

Office of the Independent Police Auditor

Monthly Report

January 2013



February 11, 2013

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period January 1, 2013 through January 31, 2013.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0
March 2012	7	61	0	1	0
April 2012	6	55	0	1	0
May 2012	10	54	0	0	0
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0
August 2012	13	60	0	0	0
September 2012	8	57	1	0	0
October 2012	9	49	1	0	0
November 2012	17	57	0	0	0
December 2012	12	52*	2	0	0
January 2013	6	50	0	1	0

*This number was previously reported as 53. As detailed later in this report, a data entry error led to one case being counted as pending at the end of December when it was actually closed during that month.

Types of Cases Filed

Citizen Complaints	4
Administrative Investigations	1
Comments of Non-Complaint	1
TOTAL	6

Citizen Complaints Received per Department

OIPA	3
BART Police Department	1
TOTAL	4

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of January 2013, 3 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed ⁷
1 (OIPA 13-01) (IA2013-002)	Performance of Duty	OIPA notified BART PD, which initiated an investigation	34
2 (OIPA 13-04) (IA2013-004)	Performance of Duty	OIPA notified BART PD, which initiated an investigation	26
3 (OIPA 13-05) (IA2013-005)*	Performance of Duty	OIPA notified BART PD, which initiated an investigation	19

*This complaint received by OIPA was later determined to be a Comment of Non-Complaint by the BART Police Department.

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

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-003)	Arrest or Detention; Courtesy	BART PD initiated an investigation	26

During the month of January 2013, 1 Administrative Investigation was initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2013-006)	Workplace Discrimination/Harassment	BART PD initiated an investigation	14

During the month of January 2013, 1 Comment of Non-Complaint was received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2013-001)	Courtesy	BART PD initiated an investigation	35

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of January 2013, 6 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-004)	<u>Police Officer #1</u> [*] • Performance of Duty	<u>Police Officer #1</u> • Performance of Duty – Service Review	26	14
2 (IA2012-072)	<u>Police Officer #1</u> • Conduct Unbecoming an Officer	<u>Police Officer #1</u> • Conduct Unbecoming an Officer – Unfounded	167	153
3 (IA2012-053)	<u>Police Officer #1</u> • Arrest/Detention • Conduct Unbecoming an Officer <u>Police Officer #2</u> • Arrest/Detention • Conduct Unbecoming an Officer	<u>Police Officer #1</u> • Arrest/Detention – Exonerated • Conduct Unbecoming an Officer – Not Sustained <u>Police Officer #2</u> • Arrest/Detention – Exonerated • Conduct Unbecoming an Officer – Not Sustained	227	203

<p>4 (IA2012-036)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Procedure <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> • Procedure 	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Procedure – Exonerated <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> • Procedure – Exonerated 	<p>279</p>	<p>259</p>
<p>5 (IA2012-033)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Bias Based Policing • Conduct Unbecoming an Officer <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> • Bias Based Policing • Conduct Unbecoming an Officer 	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Bias Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> • Bias Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded 	<p>285</p>	<p>245</p>
<p>6 (IA2012-026)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Arrest/Detention • Performance of Duty <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> • Arrest/Detention • Performance of Duty <p><u>Police Officer #3</u></p> <ul style="list-style-type: none"> • Arrest/Detention • Performance of Duty 	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Arrest/Detention – Exonerated • Performance of Duty – Unfounded <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> • Arrest/Detention – Exonerated • Performance of Duty – Unfounded <p><u>Police Officer #3</u></p> <ul style="list-style-type: none"> • Arrest/Detention – Exonerated • Performance of Duty – Unfounded 	<p>315</p>	<p>282</p>

*This complaint was determined to pertain to BART PD generally, and not to any specific officer. The listing of "Police Officer #1" is being used here for consistency in reporting format only.

During the month of January 2013, 1 Administrative Investigation was concluded by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2012-042)	<u>Police Officer #1</u> • Force	<u>Police Officer #1</u> • Force – Not Sustained	255	222

During the month of January 2013, 1 Comment of Non-Complaint was addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2013-001)	Courtesy	Supervisory Referral ⁸	35	17

Complaints/Investigations Concluded During Previous Reporting Period

Dispositions/# of Days Elapsed

Due to a data entry error with regard to a closing date, 1 Comment of Non-Complaint was addressed by the BART Police Department in December 2012 but was not reported on during that month:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2012-118)	Conduct Unbecoming an Officer	Supervisory Referral	49	4

In accordance with the BART Citizen Oversight Model, OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint

investigations conducted by the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department’s Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	0
Complainant-Initiated Appeals	1
Investigations Being Monitored	18
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.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA’s findings are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA’s investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

⁸ In defining a “Supervisory Referral,” the BART Police Department Manual indicates that an assigned supervisor will address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Section.

Office of the Independent Police Auditor

Monthly Report

February 2013



March 11, 2013

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period February 1, 2013 through February 28, 2013.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
February 2012	14	57	0	0	0
March 2012	7	61	0	1	0
April 2012	6	55	0	1	0
May 2012	10	54	0	0	0
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0
August 2012	13	60	0	0	0
September 2012	8	57	1	0	0
October 2012	9	49	1	0	0
November 2012	17	57	0	0	0
December 2012	12	52	2	0	0
January 2013	6	49 [†]	0	1	0
February 2013	9	46 [*]	0	0	0

[†] This number was previously reported as 50. It has been determined that one previously-closed case was inadvertently reopened in the Internal Affairs case database during January 2013 without being re-closed, and should have therefore not been counted in the Number of Open Cases.

^{*} Included in this number is one previously-closed case that was reopened by the BART Police Department during this reporting period pursuant to a review by OIPA. That case is reported on further below.

Types of Cases Filed

Citizen Complaints	7
Administrative Investigations	0
Comments of Non-Complaint	2
TOTAL	9

Citizen Complaints Received per Department

OIPA	1
BART Police Department	6
TOTAL	7

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of February 2013, 1 Citizen Complaint was received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed ⁷
1 (OIPA 13-11) (IA2013-013)	Performance of Duty	OIPA notified BART PD, which initiated an investigation	19

During the month of January 2013, 6 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-007)	Force; Conduct Unbecoming an Officer; Policy/Procedure	BART PD initiated an investigation	38
2 (IA2013-008)	Bias-Based Policing	BART PD initiated an investigation	30
3 (IA2013-009)	Performance of Duty; Policy/Procedure	BART PD initiated an investigation	30
4 (IA2013-011)	Bias-Based Policing; Courtesy	BART PD initiated an investigation	18
5 (IA2013-014)	Bias-Based Policing; Conduct Unbecoming an Officer; Performance of Duty	BART PD initiated an investigation	13
6 (IA2013-015)	Force	BART PD initiated an investigation	13

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

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2013-010)	Performance of Duty	BART PD initiated an investigation	26
2 (IA2013-012)	Policy/Procedure	BART PD initiated an investigation	16

Complaints/Investigations Reopened During Reporting Period

Actions Taken/# of Days Elapsed

During the month of February 2013, 1 previously closed Citizen Complaint was reopened by the BART Police Department pursuant to a review by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Initially Filed	Number of Days Elapsed Since OIPA Request to Reopen
1 (OIPA 12-02) (IA2012-003)	Neglect of Duty	BART PD reopened this complaint to conduct further investigation	434	74

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of January 2013, 9 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-079)	<u>Police Officer #1</u> • Performance of Duty	<u>Police Officer #1</u> • Performance of Duty – Exonerated	174	155

2 (IA2012-068)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Force – Exonerated • Conduct Unbecoming an Officer – Not Sustained 	206	182
3 (IA2012-041)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer • Courtesy • Policy/Procedure 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Force – Not Sustained • Conduct Unbecoming an Officer – Not Sustained • Courtesy – Not Sustained • Policy/Procedure – Sustained 	284	264
4 (IA2012-040)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Courtesy 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained • Courtesy – Not Sustained 	285	261
5 (IA2012-039)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (2 Counts) • Courtesy (2 Counts) • Procedure 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (Count 1) – Not Sustained • Conduct Unbecoming an Officer (Count 2) – Not Sustained • Courtesy (Count 1) – Not Sustained • Courtesy (Count 2) – Not Sustained • Procedure – Exonerated 	292	268
6 (IA2012-099)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Bias-Based Policing • Performance of Duty • Conduct Unbecoming an Officer 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Performance of Duty – Unfounded • Conduct Unbecoming an Officer – Unfounded 	123	109

7 (IA2012-087)	<u>Police Officer #1</u> • Bias-Based Policing • Arrest or Detention	<u>Police Officer #1</u> • Bias-Based Policing – Unfounded • Arrest or Detention – Exonerated	165	151
8 (IA2012-071)	<u>Police Officer #1 – (Unidentified)</u> • Performance of Duty	<u>Police Officer #1 – (Unidentified)</u> • Performance of Duty – Unfounded	199	185
9 (IA2012-070)	<u>Police Officer #1</u> • Courtesy • Performance of Duty <u>Police Officer #2</u> • Performance of Duty	<u>Police Officer #1</u> • Courtesy – Not Sustained • Performance of Duty – Exonerated <u>Police Officer #2</u> • Performance of Duty – Exonerated	212	198

During the month of February 2013, 1 Administrative Investigation was concluded by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2012-012)	<u>Police Officer #1</u> • Performance of Duty	<u>Police Officer #1</u> • Performance of Duty – Sustained	390	365

During the month of February 2013, 1 Comment of Non-Complaint was addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2013-005)	Performance of Duty	Supervisory Referral ⁸	47	11

Complaints/Investigations Concluded During Previous Reporting Period

Dispositions/# of Days Elapsed

One Citizen Complaint was correctly counted as closed during January 2013 but was inadvertently not listed in that month’s report:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-038)	<u>Police Officer #1</u> • Force	<u>Police Officer #1</u> • Force – Exonerated	290	251

Two Comments of Non-Complaint were marked as open in the Internal Affairs case database though each had, in fact, been closed during a prior reporting period:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2012-112)	Performance of Duty	Supervisory Referral	90	21
2 (IA2012-114)	Courtesy	Supervisory Referral	87	1

In accordance with the BART Citizen Oversight Model, OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department’s Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	0
Complainant-Initiated Appeals	1
Investigations Being Monitored	18
Investigations Reviewed During Current Month	25*

*This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA’s findings are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA’s investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

⁸ In defining a “Supervisory Referral,” the BART Police Department Manual indicates that an assigned supervisor will address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Section.

