



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

September 2020

Issue date: October 19, 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 **September 1, 2020 through September 30, 2020.**¹

(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 ² | Open Cases ³ | Investigations Resolved* | OIPA Investigations Concluded ⁴ | Cases Appealed to OIPA ⁵ | Cases Appealed by BPCRB ⁶ |
|----------------|--------------------------|-------------------------|--------------------------|--|-------------------------------------|--------------------------------------|
| September 2019 | 13 | 53 | | 1 | 0 | 0 |
| 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 |

TYPES OF CASES FILED

| | |
|----------------------------------|-----------|
| Citizen Complaints (Formal) | 5 |
| Informal Complaints ⁷ | 1 |
| Administrative Investigations | 3 |
| Inquiries ⁸ | 1 |
| TOTAL | 10 |

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

| | |
|------------------------|----------|
| OIPA | 1 |
| BART Police Department | 4 |
| TOTAL | 5 |

¹OIPA added a new data column to the October 2019 Monthly Report which will be populated going forward.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During September 2020, **1 Citizen Complaint** was received by OIPA:

| Complaint # (OIPA Case #) (IA Case #) | Nature of Complaint | Action Taken | Days Elapsed Since Complaint Filed |
|---|--|----------------------------------|---------------------------------------|
| 1 (OIPA #20-23) (IA2020-058) | Officers #1-3: <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer | OIPA initiated an investigation. | 46 |

During September 2020, **4 Citizen Complaints (Formal)** were received by BPD:

| Complaint # (IA Case #) | Nature of Complaint | Action Taken | Days Elapsed Since Complaint Filed |
|----------------------------|---|---------------------------------|---------------------------------------|
| 1 (IA2020-059) | Officer #1: <ul style="list-style-type: none"> • Performance of Duty • Policy/Procedure | BPD initiated an investigation. | 45 |
| 2 (IA2020-062) | Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing • Conduct Unbecoming an Officer | BPD initiated an investigation. | 32 |
| 3 (IA2020-063) | Officer #1: <ul style="list-style-type: none"> • Arrest/Detention • Search or Seizure • Conduct Unbecoming an Officer | BPD initiated an investigation. | 31 |
| 4 (IA2020-066) | Officer #1: <ul style="list-style-type: none"> • Bias-Based Policing • Force • Policy Procedure (AXON Camera) • Performance of Duty • Conduct Unbecoming an Officer | BPD initiated an investigation. | 31 |

During September 2020, **3 Administrative Investigations** were initiated by BPD:

| (IA Case #) | Nature of Investigation | Action Taken | Days Elapsed Since Investigation Initiated |
|-------------------|---|---------------------------------|--|
| 1 (IA2020-060) | Officers #1-2: <ul style="list-style-type: none"> • Policy/Procedure (Reporting Use of Force) • Performance of Duty • Conduct Unbecoming an Officer Officer #2 <ul style="list-style-type: none"> • Force | BPD initiated an investigation. | 38 |
| 2 (IA2020-061) | Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Courtesy • Policy/Procedure (AXON Camera) | BPD initiated an investigation. | 32 |
| 3 (IA2020-065) | Officer #1: <ul style="list-style-type: none"> • Performance of Duty Officer #2: <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer | BPD initiated an investigation. | 35 |

COMPLAINTS/INVESTIGATIONS INITIATED DURING A PRIOR REPORTING PERIOD

During August 2020, **1 Informal Complaint** was received by BPD but not previously reported:

| Complaint # (IA Case #) | Nature of Complaint | Action Taken | Days Elapsed Since Complaint Filed |
|----------------------------|--|--|------------------------------------|
| 1 (IA2020-055) | Officer #1: <ul style="list-style-type: none"> • Policy/Procedure | BPD initiated a Supervisor Referral. ¹⁰ | 54 |

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During September 2020, **1 Citizen Complaint** was concluded by OIPA:

| Complaint # (IA Case #) | Nature of Complaint | Disposition | Days Elapsed Since Complaint Filed | Days Taken to Complete Investigation |
|----------------------------|---|--|------------------------------------|--------------------------------------|
| 1 (OIPA #19-42) | Officers used excessive force during an arrest, one officer threatened the arrestee, one officer failed to include the use of force in a written report, and one supervisor failed to properly review the use of force. | <p>Officers #1-2:</p> <ul style="list-style-type: none"> Force – Exonerated <p>Officer #2:</p> <ul style="list-style-type: none"> Policy/Procedure (Report Writing) – Sustained Conduct Unbecoming an Officer – Sustained <p>Officer #3:</p> <ul style="list-style-type: none"> Performance of Duty – Sustained <p>Officer #4:</p> <ul style="list-style-type: none"> Force – Sustained | 381 | 343 |

