



OFFICE OF THE INDEPENDENT
POLICE AUDITOR

BAY AREA RAPID TRANSIT

MONTHLY REPORT

April 2024

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 **April 1, 2024 through April 30, 2024.**¹ (*The Quantitative Report includes all complaints received and administrative investigations initiated by both OIPA and the BART Police Department (BPD) Internal Affairs Bureau (IA).*)

QUANTITATIVE REPORT

	Cases Filed ²	Open Cases ³	Investigations Resolved	OIPA Investigations Concluded ⁴	Cases Appealed to OIPA ⁵	Cases Appealed by BPCRB ⁶
April 2023	12	99	10	1	0	0
May 2023	10	101	6	1	1	0
June 2023	7	103	6	1	2	0
July 2023	18	106	7	1	0	0
August 2023	18	114	8	1	0	0
September 2023	11	115	11	1	0	0
October 2023	4	106	14	2	0	0
November 2023	6	109	3	0	0	0
December 2023	9	114	4	0	0	0
January 2024	5	107	10	1	0	0
February 2024	12	118	7	1	0	0
March 2024	11	116	9	2	0	0
April 2024	9	115	9	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	7
Informal Complaints ⁷	0
Administrative Investigations	1
Inquiries ⁸	1
TOTAL	9

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	4
BART Police Department	5
TOTAL	9

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During April 2024, **3 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #24-19) (IA2024-027)	Officers #1-2: • Performance of Duty	OIPA initiated an investigation.	126
2 (OIPA #24-22) (IA2024-036)	Officer #1: • Conduct Unbecoming an Officer • Performance of Duty	OIPA initiated an investigation.	110
3 (OIPA #24-20) (IA2024-032)	Officer #1: • Conduct Unbecoming an Officer (Illegal Parking)	OIPA forwarded the complaint o BPD, who categorized the complaint as an Inquiry.	119

During April 2024, **5 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2024-026)	Officer #1: • Conduct Unbecoming an Officer • Arrest/Detention	BPD initiated an investigation.	132
2 (IA2024-029)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	129
3 (IA2024-034)	Officers #1-2: • Force	BPD initiated an investigation.	115
4 (IA2024-033)	Officer #1: • Force	BPD initiated an investigation.	112
5 (IA2024-035)	Officers #1-2: • Force	BPD initiated an investigation.	104

During April 2024, **1 Administrative Investigation** was initiated by BPD:

Investigation # (IA Case #)	Nature of Investigation	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2024-031)	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (Retaliation) • Policy/Procedure (Rumors and Bullying) • Conduct Unbecoming an Officer 	BPD initiated an investigation.	118

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During March 2024, **1 Citizen Appeal** was concluded by OIPA but not previously reported:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Appeal Received	Days Taken to Complete Review
1 (OIPA #22-16) (IA2022-020)	OIPA examined whether BPD properly resolved allegations that officers improperly ejected complainant from the system based on complainant's disability.	Officers #1-2: <ul style="list-style-type: none"> • Policy/Procedure – Exonerated (OIPA Concurred) • Bias-Based Policing – Unfounded (OIPA Concurred) 	438	301

During April 2024, **6 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2023-021)	Fare Inspectors improperly removed complainant from a train.	Employees #1-2: • No findings*	516	392
2 (IA2023-032)	Officer detained complainant based on complainant's race used excessive force during the detention.	Officer #1: • Force – Exonerated • Bias-Based Policing – Unfounded	498	383
3 (IA2023-040)	Officers harassed complainant, one officer grabbed complainant's property, and one officer was overly aggressive.	Officers #1-3: • Force – Unfounded • Conduct Unbecoming an Officer – Unfounded	472	348

* The Chief of Police determined that this complaint should be categorized as a Service Review, yet Internal Affairs completed the investigation, noting that no subject employees were identified by the complainant and determining that there were no policy violations by any BPD employees. BPD also examined the policies and procedures related to the fare inspection process and identified an issue wherein passengers who use the mobile Clipper application cannot have their fare payment verified if the smartphone battery is depleted.

<p>4 (IA2023-041)</p>	<p>Officers improperly arrested subject, used excessive force during the arrest, and celebrated inappropriately during the contact.</p>	<p>Officers #1-3: <ul style="list-style-type: none"> • Force – Exonerated • Conduct Unbecoming an Officer – Unfounded <p>Officers #1-2 <ul style="list-style-type: none"> • Arrest/Detention – Exonerated </p> </p>	<p>472</p>	<p>361</p>
<p>5 (IA2023-042)</p>	<p>Officers improperly detained complainant and used excessive force during the detention.</p>	<p>Officers #1-2: <ul style="list-style-type: none"> • Force – Exonerated • Detention – Exonerated </p>	<p>469</p>	<p>358</p>
<p>6 (IA2023-043)</p>	<p>Officer used excessive force during a detention and another officer inappropriately touched the complainant during a search.</p>	<p>Officer #1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Unfounded <p>Officer #2: <ul style="list-style-type: none"> • Force – Exonerated </p> </p>	<p>469</p>	<p>358</p>

BPD also closed case # IA2024-032, after categorizing the complaint regarding an officer's illegal parking as an Inquiry.

During April 2024, **2 Administrative Investigations** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2023-025)	Officers provided insufficient protective equipment to other officers and one officer joked inappropriately about the distribution process.	Officer #1: <ul style="list-style-type: none"> • Performance of Duty – Not Sustained • Conduct Unbecoming an Officer – Not Sustained Officer #2: <ul style="list-style-type: none"> • Performance of Duty – Exonerated 	506	396
2 (IA2023-055)	Officer misused sick leave and compensatory time off.	Officer 1: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer – Sustained • Policy/Procedure – Sustained 	450	328

DISCIPLINE ISSUED DURING REPORTING PERIOD

During April 2024, 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: <ul style="list-style-type: none"> • Policy/Procedure (Body Worn Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion¹⁰
2	Officer did not properly document a law enforcement contact.	Officer #1: <ul style="list-style-type: none"> • Policy/Procedure (Body Worn Camera) 	Officer #1: <ul style="list-style-type: none"> • Letter of Discussion

†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).

3	Officer misused sick leave and compensatory time off.	Officer #1: • Policy/Procedure • Conduct Unbecoming an Officer	Officer #1: Written Reprimand ¹¹
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In accordance with the BART Citizen Oversight Model (Model), OIPA investigates certain complaints, conducts complainant-initiated appeals, and 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	10
Complainant-Initiated Appeals	2
BPD-Initiated Appeals	0
Investigations Being Monitored	27
Investigations Reviewed During Current Month	21†

†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.

ISSUES DETECTED

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is handled by BPD.¹² The OIPA Monthly Report will reflect information regarding monitored cases, investigations, and contacts with detail not to exceed that which is allowable under state law. The investigations reviewed by OIPA during this period did generate some recommendations for revisions or additional investigation and these items will be compiled and included in a subsequent monthly report and will include responses from BPD.

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 Letter of Discussion (second level of pre-discipline): A letter of discussion may be the next step of the process of the informal process. It is a written memorandum to the employee making the employee aware of the unacceptable behavior. A letter of discussion is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to the next level of the process or to move to formal progressive discipline. An employee who may be issued a letter of discussion is entitled to appropriate representation. (BPD Policy Manual).

¹¹ Written Reprimand (first level of formal discipline): If there have been no re-occurrences at the end of the time frames as determined by the collective bargaining agreement (up to 3 years), the immediate supervisor shall meet with the employee and advise him/her that the progressive discipline has become inactive and has been removed from the employee's personnel files.

¹² OIPA may submit recommendations to IA 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.