Office of the Independent Police Auditor

Monthly Report

March 2013



April 8, 2013

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period March 1, 2013 through March 31, 2013.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
March 2012	7	61	0	1	0
April 2012	6	55	0	1	0
May 2012	10	54	0	0	0
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0
August 2012	13	60	0	0	0
September 2012	8	57	1	0	0
October 2012	9	49	1	0	0
November 2012	17	57	0	0	0
December 2012	12	52	2	0	0
January 2013	6	49	0	1	0
February 2013	9	46	0	0	0
March 2013	10	46	1	0	0

Types of Cases Filed

Citizen Complaints	8
Administrative Investigations	0
Comments of Non-Complaint	2
TOTAL	10

Citizen Complaints Received per Department

OIPA	3
BART Police Department	5
TOTAL	8

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of March 2013, 3 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed ⁷
1 (OIPA 13-12) (IA2013-018)	Performance of Duty	OIPA notified BART PD, which initiated an investigation	38
2 (OIPA 13-15) (IA2013-025)	Policy/Procedure	OIPA notified BART PD, which initiated an investigation	20
3 (OIPA 13-16) (IA2013-023)	Conduct Unbecoming an Officer	OIPA notified BART PD, which initiated an investigation	20

During the month of March 2013, 5 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-017)	Conduct Unbecoming an Officer	BART PD initiated an investigation	37
2 (IA2013-019)	Conduct Unbecoming an Officer	BART PD initiated an investigation	34
3 (IA2013-022)	Conduct Unbecoming an Officer	BART PD initiated an investigation	47
4 (IA2013-021)	Force; Performance of Duty	BART PD initiated an investigation	26
5 (IA2013-024)	Conduct Unbecoming an Officer	BART PD initiated an investigation	23

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

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2013-016)	Conduct Unbecoming an Officer	BART PD initiated an investigation	35

2 (IA2013-020)	Conduct Unbecoming an Officer	BART PD initiated an investigation	34
-------------------	-------------------------------	------------------------------------	----

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of March 2013, 5 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-046)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer • Policy/Procedure 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Force – Unfounded • Conduct Unbecoming an Officer – Unfounded • Policy/Procedure – Unfounded 	300	276
2 (IA2012-059)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Bias-Based Policing • Conduct Unbecoming an Officer • Courtesy 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Bias Based Policing – Unfounded • Conduct Unbecoming an Officer – Exonerated • Courtesy – Exonerated 	265	236
3 (IA2012-073)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer <u>Police Officer #2</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded <u>Police Officer #2</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded 	227	198
4 (IA2012-102)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Courtesy 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Courtesy – Unfounded 	133	126
5 (IA2013-015)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Force 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Force – Supervisory Referral 	41	38

During the month of March 2013, 5 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2013-010)	Performance of Duty	Supervisory Referral ⁸	54	20
2 (IA2013-012)	Policy/Procedure	Supervisory Referral	44	16
3 (IA2013-013)	Performance of Duty	Supervisory Referral	47	44
4 (IA2013-018)	Performance of Duty	Supervisory Referral	38	20
5 (IA2013-016)	Conduct Unbecoming an Officer	Supervisory Referral	35	1

In accordance with the BART Citizen Oversight Model, OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department’s Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	0
Complainant-Initiated Appeals	0
Investigations Being Monitored	19
Investigations Reviewed During Current Month	23*

*This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)).

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA's findings are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA's investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department's internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

⁸ In defining a "Supervisory Referral," the BART Police Department Manual indicates that an assigned supervisor will address the issue informally with the involved employee and document the content of the conversation in a memorandum to the Internal Affairs Section.

Office of the Independent Police Auditor

Monthly Report

April 2013



May 13, 2013

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period April 1, 2013 through April 30, 2013.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
April 2012	6	55	0	1	0
May 2012	10	54	0	0	0
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0
August 2012	13	60	0	0	0
September 2012	8	57	1	0	0
October 2012	9	49	0*	0	0
November 2012	17	57	0	0	0
December 2012	12	52	2	0	0
January 2013	6	49	0	1	0
February 2013	9	46	0	0	0
March 2013	10	46	1	0	0
April 2013	11 [†]	49	1	1	0

* OIPA previously reported one closed case in October 2012. However, further work was completed on the case during this month, and the case is therefore listed as closed in April 2013 instead. The Number of Open Cases is not affected by this change.

† This number includes one citizen complaint that was re-opened during the reporting period. That complaint is detailed further below.

Types of Cases Filed/Re-opened

Citizen Complaints	10
Administrative Investigations	1
Comments of Non-Complaint	0
TOTAL	11

Citizen Complaints Received/Re-opened per Department

OIPA	0
BART Police Department	10
TOTAL	10

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of April 2013, 9 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations ⁷	Action Taken	Number of Days Elapsed Since Complaint Filed ⁸
1 (IA2013-026)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer • Performance of Duty <u>Police Officer #2</u> <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer • Performance of Duty 	BART PD initiated an investigation.	39
2 (IA2013-033)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Courtesy 	BART PD initiated an investigation.	38
3 (IA2013-027)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Courtesy • Policy/Procedure 	BART PD initiated an investigation.	35
4 (IA2013-034)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BART PD initiated an investigation.	34
5 (IA2013-028)	<u>Civilian Employee #1</u> <ul style="list-style-type: none"> • Policy/Procedure 	BART PD initiated an investigation.	33
6 (IA2013-029)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Bias-Based Policing • Conduct Unbecoming an Officer 	BART PD initiated an investigation.	33
7 (IA2013-030)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Policy/Procedure 	BART PD initiated an investigation.	31

<p style="text-align: center;">8 (IA2013-031)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Force • Bias-Based Policing • Conduct Unbecoming an Officer <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> • Force • Bias-Based Policing • Conduct Unbecoming an Officer <p><u>Police Officer #3</u></p> <ul style="list-style-type: none"> • Policy/Procedure 	<p>BART PD initiated an investigation.</p>	<p style="text-align: center;">31</p>
<p style="text-align: center;">9 (IA2013-032)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Arrest or Detention 	<p>BART PD initiated an investigation.</p>	<p style="text-align: center;">27</p>

During the month of April 2013, 1 Citizen Complaint was re-opened by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
<p style="text-align: center;">1 (IA2013-015)</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer • Policy/Procedure • Courtesy 	<p>BART PD re-opened this investigation.</p>	<p style="text-align: center;">76</p>

During the month of April 2013, 1 Administrative Investigation was initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2013-035)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Workplace Discrimination/Harassment • Conduct Unbecoming an Officer 	BART PD initiated an investigation.	319

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of April 2013, 1 Citizen Complaint was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Allegations	Disposition ⁹	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA 12-61)	Officer detained complainant based on his race and secured complainant's handcuffs too tightly.	<u>Unidentified Officer #1</u> <ul style="list-style-type: none"> • Unnecessary or Excessive Use of Force – Unfounded • Racial Profiling – Unfounded 	215	202

During the month of April 2013, 6 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-078)	Officers acted inappropriately in asking visually-impaired complainant whether he could describe a suspect.	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Policy/Procedure – Sustained • Conduct Unbecoming an Officer – Unfounded <u>Police Officer #2</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded 	243	213
2 (IA2012-077)	An employee improperly eavesdropped on complainant’s phone conversations.	<u>Employee #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded 	249	213
3 (IA2012-058)	Officer racially profiled complainant, used force to take him down, and acted unprofessionally toward him during an arrest.	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Force – Unfounded • Bias-Based Policing – Not-Sustained • Conduct Unbecoming an Officer - Unfounded 	324	296

<p>4 (IA2012-044)</p>	<p>Complainant observed officers detain and search complainant based on his race.</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Arrest or Detention – Unfounded • Search or Seizure – Unfounded • Conduct Unbecoming an Officer – Unfounded <p><u>Police Officer #2</u></p> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Arrest or Detention – Exonerated • Search or Seizure – Unfounded • Conduct Unbecoming an Officer – Unfounded <p><u>Police Officer #3</u></p> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Arrest or Detention – Unfounded • Search or Seizure – Exonerated • Conduct Unbecoming an Officer – Unfounded 	<p>342</p>	<p>301</p>
<p>5 (IA2012-066)</p>	<p>Officer pushed complainant and handcuffed him too tightly during an arrest. Officer then kneeled on complainant's back.</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Force (Count 1) – Exonerated • Force (Count 2) – Not Sustained 	<p>272</p>	<p>231</p>
<p>6 (IA2012-108)</p>	<p>Officer illegally searched complainant and was unprofessional during an arrest.</p>	<p><u>Police Officer #1</u></p> <ul style="list-style-type: none"> • Search/Seizure – Exonerated • Conduct Unbecoming an Officer – Not Sustained 	<p>163</p>	<p>142</p>

During the month of April 2013, 1 Administrative Investigation was concluded by the BART Police Department:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2012-057)	Officer showed lack of concern for subjects involved in a fight and failed to follow up on a report of an injury.	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty – Sustained • Conduct Unbecoming an Officer – Sustained • Courtesy – Sustained 	315	289

During the month of April 2013, 1 Comment of Non-Complaint was addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2013-025)	Complainant was concerned about the lack of police presence at BART stations.	Policy/Procedure – Service Review ¹⁰	55	15

In accordance with the BART Citizen Oversight Model, OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department’s Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	0
Complainant-Initiated Appeals	1
Investigations Being Monitored	17
Investigations Reviewed During Current Month	19*

*This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA’s findings are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA’s investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

⁸ In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

⁹ In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to

cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

¹⁰ A service review refers to an instance when a complainant's concern is not about the conduct of any particular employee, but rather about how police services are/were rendered in general.

