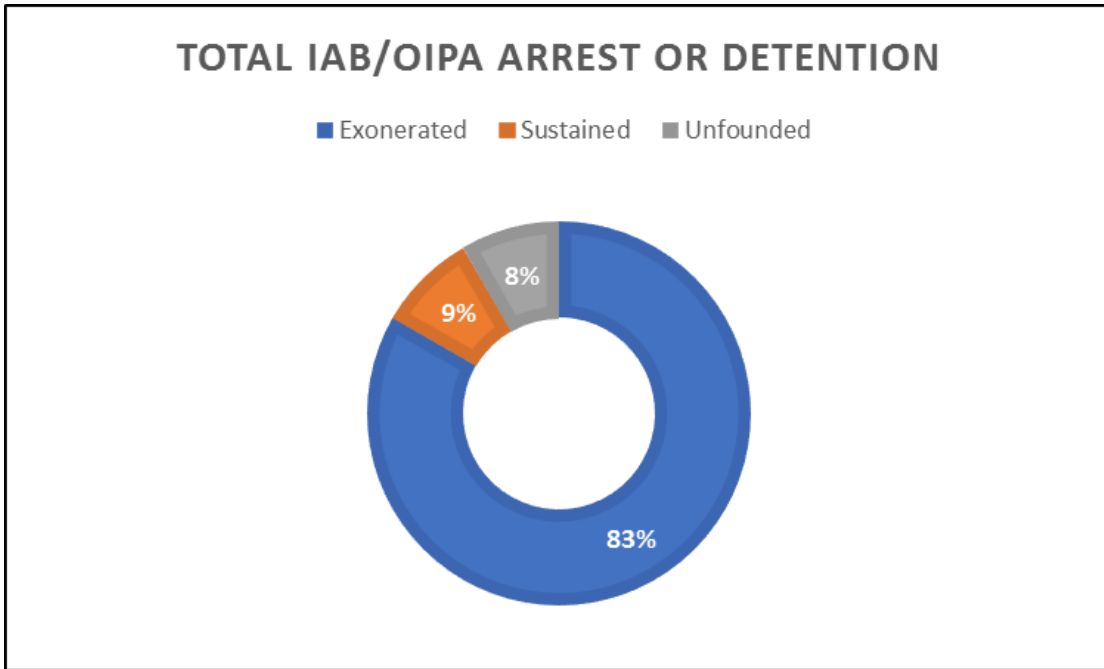
2019 Office of the Independent Police Auditor Investigative Findings

Allegation	Finding	#	Finding	#
Arrest/Detention	Sustained	1	Exonerated	27
Arrest/Detention	Exonerated	4	Not-Sustained	3
AXON Camera	Sustained	6	Sustained	8
Bias-Based Policing	Not-Sustained	1	Unfounded	4
Bias-Based Policing	Unfounded	4		
Conduct Unbecoming an Officer	Exonerated	2		
Conduct Unbecoming an Officer	Not-Sustained	1		
Force	Not-Sustained	1		
Force	Exonerated	12		
Performance of Duty	Exonerated	7		
Policy/Procedure - General Conduct	Sustained	1		
Policy/Procedure - General Conduct	Exonerated	2		
Total		42	Total	42

2019 INVESTIGATIVE FINDINGS – BPD INTERNAL AFFAIRS BUREAU (IAB) & OIPA

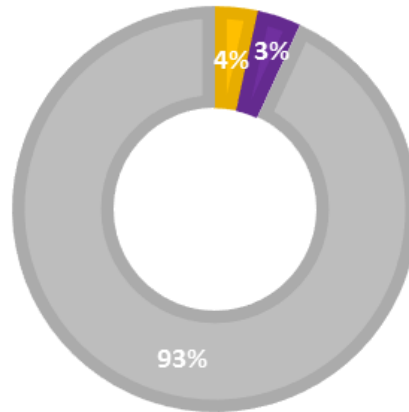
Investigative findings for complaints completed between January 1, 2019 and December 31, 2019.

These data are an aggregate of IAB's and OIPA's 2019 investigative findings.



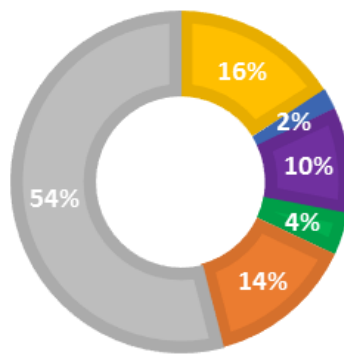
TOTAL IAB/OIPA BIAS-BASED POLICING

■ Administratively Closed ■ Not Sustained ■ Unfounded



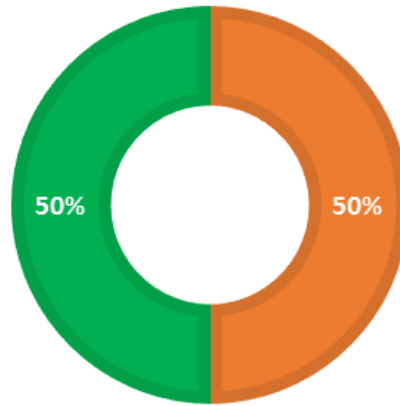
TOTAL IAB/OIPA CONDUCT UNBECOMING

■ Administratively Closed ■ Exonerated ■ Not Sustained
■ Supervisory Referral ■ Sustained ■ Unfounded



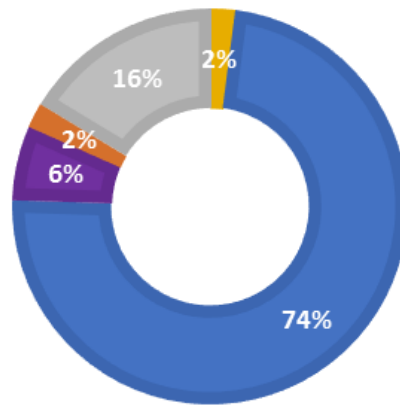
TOTAL IAB/OIPA COURTESY

■ Sustained ■ Supervisory Referral



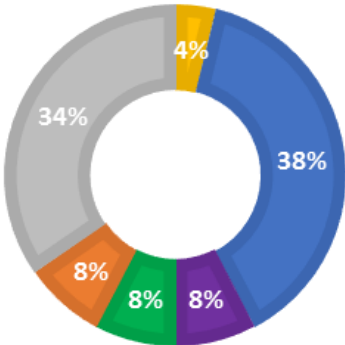
TOTAL IAB/OIPA FORCE

■ Administratively Closed ■ Exonerated ■ Not Sustained ■ Sustained ■ Unfounded



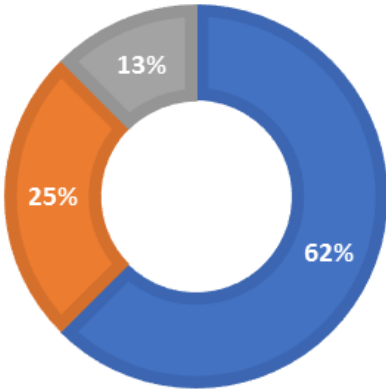
TOTAL IAB/OIPA PERFORMANCE OF DUTY

- Administratively Closed
- Exonerated
- Not Sustained
- Supervisory Referral
- Sustained
- Unfounded



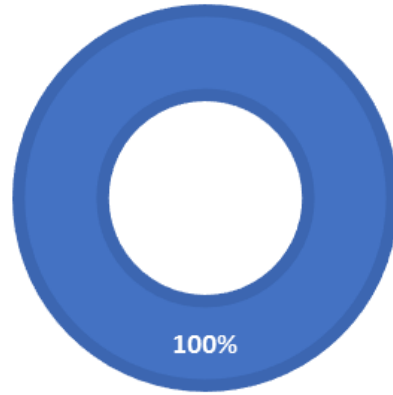
TOTAL IAB/OIPA POLICY/PROCEDURE

- Exonerated
- Sustained
- Not Sustained



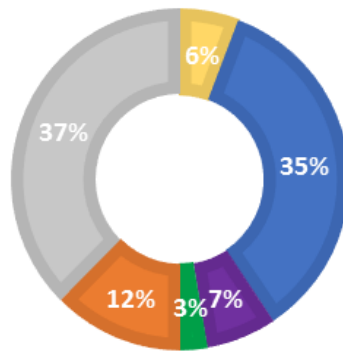
TOTAL IAB/OIPA SEARCH OR SEIZURE

■ Exonerated



TOTAL IAB/OIPA TOTAL FINDINGS

■ Administratively Closed ■ Exonerated ■ Not Sustained
■ Supervisory Referral ■ Sustained ■ Unfounded



