

# Office of the Independent Police Auditor

## Monthly Report

April 2015



May 11, 2015

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period April 1, 2015 through April 30, 2015.<sup>1</sup>

**Quantitative Report**

	Number of Cases Filed <sup>2</sup>	Number of Open Cases <sup>3</sup>	Number of OIPA Investigations Concluded <sup>4</sup>	Number of Cases Appealed to OIPA <sup>5</sup>	Number of Cases Appealed by CRB <sup>6</sup>
April 2014	18	68	1	0	0
May 2014	12	57	0	0	0
June 2014	11	61	0	0	0
July 2014	10	67	0	0	1
August 2014	20	75	2	0	0
September 2014	12	72	0	0	0
October 2014	14	78	0	0	0
November 2014	17	84	1	0	0
December 2014	11	84	1	0	0
January 2015	11	87	2	0	0
February 2015	9	78	3	0	0
March 2015	11	67	0	0	1
April 2015	13	68	2	0	0

**Types of Cases Filed**

Citizen Complaints (Formal)	10
Informal Complaints <sup>7</sup>	3
Administrative Investigations	0
<b>TOTAL</b>	<b>13</b>

**Citizen Complaints Received per Department<sup>8</sup>**

OIPA	4
BART Police Department	6
<b>TOTAL</b>	<b>10</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of April 2015, 4 **Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations <sup>9</sup>	Action Taken	Number of Days Elapsed Since Complaint Filed <sup>10</sup>
1 (OIPA #15-21) (IA2015-031)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Policing</li> <li>• Performance of Duty</li> <li>• Courtesy</li> </ul> <u>Employee #1</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Policing</li> <li>• Performance of Duty</li> </ul>	OIPA initiated an investigation and notified BPD, which also initiated an investigation.	21
2 (OIPA #15-23) (IA2015-033)	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	OIPA notified BPD, which initiated an investigation.	21
3 (OIPA #15-24) (IA2015-034)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	OIPA notified BPD, which initiated an investigation.	21
4 (OIPA #15-25) (IA2015-032)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> </ul>	OIPA notified BPD, which initiated an investigation.	20

During the month of April 2015, 6 **Citizen Complaints (Formal)** were received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-028)	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Arrest or Detention</li> <li>• Performance of Duty</li> </ul>	BPD initiated an investigation.	38
2 (IA2015-035)	<u>Officers #1-4</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest or Detention</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	37

3 (IA2015-036)	<u>Officer #1</u> • Performance of Duty • Policy/Procedure  <u>Officer #2</u> • Policy/Procedure	BPD initiated an investigation.	12
4 (IA2015-037)	<u>Officer #1</u> • Performance of Duty • Conduct Unbecoming an Officer	BPD initiated an investigation.	12
5 (IA2015-038)	<u>Officers #1-2</u> • Performance of Duty	BPD initiated an investigation.	12
6 (IA2015-039)	<u>Employee #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	11

During the month of April 2015, 3 **Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-029)	<u>Officers #1-3</u> • Bias-Based Policing • Conduct Unbecoming an Officer	BPD initiated an investigation.	25
2 (IA2015-030)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	25
3 (IA2015-041)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	13

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

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

Complaint # (OIPA Case #)	Nature of Allegations	Disposition <sup>11</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #14-36)	Officers detained complainant and others without justification, and did so because of complainant’s race. Officers did not account for information from witnesses at the scene. One officer used excessive force during detention of complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force – Exonerated</li> <li>• Racial Profiling/Bias-Based Policing – Unfounded</li> <li>• Arrest or Detention – Exonerated</li> <li>• Performance of Duty – Exonerated</li> </ul> <u>Officers #2-3</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Policing – Unfounded</li> <li>• Arrest or Detention – Exonerated</li> <li>• Performance of Duty – Exonerated</li> </ul>	364	329
2 (OIPA #14-53)*	Officers used excessive force while detaining an individual and did so based on the individual’s race.	<u>Officers #1-3</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force – Exonerated</li> <li>• Racial Profiling/Bias-Based Policing – Unfounded</li> </ul>	286	275

\* As BPD is also investigating this case, it will not be taken out of the “Number of Open Cases” column in the Quantitative Report on Page 2 until BPD’s findings have also been finalized.

