

# Office of the Independent Police Auditor

Monthly Report

February 2016



March 14, 2016

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 BART Police Citizen Review Board. This report provides information for the period February 1, 2016 through February 29, 2016.<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 BPCRB <sup>6</sup>
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
October 2015	14	79	2	0	0
November 2015	3	72	1	0	0
December 2015	16	78	1	0	0
January 2016	9	64	0	0	0
February 2016	14*	63	0	0	0

\*This number includes 6 cases that were initiated in a prior reporting period but not previously reported. They are therefore included in this report.

**Types of Cases Filed**

Citizen Complaints (Formal)	9
Informal Complaints <sup>7</sup>	0
Administrative Investigations	5
<b>TOTAL</b>	<b>14</b>

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

OIPA	1
BART Police Department	8
<b>TOTAL</b>	<b>9</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of February 2016, 1 **Citizen Complaint** was 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 #16-09) (IA2016-018)	<u>Employee #1</u> • Conduct Unbecoming an Officer	OIPA notified BPD, which initiated an investigation.	20

During the month of February 2016, 2 **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 (IA2016-012)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	36
2 (IA2016-019)	<u>Officer #1</u> • Force	BPD initiated an investigation.	17

During the month of February 2016, 3 **Administrative Investigations** were initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2016-010)	<u>Officer #1</u> • Truthfulness • Conduct Unbecoming an Officer • Policy/Procedure	BPD initiated an investigation.	40
2 (IA2016-011)	<u>Employee #1</u> • Performance of Duty	BPD initiated an investigation.	39
3 (IA2016-016)	<u>Employee #1</u> • Policy/Procedure	BPD initiated an investigation.	26

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

**Actions Taken/# of Days Elapsed**

During the month of January 2016, 5 **Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2016-008)	<u>Officers #1-2</u> • Performance of Duty	BPD initiated an investigation.	46
2 (IA2016-013)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	49
3 (IA2016-014)	<u>Officers #1-2</u> • Bias-Based Policing • Force  <u>Officer #3</u> • Performance of Duty	BPD initiated an investigation.	47
4 (IA2016-015)	<u>Officers #1-2</u> • Force  <u>Officer #2</u> • Policy/Procedure	BPD initiated an investigation.	43
5 (IA2016-017)	<u>Officers #1-2</u> • Force	BPD initiated an investigation	50

During the month of January 2016, 1 **Administrative Investigation** was received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2016-009)	<u>Officer #1</u> • Truthfulness • Conduct Unbecoming an Officer • Policy/Procedure	BPD initiated an investigation.	43

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of February 2016, 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 (IA2015-072)	Officer used excessive force during contact with complainant, and did so on the basis on race.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> </ul>	246	206
2 (IA2015-076)	Officers did not maintain physical separation of complainant and potential assailant, did not maintain detention of potential assailant for a sufficient period of time, and one officer was rude to complainant.	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Performance of Duty (Count 1) – Not Sustained</li> <li>• Performance of Duty (Count 2) – Unfounded</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Courtesy – Unfounded</li> </ul>	250	210
3 (IA2015-082)	BPD engaged in ongoing harassment of complainant.	<u>Unknown BPD Officers</u> <ul style="list-style-type: none"> <li>• Inquiry – Administratively Closed</li> </ul>	220	180
4 (IA2015-087)	Officer improperly cited complainant for a traffic violation, and officer was untruthful during courtroom testimony regarding the issuance of the citation.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Truthfulness – Not Sustained</li> </ul>	213	173

