

# Office of the Independent Police Auditor

## Monthly Report

August 2015



October 19, 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 August 1, 2015 through August 31, 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>
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
May 2015	11	70	3	0	0
June 2015	17	75	0	0	0
July 2015	14	73	1	0	0
August 2015	19*	75	2	0	0

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

**Types of Cases Filed**

Citizen Complaints (Formal)	13
Informal Complaints <sup>7</sup>	3
Administrative Investigations	3
<b>TOTAL</b>	<b>19</b>

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

OIPA	3
BART Police Department	10
<b>TOTAL</b>	<b>13</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of August 2015, 3 **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 #15-52)	<u>Unidentified Employee(s)</u> • Performance of Duty	OIPA notified BPD, which determined that the matter was limited to a parking or infraction citation.	63
2 (OIPA #15-53)	<u>Unidentified Employee(s)</u> • Performance of Duty	OIPA notified BPD, which determined that the matter was limited to a parking or infraction citation.	62
3 (OIPA #15-58) (IA2015-096)	<u>Officer #1</u> • Policy/Procedure	OIPA notified BPD, which initiated an investigation.	49

During the month of August 2015, 8 **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 (IA2015-081)	<u>Officers #1-2</u> • Force • Conduct Unbecoming an Officer • Courtesy • Policy/Procedure	BPD initiated an investigation.	77
2 (IA2015-082)	<u>Unidentified Employee(s)</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	73
3 (IA2015-083)	<u>Officers #1-3</u> • Arrest or Detention	BPD initiated an investigation.	73
4 (IA2015-087)	<u>Officer #1</u> • Arrest or Detention	BPD initiated an investigation.	66

5 (IA2015-090)	<u>Officers #1-2</u> • Performance of Duty • Conduct Unbecoming an Officer • Policy/Procedure	BPD initiated an investigation.	60
6 (IA2015-098)	<u>Officers #1-3</u> • Arrest or Detention	BPD initiated an investigation.	49
7 (IA2015-099)	<u>Officer #1</u> • Arrest or Detention	BPD initiated an investigation.	54
8 (IA2015-101)	<u>Officers #1-2</u> • Performance of Duty	BPD initiated an investigation.	77

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

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-086)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	69
2 (IA2015-089)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	64
3 (IA2015-093)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	50

During the month of August 2015, 2 **Administrative Investigations** were initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2015-085)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	73
2 (IA2015-088)	<u>Officer #1</u> • Force • Policy/Procedure	BPD initiated an investigation.	73

**Complaints/Investigations Initiated During Previous Reporting Periods**

**Actions Taken/# of Days Elapsed**

During the month of April 2015, 1 **Citizen Complaint (Formal)** was received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-095)	<u>Officer #1</u> • Arrest or Detention	BPD initiated an investigation.	178

During the month of July 2015, 1 **Citizen Complaint (Formal)** was received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-109)	<u>Officers #1-2</u> • Force	BPD initiated an investigation.	88

During the month of July 2015, 1 **Administrative Investigation** was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2015-084)	<u>Employee #1</u> • Policy/Procedure	BPD initiated an investigation.	105

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of August 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 #15-06)	Officer improperly searched complainant, used more force than necessary while searching complainant, and was rude to complainant, and officer's conduct was inappropriately based on complainant's race.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Profiling – Unfounded</li> <li>• Unnecessary or Excessive Use of Force – Not Sustained</li> <li>• Search or Seizure – Exonerated</li> <li>• Courtesy – Unfounded</li> </ul>	272	195
2 (OIPA #15-17)	Officer was rude to complainant and improperly declined to provide information requested by complainant regarding an involved party, and officer's conduct was inappropriately based on complainant's appearance.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Profiling – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Policy/Procedure – Exonerated</li> </ul>	209	154

During the month of August 2015, 11 **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 (IA2014-167)	Officer improperly detained complainant on the basis of race and used excessive force in doing so.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> </ul>	408	348