Office of the Independent Police Auditor

Monthly Report

May 2013



June 10, 2013

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period May 1, 2013 through May 31, 2013.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
May 2012	10	54	0	0	0
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0
August 2012	13	60	0	0	0
September 2012	8	57	1	0	0
October 2012	9	49	0	0	0
November 2012	17	57	0	0	0
December 2012	12	52	2	0	0
January 2013	6	49	0	1	0
February 2013	9	46	0	0	0
March 2013	10	46	1	0	0
April 2013	11	49	1	1	0
May 2013	7	44	0	2	0

Types of Cases Filed/Re-opened

Citizen Complaints	5
Administrative Investigations	1
Comments of Non-Complaint	1
TOTAL	7

Citizen Complaints Received/Re-opened per Department

OIPA	2
BART Police Department	3
TOTAL	5

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of May 2013, 2 Citizen Complaints were received by OIPA:

Complaint # (IA Case #)	Nature of Allegations ⁷	Action Taken	Number of Days Elapsed Since Complaint Filed ⁸
1 (IA2013-038) OIPA #13-26	<u>Police Officer #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	26
2 (IA2013-037) OIPA #13-24	<u>Police Officer #1</u> • Courtesy • Conduct Unbecoming an Officer • Force	BART PD initiated an investigation.	33

During the month of May 2013, 3 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-042)	<u>Police Officer #1</u> • Force <u>Police Officer #2</u> • Force	BART PD initiated an investigation.	11
2 (IA2013-041)	<u>Police Officer #1</u> • Conduct Unbecoming an Officer <u>Police Officer #2</u> • Performance of Duty • Conduct Unbecoming an Officer	BART PD initiated an investigation.	17
3 (IA2013-039)	<u>Police Officer #1</u> • Performance of Duty • Conduct unbecoming an Officer	BART PD initiated an investigation.	20

During the month of May 2013, 1 Administrative Investigation was initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2013-040)	<u>Police Officer #1</u> • Policy/Procedure <u>Police Officer #2</u> • Policy/Procedure	BART PD initiated an investigation.	18

During the month of May 2013, 1 Comment of Non-Complaint was received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2013-036)	<u>Police Officer #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	39

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of May 2013, 11 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-034)	Officer acted inappropriately by honking horn at complainant and photographing her car.	<u>Unidentified Officer #1</u> • Conduct Unbecoming an Officer – Unfounded	62	24

2 (IA2013-033)	BART employee was discourteous when complainant asked for assistance with parking payment.	<u>Unidentified Officer #1</u> • Courtesy – Unfounded ⁹	66	28
3 (IA2013-024)	BART PD employee is tracking complainant through her cell phone, following her, and invading her privacy.	<u>Unidentified Officer #1</u> • Conduct Unbecoming an Officer – Unfounded ¹⁰	86	74
4 (IA2013-003)	Officers falsely detained complainant, threatened him with force, and had an inappropriate attitude.	<u>Police Officer #1</u> • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer – Unfounded • Courtesy – Unfounded <u>Police Officer #2</u> • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer – Unfounded • Courtesy – Unfounded <u>Police Officer #3</u> • Arrest or Detention – Exonerated • Conduct Unbecoming an Officer – Unfounded • Courtesy – Unfounded	145	132
5 (IA2012-116)	Officer yelled at complainant and treated her poorly while taking her report of a crime.	<u>Police Officer #1</u> • Conduct Unbecoming an Officer – Unfounded • Courtesy – Unfounded	172	134
6 (IA2012-101)	Officer racially profiled complainant and improperly detained him for fare evasion.	<u>Police Officer #1</u> • Arrest or Detention – Exonerated • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded	205	194

7 (IA2012-091)	Officer tailgated complainant and drove erratically.	<u>Police Officer #1</u> • Conduct Unbecoming an Officer – Not Sustained	227	187
8 (IA2012-090)	Officer used excessive force by punching a subject while taking him into custody.	<u>Police Officer #1</u> • Force – Exonerated	227	201
9 (IA2012-086)	Officer targeted complainant for no reason, used excessive force by choking him, and was unprofessional.	<u>Police Officer #1</u> • Force – Unfounded • Bias-based Policing – Unfounded • Courtesy – Unfounded	231	191
10 (IA2012-081)	Officers detained complainant due to his race.	<u>Police Officer #1</u> • Bias-based Policing – Unfounded <u>Police Officer #2</u> • Bias-based Policing – Unfounded	268	228
11 (IA2012-003) ¹¹	Officers failed to pursue individuals who had battered the complainant, laughed at the complainant, and failed to make a restroom facility available to the complainant.	<u>Police Officer #1</u> • Neglect of Duty – Unfounded • Policy/ Procedure – Exonerated • Conduct Unbecoming an Officer – Not Sustained <u>Police Officer #2</u> • Neglect of Duty – Unfounded • Policy/ Procedure – Exonerated • Conduct Unbecoming an Officer – Not Sustained	525	485

		<p><u>Police Officer #3</u></p> <ul style="list-style-type: none"> • Neglect of Duty – Unfounded • Policy/ Procedure – Exonerated • Conduct Unbecoming an Officer – Not Sustained <p><u>Police Officer #4</u></p> <ul style="list-style-type: none"> • Neglect of Duty – Unfounded • Conduct Unbecoming an Officer – Unfounded • Conduct Unbecoming an Officer – Not Sustained <p><u>Police Officer #5</u></p> <ul style="list-style-type: none"> • Neglect of Duty – Unfounded • Policy/ Procedure – Exonerated • Conduct Unbecoming an Officer – Not Sustained <p><u>Police Officer #6</u></p> <ul style="list-style-type: none"> • Neglect of Duty – Unfounded • Policy/ Procedure – Exonerated • Conduct Unbecoming an Officer – Not Sustained 		
--	--	--	--	--

		<p><u>Civilian Employee #1</u></p> <ul style="list-style-type: none"> • Neglect of Duty – Unfounded • Policy/ Procedure – Exonerated • Conduct Unbecoming an Officer – Not Sustained <p><u>Civilian Employee #2</u></p> <ul style="list-style-type: none"> • Neglect of Duty – Unfounded • Policy/ Procedure – Exonerated • Conduct Unbecoming an Officer – Not Sustained <p><u>Civilian Employee #3</u></p> <ul style="list-style-type: none"> • Neglect of Duty – Unfounded • Policy/ Procedure – Exonerated • Conduct Unbecoming an Officer – Not Sustained <p><u>Civilian Employee #4</u></p> <ul style="list-style-type: none"> • Neglect of Duty – Unfounded • Policy/ Procedure – Exonerated • Conduct Unbecoming an Officer – Not Sustained 		
--	--	---	--	--

During the month of May 2013, 1 Comment of Non-Complaint was addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2013-036)	Officer was observed talking on his cellular phone while driving a marked patrol car.	Supervisory Referral ¹²	39	20

In accordance with the BART Citizen Oversight Model, OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department’s Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	1
Complainant-Initiated Appeals	3
Investigations Being Monitored	10
Investigations Reviewed During Current Month	26*

*This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA’s findings are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes

independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA's investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department's internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

⁸ In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

⁹ The allegation in this case was determined to be Unfounded against any BART Police Department officers as the complainant indicated, after the investigation had commenced, that the accused was not a police department employee.

¹⁰ The allegation in this case was determined to be Unfounded against any BART Police Department officers as the complainant indicated, after the investigation had commenced, that the accused was not a police department employee.

¹¹ It is noted that the initial IA investigation into this case was concluded on March 29, 2012 and was reported on in the April 2012 series of these monthly reports. However, at the request of OIPA, IA subsequently reopened the case and conducted further investigation. The dates shown here reflect the reclosing of the investigation, and therefore account for the total aggregate time elapsed from the initiation of the complaint to the completion of the subsequent investigation.

¹² A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

Office of the Independent Police Auditor

Monthly Report

June 2013



July 8, 2013

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period June 1, 2013 through June 30, 2013.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0
August 2012	13	60	0	0	0
September 2012	8	57	1	0	0
October 2012	9	49	0	0	0
November 2012	17	57	0	0	0
December 2012	12	52	2	0	0
January 2013	6	49	0	1	0
February 2013	9	46	0	0	0
March 2013	10	46	1	0	0
April 2013	11	49	1	1	0
May 2013	7	44	0	2	0
June 2013	8*	40	0	0	0

* This number includes one case that was received in May 2013, but was not included in that month's report due to a delay in updating the BART Police Department's Internal Affairs Case database. The case has therefore been included here and is reported on below.