2019 Internal Affairs Bureau Formal Complaints & Administrative Investigations

Allegation	Finding	#	Findings	#
Arrest or Detention	Exonerated	10	Administratively Closed	11
Arrest or Detention	Sustained	1	Exonerated	67
Arrest or Detention	Unfounded	1	Not Sustained	13
Axon Camera	Exonerated	4	Supervisory Referral	5
Axon Camera	Sustained	10	Sustained	24
Axon Camera	Not Sustained	1	Unfounded	72
			Total	192
Bias-Based Policing	Administratively Closed	1		
Bias-Based Policing	Not Sustained	1		
Bias-Based Policing	Unfounded	27		
Conduct Unbecoming an Officer	Administratively Closed	8		
Conduct Unbecoming an Officer	Exonerated	1		
Conduct Unbecoming an Officer	Not Sustained	5		
Conduct Unbecoming an Officer	Supervisory Referral	2		
Conduct Unbecoming an Officer	Sustained	7		
Conduct Unbecoming an Officer	Unfounded	27		
Courtesy	Sustained	1		
Courtesy	Supervisory Referral	1		
Force	Administratively Closed	1		
Force	Exonerated	36		
Force	Not Sustained	3		
Force	Sustained	1		
Force	Unfounded	8		
Performance of Duty	Administratively Closed	1		
Performance of Duty	Exonerated	10		
Performance of Duty	Not Sustained	2		
Performance of Duty	Supervisory Referral	2		
Performance of Duty	Sustained	2		
Performance of Duty	Unfounded	9		
Policy/Procedure	Exonerated	5		
Policy/Procedure	Sustained	2		
Policy/Procedure	Not Sustained	1		
Search or Seizure	Exonerated	1		
Total		192		

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 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.

¹¹ 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.

¹² 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.

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.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

March 2020

Issue date: April 13, 2020

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 **March 1, 2020 through March 31, 2020**.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	IAB Investigations Resolved*	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
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
October 2019	6	53	6	1	0	0
November 2019	10	59	2	1	0	0
December 2019	6	58	6	1	0	0
January 2020	8	53	13	2	0	0
February 2020	15	56	10	0	0	0
March 2020	9	54	11	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	7
Informal Complaints ⁷	0
Administrative Investigations	0
Inquiries ⁸	2
TOTAL	9

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	2
BART Police Department	5
TOTAL	7

*OIPA added a new data column to the October 2019 Monthly Report which will be populated going forward.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During March 2020, **2 Citizen Complaints** were received by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #20-13) (IA2020-024)	Officer #1: <ul style="list-style-type: none"> • Force • Arrest/Detention 	OIPA notified BPD which initiated an investigation.	37
2 (OIPA #20-14) (IA2020-026)	Officers #1-2: <ul style="list-style-type: none"> • Bias-Based Policing • Arrest/Detention • Policy/Procedure • Policy/Procedure (AXON Camera) 	OIPA notified BPD which initiated an investigation.	35

During March 2020, **5 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-027)	Officer #1: <ul style="list-style-type: none"> • Performance of Duty 	BPD initiated an investigation.	32
2 (IA2020-028)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	32
3 (IA2020-029)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	33
4 (IA2020-030)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	36
5 (IA2020-031)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	38

During February 2020, **1 Informal Complaint** was received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-031)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	34

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During February 2020, **2 Inquiries** were received by BPD (IA2020-025 and IA2020-032) but were not previously reported.

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During March 2020, **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 #19-17) (IA2019-057)	Officers racially profiled, improperly detained, harassed, and disrespected a group of detainees.	Officers #1-5: <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Arrest or Detention – Exonerated 	350	311

During March 2019, **3 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 (IA2019-053)	Officer contacted complainant based on complainant's race.	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing – Administratively Closed¹⁰ • Conduct Unbecoming an Officer – Administratively Closed 	362	331
2 (IA2019-080)	Officer contacted complainant based on complainant's race.	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded 	287	274
3 (IA2020-011)	Employee improperly cited subject for illegal parking.	Employee #1: <ul style="list-style-type: none"> • Conduct Unbecoming – Administratively Closed 	70	57

During March 2020, **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 (IA2019-083)	Officer attempted to non-verbally intimidate complainant and did so because of complainant's race. Officer was also parked illegally.	Officer #1: <ul style="list-style-type: none"> • Conduct unbecoming an Officer – Unfounded 	301	288

2 (IA2020-005)	Officers yelled at complainant during a law enforcement contact.	Officers #1-2: • Conduct Unbecoming an Officer – Supervisor Referral ¹¹	82	47
3 (IA2019-131)	Officer refused to provide identification to complainant.	Officer #1: • Conduct Unbecoming an Officer – Supervisor Referral	86	54

During March 2020, **4 Administrative Investigations** were concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2019-079)	Officer improperly detained subject, used unnecessary force during the contact, failed to report a use of force, used unprofessional language, and failed to document a TASER deployment.	Officer #1: • Force – Not Sustained • Arrest or Detention – Unfounded • Conduct Unbecoming an Officer – Sustained • Policy/Procedure (Reporting Force)– Not Sustained • Policy/Procedure (Reporting TASER)– Not Sustained	291	260
2 (IA2019-063)	Officers used excessive force and failed to use required de-escalation tactics. One officer insufficiently documented the contact, failed to properly initiate a review of the use of force, and failed to provide sufficient care.	Officers #1-2: • Conduct Unbecoming an Officer – Sustained Officer #1: • Force – Exonerated • Force (De-escalation) – Not Sustained Officer #2: • Force – Not Sustained • Force (De-escalation) – Sustained • Force (Reporting) – Sustained • Force (Reporting to Supervisor) – Sustained	333	306
3 (IA2019-090)	Officer fell asleep while on duty.	Officer #1: • Conduct Unbecoming an Officer – Sustained	246	233

4 (1A2020-021)	Officers insufficiently reviewed a use of force.	Officers #1-2: • Policy/Procedure – Sustained	53	18
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BPD also categorized case #IA2020-032 (regarding fare enforcement practices and the performance of a BPD dispatcher) as an **Inquiry** and closed the complaint.

DISCIPLINE ISSUED DURING REPORTING PERIOD

During March 2020, 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: • Oral Counseling
2	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Oral Counseling
3	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Written Reprimand

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	11
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	47
Investigations Reviewed During Current Month	12†

† 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.¹²

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 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.

¹¹ 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.

¹² 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.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

April 2020

Issue date: May 11, 2020

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 **April 1, 2020 through April 30, 2020**.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	IAB Investigations Resolved*	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
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
October 2019	6	53	6	1	0	0
November 2019	10	59	2	1	0	0
December 2019	6	58	6	1	0	0
January 2020	8	53	13	2	0	0
February 2020	15	56	10	0	0	0
March 2020	9	54	11	1	0	0
April 2020	6	44	18 [†]	1	1	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	4
Informal Complaints ⁷	1
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	5

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	2
BART Police Department	2
TOTAL	4

*OIPA added a new data column to the October 2019 Monthly Report which will be populated going forward.

[†] This total includes 3 open BPD cases not previously included in the OIPA Monthly Report.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During April 2020, **2 Citizen Complaints** were received by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #20-17) (IA2020-036)	Officers #1-4: <ul style="list-style-type: none"> • Arrest/Detention • Performance of Duty 	OIPA notified BPD which initiated an investigation.	11
2 (OIPA #20-18) (IA2020-037)	Officers #1-3: <ul style="list-style-type: none"> • Performance of Duty 	OIPA notified BPD which initiated an investigation.	11

During April 2020, **2 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-033)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	40
2 (IA2020-035)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing • Conduct Unbecoming an Officer Officer #2: <ul style="list-style-type: none"> • Performance of Duty Officers #1 & 3: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	BPD initiated an investigation.	19

During April 2020, **1 Informal Complaint** was received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-034)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	19

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During April 2020, **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 #19-19) (IA2019-060)	Officers used excessive force when they improperly detained subject and officers did not properly document a law enforcement contact.	Officers #1-2: <ul style="list-style-type: none"> • Force – Exonerated • Arrest or Detention – Not Sustained • Policy /Procedure (AXON Camera) – Sustained 	371	331

