

# Office of the Independent Police Auditor

## Monthly Report

January 2016



February 8, 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 January 1, 2016 through January 31, 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>
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
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

\*This number includes 1 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)	7
Informal Complaints <sup>7</sup>	0
Administrative Investigations	2
<b>TOTAL</b>	<b>9</b>

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

OIPA	1
BART Police Department	6
<b>TOTAL</b>	<b>7</b>

**Complaints/Investigations Initiated During Reporting Period**

**Actions Taken/# of Days Elapsed**

During the month of January 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 #16-04) (IA2016-006)	<u>Officers #1-3</u> • Performance of Duty	OIPA notified BPD, which initiated an investigation.	25

During the month of January 2016, 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 (IA2015-140)	<u>Officer #1</u> • Performance of Duty  <u>Officer #2</u> • Force	BPD initiated an investigation.	32
2 (IA2016-001)	<u>Officer #1</u> • Conduct Unbecoming an Officer	BPD initiated an investigation.	36
3 (IA2016-002)	<u>Officers #1-4</u> • Force • Bias-Based Policing	BPD initiated an investigation.	32
4 (IA2016-004)	<u>Employee #1</u> • Policy/Procedure	BPD initiated an investigation.	30
5 (IA2016-005)	<u>Employees #1-2</u> • Performance of Duty	BPD initiated an investigation.	28

During the month of January 2016, 2 **Administrative Investigations** were initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Number of Days Elapsed Since Investigation Initiated
1 (IA2016-003)	<u>Officer #1</u> • Criminal (Misdemeanor) • Conduct Unbecoming an Officer	BPD initiated an investigation.	30
1 (IA2016-007)	<u>Officer #1</u> • Policy/Procedure	BPD initiated an investigation.	21

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

**Actions Taken/# of Days Elapsed**

During the month of December 2015, 1 **Citizen Complaint (Formal)** was received by BPD:

Complaint # (IA Case #)	Nature of Allegations	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2015-141)	<u>Officer #1</u> • Force	BPD initiated an investigation.	43

**Complaints/Investigations Concluded During Reporting Period**

**Dispositions/# of Days Elapsed**

During the month of January 2016, 17 **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 (IA2015-017)	Officers used excessive force during detention of complainant, one officer improperly searched complainant, and one officer did not properly supervise other officers.	<u>Officers #1-2</u> • Force – Exonerated  <u>Officer #2</u> • Policy/Procedure – Sustained  <u>Officer #3</u> • Supervision – Sustained	333	298
2 (IA2015-019)	Officer was rude to subject, used excessive force during contact, and did so on the basis of subject's race.	<u>Officer #1</u> • Force – Exonerated • Bias-Based Policing – Not Sustained • Courtesy – Not Sustained	330	304

<p>3 (IA2015-035)</p>	<p>Officer improperly arrested complainant, officers used excessive force when taking complainant into custody, and two officers did not properly document the contact.</p>	<p><u>Officers #1-5</u></p> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> </ul> <p><u>Officer #1</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 – Sustained</li> </ul>	<p>310</p>	<p>284</p>
<p>4 (IA2015-037)</p>	<p>Officer did not appropriately respond to complainant’s call for service, did not allow complainant to retain anonymity, and did not properly document the contact.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Unfounded</li> <li>• Policy/Procedure (Count 1) – Exonerated</li> <li>• Policy/Procedure (Count 2) – Sustained</li> </ul>	<p>285</p>	<p>251</p>
<p>5 (IA2015-040)</p>	<p>Complainant’s vehicle was improperly towed from BART property.</p>	<p><u>BART Police Department</u></p> <ul style="list-style-type: none"> <li>• Policy/Procedure – Exonerated</li> </ul>	<p>282</p>	<p>247</p>
<p>6 (IA2015-047)</p>	<p>Officer improperly detained and arrested complainant, and officers used excessive force while doing so.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force (Count 1) – Unfounded</li> <li>• Force (Count 2) – Sustained</li> <li>• Arrest or Detention – Sustained</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Force – Exonerated</li> </ul>	<p>281</p>	<p>247</p>
<p>7 (IA2015-054)</p>	<p>Officer improperly contacted complainant without justification, and did so on the basis of race. Officer also did not accommodate complainant’s disability, and did not properly document the contact.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Not Sustained</li> <li>• Arrest or Detention – Not Sustained</li> <li>• Conduct Unbecoming an Officer – Not Sustained</li> <li>• Policy/Procedure – Sustained</li> </ul>	<p>239</p>	<p>205</p>