<p>2 (IA2014-127)</p>	<p>Officers detained subjects without justification and did not advise subjects of the reason for detention. One officer used excessive force and was rude to a subject.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Arrest or Detention – Exonerated</li> <li>• Courtesy – Sustained</li> <li>• Policy/Procedure – Unfounded</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Policy/Procedure – Unfounded</li> </ul>	<p>370</p>	<p>316</p>
<p>3 (IA2014-123)</p>	<p>Officer used excessive force and poor decision-making during arrest of complainant, acted unprofessionally, did not maintain proper focus on a detainee, and did not document incident as required.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force (Counts 1-3) – Not Sustained</li> <li>• Performance of Duty – Sustained</li> <li>• Conduct Unbecoming an Officer (Counts 1-2) – Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul>	<p>369</p>	<p>315</p>
<p>4 (IA2014-151)</p>	<p>Officer responded to complainant’s request for service slowly and was disrespectful to complainant.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Unfounded</li> <li>• Courtesy – Unfounded</li> </ul>	<p>350</p>	<p>298</p>
<p>5 (IA2014-149)</p>	<p>Officers cited complainant without justification and did so improperly on the basis of ethnicity.</p>	<p><u>Officers #1-3</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Arrest or Detention – Exonerated</li> </ul>	<p>349</p>	<p>289</p>
<p>6 (IA2014-141)</p>	<p>Officer detained complainants without justification, did so improperly based on complainants’ ethnicity, and was rude.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Arrest or Detention – Unfounded</li> <li>• Courtesy – Not Sustained</li> </ul>	<p>339</p>	<p>268</p>

<p>7 (IA2014-152)*</p>	<p>Officers detained subject without justification, did not release subject from detention because of subject's race, and did not listen to witnesses at the scene. One officer did not document incident as required.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Arrest or Detention – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Policy/Procedure – Sustained</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Arrest or Detention – Exonerated</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul> <p><u>Officer #3</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Performance of Duty – Unfounded</li> </ul>	<p>229</p>	<p>202</p>
<p>8 (IA2014-153)</p>	<p>Employee did not sufficiently respond to complainant's request for assistance.</p>	<p><u>Employee #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Not Sustained</li> </ul>	<p>327</p>	<p>267</p>
<p>9 (IA2014-164)</p>	<p>Officer used excessive force against complainant and did not self-identify as a peace officer.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force (Count 1) – Unfounded</li> <li>• Force (Count 2) – Exonerated</li> <li>• Policy/Procedure – Unfounded</li> </ul>	<p>295</p>	<p>220</p>
<p>10 (IA2015-003)<sup>†</sup></p>	<p>Officer used excessive force and was aggressive with complainant because of complainant's race, and officer acted unprofessionally toward complainant.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> <li>• Bias-Based Policing – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	<p>273</p>	<p>217</p>



11 (IA2015-038)	Officers did not respond to complainant's call for service.	<u>BART Police Department</u> • Service Review <sup>12</sup>	173	121
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\* 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.

† As OIPA also completed an investigation into this case during the reporting period, it will only be counted as closed once in calculating the "Number of Open Cases" in the Quantitative Report on Page 2.

During the month of August 2015, 2 **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 (IA2015-020)	Officer detained complainant without justification and was rude during detention.	<u>Officers #1-2</u> • Arrest or Detention – Supervisory Referral <sup>13</sup> • Courtesy – Supervisory Referral	209	145
2 (IA2015-070)	Officer committed traffic violations.	<u>Officers #1-3</u> • Policy/Procedure – Supervisory Referral	104	51

During the month of August 2015, 2 **Administrative Investigations** were completed by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2014-165)	Employee did not complete work individually, as was required.	<u>Employee #1</u> • Conduct Unbecoming an Officer – Sustained	294	242
2 (IA2014-168)	Officer used unprofessional and racist language in referring to subjects.	<u>Officer #1</u> • Conduct Unbecoming an Officer (Counts 1-3) – Sustained	292	236

Also during the month of August 2015, BPD closed two complaints initially received by OIPA (OIPA #15-52 and #15-53) upon determining that each complaint was limited in nature to a parking or infraction citation. As such, these two cases have been removed from the "Number of Open Cases" in the Quantitative Report on Page 2.

## Discipline Issued During Reporting Period

### Sustained Allegations/Resulting Action Taken by BPD

During the month of August 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 made inappropriate comments.	<u>Officer #1</u> • Conduct Unbecoming an Officer	<u>Officer #1</u> Informal Counseling
2	Officer #1 did not document incident as required. Officer #2 did not document use of equipment as required.	<u>Officers #1-2</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling  <u>Officer #2</u> Oral Counseling
3	Officer insufficiently documented and reviewed the facts of the underlying incident.	<u>Officer #1</u> • Performance of Duty	<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 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	5
Complainant-Initiated Appeals	0
Investigations Being Monitored	15
Investigations Reviewed During Current Month	34*

\*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

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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.

<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.