During April 2019, **7 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 (IA2019-070)	Officer contacted complainant based on complainant's race.	Officer #1: <ul style="list-style-type: none"> • Performance of Duty – Not Sustained 	340	329
2 (IA2019-088)	Officer improperly detained subject and was rude and disrespectful during the contact.	Officer #1: Courtesy – Administratively Closed ¹⁰	340	329
3 (IA2019-089)	Officers improperly arrested a subject and used excessive force, and one officer was discourteous during the contact.	Officer #1: <ul style="list-style-type: none"> • Arrest or Detention – Unfounded Officer #1: <ul style="list-style-type: none"> • Force – Exonerated Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Exonerated Officer #2: <ul style="list-style-type: none"> • Force – Unfounded 	272	255
4 (IA2019-101)	Officer used excessive force when he pointed his firearm at complainant.	Officer #1: <ul style="list-style-type: none"> • Force – Administratively Closed 	253	218

5 (IA2019-113)	One officer contacted complainant because of complainant's race and acted aggressively during the contact and two officers did not properly document a law enforcement contact.	Officers #1-2: • Policy/Procedure (AXON Camera) – Exonerated Officer #1: • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Not Sustained	210	182
6 (IA2020-014)	Officers were disrespectful to complainant when they improperly applied handcuffs.	Officers #1-2: • Conduct Unbecoming an Officer – Administratively Closed	210	182
7 (IA2019-099)	Officers used excessive force when they improperly contacted complainant for proof of payment.	Officers #1-2: Force – Administratively Closed	255	241

During April 2020, **6 Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2019-107)	Employee harassed complainant by requesting proof of payment.	Employee #1: • Conduct unbecoming an Officer – Administratively Closed	242	214
2 (IA2019-109)	Employee did not provide adequate assistance to complainant.	Employee #1: • Performance of Duty – Unfounded	235	207
3 (IA2019-122)	Employee did not provide adequate assistance to complainant.	Employee #1: • Performance of Duty – Supervisor Referral ¹¹	182	148
4 (IA2019-130)	Employee humiliated complainant during fare inspection process.	Employee #1: Courtesy – Supervisor Referral	193	158
5 (IA2020-029)	Officer used unprofessional language during a law enforcement contact.	Officer #1: Conduct Unbecoming an Officer – Supervisor Referral	59	40

6 (IA2020-034)	Officer used unprofessional language and attempted to intimidate complainant.	Officer #1: Conduct Unbecoming an Officer – Supervisor Referral	19	1
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During April 2020, **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 (IA2019-132)	Officer used profanity and acted unprofessionally during an interaction with an employee.	Officer #1: • Conduct Unbecoming an Officer – Sustained	132	99

DISCIPLINE ISSUED DURING REPORTING PERIOD

During April 2020, 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 acted inappropriately on District property.	Officer #1: • Conduct Unbecoming an Officer	Officer #1: • Written Reprimand
2	Officer did not take proper law enforcement action in response to a request for service.	Officer #1: • Policy/Procedure • Performance of Duty • Conduct Unbecoming an Officer	Officer #1: • Written Reprimand
3	Officer acted unprofessionally during a law enforcement contact.	Officer #1: • Conduct Unbecoming an Officer	Officer #1: • Non-Documented
4	Officer did not provide proper care of subject, did not communicate effectively with other BPD personnel, and did not properly document the law enforcement contact.	Officer #1: • Conduct Unbecoming an Officer	Officer #1: • Oral Counseling
5	Officer did not provide proper care to subject, did not communicate effectively with other BPD personnel, and did not properly document the law enforcement contact.	Officer #1: • Conduct Unbecoming an Officer	Officer #1: • Oral Counseling

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

6	Officer slept while on duty.	Officer #1: • Conduct Unbecoming an Officer	Officer #1: • Suspension (1 day)
7	Officers did not properly document a law enforcement contact.	Officers #1-2: • Policy/Procedure (AXON Camera)	Officer #1: • Oral Counseling Officer #2: • 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 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	1
BPD-Initiated Appeals	0
Investigations Being Monitored	48
Investigations Reviewed During Current Month	16†

† 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.¹²

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 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.

¹¹ 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.

¹² 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.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

May 2020

Issue date: June 8, 2020

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 **May 1, 2020 through May 31, 2020**.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	IAB Investigations Resolved*	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
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
October 2019	6	53	6	1	0	0
November 2019	10	59	2	1	0	0
December 2019	6	58	6	1	0	0
January 2020	8	53	13	2	0	0
February 2020	15	56	10	0	0	0
March 2020	9	54	11	1	0	0
April 2020	6	44	18	1	1	0
May 2020	4	40 [†]	6	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	3
Informal Complaints ⁷	1
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	4

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	0
BART Police Department	2
TOTAL	4

*OIPA added a new data column to the October 2019 Monthly Report which will be populated going forward.

[†] This number reflects the removal of #IA2019-060/OIPA #19-19, which was completed in April but remained on the BPD list of open cases pending presentation to the BPCRB.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During May 2020, **3 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-038)	Officer #1: • Performance of Duty	BPD initiated an investigation.	26
2 (IA2020-039)	Employee #1: • Performance of Duty	BPD initiated an investigation.	25
3 (IA2020-040)	Officers #1-2: • Performance of Duty • Arrest or Detention Officer #2: • Force • Policy/Procedure (AXON Camera)	BPD initiated an investigation.	24

During May 2020, **1 Informal Complaint** was received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-041)	Officer #1: • Policy/Procedure	BPD initiated a Supervisor Referral. ¹⁰	20

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During May 2020, **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 #19-40) (IA2019-108)	Officer used excessive force during an improper detention and one officer was discourteous and did not properly review the use of force.	Officer #1: • Force – Exonerated • Arrest or Detention – Exonerated Officer #2: • Policy/Procedure – Sustained • Courtesy – Exonerated	262	227

During May 2020, **4 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 (IA2019-068)	Officer improperly detained subject based on subject's race and used excessive force during the contact.	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Force – Exonerated 	371	345
2 (IA2019-072)	Officers used excessive force during an arrest, one officer made disparaging comments, and a supervisor failed to properly review the use of force.	Officers #1-2: <ul style="list-style-type: none"> • Force – Exonerated Officer #2: <ul style="list-style-type: none"> • Courtesy – Unfounded Officer #3: <ul style="list-style-type: none"> • Performance of Duty – Exonerated 	368	342
3 (IA2019-073)	Officer improperly detained complainant based on complainant's race and officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Arrest or Detention – Not Sustained • Policy/Procedure (AXON Camera) – Not Sustained 	360	342
4 (IA2020-002)	Officer contacted complainant based on complainant's race.	Officer #1: <ul style="list-style-type: none"> • Force – Administratively Closed¹¹ 	150	116

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING PREVIOUS REPORTING PERIODS

During April 2020, **1 Informal Complaint** was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2020-010)	Officers did not properly respond to a report of criminal activity.	Officers #1-3: <ul style="list-style-type: none"> • Performance of Duty – Supervisor Referral 	132	98

DISCIPLINE ISSUED DURING REPORTING PERIOD

During May 2020, 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 review a use of force.	Officer #1: • Policy/Procedure	Officer #1: • Non-Documented

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	1
BPD-Initiated Appeals	0
Investigations Being Monitored	49
Investigations Reviewed During Current Month	13†

† 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.¹²

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.

‡ 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 officer in violation of the applicable CA Penal Code section (832.7).

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 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 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.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

June 2020

Issue date: July 13, 2020

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 **June 1, 2020 through June 30, 2020**.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	IAB Investigations Resolved*	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
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
October 2019	6	53	6	1	0	0
November 2019	10	59	2	1	0	0
December 2019	6	58	6	1	0	0
January 2020	8	53	13	2	0	0
February 2020	15	56	10	0	0	0
March 2020	9	54	11	1	0	0
April 2020	6	44	18	1	1	0
May 2020	4	40	6	1	0	0
June 2020	7	44	4	0	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	5
Informal Complaints ⁷	1
Administrative Investigations	0
Inquiries ⁸	1
TOTAL	7

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	1
BART Police Department	4
TOTAL	5

¹OIPA added a new data column to the October 2019 Monthly Report which will be populated going forward.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During June 2020, **1 Citizen Complaint** was received by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #20-19) (IA2020-044)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Courtesy • Policy/Procedure 	OIPA notified BPD which initiated an investigation.	38

During June 2020, **4 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-042)	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer Officers #2-3: <ul style="list-style-type: none"> • Bias-Based Policing • Force 	BPD initiated an investigation.	40
2 (IA2020-004)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing 	BPD initiated an investigation.	35
3 (IA2020-046)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing • Conduct Unbecoming an Officer 	BPD initiated an investigation.	35
4 (IA2020-045)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	31

During June 2020, **1 Informal Complaint** was received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-045)	Employee #1: <ul style="list-style-type: none"> • Conduct Unbecoming 	BPD initiated an investigation.	33

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During June 2020, **2 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 (IA2019-082)	Officer used excessive force during a contact.	Officer #1: • Force – Exonerated	374	341
2 (IA2020-009)	Officer improperly entered complainant's personal space.	Officer #1: • Performance of Duty – Administratively Closed ¹⁰	164	125

During June 2020, **1 Informal Complaint** was addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-041)	Officer improperly withheld directional assistance.	Officer #1: • Policy/Procedure – Supervisor Referral. ¹¹	75	6

Also, during the month of June 2020, BPD classified the following complaint as an **Inquiry** and administratively closed the complaint: #IA2020-043 (complainant submitted a document that did not articulate an allegation of misconduct).

