

# Office of the Independent Police Auditor

## Monthly Report

July 2015



August 10, 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 July 1, 2015 through July 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>
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
May 2015	11	70	3	0	0
June 2015	17	75	0	0	0
July 2015	14*	73	1	0	0

\*This number includes one case that was initiated in a prior reporting period but not previously reported on. It is therefore included in this report.

**Types of Cases Filed**

Citizen Complaints (Formal)	12
Informal Complaints <sup>7</sup>	2
Administrative Investigations	0
<b>TOTAL</b>	<b>14</b>

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

OIPA	4
BART Police Department	8
<b>TOTAL</b>	<b>12</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of July 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 #15-44) (IA2015-073)	<u>Officer #1</u> • Racial Profiling/Bias-Based Policing • Courtesy	OIPA initiated an investigation and notified BPD, which also initiated an investigation.	32
2 (OIPA #15-45) (IA2015-069)	<u>Officer #1</u> • Performance of Duty	OIPA notified BPD, which initiated an investigation.	32
3 (OIPA #15-48) (IA2015-075)	<u>Officers #1-2</u> • Performance of Duty • Conduct Unbecoming an Officer  <u>Officer #3</u> • Performance of Duty	OIPA notified BPD, which initiated an investigation.	18
4 (OIPA #15-49) (IA2015-080)	<u>Officers #1-2</u> • Performance of Duty  <u>Officer #3</u> • Conduct Unbecoming an Officer	OIPA notified BPD, which initiated an investigation.	14

During the month of July 2015, 7 **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 (IA2015-062)*	<u>BART Police Department</u> • Service Review <sup>11</sup>	BPD initiated an investigation.	19
2 (IA2015-072)	<u>Officer #1</u> • Force • Bias-Based Policing	BPD initiated an investigation.	29
3 (IA2015-074)	<u>Officer #1</u> • Force	BPD initiated an investigation.	33
4 (IA2015-076)	<u>Officers #1-2</u> • Performance of Duty	BPD initiated an investigation.	33

5 (IA2015-077)	<u>Officer #1</u> • Bias-Based Policing	BPD initiated an investigation.	35
6 (IA2015-078)	<u>Officer #1</u> • Performance of Duty • Conduct Unbecoming an Officer • Policy/Procedure  <u>Officer #2</u> • Performance of Duty • Policy/Procedure  <u>Officer #3</u> • Performance of Duty	BPD initiated an investigation.	11
7 (IA2015-079)	<u>Officer #1</u> • Force • Bias-Based Policing • Courtesy  <u>Officer #2</u> • Force	BPD initiated an investigation.	12

\*A different case that was previously referenced by this case number (in June 2015) has now been re-designated as IA2014-169.

During the month of July 2015, 2 **Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-066)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	34
2 (IA2015-070)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	34

### **Complaints/Investigations Initiated During a Previous Reporting Period**

#### Actions Taken/# of Days Elapsed

During the month of June 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 (IA2015-071)	<u>Officer #1</u> • Service Review	BPD initiated an investigation.	53

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of July 2015, 1 **Citizen Complaint** was concluded by OIPA:

Complaint # (OIPA Case #)	Nature of Allegations	Disposition <sup>12</sup>	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #14-77)	Officer made inappropriate comments, did so on the basis of race, and intervened in complainant's work. Employee did not refer complaint to on-duty personnel as required and intentionally avoided providing complainant with immediate assistance.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Racial Profiling/Bias-Based Profiling – Unfounded</li> <li>• Conduct Unbecoming an Officer – Sustained</li> <li>• Policy/Procedure – Unfounded</li> </ul> <u>Employee #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	266	233

During the month of July 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 (IA2014-095)	Officers used excessive force in detaining complainant and did so because of complainant's race.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force (Counts 1-2) – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> </ul> <u>Officers #2-3</u> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> <li>• Bias-Based Policing – Unfounded</li> </ul>	377	342