Types of Cases Filed

Citizen Complaints	5
Administrative Investigations	0
Comments of Non-Complaint	3
TOTAL	8

Citizen Complaints Received per Department

OIPA	0
BART Police Department	5
TOTAL	5

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of June 2013, 4 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations ⁷	Action Taken	Number of Days Elapsed Since Complaint Filed ⁸
1 (IA2013-049)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer 	BART PD initiated an investigation.	13
2 (IA2013-048)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Force 	BART PD initiated an investigation.	27
3 (IA2013-051)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Force <u>Police Officer #2</u> <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer • Courtesy 	BART PD initiated an investigation.	14
4 (IA2013-045)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Conduct unbecoming an Officer 	BART PD initiated an investigation.	27

During the month of June 2013, 3 Comments of Non-Complaint were received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2013-046)	<u>Civilian #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BART PD initiated an investigation.	26
2 (IA2013-044)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Policy/Procedure <u>Police Officer #2</u> <ul style="list-style-type: none"> • Policy/Procedure 	BART PD initiated an investigation.	33
3 (IA2013-047)	<u>Civilian #1</u> <ul style="list-style-type: none"> • Performance of Duty • Conduct Unbecoming an Officer 	BART PD initiated an investigation.	26

Complaints/Investigations Initiated During Previous Reporting Period

Actions Taken/# of Days Elapsed

During the month of May 2013, 1 Citizen Complaint was received by the BART Police Department but was not previously reported on:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-050)	<u>Civilian #1</u> • Criminal (Misdemeanor)	BART PD initiated an investigation.	55

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of June 2013, 4 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition ⁹	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-038)	Complainant alleged that her shirt may have been inappropriately unbuttoned sometime during her arrest or incarceration.	Did not involve BART PD	54	28
2 (IA2012-055)	One officer contacted complainant partially due to complainant's ethnicity, made a racist remark, improperly issued a citation to complainant, and did not complete a required report. The first officer and another officer did not follow procedure in responding to complainant's allegations.	<u>Officer #1</u> • Arrest/Detention – Sustained • Bias Based Policing – Not Sustained • Conduct Unbecoming an Officer – Not Sustained • Courtesy – Not Sustained • Policy/Procedure (Count 1) – Not Sustained • Policy/Procedure (Count 2) – Sustained	370	344

		<u>Officer #2</u> • Policy/Procedure – Sustained		
3 (IA2012-113)	Complainant alleged he was improperly cited for fare evasion.	<u>Officer #1</u> • Arrest/Detention – Exonerated	200	176
4 (IA2012-117)	Police who responded to a report of a disturbance on a train took insufficient action when they arrived.	<u>Officer #1</u> • Performance of Duty – Exonerated <u>Officer #2</u> • Performance of Duty – Exonerated	199	189

During the month of June 2013, 5 Administrative Investigations were concluded by the BART Police Department:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2013-040)	Officer did not provide required notification about the outcome of a BPD criminal case that was prosecuted.	Supervisory Referral ¹⁰	46	14
2 (IA2012-096)	One officer made offensive comments to another officer. Other officers nearby did not report this misconduct.	<u>Officer #1</u> • Workplace Discrimination (Count 1) – Sustained • Workplace Discrimination (Count 2) – Not Sustained • Workplace Discrimination (Count 3) – Unfounded <u>Officer #2</u> • Failure to Report Misconduct – Unfounded	242	221

		<u>Officer #3</u> <ul style="list-style-type: none"> • Failure to Report Misconduct – Unfounded 		
3 (IA2012-056)	Officer drove recklessly and failed to notify BPD after an official contact by another law enforcement agency.	<u>Officer #1</u> <ul style="list-style-type: none"> • Criminal – Sustained • Conduct Unbecoming an Officer – Sustained • Policy/Procedure – Sustained 	371	336
4 (IA2013-035)	One officer made an offensive comment about another officer.	<u>Officer #1</u> <ul style="list-style-type: none"> • Discrimination – Not Sustained • Conduct Unbecoming an Officer – Not Sustained • Courtesy – Not Sustained 	375	358
5 (IA2012-050)	An officer insufficiently responded to a work assignment. Another officer discriminated against and mistreated the first officer.	<u>Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty – Sustained <u>Officer #2</u> <ul style="list-style-type: none"> • Discrimination – Unfounded • Conduct Unbecoming an Officer – Not Sustained • Courtesy – Not Sustained 	375	347

During the month of June 2013, 3 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2013-046)	Complainant alleged that civilian employee drove police vehicle unsafely.	Supervisory Referral	26	7
2 (IA2013-044)	Complainant alleged that two officers improperly used a highway carpool lane.	Supervisory Referral	33	14
3 (IA2013-047)	Civilian employee was disrespectful in responding to complainant's call for assistance while on a BART train.	Supervisory Referral	26	14

In accordance with the BART Citizen Oversight Model, OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	1
Complainant-Initiated Appeals	3
Investigations Being Monitored	10
Investigations Reviewed During Current Month	21*

*This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the "Citizen Board, Office of the District Secretary, and other District departments." As complaints received by the Citizen Board are customarily directed to OIPA for further action, such

complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA’s findings are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA’s investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

⁸ In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

⁹ In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

¹⁰ A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

Office of the Independent Police Auditor

Monthly Report

July 2013



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

August 12, 2013

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period July 1, 2013 through July 31, 2013.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
July 2012	7	58	0	0	0
August 2012	13	60	0	0	0
September 2012	8	57	1	0	0
October 2012	9	49	0	0	0
November 2012	17	57	0	0	0
December 2012	12	52	2	0	0
January 2013	6	49	0	1	0
February 2013	9	46	0	0	0
March 2013	10	46	1	0	0
April 2013	11	47*	1	1	0
May 2013	7	42*	0	2	0
June 2013	8	38*	0	0	0
July 2013	15 [†]	44	1	1	0

*Due to a previously unidentified reporting error in April 2013, two closed cases were not reported on during that month. The two cases are therefore reported on in this report, and the number of open cases decreased by two where indicated in this chart.

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

Types of Cases Filed

Citizen Complaints	12
Administrative Investigations	3
Comments of Non-Complaint	0
TOTAL	15

Citizen Complaints Received per Department

OIPA	3
BART Police Department	9
TOTAL	12

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of July 2013, 3 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations ⁷	Action Taken	Number of Days Elapsed Since Complaint Filed ⁸
1 (OIPA 13-41) (IA2013-055)	<u>Unidentified Officer(s)</u> • Neglect of Duty	OIPA referred the complaint to BART PD and will monitor their investigation.	27
2 (OIPA 13-45) (IA2013-059)	<u>Unidentified Officer(s)</u> • Neglect of Duty	OIPA referred the complaint to BART PD and will monitor their investigation.	14
3 (OIPA 13-46) (IA2013-063)	<u>Civilian #1</u> • Conduct Unbecoming an Officer	OIPA referred the complaint to BART PD and will monitor their investigation.	14

During the month of July 2013, 8 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-052)	<u>Officer #1</u> • Conduct Unbecoming an Officer • Courtesy <u>Officer #2</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	38
2 (IA2013-053)	<u>Unidentified Officer(s)</u> • Policy Complaint	BART PD initiated an investigation.	32
3 (IA2013-054)	<u>Officer #1</u> • Bias-Based Policing • Arrest or Detention	BART PD initiated an investigation.	27
4 (IA2013-056)	<u>Unidentified Officer(s)</u> • Policy/Procedure	BART PD initiated an investigation.	31
5 (IA2013-057)	<u>Unidentified Officer(s)</u> • Performance of Duty	BART PD initiated an investigation.	26

6 (IA2013-058)	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer <u>Officer #2</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BART PD initiated an investigation.	21
7 (IA2013-062)	<u>Officer #1</u> <ul style="list-style-type: none"> • Arrest or Detention 	BART PD initiated an investigation.	14
8 (IA2013-068)	<u>Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty 	Bart PD initiated an investigation.	38

During the month of July 2013, 2 Administrative Investigations were initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2013-061)	<u>Officer #1</u> <ul style="list-style-type: none"> • Policy/Procedure 	BART PD initiated an investigation.	21
2 (IA2013-064)	<u>Unidentified Officer(s)</u> <ul style="list-style-type: none"> • Force 	BART PD initiated an investigation.	12

Complaints/Investigations Initiated During Previous Reporting Period

Actions Taken/# of Days Elapsed

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

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-060)	<u>Unidentified Officer(s)</u> <ul style="list-style-type: none"> • Policy/Procedure 	BART PD initiated an investigation.	48

During the month of March 2013, 1 Administrative Investigation was initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2013-035*)	<u>Officer #1</u> • Policy/Procedure	BART PD initiated an investigation.	146

*The incident underlying this case gave rise to a separate misconduct investigation involving the use of force by an officer (see IA2013-048 in the June 2013 report). When it was discovered that a potential procedural issue had arisen involving the same incident (separate from the use of force), the BART Police Department initiated this additional investigation. The underlying incident occurred on March 19, 2013.

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

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

Complaint # (IA Case #)	Nature of Allegations	Disposition ⁹	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-115)	Officer pointed a gun at complainant and a friend, and was unprofessional for not allowing complainant to explain the situation.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Unfounded • Force – Exonerated • Bias Based Policing – Not Sustained • Search or Seizure - Exonerated	235	207
2 (IA2012-119)	Officer struck complainant's foot with a flashlight while he was asleep and threw him to the ground. Officer did not detain complainant to evaluate his ability to care for himself and did not complete a field information card.	<u>Officer #1</u> • Force – Not Sustained • Policy/Procedure – Sustained • Performance of Duty – Sustained	233	214

3 (IA2013-011)	Officer discriminated against complainant based on his race and treated complainant discourteously during a contact regarding fare evasion.	<u>Officer #1</u> <ul style="list-style-type: none"> • Bias Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded 	172	153
4 (IA2013-021)	Officers unjustifiably arrested complainant for public intoxication, used excessive force against him, and failed to conduct a blood test to measure his intoxication.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Exonerated • Arrest/Detention – Exonerated • Policy/Procedure – Unfounded <u>Officer #2</u> <ul style="list-style-type: none"> • Force – Exonerated • Arrest/Detention – Exonerated • Policy/Procedure – Unfounded 	151	119
5 (IA2013-032)	Complainant was unjustifiably arrested for public intoxication.	<u>Officer #1</u> <ul style="list-style-type: none"> • Arrest/Detention – Exonerated 	117	104
6 (IA2013-039)	Complainant observed officer fail to intervene in a fight between civilians.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Supervisory Referral¹⁰ 	83	48
7 (IA2013-060)	Complainant reported unsafe conditions at the Daly City BART Station and the surrounding area.	Service Review ¹¹	48	28

During the month of July 2013, 2 Administrative Investigations were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-109)	Officers kicked and pushed complainant, mistreated him due to his ethnicity, and were disrespectful toward him.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained • Force – Exonerated • Bias Based Policing – Unfounded <u>Officer #2</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained • Force – Exonerated • Bias Based Policing – Unfounded <u>Officer #3</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained • Force – Exonerated • Bias Based Policing – Unfounded 	289	258
2 (IA2013-061)	BART Police vehicle was filmed by city traffic cameras failing to stop for a red light.	<u>Officer #1</u> <ul style="list-style-type: none"> • Policy/Procedure – Supervisory Referral 	21	7

Complaints/Investigations Concluded During a Prior Reporting Period

Dispositions/# of Days Elapsed

During the month of April 2013, 2 Citizen Complaints were concluded by the BART Police Department, but were not previously reported on:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-074)	Officers did not enforce BART District rules and/or laws relating to food and bicycles on board BART trains.	<u>Unknown Officer(s)</u> • Performance of Duty – Unfounded	374	249
2 (IA2012-085)	Officer failed to take a report and was rude when complainant advised him of a person armed with a weapon on a train.	<u>Officer #1</u> • Performance of Duty – Unfounded • Conduct Unbecoming an Officer – Not Sustained	304	195

Additional Notes

In accordance with the BART Citizen Oversight Model, OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department’s Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	1
Complainant-Initiated Appeals	3
Investigations Being Monitored	10
Investigations Reviewed During Current Month	23*

*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.