DISCIPLINE ISSUED DURING REPORTING PERIOD

During June 2020, 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	Officers did not properly document a law enforcement contact.	Officers #1-2: • Policy/Procedure (AXON Camera)	Officers #1-2: • Letter of Discussion

[†] 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 officer in violation of the applicable CA Penal Code section (832.7).

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	10
Complainant-Initiated Appeals	2
BPD-Initiated Appeals	0
Investigations Being Monitored	51
Investigations Reviewed During Current Month	12†

† 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.¹²

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 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.

¹¹ 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.

¹² 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.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

July 2020

Issue date: August 10, 2020

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 **July 1, 2020 through July 31, 2020.**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	IAB Investigations Resolved*	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
July 2019	11	61		0	0	0
August 2019	9	62		1	0	0
September 2019	13	53		1	0	0
October 2019	6	53	6	1	0	0
November 2019	10	59	2	1	0	0
December 2019	6	58	6	1	0	0
January 2020	8	53	13	2	0	0
February 2020	15	56	10	0	0	0
March 2020	9	54	11	1	0	0
April 2020	6	44	18	1	1	0
May 2020	4	40	6	1	0	0
June 2020	7	44	4	0	0	0
July 2020	1	41	3	1	0	0

TYPES OF CASES FILED

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

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	0
BART Police Department	1
TOTAL	1

¹*OIPA added a new data column to the October 2019 Monthly Report which will be populated going forward.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During July 2020, 1 **Citizen Complaint (Formal)** was received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-048)	Officer #1: • Force	BPD initiated an investigation.	18

During October 2019, 1 **Informal Complaint** was received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2019-115)	Officer #1: • Courtesy	BPD initiated a Supervisor Referral. ¹⁰	32

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During July 2020, 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 #19-41) (IA2019-111)	Officer used excessive force and an improper search during an improper detention and arrest. Two officers also improperly elevated the charge to misdemeanor. One officer did not properly review the use of force and another officer was rude to complainant.	Officer #1: • Force – Sustained • Policy/Procedure (Charging) – Sustained • Arrest/Detention (Counts 1-2) – Exonerated • Search or Seizure – Exonerated Officer #2: • Policy/Procedure (Charging) – Exonerated Officer #3: • Performance of Duty – Sustained Officer #4 • Courtesy – Not Sustained	312	279

During July 2020, 1 **Citizen Complaint (Formal)** was concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-013)	Officer was rude to complainant and refused to provide identification.	Officer #1: • Conduct Unbecoming an Officer – Sustained • Courtesy – Not Sustained	180	146

During July 2020, **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 (IA2020-006)	Officer acted unprofessionally and used force. Two officers failed to properly record and report the contact, and one of those officers failed to intercede and miscategorized video evidence.	Officer #1: <ul style="list-style-type: none"> • Force – Sustained • Conduct Unbecoming an Officer – Sustained • Policy/Procedure (Reporting) – Sustained Officer #2: <ul style="list-style-type: none"> • Policy/Procedure (Intercede and Report) – Sustained • Performance of Duty (Video Classification) – Not Sustained Officers #1-2: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) – Sustained 	196	176

During June 2020, **1 Informal Complaint** was addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-016)	Employee did not properly respond to a call for service.	Employee #1: <ul style="list-style-type: none"> • Conduct Unbecoming – Supervisor Referral 	179	151

DISCIPLINE ISSUED DURING REPORTING PERIOD

During July 2020, 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: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officers #1: <ul style="list-style-type: none"> • Letter of Discussion

† 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 officer in violation of the applicable CA Penal Code section (832.7).

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	10
Complainant-Initiated Appeals	2
BPD-Initiated Appeals	0
Investigations Being Monitored	51
Investigations Reviewed During Current Month	12 [†]

[†]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.¹¹

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 IAB.

¹¹ OIPA may submit recommendations to IAB 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.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

August 2020

Issue date: September 14, 2020

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 **August 1, 2020 through August 31, 2020.**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
August 2019	9	62		1	0	0
September 2019	13	53		1	0	0
October 2019	6	53	6	1	0	0
November 2019	10	59	2	1	0	0
December 2019	6	58	6	1	0	0
January 2020	8	53	13	2	0	0
February 2020	15	56	10	0	0	0
March 2020	9	54	11	1	0	0
April 2020	6	44	18	1	1	0
May 2020	4	40	6	1	0	0
June 2020	7	44	4	0	0	0
July 2020	1	41	3	1	0	0
August 2020	9	43	5	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	5
Informal Complaints ⁷	4
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	9

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	1
BART Police Department	4
TOTAL	5

¹OIPA added a new data column to the October 2019 Monthly Report which will be populated going forward.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During August 2020, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #20-20) (IA2020-057)	Officers #1-2: • Conduct Unbecoming an Officer	OIPA initiated an investigation.	18

During August 2020, **4 Citizen Complaint (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-050)	Officers #1-2: • Arrest or Detention	BPD initiated an investigation.	28
2 (IA2020-051)	Officer #1: • Bias-Based Policing	BPD initiated an investigation.	24
3 (IA2020-053)	Officers #1-2: • Conduct Unbecoming an Officer	BPD initiated an investigation.	21
4 (IA2020-056)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	19

During August 2020, **3 Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-049)	Officers #1-2: • Conduct Unbecoming an Officer	BPD initiated a Supervisor Referral. ¹⁰	32
2 (IA2020-054)	Officer #1: • Performance of Duty	BPD initiated a Supervisor Referral.	21
3 (IA2020-055)	Officers #1-2: • Policy/Procedure	BPD initiated a Supervisor Referral.	21

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During July 2020, **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 (IA2020-052)	Officer #1: • Courtesy	BPD initiated an investigation.	48

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During August 2020, **2 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 (IA2019-098)	Officer improperly detained complainant, used excessive force during the contact, did not adjust the tightness of handcuffs as requested, and did not properly report the contact. Another officer used excessive force when applying handcuffs and a supervisor did not properly address the use of force.	Officer #1: • Force (Count 1) – Unfounded • Force (Count 2) – Exonerated • Arrest or Detention – Sustained • Policy/Procedure (AXON Camera) – Sustained • Performance of Duty (Handcuffs) – Sustained Officer #2: • Performance of Duty – Sustained Officer #3: • Force – Unfounded	377	349
2 (IA2020-004)	Officers harassed complainant because of his race.	Officers #1-5: • Bias Based Policing – Administratively Closed ¹¹	98	57

During August 2020, **3 Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-045)	Employee was hostile toward complainant during phone call.	Employee #1: • Conduct Unbecoming – Supervisor Referral	96	79
2 (IA2020-054)	Officer did not properly collect information related to a reported crime.	Officer #1: Performance of Duty – Supervisor Referral	96	79
3 (IA2020-055)	Officer exceeded freeway speed limits in a department vehicle.	Officer #1: Policy/Procedure – Supervisor Referral	19	5

DISCIPLINE ISSUED DURING REPORTING PERIOD

During August 2020, 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 and improperly elevated the criminal charges against the complainant.	Officer #1: • Force • Policy/Procedure	Officer #1: • Letter of Discussion
2	Officers did not properly document a law enforcement contact.	Officers #1-2: • Policy/Procedure	Officer #1: Letter of Discussion
3	Officers did not properly document a law enforcement contact.	Officers #1-2: Policy/Procedure	Officer #1: Letter of Discussion

†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 officer in violation of the applicable CA Penal Code section (832.7).

