



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

July 2023

Issue date: September 11, 2023

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 **July 1, 2023 through July 31, 2023**.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
July 2022	10	91	5	0	0	0
August 2022	10	85	17	2	0	0
September 2022	11	90	7	0	0	0
October 2022	5	82	13	1	0	0
November 2022	5	84	3	1	0	0
December 2022	5	86	3	0	0	0
January 2023	6	87	5	0	0	0
February 2023	12	91	9	1	0	0
March 2023	10	98	4	1	0	0
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

TYPES OF CASES FILED

Citizen Complaints (Formal)	18
Informal Complaints ⁷	1
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	19

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	4
BART Police Department	15
TOTAL	19

* OIPA completed case #22-34 in July 2023 but the case remains active in the Internal Affairs database pending a decision by Interim Chief Franklin regarding whether to appeal the findings, which were supported by the BPCRB at their August 2023 regular meeting.

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During July 2023, **3 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #23-27) (IA2023-065)	Officer #1: • Bias-Based Policing	OIPA notified BPD which BPD initiated an investigation.	57
2 (OIPA #23-28) (IA2023-068)	Officers #1-2: • Performance of Duty Officer #2: • Courtesy	OIPA notified BPD which BPD initiated an investigation.	50
3 (OIPA #23-30) (IA2023-072)	Officer #1: • Courtesy	OIPA notified BPD which BPD initiated an investigation.	45

During July 2023, **15 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-059)	Officers #1-2: • Performance of Duty	BPD initiated an investigation.	70
2 (IA2023-060)	Officers #1-2: • Bias-Based Policing • Performance of Duty	BPD initiated an investigation.	67
3 (IA2023-061)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	66
4 (IA2023-062)	Officer #1: • Force	BPD initiated an investigation.	63
5 (IA2023-063)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	63
6 (IA2023-064)	Officers #1-3: • Conduct Unbecoming an Officer	BPD initiated an investigation.	58

7 (IA2023-066)	Officers #1-4: <ul style="list-style-type: none"> • Force • Arrest/Detention • Policy/Procedure • Performance of Duty • Search/Seizure 	BPD initiated an investigation.	49
8 (IA2023-069)	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	49
9 (IA2023-070)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	46
10 (IA2023-071)	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer 	BPD initiated an investigation.	45
11 (IA2023-073)	Officers #1-3: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	49
12 (IA2023-074)	Officer #1: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	48
13 (IA2023-075)	Officer #1: <ul style="list-style-type: none"> • Force • Conduct Unbecoming an Officer 	BPD initiated an investigation.	44
14 (IA2023-076)	Officers #1-3: <ul style="list-style-type: none"> • Force 	BPD initiated an investigation.	42
15 (IA2023-067)	Officers #1-2: <ul style="list-style-type: none"> • Conduct Unbecoming an Officer • Policy/Procedure • Performance of Duty 	BPD initiated an investigation.	51

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During July 2023, **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 #22-34) (IA2022-076)	Officers improperly detained complainant based on complainant's race, improperly handcuffed complainant, used excessive force during the detention, and were discourteous. Officers also failed to care for complainant's property during the detention and one officer failed to properly supervise other officers.	<p>Officers #1-3:</p> <ul style="list-style-type: none"> • Arrest/Detention – Exonerated • Force – Exonerated <p>Officers #1&3:</p> <ul style="list-style-type: none"> • Bias-Based Policing – Not Sustained <p>Officers #2&3:</p> <ul style="list-style-type: none"> • Policy/Procedure (Property Handling) <p>Officer #2:</p> <ul style="list-style-type: none"> • Policy/Procedure (Property Handling) – Exonerated <p>Officer #4:</p> <ul style="list-style-type: none"> • Policy/Procedure (Body Worn Camera) – Sustained <p>Officer #5:</p> <ul style="list-style-type: none"> • Policy/Procedure (Supervision) – Exonerated 	347	280

During July 2023, **7 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2022-052)	Officer improperly contacted complainant for a traffic violation and ran a records check during the contact.	Officer #1: • Conduct Unbecoming an Officer – Sustained	425	355
2 (IA2022-054)	Officer spoke harshly and aggressively to complainant during a contact.	Officer #1: • Courtesy – Unfounded	417	347
3 (IA2022-055)	Officer was dishonest during the hiring process.	Officer #1: • Truthfulness – Unfounded	420	360

4 (IA2022-057)	Officer was dishonest during the hiring process.	Officer #1: • Truthfulness – Unfounded	420	360
4 (IA2022-057)	Officers refused to take action after complainant reported a crime and officers improperly cited complainant.	Officers #1-2: • Performance of Duty – Unfounded	402	355
5 (IA2022-058)	Officer used excessive force and profanities during detention for fare evasion. [†]	Officer #1: • Force – Exonerated • Conduct Unbecoming an Officer – No finding reached	420	360
6 (IA2022-059)	Officers improperly contacted complainant based on complainant's race used excessive force during detention for fare evasion. One officer improperly touched complainant during a search.	Officers #1-2: • Force – Exonerated • Bias-Based Policing – Unfounded Officer #2: • Conduct Unbecoming an Officer – Not Sustained	398	350
7 (IA2022-060)	Officer failed to take enforcement action.	Officer #1: • Performance of Duty – Administratively Closed ¹⁰	398	350