<p>5 (IA2015-098)</p>	<p>Officers improperly arrested complainant, and did not advise complainant of applicable Constitutional rights, and officers improperly handcuffed complainant.</p>	<p><u>Officers #1-3</u></p> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> </ul> <p><u>Officers #1-2</u></p> <ul style="list-style-type: none"> <li>• Policy/Procedure (Count 1) – Exonerated</li> <li>• Policy/Procedure (Count 2) – Unfounded</li> </ul> <p><u>Officer #3</u></p> <ul style="list-style-type: none"> <li>• Policy/Procedure (Count 2) – Exonerated</li> </ul>	<p>196</p>	<p>172</p>
<p>6 (IA2015-101)</p>	<p>Officers were rude and unprofessional toward complainant, did not provide complainant with requested documentation, and one officer did not properly document the contact.</p>	<p><u>Officers #1-2</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Exonerated</li> <li>• Courtesy – Unfounded</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Policy/Procedure – Exonerated</li> </ul>	<p>225</p>	<p>199</p>
<p>7 (IA2015-112)</p>	<p>Officer improperly cited complainant and was rude and intimidating toward complainant.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> <li>• Courtesy – Unfounded</li> </ul>	<p>152</p>	<p>127</p>
<p>8 (IA2015-118)</p>	<p>Officer improperly declined to provide a police report to complainant.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Not Sustained</li> </ul>	<p>132</p>	<p>114</p>
<p>9 (IA2015-075)</p>	<p>Officers did not sufficiently investigate a criminal complaint, one officer acted unprofessionally, and one officer was intimidating toward complainant.</p>	<p><u>Officers #1-2</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Exonerated</li> </ul> <p><u>Officers #2-3</u></p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> </ul>	<p>235</p>	<p>211</p>

10 (IA2015-109)	Officers used excessive force during contact with subject, and did so on the basis of race.	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Bias-Based Policing – Unfounded</li> </ul>	235	195
11 (IA2015-140)	Officer used excessive force during contact with complainant, and one officer did not properly receive and process an allegation of misconduct.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force – Not Sustained</li> </ul> <u>Officer #2</u> <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> </ul>	399	359

During the month of February 2016, 1 **Informal Complaint** was 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 (IA2015-083)	Officer improperly arrested complainant and fabricated details regarding complainant's conduct.	<u>Officers #1-2</u> <ul style="list-style-type: none"> <li>• Arrest or Detention – Supervisory Referral<sup>11</sup></li> <li>• Performance of Duty – Supervisory Referral</li> </ul>	220	188

During the month of February 2016, 1 **Administrative Investigation** was 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 (IA2015-052)	Officer used excessive force during arrest of subject, and officer was inappropriately aggressive and unprofessional during contact.	<u>Officer #1</u> <ul style="list-style-type: none"> <li>• Force (Count 1) – Not Sustained</li> <li>• Force (Count 2) – Sustained</li> <li>• Conduct Unbecoming an Officer – Sustained</li> </ul>	299	259

During the month of February 2016, 1 **Administrative Investigation** was re-opened and amended by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2014-165)*	Employee plagiarized the written work of another employee.	<u>Employee #1</u> • Conduct Unbecoming – Not Sustained**	441	423

\*BPD completed an investigative report in August 2015, and subsequently generated an addendum in February 2016 which addressed a revision to the investigative findings.

\*\*This allegation was previously Sustained.

During the month of February 2016, 1 **Formal Complaint** was re-opened and amended by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Address Complaint
1 (IA2015-047)*	Officer improperly detained and arrested complainant, and officers used excessive force while doing so. One officer did not properly document the contact.	<u>Officer #1</u> • Force – Exonerated  <u>Officer #2</u> • Force (Count 1) – Sustained • Force (Count 2) – Unfounded • Arrest or Detention – Sustained • Policy/Procedure – Sustained	316	292

\*BPD completed an initial report in January 2016, and subsequently generated a revised report to address additional allegations.



**Discipline Issued During Reporting Period**

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

During the month of February 2016, 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	One officer improperly searched complainant, and one officer did not properly supervise other officers.	<u>Officer #1</u> • Policy/Procedure  <u>Officer #2</u> • Supervision	<u>Officer #1</u> Letter of Discussion  <u>Officer #2</u> Oral Counseling
2	Officer did not properly report a use of force.	<u>Officer #1</u> • Policy/Procedure	<u>Officer #1</u> Oral Counseling
3	Officer did not properly receive and process an allegation of misconduct.	<u>Officer #1</u> • Performance of Duty	<u>Officer #1</u> Letter of Discussion

**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	0
Complainant-Initiated Appeals	0
Investigations Being Monitored	11
Investigations Reviewed During Current Month	26*

\*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 BART Police Citizen Review 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 BART Police 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. 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 BART Police Citizen Review Board after receiving and reviewing the findings issued by 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 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.