Pursuant to a review conducted by OIPA, the BART Police Department re-opened Case #IA2012-120 for follow-up work during the current reporting period. The complainant in that case had

raised a concern about the length of an extended train delay due to police activity. The case was reclassified from a Comment of Non-Complaint to a Citizen Complaint, and Internal Affairs personnel contacted the complainant to verify that her concern was sufficiently addressed. The follow-up work is complete, and the disposition of the case remains “Service Review.”

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA’s findings are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA’s investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

⁸ In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

⁹ In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to

cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

¹⁰ A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

¹¹ A service review refers to an instance when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.

Office of the Independent Police Auditor

Monthly Report

August 2013



September 9, 2013

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period August 1, 2013 through August 31, 2013.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
August 2012	13	60	0	0	0
September 2012	8	57	1	0	0
October 2012	9	49	0	0	0
November 2012	17	57	0	0	0
December 2012	12	52	2	0	0
January 2013	6	49	0	1	0
February 2013	9	46	0	0	0
March 2013	10	46	1	0	0
April 2013	11	47	1	1	0
May 2013	7	42	0	2	0
June 2013	8	38	0	0	0
July 2013	15	44	1	1	0
August 2013	17	43	3*	0	0

* Two of these completed cases were appeals filed with OIPA by complainants who were dissatisfied with the findings they received from BPD regarding their allegations of misconduct. These two do not factor into the Number of Open Cases. They are, however, detailed further below.

Types of Cases Filed

Citizen Complaints	11
Administrative Investigations	1
Comments of Non-Complaint	5
TOTAL	17

Citizen Complaints Received per Department

OIPA	4
BART Police Department	7
TOTAL	11

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of August 2013, 4 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations ⁷	Action Taken	Number of Days Elapsed Since Complaint Filed ⁸
1 (OIPA 13-55) (IA2013-079)	<u>Civilian #1</u> • Performance of Duty	OIPA referred the complaint to BART PD and will monitor their investigation.	11
2 (OIPA 13-52) (IA2013-074)	<u>Officer #1</u> • Conduct Unbecoming an Officer	OIPA referred the complaint to BART PD and will monitor their investigation.	19
3 (OIPA 13-48) (IA2013-073)	<u>Officer #1</u> • Performance of Duty	OIPA referred the complaint to BART PD and will monitor their investigation.	34
4 (OIPA 13-47) (IA2013-067)	<u>Officer #1</u> • Arrest or Detention	OIPA referred the complaint to BART PD and will monitor their investigation.	34

During the month of August 2013, 7 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-066)	<u>Civilian #1</u> • Courtesy	BART PD initiated an investigation.	34
2 (IA2013-069)	<u>Officer #1</u> • Performance of Duty	BART PD initiated an investigation.	34
3 (IA2013-070)	<u>Officer #1</u> • Force <u>Officer #2</u> • Force	BART PD initiated an investigation.	30
4 (IA2013-077)	<u>Officer #1</u> • Performance of Duty • Courtesy	BART PD initiated an investigation.	21

5 (IA2013-078)	<u>Officer #1</u> • Bias Based Policing • Conduct Unbecoming an Officer	BART PD initiated an investigation.	13
6 (IA2013-081)	<u>Officer #1</u> • Force • Conduct Unbecoming an Officer	BART PD initiated an investigation.	10
7 (IA2013-085)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	10

During the month of August 2013, 1 Administrative Investigation was initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2013-076)	<u>Officer #1</u> • Performance of Duty	BART PD initiated an investigation.	21

During the month of August 2013, 5 Comments of Non-Complaint were received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2013-065)	<u>Civilian #1</u> • Policy/Procedure	BART PD initiated an investigation.	35
2 (IA2013-071)	<u>Officer #1</u> • Performance of Duty <u>Officer #2</u> • Performance of Duty	BART PD initiated an investigation.	28
3 (IA2013-072)	<u>Officer #1</u> • Performance of Duty	BART PD initiated an investigation.	30
4 (IA2013-075)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	24
5 (IA2013-082)	<u>Officer #1</u> • Policy/Procedure	BART PD initiated an investigation.	15

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of August 2013, 1 Citizen Complaint was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Allegations	Disposition ⁹	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #13-24)	Officers detained complainant and her husband for no reason, secured complainant's handcuffs too tightly, and held her inside an extremely hot patrol car.	<u>Unidentified Officer(s)</u> <ul style="list-style-type: none"> • Unnecessary or Excessive Use of Force – Unfounded • Unlawful Detention – Unfounded • Conduct Unbecoming an Officer – Unfounded 	130	116

During the month of August 2013, 2 Appeals initiated by complainants were concluded by OIPA:

Appeal # (OIPA Case #) (IA Case #)	Nature of Allegations in Original Complaint	OIPA Disposition	Number of Days Elapsed Since Appeal Filed	Number of Days Taken to Complete Appeal
1 (OIPA #13-25) (IA2013-004)	Officers do not address homelessness inside a BART station, and a dispatcher was rude to complainant when complainant called BPD to raise this issue.	<u>Unidentified Officer(s)</u> <ul style="list-style-type: none"> • Performance of Duty – Service Review¹⁰ <u>Unidentified Civilian</u> <ul style="list-style-type: none"> • Discourtesy – Not Sustained 	125	91
2 (OIPA #13-27) (IA2011-083)	While answering complainant's question, officer was rude and attempted to provoke a response by holding her hand on her gun or holster.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained • Discourtesy – Not Sustained 	116	84

During the month of August 2013, 13 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-080)	Officer was rude, failed to supply complainant with a business card, inappropriately touched the complainant, and improperly delayed the arrest of complainant until after a complaint was filed. Officers also arrested complainant without justification.	<u>Officer #1</u> <ul style="list-style-type: none"> • Arrest/Detention – Not Sustained <u>Officer #2</u> <ul style="list-style-type: none"> • Arrest/Detention – Not Sustained • Courtesy – Exonerated • Conduct Unbecoming an Officer – Sustained • Force – Unfounded • Performance of Duty – Sustained 	351	339
2 (IA2013-002)	Officer did not take complainant's report of a crime seriously and did not initiate a criminal report.	<u>Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty – Not Sustained • Policy/Procedure – Exonerated 	244	212
3 (IA2013-007)	Officer shoved complainant unnecessarily, did not let her use a restroom, and stalked her.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Not Sustained • Conduct Unbecoming an Officer (Count 1) – Exonerated • Conduct Unbecoming an Officer (Count 2) – Unfounded 	220	185
4 (IA2013-008)	Officers cited complainants, and others, for fare evasion due to complainants' races. Officer made inappropriate comments to and about complainants.	<u>Officer #1</u> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded <u>Officer #2</u> <ul style="list-style-type: none"> • Bias-Based Policing – Unfounded • Courtesy – Sustained 	212	200

5 (IA2013-009)	Officer went out of his way to identify complainant, who had an outstanding warrant.	<u>Officer #1</u> • Policy/Procedure – Exonerated	212	193
6 (IA2013-017)	Complainant observed two BART officers harassing an African-American subject.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral ¹¹ <u>Officer #2</u> • Conduct Unbecoming an Officer – Supervisory Referral	191	179
7 (IA2013-019)	Officer made a rude comment to complainant during a dispute over the validity of a BART ticket.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Not Sustained	188	153
8 (IA2013-027)	Officer observing a custody exchange withheld information from one party and did not complete a police report.	<u>Officer #1</u> • Performance of Duty – Exonerated • Report Preparation – Exonerated	154	135
9 (IA2013-053)	Officers improperly prohibited complainant from distributing materials on BART property.	<u>Unidentified Officers</u> • Policy Complaint – Service Review	60	26
10 (IA2013-055)	BPD provides insufficient security on trains at night.	<u>Unidentified Officer(s)</u> • Performance of Duty – Service Review	55	21
11 (IA2013-057)	Complainant, who was attacked at a BART station, has not been contacted by BPD about the incident.	<u>Unidentified Officer(s)</u> • Performance of Duty – Service Review	54	28

12 (IA2013-059)	BPD patrols of a BART station are insufficient.	<u>Unidentified Officer(s)</u> <ul style="list-style-type: none"> • Performance of Duty – Service Review • Procedure – Service Review 	42	15
13 (IA2013-066)	A BPD employee was rude to the complainant when he called.	<u>Civilian #1</u> <ul style="list-style-type: none"> • Courtesy – Administrative Closure 	34	17

