

# Office of the Independent Police Auditor

## Monthly Report

January 2015



February 9, 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 January 1, 2015 through January 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>
January 2014	9	53	0	0	0
February 2014	11	55	0	0	0
March 2014	19	65	0	0	0
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

**Types of Cases Filed**

Citizen Complaints (Formal)	9
Informal Complaints <sup>7</sup>	1
Administrative Investigations	1
<b>TOTAL</b>	<b>11</b>

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

OIPA	2
BART Police Department	7
<b>TOTAL</b>	<b>9</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of January 2015, 2 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 #15-04) (IA2015-007)	<u>Officers #1-4</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force</li> <li>• Racial Profiling/Bias-Based Policing</li> </ul>	OIPA initiated an investigation and notified BPD, which also initiated an investigation.	11
2 (OIPA #15-06) (IA2015-003)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Unnecessary or Excessive Use of Force</li> <li>• Racial Profiling/Bias-Based Policing</li> <li>• Search/Seizure</li> </ul>	OIPA initiated an investigation and notified BPD, which also initiated an investigation.	20

During the month of January 2015, 5 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 (IA2015-001)	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Policy/Procedure</li> </ul>	BPD initiated an investigation.	34
2 (IA2015-002)	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Arrest or Detention</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	25
3 (IA2015-004)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	21
4 (IA2015-006)	<u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	16
5 (IA2015-009)	<u>Officers #1-5</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Conduct Unbecoming an Officer</li> </ul>	BPD initiated an investigation.	12

During the month of January 2015, 1 Informal Complaint was received by the BART Police Department (BPD):

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-005)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty</li> <li>• Courtesy</li> </ul>	BPD initiated an investigation.	20

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

Actions Taken/# of Days Elapsed

During the month of December 2014, 1 Citizen Complaint (Formal) was received by the BART Police Department (BPD):

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-166)	<u>Officers #1-3</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest or Detention</li> </ul>	BPD initiated an investigation.	53

During the month of September 2014, 1 Citizen Complaint (Formal) was received by the BART Police Department (BPD):

Complaint # (OIPA Case #) (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2014-167)	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force</li> <li>• Bias-Based Policing</li> </ul>	BPD initiated an investigation.	156

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During the month of December 2014, 1 Administrative Investigation was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2014-165)	<u>Civilians #1-3</u> <ul style="list-style-type: none"> <li>• Policy/Procedure</li> <li>• Reporting Misconduct</li> </ul> <u>Civilians #4-5</u> <ul style="list-style-type: none"> <li>• Truthfulness</li> <li>• Conduct Unbecoming an Officer</li> <li>• Policy/Procedure</li> </ul>	BPD initiated an investigation.	42

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**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of January 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 #14-16)	Officer drove past complainant in dangerous manner and did so because of complainant's race and clothing.	<u>Unidentified Officer</u> <ul style="list-style-type: none"> <li>• Racial Profiling – Not Sustained</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> </ul>	355	344
2 (OIPA #14-21)	Officers were involved in the death of an individual, obfuscated their involvement, and insufficiently investigated the death; one officer insufficiently supervised the investigation. Officers were dismissive in communicating with complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Supervision – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Suspicious Death (Obfuscation) – Unfounded</li> <li>• Performance of Duty – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul> <u>Officers #3-6</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Unfounded</li> </ul> <u>Unidentified Officer</u> <ul style="list-style-type: none"> <li>• Suspicious Death (Causation) – Unfounded</li> </ul>	340	329

During the month of January 2015, 3 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 (IA2014-079)	Officer used excessive force while detaining complainant without justification. Officer did not properly update dispatch of his status and did not record incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Arrest or Detention – Exonerated</li> <li>• Policy/Procedure (Counts 1-2) – Sustained</li> </ul>	223	198
2 (IA2014-096)	Officers used excessive force and acted unprofessionally when arresting complainant. Officer did not record incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Courtesy - Unfounded</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Courtesy – Unfounded</li> <li>• Policy/Procedure – Sustained</li> </ul>	186	151
3 (IA2014-118)	Employee was rude to complainant.	<u>Civilian #1</u> <ul style="list-style-type: none"> <li>• Unprofessional Conduct – Not Sustained</li> </ul>	138	125

\*Additionally during the month of January 2015, BPD reclassified IA2014-071 from a Citizen Complaint to an Inquiry as it did not involve any BPD personnel. This case has therefore also been closed.

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

**Dispositions/# of Days Elapsed**

During the month of December 2014, 2 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 (IA2014-111)	Officer was disrespectful toward complainant during a custody exchange.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Unfounded	154	109
2 (IA2014-066)	Officers used excessive force and were prejudiced when arresting complainant.	<u>Officer #1</u> • Force (Counts 1-4) – Unfounded • Force (Count 5) – Exonerated • Bias-Based Policing – Unfounded  <u>Officer #2</u> • Force (Counts 1-3) – Unfounded • Force (Counts 4-5) – Exonerated • Bias-Based Policing – Unfounded  <u>Officers #3-4</u> • Force (Counts 1-3) – Unfounded • Force (Count 4) – Exonerated • Bias-Based Policing – Unfounded  <u>Officer #5</u> • Force – Unfounded • Bias-Based Policing – Unfounded	270	220



## Discipline Issued During Reporting Period

### Sustained Allegations/Resulting Action Taken by BPD

During the month of January 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 accurately document efforts to record an incident.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Informal Counseling
2	Officer did not report an equipment malfunction 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	13
Complainant-Initiated Appeals	0
Investigations Being Monitored	14
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.

<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.

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<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)