

Office of the Independent Police Auditor

Monthly Report

September 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 September 1, 2015 through September 30, 2015.¹

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 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
September 2015	9	78	1	0	0

Types of Cases Filed

Citizen Complaints (Formal)	6
Informal Complaints ⁷	2
Administrative Investigations	1
TOTAL	9

Citizen Complaints Received per Department⁸

OIPA	0
BART Police Department	6
TOTAL	6

Complaints/Investigations Initiated During Reporting Period

Actions Taken/# of Days Elapsed

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

Complaint # (IA Case #)	Nature of Allegations ⁹	Action Taken	Number of Days Elapsed Since Complaint Filed ¹⁰
1 (IA2015-094)	<u>Officers #1-3</u> • Force • Arrest or Detention	BPD initiated an investigation.	30
2 (IA2015-097)	<u>Officer #1</u> • Performance of Duty	BPD initiated an investigation.	45
3 (IA2015-100)	<u>Officer #1</u> • Force	BPD initiated an investigation.	42
4 (IA2015-103)	<u>Officer #1</u> • Arrest or Detention	BPD initiated an investigation.	27
5 (IA2015-104)	<u>Officer #1</u> • Bias-Based Policing • Conduct Unbecoming an Officer • Courtesy • Policy/Procedure <u>Officer #2</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	21
6 (IA2015-107)	<u>Officers #1-3</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	19

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

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-092)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	46
2 (IA2015-102)	<u>Employee #1</u> • Performance of Duty	BPD initiated an investigation.	38

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

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2015-091)	<u>Officers #1-2</u> • Force	BPD initiated an investigation.	48

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

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

Complaint # (OIPA Case #)	Nature of Allegations	Disposition ¹¹	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA #13-77)*	One officer targeted complainant for law enforcement contact based on ethnicity, arrested and searched complainant without proper justification, and harassed complainant. Other officer targeted subjects for law enforcement contact based on inappropriate factors.	<u>Officer #1</u> • Racial Profiling/Bias-Based Profiling – Unfounded • Arrest or Detention – Exonerated • Search or Seizure – Exonerated • Conduct Unbecoming an Officer – Unfounded <u>Officer #2</u> • Racial Profiling/Bias-Based Profiling – Not Sustained	700 [†]	179

* 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.

† It is OIPA’s position that the applicable statute of limitations governing this investigation was tolled from May 1, 2014 through September 8, 2015 due to the unavailability of a subject officer.

During the month of September 2015, 1 **Citizen Complaint (Formal)** was 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 (IA2015-046)	The number of officers on patrol in certain areas of the BART District is insufficient.	<u>BART Police Department</u> • Service Review ¹²	166	121

During the month of September 2015, 5 **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 (IA2015-086)	Officer operated a patrol vehicle unsafely.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral ¹³	69	21
2 (IA2015-089)	Officer operated a patrol vehicle unsafely.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	64	20
3 (IA2015-092)	Officer operated a patrol vehicle unsafely.	<u>Officer #1</u> • Policy/Procedure – Supervisory Referral	46	22
4 (IA2015-093)	Officer did not sufficiently respond to a request for assistance from complainant.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral	50	5
5 (IA2015-102)	Employee did not sufficiently respond to a request for assistance from complainant.	<u>Employee #1</u> • Performance of Duty – Supervisory Referral	38	18

Discipline Issued During Reporting Period

Sustained Allegations/Resulting Action Taken by BPD

During the month of September 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	Officers did not sufficiently investigate after responding to a call for service and did not document incident as required.	<u>Officers #1-2</u> <ul style="list-style-type: none"> • Performance of Duty • Policy/Procedure 	<u>Officers #1-2</u> Letter of Discussion
2	Officer did not report a use of force as required.	<u>Officer #1</u> <ul style="list-style-type: none"> • Policy/Procedure 	<u>Officer #1</u> Suspension (1 day)
3	Officer used unprofessional and racist language in referring to subjects.	<u>Officer #1</u> <ul style="list-style-type: none"> • Conduct Unbecoming an Officer (Counts 1-3) 	<u>Officer #1</u> Suspension (7 days)
4	Officer did not report alleged misconduct, did not record incident as required, used excessive force, and did not document a use of force as required.	<u>Officer #1</u> <ul style="list-style-type: none"> • Force • Policy/Procedure (Counts 1-3) 	<u>Officer #1</u> Suspension (3 days)
5	Officer was rude to a subject.	<u>Officer #1</u> <ul style="list-style-type: none"> • Courtesy 	<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 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	4
Complainant-Initiated Appeals	0
Investigations Being Monitored	15
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 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 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) 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 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))

⁸ 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.

⁹ 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.

¹⁰ 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).

¹¹ 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)

¹² 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.

¹³ 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.