During the month of August 2013, 3 Administrative Investigations were concluded by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2012-094)	Officer inappropriately accessed a law enforcement database, misused law enforcement information, inappropriately associated with a criminal gang, and compromised criminal investigations.	<u>Officer #1</u> <ul style="list-style-type: none"> • Policy/Procedure (Count 1) – Sustained • Policy/Procedure (Count 2) – Sustained • Policy/Procedure (Count 3) – Sustained • Policy/Procedure (Count 4) – Sustained • Policy/Procedure (Count 5) – Not Sustained • Policy/Procedure (Count 6) – Not Sustained • Policy/Procedure (Count 7) – Not Sustained • Conduct Unbecoming an Officer (Count 1) – Sustained • Conduct Unbecoming an Officer (Count 2) – Not Sustained • Conduct Unbecoming 	308	293

		an Officer (Count 3) – Not Sustained • Conduct Unbecoming an Officer (Count 4) – Not Sustained		
2 (IA2013-035)	Officer did not properly submit a report.	<u>Officer #1</u> • Policy/Procedure – Supervisory Referral	174	147
3 (IA2013-064)	Arrestee escaped from holding cell that had a malfunctioning lock and sustained injuries from falling while subsequently fleeing.	<u>Unidentified Officer(s)</u> • Force – Administrative Closure	40	28

During the month of August 2013, 1 Comment of Non-Complaint was addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2013-075)	Officer laughed at complainant's difficulty with language.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	24	13

Additional Notes

In accordance with the BART Citizen Oversight Model, OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	0
Complainant-Initiated Appeals	1
Investigations Being Monitored	14
Investigations Reviewed During Current Month	32*

*This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA’s findings are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA’s investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

⁸ In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

⁹ In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

¹⁰ A service review refers to an instance when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.

¹¹ A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

Office of the Independent Police Auditor

Monthly Report
September 2013



October 7, 2013

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period September 1, 2013 through September 30, 2013.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
September 2012	8	57	1	0	0
October 2012	9	49	0	0	0
November 2012	17	57	0	0	0
December 2012	12	52	2	0	0
January 2013	6	49	0	1	0
February 2013	9	46	0	0	0
March 2013	10	46	1	0	0
April 2013	11	47	1	1	0
May 2013	7	42	0	2	0
June 2013	8	38	0	0	0
July 2013	15	44	1	1	0
August 2013	17	43	3	0	0
September 2013	14*	44	0	0	0

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

Types of Cases Filed

Citizen Complaints	13
Administrative Investigations	1
Comments of Non-Complaint	0
TOTAL	14

Citizen Complaints Received per Department

OIPA	2
BART Police Department	11
TOTAL	13

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of September 2013, 2 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations ⁷	Action Taken	Number of Days Elapsed Since Complaint Filed ⁸
1 (OIPA 13-49) (IA2013-092)	<u>Officer #1</u> • Excessive Use of Force <u>Unknown Officers</u> • Search or Seizure	OIPA initiated an investigation. OIPA also notified BART PD of the complaint.	20
2 (OIPA 13-60) (IA2013-095)	<u>Officer #1</u> • Arrest or Detention	OIPA referred the complaint to BART PD and will monitor their investigation.	7

During the month of September 2013, 9 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-083)	<u>Unknown Officers</u> • Policy/Procedure	BART PD initiated an investigation.	36
2 (IA2013-084)	<u>Officer #1</u> • Conduct Unbecoming an Officer • Performance of Duty • Courtesy <u>Officer #2</u> • Conduct Unbecoming an Officer • Performance of Duty • Courtesy	BART PD initiated an investigation.	35
3 (IA2013-087)	<u>Civilian #1</u> • Courtesy	BART PD initiated an investigation.	34
4 (IA2013-089)	<u>Officer #1</u> • Performance of Duty <u>Officer #2</u> • Performance of Duty	BART PD initiated an investigation.	19

5 (IA2013-090)	<u>Officer #1</u> • Performance of Duty <u>Officer #2</u> • Performance of Duty	BART PD initiated an investigation.	18
6 (IA2013-091)	<u>Officer #1</u> • Force • Conduct Unbecoming an Officer <u>Officer #2</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	14
7 (IA2013-096)	<u>Officer #1</u> • Force	BART PD initiated an investigation.	14
8 (IA2013-094)	<u>Officer #1</u> • Force	BART PD initiated an investigation.	11
9 (IA2013-093)	<u>Civilian #1</u> • Courtesy	BART PD initiated an investigation.	10

Complaints/Investigations Initiated During a Previous Reporting Period

Actions Taken/# of Days Elapsed

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

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-086)	<u>Officer #1</u> • Force	BART PD initiated an investigation.	86

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

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-088)	<u>Officer #1</u> • Performance of Duty <u>Officer #2</u> • Performance of Duty	BART PD initiated an investigation.	40

During the month of August 2013, 1 previously unreported Administrative Investigation was initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2013-080)	<u>Unknown Officers</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	67

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of September 2013, 4 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition ⁹	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-074)	Officer was observed driving a patrol car without front and rear license plates.	<u>BART Police Department</u> • Service Review ¹⁰	47	34
2 (IA2013-020)	Officer was unprofessional and made complainant feel threatened by his aggressive demeanor. Officer did not complete a required report about the matter.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Not Sustained • Policy/Procedure – Sustained	216	191
3 (IA2013-014)	Officer unnecessarily detained complainant based on his race and for eating inside a BART station. Officer was sarcastic.	<u>Officer #1</u> • Bias Based Policing – Unfounded • Conduct Unbecoming an Officer – Unfounded • Detention – Exonerated	223	189

<p style="text-align: center;">4 (IA2013-022)</p>	<p>Officers laughed at complainant, asked her inappropriate questions, and did not identify themselves upon request after complainant overslept while on a BART train.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (Inappropriate Questions/Conduct) – Unfounded • Courtesy (Providing Name/Badge) – Unfounded <p><u>Officer #2</u></p> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (Inappropriate Questions/Conduct) – Unfounded • Courtesy (Providing Name/Badge) – Unfounded <p><u>Officer #3</u></p> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (Inappropriate Questions/Conduct) – Unfounded • Courtesy (Providing Name/Badge) – Unfounded 	<p style="text-align: center;">229</p>	<p style="text-align: center;">204</p>
---	--	---	--	--

During the month of September 2013, 1 Administrative Investigation was concluded by the BART Police Department:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2013-006)	One officer yelled at another and discriminated against the second officer on the basis of gender and sexual orientation.	<u>Officer #1</u> <ul style="list-style-type: none"> • Workplace Discrimination / Harassment – Sustained • Workplace Discrimination / Harassment – Not Sustained • Courtesy – Unfounded 	252	233

During the month of September 2013, 7 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2013-065)	Officer made an unsafe lane change while driving.	<u>Officer #1</u> <ul style="list-style-type: none"> • Policy/Procedure – Supervisory Referral¹¹ 	63	30
2 (IA2013-073)	Officer did not cite a patron smoking in a BART station or engage individuals who were gambling at a BART station.	<u>Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty – Supervisory Referral 	62	28
3 (IA2013-072)	Officer did not ask complainant, who was having a dispute with another party, whether he wanted the other party prosecuted.	<u>Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty – Supervisory Referral 	58	32

<p>4 (IA2013-071)</p>	<p>Officers did not respond to investigate a disturbance at a BART station that was observed by complainant.</p>	<p><u>Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty – Supervisory Referral <u>Officer #2</u> <ul style="list-style-type: none"> • Performance of Duty – Supervisory Referral </p>	<p>56</p>	<p>22</p>
<p>5 (IA2013-082)</p>	<p>Complainant observed officer in uniform but not equipped with a gun or Taser.</p>	<p><u>Officer #1</u> <ul style="list-style-type: none"> • Policy/Procedure – Supervisory Referral </p>	<p>43</p>	<p>11</p>
<p>6 (IA2013-078)</p>	<p>Officer had a negative attitude and stereotyped complainant based on race when issuing a ticket to complainant for fare evasion. Complainant, who was upset about being cited, retracted allegations about officer’s bias and attitude.</p>	<p><u>Officer #1</u> <ul style="list-style-type: none"> • Arrest or Detention – Supervisory Referral </p>	<p>41</p>	<p>14</p>
<p>7 (IA2013-079)</p>	<p>Civilian issued a warning to complainant about an expired parking permit, even though the permit is valid.</p>	<p><u>Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty – Supervisory Referral </p>	<p>39</p>	<p>14</p>

Complaints/Investigations Concluded During a Previous Reporting Period

Dispositions/# of Days Elapsed

During the month of July 2013, 1 additional Citizen Complaint was concluded by the BART Police Department. This case was initially closed in March 2013, but was reopened for further investigation in April 2013. It was then re-closed in July 2013 and is reported on here:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-015)	Complainant was improperly detained for fare evasion, and an officer displayed his firearm in a threatening manner and refused to identify himself upon request. Officers also did not initiate a complaint as requested by complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Unfounded • Conduct Unbecoming an Officer – Unfounded • Courtesy – Unfounded • Policy/Procedure – Not Sustained <u>Officer #2</u> <ul style="list-style-type: none"> • Policy/Procedure – Sustained 	223	142

Additional Notes

In accordance with the BART Citizen Oversight Model, OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department’s Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	1
Complainant-Initiated Appeals	1
Investigations Being Monitored	14
Investigations Reviewed During Current Month	26*

*This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District

departments.” As complaints received by the Citizen Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA’s findings are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA’s investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

⁸ In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

⁹ In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

¹⁰ A service review refers to an instance when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.