DISCIPLINE ISSUED DURING REPORTING PERIOD

During July 2023, 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 (Body Worn Camera)	Officer #1: • Letter of Discussion ¹¹

[†] The complainant alleged that two officers used excessive force during the detention, but IA only reached a finding as to one of the officers who used force during the arrest and did not address the allegation of Conduct Unbecoming an Officer in the final report.

[‡] 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).

2	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera)	Officer #1: • Letter of Discussion
3	Officer did not properly document a law enforcement contact.	Officer #1: • Policy/Procedure (Body Worn Camera)	Officer #1: • Oral Counseling ¹²
4	Officer improperly contacted complainant for a traffic violation and ran a records check during the contact.	Officer #1: • Conduct Unbecoming an Officer	Officer #1: • Non-Documented

ADDITIONAL NOTES

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	7
Complainant-Initiated Appeals	3
BPD-Initiated Appeals	0
Investigations Being Monitored	31
Investigations Reviewed During Current Month	17†

†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.

The Model provides that OIPA shall have authority to require follow-up investigation into any citizen complaint or allegation that is handled by BPD.¹³ 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 generated the following recommendations for revisions or additional investigation.

OIPA identified one intake interview that was conducted by an IA investigator which included an exchange that OIPA characterized as dissuasive. OIPA has consistently conveyed to IA leadership that it is inappropriate in most instances to respond to a complainant's concerns by offering any justifications for the conduct in question. BPD responded that IA leadership would discuss OIPA's input with the investigator. It remains our intention to provide feedback to IA leadership that will improve the quality of its investigations, improve the experience for complainants, and mitigate the perception that IA investigations are not objective.

OIPA identified one complaint that was received by IA during this period which was classified as an "Informal Complaint" by IA personnel. After reviewing the available information and evidence, OIPA inquired as to the reasons that the complaint, which included potentially serious policy violations, was classified as "Informal." Informal complaints are typically addressed via a Supervisor referral involving a documented discussion with the involved employee. BPD replied that the case will be reclassified as a Formal Complaint which will be fully investigated by IA.

OIPA's review of IA data for inclusion in this report also revealed a number of minor clerical errors, which BPD has committed to resolving. These are likely primarily attributable to recent staffing changes in the IA unit and OIPA's feedback is intended to support the training of new personnel by conveying our expectations related to consistent data entry and maintenance. The IA unit is in a transitional period with regard to staffing the Police Administrative Specialist position and the expectation is that new personnel will be fully trained in short order.

Policy/Procedure Recommendations

NEW PROCESS RE DISCIPLINE ISSUANCE DATE

While reviewing data for inclusion in OIPA's monthly reports, we noted that disciplinary documentation (the letters issued to personnel when discipline is imposed) included inconsistent information about the duration of time that the disciplinary documentation would remain in an employees' file.

For example, some employees received correspondence stating that the discipline would remain active, for the purpose of adhering to collectively bargained progressive discipline structure, for a period of one year from the date of issuance of the letter, some employees received correspondence stating that the discipline would remain active for one year from the date of the underlying incident, and other employees were informed that the discipline would remain active in the file for one year from the date that an investigation into the matter was completed.

Because the progressive discipline system relies on the proper maintenance of imposed disciplinary records, and because employees should be able to rely on the consistency of the disciplinary structure, OIPA recommended that BPD maintain each record for the required period of time beginning from the date of issuance. OIPA also intended to remove the discretion of IA personnel regarding determining which starting date was appropriate on a case-by-case basis. The existence of this discretion may create the perception that some employees are treated differently than others due to the nature of their relationship with IA personnel. The recommended revision to this practice was also intended to ensure that repeated policy violations by the same officer will result in appropriately escalated discipline such that the imposition of discipline has the desired effect of preventing future policy violations.

OIPA appreciates the prompt and appropriate action taken by Interim Chief Franklin.

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 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.

¹¹ 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).

¹² Oral Counseling (third level of pre-discipline): An oral counseling may be the next step of the informal process. It is documented in a memorandum to the employee entitled "Oral Counseling." Prior to issuance, the supervisor should discuss the performance or infraction in detail with the employee. The purpose of the discussion is for the employee to be made aware of the unacceptable behavior. An employee who is covered by a collective bargaining agreement and who may be issued an Oral Counseling is entitled to appropriate association representation. An Oral Counseling is pre-disciplinary, however, if the employee fails to correct the behavior, there will be cause to move to progressive discipline.

¹³ 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.