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	12
Complainant-Initiated Appeals	1
BPD-Initiated Appeals	0
Investigations Being Monitored	52
Investigations Reviewed During Current Month	10†

† 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.¹²

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 IAB.

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 OIPA may submit recommendations to IAB 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.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

September 2020

Issue date: October 19, 2020

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, 2020 through September 30, 2020.**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 2019	13	53		1	0	0
October 2019	6	53	6	1	0	0
November 2019	10	59	2	1	0	0
December 2019	6	58	6	1	0	0
January 2020	8	53	13	2	0	0
February 2020	15	56	10	0	0	0
March 2020	9	54	11	1	0	0
April 2020	6	44	18	1	1	0
May 2020	4	40	6	1	0	0
June 2020	7	44	4	0	0	0
July 2020	1	41	3	1	0	0
August 2020	9	43	5	1	0	0
September 2020	10	45	8	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	5
Informal Complaints ⁷	1
Administrative Investigations	3
Inquiries ⁸	1
TOTAL	10

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	1
BART Police Department	4
TOTAL	5

¹*OIPA added a new data column to the October 2019 Monthly Report which will be populated going forward.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During September 2020, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #20-23) (IA2020-058)	Officers #1-3: <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer 	OIPA initiated an investigation.	46

During September 2020, **4 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-059)	Officer #1: <ul style="list-style-type: none"> • Performance of Duty • Policy/Procedure 	BPD initiated an investigation.	45
2 (IA2020-062)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing • Conduct Unbecoming an Officer 	BPD initiated an investigation.	32
3 (IA2020-063)	Officer #1: <ul style="list-style-type: none"> • Arrest/Detention • Search or Seizure • Conduct Unbecoming an Officer 	BPD initiated an investigation.	31
4 (IA2020-066)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing • Force • Policy Procedure (AXON Camera) • Performance of Duty • Conduct Unbecoming an Officer 	BPD initiated an investigation.	31

During September 2020, **3 Administrative Investigations** were initiated by BPD:

(IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-060)	Officers #1-2: <ul style="list-style-type: none"> • Policy/Procedure (Reporting Use of Force) • Performance of Duty • Conduct Unbecoming an Officer Officer #2 <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	38
2 (IA2020-061)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Courtesy • Policy/Procedure (AXON Camera) 	BPD initiated an investigation.	32
3 (IA2020-065)	Officer #1: <ul style="list-style-type: none"> • Performance of Duty Officer #2: <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer 	BPD initiated an investigation.	35

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During August 2020, **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 (IA2020-055)	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure 	BPD initiated a Supervisor Referral. ¹⁰	54

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During September 2020, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #19-42)	Officers used excessive force during an arrest, one officer threatened the arrestee, one officer failed to include the use of force in a written report, and one supervisor failed to properly review the use of force.	<p>Officers #1-2:</p> <ul style="list-style-type: none"> Force – Exonerated <p>Officer #2:</p> <ul style="list-style-type: none"> Policy/Procedure (Report Writing) – Sustained Conduct Unbecoming an Officer – Sustained <p>Officer #3:</p> <ul style="list-style-type: none"> Performance of Duty – Sustained <p>Officer #4:</p> <ul style="list-style-type: none"> Force – Sustained 	381	343

During September 2020, **3 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 (IA2019-117)	Officers harassed complainant because of his race.	<p>Officer #1:</p> <ul style="list-style-type: none"> Bias Based Policing – Unfounded Conduct Unbecoming an Officer – Unfounded 	381	315
2 (IA2020-008)†	Officer engaged in off-duty solicitation.	<p>Officer #1:</p> <ul style="list-style-type: none"> Criminal Conduct – Not Sustained Conduct Unbecoming an Officer – Sustained 	350	290
3 (IA2020-030)	Officer intimidated complainant.	<p>Unknown Officer #1:</p> <ul style="list-style-type: none"> Conduct Unbecoming an Officer – Administratively Closed¹¹ 	217	169

†This complaint was originally categorized as an Administrative Investigation by BPD and was reported as such in the OIPA Monthly Report for January 2020.

During September 2020, **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 (IA2020-049)	Officers damaged property with their vehicle and left the scene.	Officers #1-2: • Conduct Unbecoming an Officer – Supervisor Referral	74	34
2 (IA2020-052)	Officers intimidated complainant by shouting aggressively.	Officers #1-2: • Courtesy – Supervisor Referral	83	35

Also, during the month of September 2020, BPD received and classified the following complaint as an **Inquiry** and Administratively Closed the complaint: #IA2020-064 (after determining that no allegation of misconduct was articulated).

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING PRIOR REPORTING PERIOD

During August 2020, **1 Informal Complaint** was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2020-055)	Officer exceeded freeway speed limits in a department vehicle.	Officer #1: • Policy/Procedure – Supervisor Referral	54	5

DISCIPLINE ISSUED DURING REPORTING PERIOD

During September 2020, 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: • Oral Counseling
2	Officer verbally threatened subject and failed to properly document a use of force by another officer.	Officer #1: • Policy/Procedure (Report Writing) • Conduct Unbecoming an Officer	Officer #1: • Oral Counseling
3	One officer improperly detained complainant, failed to properly forward a complaint of misconduct, did not properly address complaints of physical discomfort and did not properly document a law enforcement contact. One officer failed to properly supervise subordinate officers and failed to ensure that a use of force was properly documented and reviewed.	Officer #1: • Arrest or Detention • Performance of Duty • Policy/Procedure (AXON Camera) Officer #2: • Performance of Duty (Supervision)	Officer #1: • Letter of Discussion Officer #2: • Non-Documented

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	11
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	54
Investigations Reviewed During Current Month	12†

†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.

‡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 officer in violation of the applicable CA Penal Code section (832.7).

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.¹²

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 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 IAB.

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 OIPA may submit recommendations to IAB 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.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

October 2020

Issue date: November 16, 2020

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 **October 1, 2020 through October 31, 2020**.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
October 2019	6	53	6	1	0	0
November 2019	10	59	2	1	0	0
December 2019	6	58	6	1	0	0
January 2020	8	53	13	2	0	0
February 2020	15	56	10	0	0	0
March 2020	9	54	11	1	0	0
April 2020	6	44	18	1	1	0
May 2020	4	40	6	1	0	0
June 2020	7	44	4	0	0	0
July 2020	1	41	3	1	0	0
August 2020	9	43	5	1	0	0
September 2020	10	45	8	1	0	0
October 2020	10	48	9	2	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	4
Informal Complaints ⁷	5
Administrative Investigations	1
Inquiries ⁸	0
TOTAL	10

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	2
BART Police Department	2
TOTAL	4

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During October 2020, **2 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #20-26) (IA2020-069)	Officers #1-3: • Performance of Duty	OIPA initiated an investigation.	33
2 (OIPA #20-28) (IA2020-070)	Officers #1-4: • Force Officers #2-4: • Arrest/Detention • Search or Seizure • Conduct Unbecoming an Officer	OIPA initiated an investigation.	26

During October 2020, **2 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-071)	Officers #1-3: • Performance of Duty • Courtesy	BPD initiated an investigation.	31
2 (IA2020-075)	Employee #1: • Bias-Based Policing • Courtesy	BPD initiated an investigation.	24

During October 2020, **1 Administrative Investigation** was initiated by BPD:

(IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-076)	Officer #1: • Arrest/Detention • Performance of Duty • Conduct Unbecoming an Officer • Policy/Procedure (AXON Camera)	BPD initiated an investigation.	18

During October 2020, **5 Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-067)	Officers #1-2: • Courtesy	BPD initiated a Supervisor Referral. ¹⁰	38
2 (IA2020-068)	Officers #1-2: • Performance of Duty	BPD initiated a Supervisor Referral.	35
3 (IA2020-072)	Officer #1: • Policy/Procedure	BPD initiated a Supervisor Referral.	21
4 (IA2020-073)	Employees #1-3: • Courtesy	BPD initiated an investigation.	21
5 (IA2020-074)	Officer #1: • Courtesy	BPD initiated an investigation.	20

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During October 2020, **2 Citizen Complaints** were concluded by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #19-50)	Officers used excessive force during an arrest, one officer did not properly de-escalate the contact, and all involved officers mistreated the subject due to the subject's race.	Officers #1-3: • Bias-Based Policing – Unfounded • Force – Exonerated Officer #2: • Policy/Procedure (De-Escalation) – Sustained	377	342
2 (OIPA #19-51)	Officer improperly contacted and detained subject, used excessive force during the detention, and did so because of the detainee's race.	Officer #1: • Arrest or Detention – Exonerated • Force – Exonerated • Bias-Based Policing – Unfounded	377	374*

*This investigation was tolled pending potential litigation related to the contact. Though litigation may still be pending, it is OIPA's understanding that the allotted time normally allowed for resolving a claim (a precursor to litigation) has been extended due to the global Covid-19 pandemic. OIPA determined it was in the best interest of the complainant and the officer to complete the investigation at this time.