¹¹ A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

Office of the Independent Police Auditor

Monthly Report

October 2013



November 18, 2013

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period October 1, 2013 through October 31, 2013.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
October 2012	9	49	0	0	0
November 2012	17	57	0	0	0
December 2012	12	52	2	0	0
January 2013	6	49	0	1	0
February 2013	9	46	0	0	0
March 2013	10	46	1	0	0
April 2013	11	47	1	1	0
May 2013	7	42	0	2	0
June 2013	8	38	0	0	0
July 2013	15	44	1	1	0
August 2013	17	43	3	0	0
September 2013	14	44	0	0	0
October 2013	16*	51	1	0	0

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

Types of Cases Filed

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

Citizen Complaints Received per Department

OIPA	0
BART Police Department	13
TOTAL	13

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

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

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

9 (IA2013-106)	<u>Officer #1</u> • Criminal • Arrest or Detention <u>Officer #2</u> • Arrest or Detention • Supervision	BART PD initiated an investigation.	27
10 (IA2013-107)	<u>Officer #1</u> • Arrest or Detention	BART PD initiated an investigation.	27
11 (IA2013-110)	<u>Officer #1</u> • Performance of Duty	BART PD initiated an investigation.	25
12 (IA2013-111)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	24

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

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2013-104)	<u>Officer #1</u> • Courtesy	BART PD initiated an investigation.	29
2 (IA2013-100)	<u>Civilian #1</u> • Courtesy	BART PD initiated an investigation.	46

Complaints/Investigations Initiated During a Previous Reporting Period

Actions Taken/# of Days Elapsed

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

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-099)	<u>Officer #1</u> • Force	BART PD initiated an investigation.	88

During the month of July 2013, 1 previously unreported Administrative Investigation was initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2013-112)	<u>Officer #1</u> • Force	BART PD initiated an investigation.	110

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

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

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

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

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

7 (IA2013-095)	Complainant was improperly issued a citation for fare evasion. Complainant later withdrew the complaint.	<u>Officer #1</u> • Arrest or Detention – Administrative Closure ¹¹	49	23
-------------------	--	---	----	----

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

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2013-100)	Employee was rude to patrons when giving them parking instructions at a BART station.	<u>Civilian #1</u> • Courtesy – Supervisory Referral ¹²	46	27
2 (IA2013-087)	Employee was rude to complainant when giving parking instructions at a BART station and improperly issued a ticket.	<u>Civilian #1</u> • Courtesy – Supervisory Referral • Policy/Procedure – Supervisory Referral	76	56

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BART PD

During the month of October 2013, BART PD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s)	Classification of Sustained Allegation(s)	Action Taken
1	One officer discriminated against a second officer on the basis of gender.	<u>Officer #1</u> • Workplace Discrimination / Harassment	<u>Officer #1</u> Letter of Discussion

2	Officer did not complete a required report regarding a contact with an individual.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
---	--	---	--

Additional Notes

In accordance with the BART Citizen Oversight Model, OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department’s Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	1
Complainant-Initiated Appeals	0
Investigations Being Monitored	7
Investigations Reviewed During Current Month	30*

*This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA’s findings are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA’s investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department's internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

⁸ In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

⁹ In defining the "Disposition of Internal Investigations," the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

¹⁰ A service review refers to an instance when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.

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

¹² A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

Office of the Independent Police Auditor

Monthly Report

November 2013



December 9, 2013

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period November 1, 2013 through November 30, 2013.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
November 2012	17	57	0	0	0
December 2012	12	52	2	0	0
January 2013	6	49	0	1	0
February 2013	9	46	0	0	0
March 2013	10	46	1	0	0
April 2013	11	47	1	1	0
May 2013	7	42	0	2	0
June 2013	8	38	0	0	0
July 2013	15	44	1	1	0
August 2013	17	43	3	0	0
September 2013	14	44	0	0	0
October 2013	16	50	1	0	0
November 2013	18*	58	0	0	0

*This number includes one case that was initiated in a prior reporting period, but was not previously reported on. It is therefore included in this report. The Number of Open Cases from the previous report mistakenly included the case and has been corrected. This number also includes one case that was re-opened by the BART Police Department for further investigation at the request of OIPA (IA2012-117).

Types of Cases Filed

Citizen Complaints	16
Administrative Investigations	0
Comments of Non-Complaint	1
TOTAL	17

Citizen Complaints Received per Department

OIPA	7
BART Police Department	9
TOTAL	16

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of November 2013, 7 Citizen Complaints were received by OIPA:

Complaint # OIPA Case #) (IA Case #)	Nature of Allegations ⁷	Action Taken	Number of Days Elapsed Since Complaint Filed ⁸
1 (OIPA #13-70) (IA2013-120)	<u>Civilian #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	38
2 (OIPA #13-71) (IA2013-114)	<u>Officer #1</u> • Arrest or Detention <u>Officer #2</u> • Arrest or Detention	BART PD initiated an investigation.	34
3 (OIPA #13-74) (IA2013-118)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	26
4 (OIPA #13-75) (IA2013-119)	<u>Officer #1</u> • Conduct Unbecoming an Officer <u>Officer #2</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	26
5 (OIPA #13-77) (IA2013-125)	<u>Officer #1</u> • Bias-Based Policing • Arrest or Detention • Conduct Unbecoming an Officer • Policy/Procedure <u>Officer #2</u> • Bias-Based Policing • Conduct Unbecoming an Officer • Discourtesy	OIPA initiated an investigation and informed BART PD of the complaint. BART PD initiated two separate investigations based on the allegations raised.*	21
6 (OIPA #13-78) (IA2013-127)	<u>Civilian #1</u> • Truthfulness • Conduct Unbecoming an Officer	BART PD initiated an investigation.	18

7 (OIPA #13-79) (IA2013-128)	<u>Civilian #1</u> • Policy/Procedure	BART PD initiated an investigation.	17
------------------------------------	--	-------------------------------------	----

*The second of these investigations is included in the following chart under Case #IA2013-126.

During the month of November 2013, 8 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-113)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	38
2 (IA2013-116)	<u>Officer #1</u> • Truthfulness	BART PD initiated an investigation.	32
3 (IA2013-117)	<u>Officer #1</u> • Performance of Duty • Conduct Unbecoming an Officer <u>Officer #2</u> • Performance of Duty	BART PD initiated an investigation.	29
4 (IA2013-121)	<u>Officer #1</u> • Bias-Based Policing • Arrest or Detention	BART PD initiated an investigation.	24
5 (IA2013-124)	<u>Officer #1</u> • Conduct Unbecoming an Officer <u>Officer #2</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	19
6 (IA2013-123)	<u>Officer #1</u> • Performance of Duty • Conduct Unbecoming an Officer <u>Officer #2</u> • Performance of Duty • Conduct Unbecoming an Officer	BART PD initiated an investigation.	17

7 (IA2013-126)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	21
8 (IA2013-129)	<u>Officer #1</u> • Force	BART PD initiated an investigation.	13

During the month of November 2013, 1 Comment of Non-Complaint was received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2013-122)	<u>Officer #1</u> • Arrest or Detention	BART PD initiated an investigation.	24

Complaints/Investigations Initiated During a Previous Reporting Period

Actions Taken/# of Days Elapsed

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

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-115)	<u>Officer #1</u> • Bias-Based Policing	BART PD initiated an investigation.	76

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of November 2013, 8 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition ⁹	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-029)	Officer discriminated against complainant, improperly detained her, and failed to consider other individuals as possible suspects. Officer did not document this contact.	<u>Officer #1</u> <ul style="list-style-type: none"> • Arrest or Detention – Unfounded • Performance of Duty – Unfounded • Bias-Based Policing – Unfounded • Policy/Procedure – Sustained 	243	206
2 (IA2013-031)	Officers pushed complainant’s head up against a wall, forced him onto a bench, and made references to him based on his race. Another officer did not complete a use of force report.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force (Count 1) – Unfounded • Force (Count 2) – Exonerated • Bias-Based Policing – Unfounded <u>Officer #2</u> <ul style="list-style-type: none"> • Force (Count 1) – Unfounded • Force (Count 2) – Exonerated • Bias-Based Policing – Unfounded <u>Officer #3</u> <ul style="list-style-type: none"> • Policy/Procedure – Sustained 	241	224

3 (IA2013-045)	Officer made threatening and inappropriate remarks to complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (Count 1) – Sustained • Conduct Unbecoming an Officer (Count 2) – Exonerated • Conduct Unbecoming an Officer (Count 3) – Not Sustained 	181	164
4 (IA2013-048)	Officer threw complainant to the ground, pushed him to the ground, and kicked him.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force (Count 1) – Unfounded • Force (Count 2) – Exonerated • Force (Count 3) – Not Sustained 	181	160
5 (IA2013-063)	Employee improperly issued a parking ticket to complainant.	<u>Civilian #1</u> <ul style="list-style-type: none"> • Performance of Duty – Unfounded 	133	112
6 (IA2013-088)	Officers did not conduct a thorough investigation in response to a bicycle theft.	<u>BART Police Department</u> <ul style="list-style-type: none"> • Performance of Duty – Service Review¹⁰ 	103	68
7 (IA2013-090)	Officers inappropriately searched and handcuffed complainant following a dispute with two juveniles.	<u>Unknown Officers</u> <ul style="list-style-type: none"> • Arrest or Detention – Administratively Closed¹¹ • Search or Seizure – Administratively Closed 	81	61
8 (IA2013-117)	Officers made insufficient attempts to locate an individual who had created a disturbance in a BART station. One officer did not take the situation seriously.	<u>Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty – Supervisory Referral¹² • Conduct Unbecoming an Officer – Supervisory Referral <u>Officer #2</u> <ul style="list-style-type: none"> • Performance of Duty – Supervisory Referral 	29	10

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

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2013-104)	Officer was rude to complainant during a phone call.	<u>Officer #1</u> • Courtesy – Supervisory Referral	50	23
2 (IA2013-110)	Officer improperly reported statement made by complainant during a criminal investigation.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral	46	30

Complaints/Investigations Concluded During a Previous Reporting Period

Dispositions/# of Days Elapsed

During the month of September 2013, 1 Citizen Complaint was concluded by the BART Police Department. Though it was accounted for correctly in the number of pending cases, it was not previously reported on:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-023)	Officer was rude to complainant, misused discretion regarding the issuance of a citation, and failed to complete a required report.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Not Sustained • Conduct Unbecoming an Officer – Sustained • Policy/Procedure – Sustained	265	184

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BART PD

During the month of November 2013, BART PD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s)	Classification of Sustained Allegation(s)	Action Taken
1	Officer improperly accessed a law enforcement database and misused the information that was obtained.	<u>Officer #1</u> <ul style="list-style-type: none"> • Policy/Procedure (Count 1) • Policy/Procedure (Count 2) • Policy/Procedure (Count 3) • Policy/Procedure (Count 4) • Conduct Unbecoming an Officer 	<u>Officer #1</u> Termination
2	Officer misused discretion regarding the issuance of a citation and failed to complete a required report.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Policy/Procedure 	<u>Officer #1</u> Written Reprimand

Additional Notes

In accordance with the BART Citizen Oversight Model, OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	2
Complainant-Initiated Appeals	0
Investigations Being Monitored	12
Investigations Reviewed During Current Month	25*

*This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA’s findings are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA’s investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

⁸ In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

⁹ In defining the “Disposition of Internal Investigations,” the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

¹⁰ A service review refers to an instance when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.

