



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

October 2020

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Issue date: November 16, 2020

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (B), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the BART Police Citizen Review Board (BPCRB). This report provides information for the period **October 1, 2020 through October 31, 2020**.<sup>1</sup>

*(The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IAB)).*

## QUANTITATIVE REPORT

	Cases Filed <sup>2</sup>	Open Cases <sup>3</sup>	Investigations Resolved	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
October 2019	6	53	6	1	0	0
November 2019	10	59	2	1	0	0
December 2019	6	58	6	1	0	0
January 2020	8	53	13	2	0	0
February 2020	15	56	10	0	0	0
March 2020	9	54	11	1	0	0
April 2020	6	44	18	1	1	0
May 2020	4	40	6	1	0	0
June 2020	7	44	4	0	0	0
July 2020	1	41	3	1	0	0
August 2020	9	43	5	1	0	0
September 2020	10	45	8	1	0	0
October 2020	10	48	9	2	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	4
Informal Complaints <sup>7</sup>	5
Administrative Investigations	1
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>10</b>

### CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT<sup>9</sup>

OIPA	2
BART Police Department	2
<b>TOTAL</b>	<b>4</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During October 2020, **2 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #20-26) (IA2020-069)	Officers #1-3: • Performance of Duty	OIPA initiated an investigation.	33
2 (OIPA #20-28) (IA2020-070)	Officers #1-4: • Force  Officers #2-4: • Arrest/Detention • Search or Seizure • Conduct Unbecoming an Officer	OIPA initiated an investigation.	26

During October 2020, **2 Citizen Complaints (Formal)** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2020-071)	Officers #1-3: • Performance of Duty • Courtesy	BPD initiated an investigation.	31
2 (IA2020-075)	Employee #1: • Bias-Based Policing • Courtesy	BPD initiated an investigation.	24

During October 2020, **1 Administrative Investigation** was initiated by BPD:

(IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-076)	Officer #1: • Arrest/Detention • Performance of Duty • Conduct Unbecoming an Officer • Policy/Procedure (AXON Camera)	BPD initiated an investigation.	18

During October 2020, **5 Informal Complaints** were received by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2020-067)	Officers #1-2: • Courtesy	BPD initiated a Supervisor Referral. <sup>10</sup>	38
2 (IA2020-068)	Officers #1-2: • Performance of Duty	BPD initiated a Supervisor Referral.	35
3 (IA2020-072)	Officer #1: • Policy/Procedure	BPD initiated a Supervisor Referral.	21
4 (IA2020-073)	Employees #1-3: • Courtesy	BPD initiated an investigation.	21
5 (IA2020-074)	Officer #1: • Courtesy	BPD initiated an investigation.	20

### COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During October 2020, **2 Citizen Complaints** were concluded by OIPA:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (OIPA #19-50)	Officers used excessive force during an arrest, one officer did not properly de-escalate the contact, and all involved officers mistreated the subject due to the subject's race.	Officers #1-3: • Bias-Based Policing – Unfounded • Force – Exonerated  Officer #2: • Policy/Procedure (De-Escalation) – Sustained	377	342
2 (OIPA #19-51)	Officer improperly contacted and detained subject, used excessive force during the detention, and did so because of the detainee's race.	Officer #1: • Arrest or Detention – Exonerated • Force – Exonerated • Bias-Based Policing – Unfounded	377	374*

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\*This investigation was tolled pending potential litigation related to the contact. Though litigation may still be pending, it is OIPA's understanding that the allotted time normally allowed for resolving a claim (a precursor to litigation) has been extended due to the global Covid-19 pandemic. OIPA determined it was in the best interest of the complainant and the officer to complete the investigation at this time.

During October 2020, **1 Citizen Complaint (Formal)** was concluded by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-033)	Officer improperly contacted complainant, used excessive force during the contact, and failed to properly document the contact.	Officer #1: <ul style="list-style-type: none"> <li>• Force – Exonerated</li> <li>• Arrest or Detention – Exonerated</li> <li>• Policy/Procedure (AXON Camera) – Sustained</li> </ul>	229	208

During October 2020, **1 Administrative Investigation** was concluded by BPD:

Investigation # (IA Case #)	Nature of Allegations	Disposition	Days Elapsed Since Investigation Initiated	Days Taken to Address Allegation
1 (IA2018-013)	Officer slept in public while on duty during an outreach event.	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure – Sustained</li> </ul>	282	249

During October 2020, **4 Informal Complaints** were addressed by BPD:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2020-053)	Officers acted unprofessionally during a contact and scared complainant.	Officers #1-2: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Supervisor Referral</li> </ul>	84	53
2 (IA2020-067)	Officers acted aggressively and improperly contacted complainant.	Officers #1-2: <ul style="list-style-type: none"> <li>• Courtesy – Supervisor Referral</li> </ul>	38	7
3 (IA2020-068)	Officers did not properly respond to a call for service	Officers #1-2: <ul style="list-style-type: none"> <li>• Performance of Duty – Supervisor Referral</li> </ul>	35	6
4 (IA2020-072)	Officer unnecessarily exceeded freeway speed limit in a BPD vehicle.	Officers #1-2: <ul style="list-style-type: none"> <li>• Performance of Duty – Supervisor Referral</li> </ul>	21	1

Also, during the month of October 2020, BPD received and classified the following complaint as an **Inquiry** and **Administratively Closed**<sup>11</sup> the complaint: #IA2020-025 (after determining that no allegation of misconduct was articulated).