During the month of April 2015, 8 **Citizen Complaints (Formal)** were concluded by BPD:

Complaint # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2014-077)	Officer made multiple inappropriate threats to use force against complainant, made an inappropriate gesture, used inappropriate language, and did not record incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer (Counts 1-2) – Unfounded</li> <li>• Conduct Unbecoming an Officer (Counts 3-4) – Not Sustained</li> <li>• Conduct Unbecoming an Officer (Count 5) – Exonerated</li> <li>• Courtesy – Unfounded</li> <li>• Policy/Procedure – Sustained</li> </ul>	320	309
2 (IA2014-084)	Officers used excessive force while detaining complainant.	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> </ul>	307	275
3 (IA2014-092)	Officer failed to accept a citizen's arrest as required based on the race of the parties involved in a dispute and did not record incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Not Sustained</li> <li>• Performance of Duty – Unfounded</li> <li>• Policy/Procedure – Sustained</li> </ul>	276	237
4 (IA2014-114)	Officer made an inappropriate statement to complainant.	<u>Officer #1 (Unidentified)</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	238	206

<p>5 (IA2014-134)</p>	<p>One officer did not follow protocol in searching complainant, did not conduct search properly, and made inappropriate physical contact with complainant. Another officer did not provide appropriate supervision during the incident.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Policy/Procedure (Counts 1-2) – Sustained</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Supervisory Responsibility – Sustained</li> </ul>	<p>194</p>	<p>183</p>
<p>6 (IA2014-144)</p>	<p>Officer was unprofessional toward complainant, did not record incident as required, and did not correctly apply a policy regarding ridership on BART.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Policy/Procedure (Count 1) – Not Sustained</li> <li>• Policy/Procedure (Count 2) – Sustained</li> </ul>	<p>199</p>	<p>161</p>
<p>7 (IA2014-148)</p>	<p>Officers detained and searched an individual without proper justification.</p>	<p><u>Officers #1-2</u></p> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Search or Seizure – Exonerated</li> </ul>	<p>184</p>	<p>145</p>
<p>8 (IA2014-162)</p>	<p>Complainant was the victim of a crime and was concerned about the lack of video evidence available to document the incident.</p>	<p><u>BART Police Department</u></p> <ul style="list-style-type: none"> <li>• Service Review<sup>12</sup></li> </ul>	<p>131</p>	<p>93</p>

During the month of April 2015, 4 **Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2015-022)*	Officer was discourteous to complainant based on her appearance.	<u>Officer #1</u> • Bias-Based Policing – Supervisory Referral <sup>13</sup>	48	14
2 (IA2015-024)	Officer inappropriately circulated materials related to work.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	46	12
3 (IA2015-025)	Officer was discourteous to complainant.	<u>Officer #1</u> • Courtesy – Supervisory Referral	48	9
4 (IA2015-029)	Officers unnecessarily addressed individual harshly during a contact and did so because of the individual's appearance.	<u>Officers #1-3</u> • Bias-Based Policing – Supervisory Referral • Conduct Unbecoming an Officer – Supervisory Referral	25	14

\* As OIPA is also investigating this case, it will not be taken out of the "Number of Open Cases" column in the Quantitative Report on Page 2 until OIPA's findings have also been finalized.

### **Discipline Issued During Reporting Period**

#### **Sustained Allegations/Resulting Action Taken by BPD**

During the month of April 2015, BART PD took the following actions in cases where one or more allegations of misconduct were sustained:

Case #	Nature of Sustained Allegation(s)	Classification of Sustained Allegation(s)	Action Taken
1	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Oral Counseling
2	Officer did not record incident as required.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Oral 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 BPD. Though potentially work-intensive, some complaint investigation reviews are completed informally, with any concerns being addressed through a conversation with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following is a snapshot of some of the pending cases that OIPA is involved in as of the close of this reporting period.

Investigations Being Conducted	10
Complainant-Initiated Appeals	1
Investigations Being Monitored	12
Investigations Reviewed During Current Month	27*

\*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.

<sup>1</sup> 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.

<sup>2</sup> This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes previously completed cases that have been re-opened during the current reporting period.

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

<sup>4</sup> 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.

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> The BART Police Department defines an Informal Complaint as, "A comment on the actions of a Department employee, where the reporting party expressly states that he or she does not feel that the matter should be formally investigated with the understanding that an Informal Complaint does not hold the potential to result in disciplinary action against the employee." (BART Police Department Policy Manual, Policy 1020.1.1(d))

<sup>8</sup> It is important to note that OIPA does not separate citizen complaints it receives into "Formal" and "Informal" classifications. This chart reflects all citizen complaints received by OIPA and all Formal Complaints received by the BART Police Department.

<sup>9</sup> 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.

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<sup>10</sup> 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).

<sup>11</sup> 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)

<sup>12</sup> 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.

<sup>13</sup> A Supervisory Referral refers to an instance involving an inquiry or an Informal Complaint. An assigned supervisor addresses the issue informally with the involved employee and documents the content of the conversation with a memorandum to IA.