During October 2020, **1 Citizen Complaint (Formal)** was concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-033)	Officer improperly contacted complainant, used excessive force during the contact, and failed to properly document the contact.	Officer #1: <ul style="list-style-type: none"> • Force – Exonerated • Arrest or Detention – Exonerated • Policy/Procedure (AXON Camera) – Sustained 	229	208

During October 2020, **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 (IA2018-013)	Officer slept in public while on duty during an outreach event.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure – Sustained 	282	249

During October 2020, **4 Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-053)	Officers acted unprofessionally during a contact and scared complainant.	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Supervisor Referral 	84	53
2 (IA2020-067)	Officers acted aggressively and improperly contacted complainant.	Officers #1-2: <ul style="list-style-type: none"> • Courtesy – Supervisor Referral 	38	7
3 (IA2020-068)	Officers did not properly respond to a call for service	Officers #1-2: <ul style="list-style-type: none"> • Performance of Duty – Supervisor Referral 	35	6
4 (IA2020-072)	Officer unnecessarily exceeded freeway speed limit in a BPD vehicle.	Officers #1-2: <ul style="list-style-type: none"> • Performance of Duty – Supervisor Referral 	21	1

Also, during the month of October 2020, BPD received and classified the following complaint as an **Inquiry** and **Administratively Closed**¹¹ the complaint: #IA2020-025 (after determining that no allegation of misconduct was articulated).

DISCIPLINE ISSUED DURING REPORTING PERIOD

During October 2020, 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	One officer used excessive force, and one officer threatened subject and failed to properly document the use of force.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure • Conduct Unbecoming an Officer Officer #2: <ul style="list-style-type: none"> • Force 	Officer #1: <ul style="list-style-type: none"> • Oral Counseling Officer #2: <ul style="list-style-type: none"> • Written Reprimand
2	Officer failed to apply required de-escalation tactics.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure 	Officer #1: <ul style="list-style-type: none"> • Non-Documented‡
3	Officer was discourteous to complainant.	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	Officer #1: <ul style="list-style-type: none"> • Non-Documented

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	11
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	57
Investigations Reviewed During Current Month	16†

† 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.

† 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).

‡ The subject officer in this case received counseling to review and identify available de-escalation opportunities during the contact.

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 or reviewed cases with detail not to exceed that which is allowable under state law.

The investigations reviewed by OIPA during the period generated recommendations for policy/practice revisions and requests for additional investigation.¹²

OIPA review of Supervisor Use of Force Reports, which are generated as required by BPD Policy 300 (Use of Force), prompted OIPA to request several referrals to the BPD Office of Internal Affairs.

These referrals were related to:

- Unreported force
- AXON camera activation
- Conduct unbecoming
- Incomplete supervisory review
- Application of the BART Proof of Payment (PoP) Ordinance

BPD Chief Alvarez and his command staff were receptive to all OIPA recommendations related to the issues listed above. Each unaddressed potential policy violation was properly routed or addressed, and Chief Alvarez updated instructions to BPD personnel related to the enforcement of facemask violations and the PoP Ordinance.

These adjustments effectively refocused facemask enforcement on passenger education and the provision of facemasks where feasible. OIPA acknowledges the importance of removing passengers who endanger the health and safety of others, and OIPA prioritizes review of these contacts to ensure that force and/or improper discretion are not unnecessarily applied during these ejections.

As part of our mission to assist in the improvement of policing at BART, OIPA also noted several instances in which officers applied sound and effective de-escalation tactics in accordance with the state-of-the-art Integrating Communications, Assessment, and Tactics (ICAT) training program designed by the Police Executive Research Forum (PERF). Effective de-escalation tactics have been employed by BPD officers in potentially deadly situations involving firearms and other weapons as well as during low-level contacts, thereby minimizing applications of force, injuries, complaints of misconduct, and legal liability.

OIPA is committed to identifying and addressing areas for improvement while also recognizing examples of effective de-escalation that can be used in trainings to inform those conversations with real-life references.

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 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 IAB.

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 OIPA may submit recommendations to IAB 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.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

November 2020

Issue date: December 14, 2020

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 **November 1, 2020 through November 30, 2020.**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
November 2019	10	59	2	1	0	0
December 2019	6	58	6	1	0	0
January 2020	8	53	13	2	0	0
February 2020	15	56	10	0	0	0
March 2020	9	54	11	1	0	0
April 2020	6	44	18	1	1	0
May 2020	4	40	6	1	0	0
June 2020	7	44	4	0	0	0
July 2020	1	41	3	1	0	0
August 2020	9	43	5	1	0	0
September 2020	10	45	8	1	0	0
October 2020	10	48	9	2	0	0
November 2020	11	51	7	2	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	7
Informal Complaints ⁷	0
Administrative Investigations	4
Inquiries ⁸	0
TOTAL	11

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	1
BART Police Department	6
TOTAL	7

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During November 2020, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #20-29) (IA2020-077)	Officers #1-3: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer Officers #2-3 <ul style="list-style-type: none"> • Force • Arrest or Detention 	OIPA initiated an investigation.	35

During November 2020, **5 Citizen Complaints (Formal)** were received by BPD:

(IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-078)	Employees #1-4: <ul style="list-style-type: none"> • Courtesy 	BPD initiated an investigation.	31
2 (IA2020-079)	Officers #1-2: <ul style="list-style-type: none"> • Performance of Duty 	BPD initiated an investigation.	35
3 (IA2020-082)	Employee #1: <ul style="list-style-type: none"> • Bias-Based Policing • Conduct Unbecoming 	BPD initiated an investigation.	27
4 (IA2020-083)	Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing • Conduct Unbecoming an Officer • Policy/Procedure (AXON Camera) 	BPD initiated an investigation.	25
5 (IA2020-084)	Employee #1: <ul style="list-style-type: none"> • Performance of Duty • Conduct Unbecoming 	BPD initiated an investigation.	21

During November 2020, **3 Administrative Investigations** were initiated by BPD:

(IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-081)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	26
2 (IA2020-085)	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Policy/Procedure (AXON Camera) 	BPD initiated an investigation.	14
3 (IA2020-086)	Officer #1: <ul style="list-style-type: none"> • Performance of Duty • Policy/Procedure (AXON Camera) 	BPD initiated an investigation.	19

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During October 2020, **1 Citizen Complaint (Formal)** was received by BPD but not previously reported:

(IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-080)	Officer #1: • Arrest or Detention	BPD initiated an investigation.	49

During October 2020, **1 Administrative Investigation** was initiated by BPD but not previously reported:

(IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-076)	Officer #1: • Arrest or Detention • Conduct Unbecoming an Officer • Performance of Duty • Policy/Procedure (AXON Camera)	BPD initiated an investigation.	46

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During November 2020, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #19-52) (IA2019-125)	Officer did not respond appropriately to a misconduct complaint, attempted to intimidate complainant, and improperly used a law enforcement database to collect personal information about complainant.	Officer #1: • Policy/Procedure (Database Misuse) – Unfounded • Conduct Unbecoming an Officer – Unfounded • Performance of Duty – Unfounded	397	358

During November 2020, **2 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 (IA2020-018)	Officer improperly ejected complainant from the system.	Officer #1: • Conduct Unbecoming an Officer – Not Sustained	317	292
2 (IA2020-040)	Officer improperly detained complainant, did not properly supervise a trainee, did not properly document the contact, and used excessive force during the detention.	Officer #1: • Force – Sustained • Performance of Duty – Sustained • Arrest or Detention – Sustained • Policy/Procedure (AXON Camera) – Exonerated	216	190

During November 2020, **1 Administrative Investigation** was concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2019-133)	Officer improperly detained subject, improperly applied the Proof of Payment Ordinance and used excessive force during the detention.	Officer #1: • Force (Taser) – Sustained • Arrest or Detention – Sustained • Policy/Procedure (Proof of Payment) – Sustained	363	336

During November 2020, **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 (IA2020-073)	Employees were speaking too loudly in close proximity to complainant.	Officers #1-3: • Courtesy – Administratively Closed ¹⁰	49	9
2 (IA2020-074)	Officer was dismissive and did not take appropriate action upon request.	Officer #1: • Courtesy – Supervisor Referral	48	7

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING A PRIOR REPORTING PERIOD

During September 2020, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #19-46) (IA2019-124)*	Officers intimidated passengers by invading personal space and officers harassed a passenger while requesting proof of payment.	Officers #1-3: • Conduct Unbecoming an Officer – Administratively Closed	417	323

DISCIPLINE ISSUED DURING REPORTING PERIOD

During November 2020, 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 improperly detained subject, improperly applied the Proof of Payment Ordinance and used excessive force during the detention.	Officer #1: • Force (Taser) • Arrest or Detention • Policy/Procedure (Proof of Payment)	Officer #1: • Written Reprimand
2	Officer engaged in off-duty solicitation.	Officer #1: • Conduct Unbecoming an Officer	Officer #1: • Suspension Held in Abeyance (40 hours)‡

*This case remained on the list of open cases for BPD pending presentation to the BPCRB at their regular meeting in November 2020.