During September 2020, **3 Citizen Complaints (Formal)** were concluded by BPD:

| Complaint # (IA Case #) | Nature of Complaint | Disposition | Days Elapsed Since Complaint Filed | Days Taken to Complete Investigation |
|----------------------------|--|--|------------------------------------|--------------------------------------|
| 1 (IA2019-117) | Officers harassed complainant because of his race. | <p>Officer #1:</p> <ul style="list-style-type: none"> Bias Based Policing – Unfounded Conduct Unbecoming an Officer – Unfounded | 381 | 315 |
| 2 (IA2020-008)† | Officer engaged in off-duty solicitation. | <p>Officer #1:</p> <ul style="list-style-type: none"> Criminal Conduct – Not Sustained Conduct Unbecoming an Officer – Sustained | 350 | 290 |
| 3 (IA2020-030) | Officer intimidated complainant. | <p>Unknown Officer #1:</p> <ul style="list-style-type: none"> Conduct Unbecoming an Officer – Administratively Closed¹¹ | 217 | 169 |

†This complaint was originally categorized as an Administrative Investigation by BPD and was reported as such in the OIPA Monthly Report for January 2020.

During September 2020, **2 Informal Complaints** were addressed by BPD:

| Complaint # (IA Case #) | Nature of Complaint | Disposition | Days Elapsed Since Complaint Filed | Days Taken to Complete Investigation |
|----------------------------|--|---|------------------------------------|--------------------------------------|
| 1 (IA2020-049) | Officers damaged property with their vehicle and left the scene. | Officers #1-2: • Conduct Unbecoming an Officer – Supervisor Referral | 74 | 34 |
| 2 (IA2020-052) | Officers intimidated complainant by shouting aggressively. | Officers #1-2: • Courtesy – Supervisor Referral | 83 | 35 |

Also, during the month of September 2020, BPD received and classified the following complaint as an **Inquiry** and Administratively Closed the complaint: #IA2020-064 (after determining that no allegation of misconduct was articulated).

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING PRIOR REPORTING PERIOD

During August 2020, **1 Informal Complaint** was concluded by BPD:

| Investigation # (IA Case #) | Nature of Allegations | Disposition | Days Elapsed Since Investigation Initiated | Days Taken to Address Allegation |
|--------------------------------|--|---|--|----------------------------------|
| 1 (IA2020-055) | Officer exceeded freeway speed limits in a department vehicle. | Officer #1: • Policy/Procedure – Supervisor Referral | 54 | 5 |

DISCIPLINE ISSUED DURING REPORTING PERIOD

During September 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 | Officer did not properly document a law enforcement contact. | Officer #1: • Policy/Procedure (AXON Camera) | Officer #1: • Oral Counseling |
| 2 | Officer verbally threatened subject and failed to properly document a use of force by another officer. | Officer #1: • Policy/Procedure (Report Writing) • Conduct Unbecoming an Officer | Officer #1: • Oral Counseling |
| 3 | One officer improperly detained complainant, failed to properly forward a complaint of misconduct, did not properly address complaints of physical discomfort and did not properly document a law enforcement contact. One officer failed to properly supervise subordinate officers and failed to ensure that a use of force was properly documented and reviewed. | Officer #1: • Arrest or Detention • Performance of Duty • Policy/Procedure (AXON Camera) Officer #2: • Performance of Duty (Supervision) | Officer #1: • Letter of Discussion Officer #2: • Non-Documented |

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 | 54 |
| Investigations Reviewed During Current Month | 12† |

†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 officer in violation of the applicable CA Penal Code section (832.7).

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 cases with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during the period did not generate any notable recommendations for revisions or additional investigation.¹²

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 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.

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 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.

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. 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 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).

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 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.

⁹ 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.

¹⁰ 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.

¹¹ 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.

¹² 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.