## DISCIPLINE ISSUED DURING REPORTING PERIOD

During October 2020, 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	One officer used excessive force, and one officer threatened subject and failed to properly document the use of force.	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure</li> <li>• Conduct Unbecoming an Officer</li> </ul> Officer #2: <ul style="list-style-type: none"> <li>• Force</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>• Oral Counseling</li> </ul> Officer #2: <ul style="list-style-type: none"> <li>• Written Reprimand</li> </ul>
2	Officer failed to apply required de-escalation tactics.	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>• Non-Documented‡</li> </ul>
3	Officer was discourteous to complainant.	Officer #1: <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer</li> </ul>	Officer #1: <ul style="list-style-type: none"> <li>• Non-Documented</li> </ul>

## ADDITIONAL NOTES

In accordance with the BART Citizen Oversight Model (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 conference with BPD's Internal Affairs investigators. Noting the various kinds of work that OIPA undertakes with regard to complaints and investigations, the following chart includes some of the pending cases in which OIPA is involved as of the end of this reporting period.

Investigations Being Conducted	11
Complainant-Initiated Appeals	0
BPD-Initiated Appeals	0
Investigations Being Monitored	57
Investigations Reviewed During Current Month	16†

† 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.

† Some details regarding the nature of sustained allegations may be withheld to avoid unintentionally breaching mandatory confidentiality requirements. In some instances, the relative infrequency of the alleged misconduct may tend to allow for identification of the subject officer in violation of the applicable CA Penal Code section (832.7).

‡ The subject officer in this case received counseling to review and identify available de-escalation opportunities during the contact.

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is handled by BPD. The OIPA Monthly Report will reflect information regarding monitored or reviewed cases with detail not to exceed that which is allowable under state law.

The investigations reviewed by OIPA during the period generated recommendations for policy/practice revisions and requests for additional investigation.<sup>12</sup>

OIPA review of Supervisor Use of Force Reports, which are generated as required by BPD Policy 300 (Use of Force), prompted OIPA to request several referrals to the BPD Office of Internal Affairs.

These referrals were related to:

- Unreported force
- AXON camera activation
- Conduct unbecoming
- Incomplete supervisory review
- Application of the BART Proof of Payment (PoP) Ordinance

BPD Chief Alvarez and his command staff were receptive to all OIPA recommendations related to the issues listed above. Each unaddressed potential policy violation was properly routed or addressed, and Chief Alvarez updated instructions to BPD personnel related to the enforcement of facemask violations and the PoP Ordinance.

These adjustments effectively refocused facemask enforcement on passenger education and the provision of facemasks where feasible. OIPA acknowledges the importance of removing passengers who endanger the health and safety of others, and OIPA prioritizes review of these contacts to ensure that force and/or improper discretion are not unnecessarily applied during these ejections.

As part of our mission to assist in the improvement of policing at BART, OIPA also noted several instances in which officers applied sound and effective de-escalation tactics in accordance with the state-of-the-art Integrating Communications, Assessment, and Tactics (ICAT) training program designed by the Police Executive Research Forum (PERF). Effective de-escalation tactics have been employed by BPD officers in potentially deadly situations involving firearms and other weapons as well as during low-level contacts, thereby minimizing applications of force, injuries, complaints of misconduct, and legal liability.

OIPA is committed to identifying and addressing areas for improvement while also recognizing examples of effective de-escalation that can be used in trainings to inform those conversations with real-life references.

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<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 also made aware of additional complaints about the BART Police Department 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

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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> BPD policy provides that if a person alleges or raises an issue that does not constitute a violation of Department policy, procedure, rules, regulations, or the law, the Department will classify the issue as an inquiry.

<sup>9</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>10</sup> A Supervisor 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 IAB.

<sup>11</sup> Administrative Closure is defined as follows in the BPD Policy Manual: Allegations that are received and documented; however, the Chief of Police or his/her designee determines, based on a preliminary investigation, that further investigation is not warranted. Under these circumstances, the complaint will be Administratively Closed and documented in a summary memorandum to the case file. Employees will be documented as witnesses only, not as subjects to the complaint. Internal Affairs will send a letter to the complainant notifying them that the case was closed following a preliminary investigation.

<sup>12</sup> OIPA may submit recommendations to IAB regarding minor clerical or record-keeping adjustments which are intended to maintain the integrity of the data collection and record-keeping processes at BPD. These are not considered by OIPA to be substantive recommendations requiring reporting herein.