†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).

‡A suspension held in abeyance provides that the suspension will be imposed if any similar misconduct allegations are sustained within 2 years of this issuance.

3	One officer acted unprofessionally, used force and did not properly document or report the use of force. One officer failed to properly document the contact and failed to intercede.	Officer #1: <ul style="list-style-type: none"> • Force • Policy/Procedure (Reporting Use of Force) • Policy/Procedure (AXON Camera) • Conduct Unbecoming an Officer Officer #2 <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) • Policy/Procedure (Duty to Intercede and Report) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion Officer #2 <ul style="list-style-type: none"> • Letter of Discussion
4	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion
5	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (AXON Camera) 	Officer #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 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	58
Investigations Reviewed During Current Month	20†

†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 addressed by BPD. The OIPA Monthly Report will reflect information regarding monitored or reviewed cases with detail not to exceed that which is allowable under state law.

The BPD Internal Affairs investigations and Supervisor Use of Force Reports (SUFRs) reviewed by OIPA during the period generated recommendations for policy/practice revisions and requests for additional action.¹¹

OIPA review of SUFRs, which are generated as required by BPD Policy 300 (Use of Force), prompted OIPA to recommend referrals to the BPD Office of Internal Affairs.

These referrals were related to:

- Unreported force
- AXON camera activation
- Incomplete supervisory review
- Application of the BART Proof of Payment (PoP) Ordinance
- Discourtesy and Conduct Unbecoming an Officer

BPD Chief Alvarez and his command staff were receptive to the OIPA recommendations related to the issues listed above. Each unaddressed potential policy violation was properly routed or addressed, and Chief Alvarez updated instructions to BPD personnel related to performance in the listed areas.

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.

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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 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.

¹¹ OIPA may submit recommendations to IAB 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.



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

December 2020

Issue date: January 11, 2020

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 **December 1, 2020 through December 31, 2020**.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
December 2019	6	58	6	1	0	0
January 2020	8	53	13	2	0	0
February 2020	15	56	10	0	0	0
March 2020	9	54	11	1	0	0
April 2020	6	44	18	1	1	0
May 2020	4	40	6	1	0	0
June 2020	7	44	4	0	0	0
July 2020	1	41	3	1	0	0
August 2020	9	43	5	1	0	0
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

TYPES OF CASES FILED

Citizen Complaints (Formal)	4
Informal Complaints ⁷	3
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	7

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	1
BART Police Department	3
TOTAL	4

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During December 2020, **1 Citizen Complaint** was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #20-32) (IA2020-093)	Officer #1: • Conduct Unbecoming an Officer	OIPA notified BPD which initiated an investigation.	25

During December 2020, **2 Citizen Complaints (Formal)** were received by BPD:

(IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-089)	Officers #1-2: • Force	BPD initiated an investigation.	27
2 (IA2020-095)	Employee #1: • Performance of Duty • Conduct Unbecoming	BPD initiated an investigation.	13
3 (IA2020-096)	Officer #1: • Force	BPD initiated an investigation.	13

During December 2020, **2 Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-088)	Officer #1: • Policy/Procedure	BPD initiated a Supervisor Referral. ¹⁰	39
2 (IA2020-090)	Officer #1: • Policy/Procedure	BPD initiated a Supervisor Referral.	39

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During November 2020, **1 Citizen Complaint (Formal)** was received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-091)	Officer #1: • Force	BPD initiated an investigation.	43

During November 2020, **1 Informal Complaint** was received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-092)	Officer #1: • Arrest/Detention	BPD initiated an investigation.	42

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During December 2020, **1 Citizen Complaint** was concluded by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #20-06)	Officer harassed and improperly detained and searched subject and did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Arrest/Detention – Administratively Closed • Search/Seizure – Administratively Closed • Courtesy – Administratively Closed • Conduct Unbecoming an Officer – Administratively Closed • Policy/Procedure (AXON Camera) – Administratively Closed 	341	306

During December 2020, **2 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 (IA2020-023)	Officer improperly ejected complainant from the system.	Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained 	317	292
2 (IA2020-084)	Employee was unprofessional and inattentive to complainant during a phone call.	Employee #1: <ul style="list-style-type: none"> • Conduct Unbecoming – Supervisor Referral 	49	10

During December 2020, **1 Informal Complaint** was addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-088)	Officer exceeded the posted speed limit.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure – Supervisor Referral 	48	7

DISCIPLINE ISSUED DURING REPORTING PERIOD

During December 2020, 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	Employee fell asleep while on duty.	Employee #1: • Policy/Procedure	Officer #1: • Written Reprimand
2	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • Oral Counseling
3	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (AXON Camera)	Officer #1: • 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 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	59
Investigations Reviewed During Current Month	13†

†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 addressed by BPD. The OIPA Monthly Report will reflect information regarding monitored or reviewed cases with detail not to exceed that which is allowable under state law.

The BPD Internal Affairs investigations, Supervisor Use of Force Reports (SUFRs), officer contacts, and body-worn camera recordings reviewed by OIPA during the period

*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).

generated recommendations for policy/practice revisions and requests for additional action.¹¹

BPD Supervisor Use of Force Reports

OIPA review of SUFRs during this reporting period, which are generated as required by BPD Policy 300 (Use of Force), prompted OIPA to recommend investigation by the BPD Office of Internal Affairs in some instances.

These referrals to Internal Affairs were related to:

- Unreported use of force
- Late or failed AXON camera activations
- Incomplete supervisory reviews
- Conduct Unbecoming an Officer
- Improper application and enforcement of the BART Proof of Payment (PoP) Ordinance

In response to OIPA's concerns related to the actual and potential policy violations listed above, BPD pledged to examine the quality and scope of training for new supervisors. Command staff also indicated that they will recommend that Field Training Officers review the body-worn camera recordings of trainees on a daily basis to provide correction, additional training, or discipline where appropriate.

BPD command staff have also committed to improve data collection efforts to better document the underlying reason for a contact that results in an arrest. For example, where a subject is contacted for fare evasion and refuses to provide verifiable identification, that subject may ultimately be charged with resisting, delaying or obstructing an officer while the underlying fare evasion violation will be documented only in the officer's written narrative. This process does not lend itself to an efficient data retrieval process and prevents effective analysis of contact outcomes related to low level criminal activity and the manner in which enforcement contributes to racially disparate outcomes.

Additionally, OIPA review of SUFRs has detected instances in which supervisors did not properly or fully perform duties related to the review of force, including:

- Force Analysis
 - Properly identifying and documenting de-escalation efforts
 - Properly categorizing the level of force
 - Fully addressing all applied force options including TASER deployment
 - Fully reviewing available video prior to making a determination about the propriety of the force used
- Investigation Processes
 - Deferring review to a supervisor who was not involved in the contact
 - Identifying, documenting, and addressing contacts that were initiated absent reasonable suspicion of criminal activity
 - Differentiating between a consensual contact and a detention
 - Interviewing subjects and officers outside one another's presence as required
 - Collecting available relevant evidence

- e.g. station video and witness interviews
 - Conducting administrative interviews of the subject of the applied force
 - Some subjects appear to be under the impression that if they do not complain about the officer's conduct, the supervisor will release them from custody.
 - This undermines the supervisor's ability to collect accurate information about the subject's perception regarding the use of force and supervisors should be more aware of that dynamic during these interviews
- Collateral Issues
 - Insufficiently addressing late or failed body-worn camera activations
 - Identification of inaccurate statements in the involved officers' written reports
- Internal Accountability Measures
 - Auditing subordinate officers' body-worn camera recordings to detect improper labeling and categorization
- Complaint Routing
 - Appropriately addressing complaints of misconduct, including improper arrest or detention and excessive force

In connection with concerns noted above and at the invitation of Chief Alvarez, I addressed over 50 attendees at a December Police Managers' Meeting, including the majority of BPD Sergeants. I was able to describe the OIPA SUFR review process and to identify each of the areas that I typically review in relation to the quality of these reports. One attendee requested that I identify examples of high-quality supervisory force review and reporting, which I committed to provide, and I reminded the supervisors that I remain available to answer any questions about my expectations.