8 (IA2015-056)	Officer was rude to complainant	<u>Unknown BPD Officer #1</u> • Conduct Unbecoming an Officer – Not Sustained	238	214
9 (IA2015-058)	Officer used unnecessary force during contact with two complainants, made inappropriate comments, and inappropriately touched one complainant.	<u>Officer #1</u> • Force (Counts 1-2) – Unfounded • Conduct Unbecoming an Officer (Counts 1-4) – Unfounded	245	211
10 (IA2015-063)	Officer video recorded complainant, laughed at complainant, and did so on the basis of race.	<u>Unknown BPD Officer #1</u> • Workplace Discrimination/Harassment – Not Sustained • Conduct Unbecoming an Officer – Not Sustained	223	188
11 (IA2015-068)	Officers used excessive force during contact with complainant.	<u>Officers #1-4</u> • Force – Unfounded	223	189
12 (IA2015-074)	Officer used excessive force during contact with subject, incorrectly applied handcuffs to subject causing pain, and did not properly document the contact.	<u>Officer #1</u> • Force (Count 1) – Exonerated • Force (Count 2) – Unfounded • Policy/Procedure – Sustained	215	201
13 (IA2015-077)	Officer contacted only one member of a group of subjects, and selected subject for contact on the basis of race.	<u>Officer #1</u> • Bias-Based Policing – Unfounded	217	183

<p>14 (IA2015-078)</p>	<p>Officers did not take appropriate law enforcement action, and one officer was discourteous to a witness.</p>	<p><u>Officers #1-3</u></p> <ul style="list-style-type: none"> <li>• Policy/Procedure (Count 1) – Exonerated</li> </ul> <p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Unfounded</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty (Count 1) – Unfounded</li> <li>• Performance of Duty (Count 2) – Sustained</li> <li>• Courtesy – Not Sustained</li> </ul> <p><u>Officer #3</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Sustained</li> </ul>	<p>193</p>	<p>169</p>
<p>15 (IA2015-103)</p>	<p>Officer did not provide translation services for a subject with limited English language proficiency.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Performance of Duty – Supervisory Referral<sup>11</sup></li> </ul>	<p>139</p>	<p>120</p>
<p>16 (IA2015-073)</p>	<p>Officers improperly detained subject, treated subject discourteously, improperly checked for the existence of outstanding warrants, and did so on the basis of race.</p>	<p><u>Officers #1-2</u></p> <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Policy/Procedure – Exonerated</li> <li>• Courtesy – Unfounded</li> </ul> <p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Arrest or Detention – Exonerated</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Arrest or Detention – Unfounded</li> </ul>	<p>213</p>	<p>203</p>
<p>17 (IA2015-059)</p>	<p>Officers used unnecessary force, and improperly searched complainant.</p>	<p><u>Officer #1</u></p> <ul style="list-style-type: none"> <li>• Force – Unfounded</li> </ul> <p><u>Officer #2</u></p> <ul style="list-style-type: none"> <li>• Search or Seizure – Exonerated</li> </ul>	<p>230</p>	<p>195</p>

During the month of January 2016, 3 **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 (IA2015-136)	Officer operated a vehicle in an unsafe manner.	<u>Officer #1</u> • Conduct Unbecoming an Officer – Supervisory Referral	41	30
2 (IA2015-138)	Officer intimidated subject during questioning.	<u>Officer #1</u> • Policy/Procedure – Supervisory Referral • Conduct Unbecoming an Officer – Supervisory Referral	39	13
3 (IA2015-139)	Officer did not promptly return a phone call from complainant.	<u>Officer #1</u> • Performance of Duty – Supervisory Referral	41	15

During the month of January 2016, 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 (IA2015-057)	Officer did not properly report a use of force.	<u>Officer #1</u> • Policy/Procedure – Sustained	236	210
2 (IA2015-061)	Employee was engaged in unauthorized employment outside of BPD.	<u>Employee #1</u> • Policy/Procedure – Not Sustained	234	208



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

**Dispositions/# of Days Elapsed**

During the month of December 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 (IA2014-155)	Officers unjustifiably interfered with a child custody exchange, and two officers used unnecessary force while doing so.	<u>Officers #1-2</u> • Force – Unfounded  <u>Officers #1-4</u> • Arrest/Detention (Count 1) – Exonerated  <u>Officers #1-2</u> • Arrest/Detention (Count 2) – Unfounded  <u>Officer #1</u> • Performance of Duty (Count 1) – Exonerated  <u>Officer #2</u> • Performance of Duty (Count 1) – Unfounded  <u>Officers #1-4</u> • Performance of Duty (Count 2)– Exonerated  <u>Officers #1-2</u> • Policy/Procedure (Count 1) – Unfounded  <u>Officers #1-3</u> • Policy/Procedure (Count 2) – Unfounded	423	257/367*

\*BPD completed an initial report in August 2015, and generated an Addendum to address additional allegations, which was completed in December 2015.

## Discipline Issued During Reporting Period

### Sustained Allegations/Resulting Action Taken by BPD

During the month of January 2016, BPD 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	Employee engaged in a verbal altercation with coworker.	<u>Employee #1</u> • Policy/Procedure	<u>Employee #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	0
Complainant-Initiated Appeals	0
Investigations Being Monitored	11
Investigations Reviewed During Current Month	28*

\*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 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.

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<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.