<p>2 (IA2014-128)</p>	<p>Officers used excessive force in detaining complainant, did so because of complainant's race, and did not follow protocol when one officer searched complainant.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> <li>• Supervision – Exonerated</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Force (Count 1) – Exonerated</li> <li>• Force (Counts 2-3) – Unfounded</li> <li>• Bias-Based Policing – Unfounded</li> <li>• Search Protocol – Exonerated</li> </ul> <p><u>Officer #3</u></p> <ul style="list-style-type: none"> <li>• Supervision – Exonerated</li> </ul>	<p>297</p>	<p>262</p>
<p>3 (IA2014-139)</p>	<p>Officer improperly arrested complainant, mishandled complainant's property, gave false testimony about complainant, and insufficiently documented and reviewed the facts of the underlying incident.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Truthfulness – Not Sustained</li> <li>• Arrest or Detention – Exonerated</li> <li>• Property/Procedure – Exonerated</li> <li>• Performance of Duty – Sustained</li> </ul>	<p>273</p>	<p>261</p>
<p>4 (IA2014-145)</p>	<p>Officers deployed TASERS and removed an individual from a BART train without justification.</p>	<p><u>Unidentified Officers</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> </ul>	<p>253</p>	<p>249</p>

<p>5 (IA2014-150)</p>	<p>Officers did not take sufficient action in response to complainant's call for service and did not document or record incident as required. One officer did not document use of equipment as required.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Unfounded</li> <li>• Policy/Procedure – Sustained</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Exonerated</li> <li>• Policy/Procedure (Count 1) – Not Sustained</li> <li>• Policy/Procedure (Count 2) – Sustained</li> </ul>	<p>262</p>	<p>250</p>
<p>6 (IA2014-154)</p>	<p>One employee did not obtain and record sufficient information about an incident. One employee prematurely terminated BPD's involvement in incident.</p>	<p><u>Employee #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> </ul> <p><u>Employee #2</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Exonerated</li> </ul>	<p>249</p>	<p>216</p>
<p>7 (IA2014-161)</p>	<p>Officer improperly detained complainant because of complainant's race.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> </ul>	<p>229</p>	<p>202</p>
<p>8 (IA2014-169)</p>	<p>Officers did not follow protocol when one officer searched complainant. One officer did not report alleged misconduct as required and did not document incident in a timely manner.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty (Counts 1-2) – Sustained</li> </ul> <p><u>Officers #2-3</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Policy/Procedure – Exonerated</li> </ul> <p><u>Officer #4</u></p> <ul style="list-style-type: none"> <li>• Supervisory Responsibility – Exonerated</li> </ul>	<p>371</p>	<p>353</p>

9 (IA2015-001)	Officers did not sufficiently investigate after responding to a call for service and did not document incident as required. One officer did not record incident as required.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> <li>• Policy/Procedure (Count 1) – Sustained</li> <li>• Policy/Procedure (Count 2) – Not Sustained</li> </ul>	216	189
10 (IA2015-008)	Officer harassed complainant.	<u>Unidentified Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> </ul>	188	161
11 (IA2015-062)	BPD's patrols of a BART parking lot are insufficient.	<u>BART Police Department</u> <ul style="list-style-type: none"> <li>• Service Review</li> </ul>	19	8

During the month of July 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 (IA2015-051)	Officer mistreated complainant's property.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Policy/Procedure – Supervisory Referral<sup>13</sup></li> </ul>	84	70
2 (IA2015-053)	Officer inappropriately prolonged detention of the complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Supervisory Referral</li> </ul>	56	21
3 (IA2015-064)	Officer was rude to complainant.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Supervisory Referral</li> </ul>	52	28



4 (IA2015-066)	Officer was antagonistic toward complainant.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	34	6
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Also during the month of July 2015, BPD reclosed IA2014-115 after having reopened it. This case was initially closed during March 2015, and was reported on during that month. As none of the findings changed when the case was reclosed, it has not been reported on again this month.

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

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

During the month of July 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 report alleged misconduct as required and did not document incident in a timely manner.	<u>Officer #1</u> • Performance of Duty (Counts 1-2)	<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	7
Complainant-Initiated Appeals	0
Investigations Being Monitored	12
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.

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<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.

<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> 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>12</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>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.