I will continue to identify areas for improvement or conduct that warrants further action or review to determine whether the frequency of these lapses declines.

Body Worn Camera Activation, Labeling, and Retention

As mentioned above, SUFR review revealed that some officers continued to activate cameras after the initiation of a law enforcement contact in violation of BPD policy, including after the application of force. Late activations are not consistently detected, documented, or properly addressed by supervisory personnel.

Updated instructions provided to BPD personnel by Chief Alvarez further clarified the Department's expectations of its officers with regard to activation of the body-worn cameras. Prior to these adjustments, OIPA review of body-worn camera recordings revealed that there were undetected instances in which officers eliminated the pre-activation buffering recording prior to a law enforcement contact by fully shutting down the camera. This practice threatened to defeat one of the main purposes of collecting pre-activation recordings which are useful, and at times central, in criminal prosecutions, complaint investigations, administrative investigations, supervisory review of subordinate officers, and litigation defense.

Importantly, this practice of eliminating the buffering recording creates circumstances in which a critical incident may not be recorded, and the unavailability of critical incident video

may seriously erode community trust and may call into question the Department's commitment to transparency.

During this reporting period, OIPA also discovered that despite the existence of a video labeling category for every possible type of officer activity, some officers improperly used a category that automatically deleted videos after 30 days.

OIPA alerted Chief Alvarez that this practice, which had been previously identified and addressed via policy revision in 2019, caused the permanent deletion of recordings related to law enforcement contacts (including ejections related to proof of payment enforcement activities) and those recordings were no longer available to assist in the areas listed above. In response, BPD emailed a reminder to all officers about the requirements for proper labeling and assigned supervisors to audit a subset of recordings to determine whether certain repeated inaccurate categorizations were intentional and/or intended to subvert the intended retention period.

At least one officer has been identified as the subject of an Internal Affairs misconduct investigation in connection with repeated mislabeling to determine whether these inaccuracies were intentional and/or intended to circumvent review and other similarly situated BPD personnel may be identified as a result of internal auditing activity initiated by the Chief and his command staff. I will monitor these investigations going forward and will report on the results, including any related disciplinary action and/or related policy revisions.

Pending the completion of their internal review, BPD has temporarily adjusted the video recording retention periods and has suspended automatic deletions. OIPA looks forward to an update regarding the department's long-term remedy.

Uniform Standards (Thin Blue Line Facemasks)

OIPA recently received a complaint including an allegation of Conduct Unbecoming an Officer directly connected with an on-duty supervisor's use of a "Thin Blue Line (TBL)ⁱ" facemask. It is my opinion, which is supported by the complaint we received, that the imagery can be reasonably interpreted to convey a rejection of the assertion that "Black Lives Matter," regardless of the original intent of the TBL imagery and messaging.

ⁱ"The idea of a "thin blue line" can be traced all the way back to a[n] 1854 British battle formation, a "thin red line" used during the Crimean War and then popularized in art, poetry and song. According to lawyers James Clapp and Elizabeth Thornburg, who have dug up the history behind popular phrases, the idea migrated to other professions, with other colors, from a "thin white line of bishops" to a "thin blue line of public schoolboys in blazers." It was occasionally used for police, they write, but that usage caught on in 1922, after New York police commissioner Richard Enright, facing criticism of his leadership, mentioned it in a public relations effort. The phrase started showing up in speeches by politicians and related press coverage from Chicago to Los Angeles. In the 1950s, "The Thin Blue Line" was the title of a briefly running television show about the Los Angeles Police Department, masterminded by the chief, William H. Parker, who took advantage of Hollywood's proximity to make public relations a key part of his tenure. (The Short, Fraught History of the 'Thin Blue Line' American Flag by Maurice Chammah and Cary Aspinwall; <https://www.themarshallproject.org/2020/06/08/the-short-fraught-history-of-the-thin-blue-line-american-flag>, accessed January 5, 2021).

The Police1[‡] website, which is administered by Lexipol (a company with whom BPD contracts for policy manual maintenance and guidance), recently posted an article that included the acknowledgement that “[w]hile police officers and supporters of law enforcement have embraced the image as a source of pride and fraternal kinship, **others see the thin blue line flag as a banner of defiance in a time of demands for police reform.**” (emphasis added). A related article on the website about the TBL flag[§] notes that officers cannot rely on the protection of the First Amendment to counter a departmental prohibition of TBL displays, adding that the standard for protected speech is more limited as applied to public government employees.

In yet another related article on Police1 about a TBL controversy in Massachusetts, the author explained:

“Tensions across the country have risen around policing as protesters have called for reexamination of the justice system in the wake of recent police killings of unarmed Black men and women such as George Floyd in Minneapolis. Recently, the black and blue flags have been used by “Back the Blue” or “Blue Lives Matter” groups that have formed in response to the Black Lives Matter movement and calls to defund the police, **often as a direct counter.**”^{**} (emphasis added).

Images of protestors displaying TBL imagery alongside white supremacist imagery were distributed nationally after the killing of George Floyd and during the expressions of outrage that followed, as documented in the image included below.



Given the current national climate, it is objectively reasonable to perceive the imagery as a direct opposition to voiced concerns about the racially disparate impact of police violence on communities of color, both currently and historically. The display of the TBL facemask by BPD officers and supervisors can be perceived as unnecessarily antagonistic and can be reasonably expected to decrease community trust and to minimize the effectiveness of officers who choose to wear the masks.

[‡]Police1 describes itself as the #1 resource for law enforcement online, adding that its mission is to help officers fulfill their mission. They note that they provide law enforcement with the information and resources they need to better protect their communities and come home safe every day. (<https://www.police1.com/info/about/>, accessed 12/11/20).

[§]<https://www.police1.com/legal/articles/3-things-to-consider-before-you-raise-a-blue-line-flag-yTymSYXUqtXZUOYi/>, accessed 12/11/20).

^{**}<https://www.police1.com/chiefs-sheriffs/articles/mass-police-chief-retires-amid-thin-blue-line-flag-controversy-kwFHRmj20wsAPFcy/>, accessed 12/11/20)

It is of concern that any BPD officer who observed national events and media coverage since the May 2020 killing of George Floyd by a Minneapolis police officer could remain unaware of the tension that may result from displaying the TBL imagery. It is equally concerning that any officer charged with serving communities of color would disregard that awareness and don a TBL-branded mask despite even the mere possibility that it would offend a single citizen under their care.

OIPA advised Chief Alvarez of the facemask-related complaint and recommended the issuance of a prohibition on facemasks that display any messaging or imagery. OIPA later became aware of at least 3 other sworn officers who wore a TBL facemask while on duty, including a Field Training Officer and a Sergeant.

Chief Alvarez ultimately standardized uniform components, including facemasks, and BPD officers will now only be permitted to wear face coverings with no messaging, imagery, or logo other than a BPD logo.

De-Escalation

As part of our mission to assist in the improvement of policing at BART, OIPA also noted some instances in which officers applied sound and effective de-escalation tactics in accordance with the state-of-the-art Integrating Communications, Assessment, and Tactics (ICAT) training program designed by the Police Executive Research Forum (PERF).

OIPA remains committed to identifying and addressing areas for improvement while also recognizing and elevating examples of effective de-escalation that can be used in trainings to inform those conversations with real-life references. Effective de-escalation tactics have been employed by BPD officers in potentially deadly situations involving firearms and other weapons as well as during low-level contacts, thereby minimizing applications of force, injuries, complaints of misconduct, and legal liability.

OIPA is aware that Chief Alvarez has now selected in-house ICAT trainers who are expected to begin providing instruction to BPD officers in January 2021. OIPA looks forward to reviewing contacts to identify positive outcomes resulting from the application of these techniques.

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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.

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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 IAB.

¹¹ OIPA may submit recommendations to IAB 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.