¹¹ Administrative closure refers to 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 A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

Office of the Independent Police Auditor

Monthly Report

December 2013



January 13, 2014

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period December 1, 2013 through December 31, 2013.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
December 2012	12	52	2	0	0
January 2013	6	49	0	1	0
February 2013	9	46	0	0	0
March 2013	10	46	1	0	0
April 2013	11	47	1	1	0
May 2013	7	42	0	2	0
June 2013	8	38	0	0	0
July 2013	15	44	1	1	0
August 2013	17	43	3	0	0
September 2013	14	44	0	0	0
October 2013	16	50	1	0	0
November 2013	18	58	0	0	0
December 2013	14*	62	0	0	0

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

Types of Cases Filed

Citizen Complaints	10
Administrative Investigations	3
Comments of Non-Complaint	1
TOTAL	14

Citizen Complaints Received per Department

OIPA	5*
BART Police Department	5
TOTAL	10

*This number does not include one complaint that OIPA received during December, which the BART Police Department had already received in a previous reporting period (IA2013-123). As the case was already reported on, it has not been duplicated here.

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

During the month of December 2013, 5 Citizen Complaints were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations ⁷	Action Taken	Number of Days Elapsed Since Complaint Filed ⁸
1 (OIPA #13-81) (IA2013-130)	<u>Officer #1</u> • Bias-Based Policing • Conduct Unbecoming an Officer	OIPA initiated an investigation and informed BART PD, which also initiated an investigation.	35
2 (OIPA #13-84) (IA2013-134)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BART PD initiated an investigation.	27
3 (OIPA #13-85) (IA2013-133)	<u>Unspecified Officer(s)</u> • Service Review	BART PD initiated an investigation.	27
4 (OIPA #13-88) (IA2013-135)	<u>Officer #1</u> • Bias-Based Policing • Arrest or Detention • Conduct Unbecoming an Officer	OIPA initiated an investigation and informed BART PD, which also initiated an investigation.	24
5 (OIPA #13-89) (IA2013-136)	<u>Officer #1</u> • Unnecessary or Excessive Use of Force • Arrest or Detention	OIPA initiated an investigation and informed BART PD, which also initiated an investigation.	24

During the month of December 2013, 4 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-137)	<u>Officer #1</u> • Arrest or Detention	BART PD initiated an investigation.	23
2 (IA2013-138)	<u>Officer #1</u> • Performance of Duty <u>Officer #2</u> • Performance of Duty	BART PD initiated an investigation.	14
3 (IA2013-139)	<u>Officer #1</u> • Arrest or Detention	BART PD initiated an investigation.	17

4 (IA2013-140)	<u>Officer #1</u> • Conduct Unbecoming an Officer • Policy/Procedure	BART PD initiated an investigation.	17
-------------------	--	-------------------------------------	----

During the month of December 2013, 2 Administrative Investigations were initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2013-141)	<u>Officer #1</u> • Conduct Unbecoming an Officer • Policy/Procedure	BART PD initiated an investigation.	28
2 (IA2013-143)	<u>Officer #1</u> • Force • Conduct Unbecoming an Officer • Arrest or Detention <u>Officer #2</u> • Force • Conduct Unbecoming an Officer • Arrest or Detention <u>Officer #3</u> • Force • Conduct Unbecoming an Officer • Arrest or Detention	BART PD initiated an investigation.	15

During the month of December 2013, 1 Comment of Non-Complaint was received by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Action Taken	Number of Days Elapsed Since Comment Filed
1 (IA2013-131)	<u>Officer #1</u> • Performance of Duty	BART PD initiated an investigation.	38

Complaints/Investigations Initiated During a Previous Reporting Period

Actions Taken/# of Days Elapsed

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

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2013-132)	<u>Officer #1</u> • Policy/Procedure	BART PD initiated an investigation.	48

During the month of October 2013, 1 previously unreported Administrative Investigation was initiated by the BART Police Department:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2013-142)	<u>Officer #1</u> • Force • Arrest or Detention <u>Officer #2</u> • Force • Arrest or Detention	BART PD initiated an investigation.	77

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of December 2013, 4 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition ⁹	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-049)	Officer used unnecessary force and was rude and unprofessional during arrest of complainant.	<u>Officer #1</u> • Force – Exonerated • Conduct Unbecoming an Officer – Unfounded	202	177

2 (IA2013-051)	Officers used excessive force during arrest of complainant, and one officer used a racial slur and other inappropriate language.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force – Exonerated <u>Officer #2</u> <ul style="list-style-type: none"> • Force – Exonerated • Conduct Unbecoming an Officer (Count 1) – Unfounded • Conduct Unbecoming an Officer (Count 2) – Sustained • Courtesy (Count 1) – Unfounded • Courtesy (Count 2) – Sustained 	203	170
3 (IA2013-085)	Officer was observed speeding while driving patrol car.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Not Sustained 	136	113
4 (IA2013-108)	Officers released a subject despite complainant’s desire to conduct a citizen’s arrest.	<u>Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty – Supervisory Referral¹⁰ <u>Officer #2</u> <ul style="list-style-type: none"> • Performance of Duty – Supervisory Referral 	103	77

During the month of December 2013, 1 Administrative Investigation was completed by the BART Police Department:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2012-104)	Employee improperly released information without notifying the Department.	<u>Civilian #1</u> <ul style="list-style-type: none"> • Procedure – Administratively Closed¹¹ 	432	407*

*The investigation into this complaint was suspended for a period of time due to an associated matter that was pending arbitration.

During the month of November 2013, 4 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2013-086)	Officer used excessive force when arresting complainant.	<u>Officer #1</u> • Force – Supervisory Referral	184	168
2 (IA2013-119)	Officers harassed complainant and treated him unprofessionally when issuing him a citation.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral <u>Officer #2</u> • Conduct Unbecoming an Officer – Supervisory Referral	61	28
3 (IA2013-120)	Employee improperly issued a parking citation in order to meet a quota.	<u>Civilian #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	73	42
4 (IA2013-122)	Officer detained one of the parties involved in a dispute (complainant) but not the other party.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral	59	18

Complaints/Investigations Concluded During a Previous Reporting Period

Dispositions/# of Days Elapsed

During the month of November 2013, 1 Citizen Complaint was concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2013-030)	Officer improperly interviewed complainant about a crime while complainant was medically incapacitated.	<u>Officer #1 (Retired)</u> • Policy/Procedure – Exonerated	276	220

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BART PD

During the month of December 2013, BART PD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s)	Classification of Sustained Allegation(s)	Action Taken
1	Officer did not properly document a contact with an individual.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
2	Officer did not complete a use of force report as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
3	Officer used inappropriate language toward complainant during complainant's arrest.	<u>Officer #1</u> • Conduct Unbecoming an Officer • Courtesy	<u>Officer #1</u> Informal Counseling

Additional Notes

In accordance with the BART Citizen Oversight Model, OIPA investigates certain complaints, conducts complainant-initiated appeals, and also monitors and/or reviews complaint investigations conducted by the BART Police Department. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with the BART Police Department’s Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	5
Complainant-Initiated Appeals	0
Investigations Being Monitored	12
Investigations Reviewed During Current Month	25*

*This number does not include all OIPA reviews, as OIPA commonly looks at a variety of cases in the Internal Affairs database to obtain updates on both pending and completed investigations.

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the “Citizen Board, Office of the District Secretary, and other District departments.” As complaints received by the Citizen Board are customarily directed to OIPA for further action, such complaints are included in the Quantitative Report above; OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as “Comments of Non-Complaint;” these are comments “on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint.” (BART Police Department Policy Manual, Policy 1020.1.1(e)). Finally, this total also includes previously completed cases that have been re-opened during the current reporting period.

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period for which OIPA’s findings are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA’s investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department’s internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ In any case that has not been completed, the listed allegations are preliminary in nature and may change as more information is gathered during the investigation.

⁸ In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint, comment, etc., and the date of the report (as noted on the front page).

⁹ In defining the "Disposition of Internal Investigations," the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

¹⁰ A supervisory referral refers to an instance involving an inquiry or comment of non-complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.

¹¹ Administrative closure refers to allegations that are received and documented; however the Chief of Police or his/her designee determines, based on a preliminary investigation, that further investigation is not warranted. Under these circumstances, the complaint will be Administratively Closed and documented in a summary memorandum to the case file. Employees will be documented as witnesses only, not as subjects to the complaint. Internal Affairs will send a letter to the complainant notifying them that the case was closed following a preliminary investigation.