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## Summary of Misconduct Investigations

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### BART Independent Office of the Inspector General



#### Investigation Results

We completed seven investigations of allegations of time theft, vehicle misuse, conflicts of interest, and unauthorized disclosures of official records. Each allegation was potential fraud or abuse and a violation of District rules or California state law. We are providing this report to comply with California

Public Utilities Code [28841](#), which requires that we keep BART administration, the Board of Directors, and the public informed of our fraud, waste, or abuse investigative findings and recommendations. Our investigations are based on complaints reported in good faith. In brief:

**Allegation One:** Evidence supports that employees were commuting to and from work on BART time and, in some cases, doing so in a BART vehicle. Evidence further supports that their supervisor was aware of and participated in the misconduct.

**Allegation Two:** Evidence supports that an employee was not performing their duties while on BART time by spending their time in their personal vehicle instead of attending to their tasks at their assigned location.

**Allegation Three:** Evidence did not support that an employee was falsifying their time and intentionally obtaining shift differential pay while working the day shift. However, the lapse in changing the employee's baseline schedule in BART's timekeeping system resulted in a \$1,302 over payment to the employee, which the employee repaid.

**Allegation Four:** Evidence did not support that an employee misused a BART vehicle for their personal use.

**Allegations Five and Six:** Evidence supports two former employees accepted employment offers from firms doing business with BART and then used their official positions to approve contracts for those firms.

**Allegation Seven:** Evidence did not support that an employee disclosed or permitted an unauthorized person access to confidential District records.

BART Executive Management addressed the misconduct we substantiated in our investigations. Also, we made prior recommendations to address the internal control weaknesses that existed at the time the conflicts of interest took place. Therefore, there are no recommendations associated with this report. The subsequent pages provide detail on our investigative results and conclusions.



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Providing independent oversight of the District's use of revenue.



### Allegation One of Seven

The first whistleblower complaint we received alleged that seven employees were clocking in and out at a BART facility that was not their assigned duty location and then using BART time to commute to and from work. In some cases, they were doing so in BART vehicles. BART policy requires employees to report to work on time at their assigned work location and to engage in only District activities while on duty. BART policy also prohibits employees from using BART vehicles for personal use.

At times, the District does allow an employee to start their day at a non-duty location when there is a need for the employee to do work at that facility before reporting to their assigned work location. This flexibility allows for efficiencies in BART's operations. In those circumstances, the employees may stage a BART vehicle at the non-duty location so that it is available to them when they start their shift. According to BART management, these circumstances are not generally ongoing or required of groups of employees. Our review of timekeeping data showed a pattern of the employees, including their supervisor, regularly clocking in and out at a non-duty location since May of 2022. This behavior stopped in February 2023 after our office issued its investigation into an employee not working the majority of their shift but collecting pay and benefits for their time.<sup>1</sup> However, five of the seven employees continued to stage a BART vehicle at a non-duty location for their commute to work while not on duty.

We forwarded the specific details of our findings to BART management to take appropriate action in accordance with the applicable collective bargaining agreement. BART management reported to us that they took corrective actions in compliance with that agreement. Because corrective actions were taken, we have no recommendations for this investigation.

### Allegation Two of Seven

The second whistleblower complaint we received alleged that an employee was spending their on-duty hours in their personal vehicle and not conducting their assigned tasks. We learned that the employee's direct supervisor had already been made aware of the misconduct and had taken steps to address it in accordance with the relevant collective bargaining agreement. Therefore, we did not pursue this investigation further, but did provide the details of our preliminary findings to BART management. Because corrective actions were already taken, we have no recommendations for this investigation.

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<sup>1</sup> [BART Employee Collected Pay & Benefits for Time Not Worked \(2/3/23\)](#)



### Allegation Three of Seven

The third whistleblower complaint we received alleged that an employee was falsely claiming overtime and falsely claimed to have worked while traveling on holiday. The complainant also alleged that the employee continued to claim swing-shift differential pay but was actually working the day shift. None of the evidence we reviewed supported the allegations. Those we interviewed and the records we examined support that the employee was working the overtime they claimed. However, there was an administrative error related to the employee's baseline schedule when they switched from swing to day shift as part of an operational change.

Baseline schedules must be completed by an employee's foreworker, supervisor, or manager and are used in BART's timekeeping system to simplify time entry and pay calculations. Baseline schedules also allow for conducting pay audits. The baseline schedule is based on the days and hours an employee is expected to work each pay period. For employees with baseline schedules including swing or graveyard shifts, the time keeping system automatically applies the appropriate shift-differential pay such as seven percent premium pay for swing shifts. Changes to baseline schedules are required anytime an employee's regular schedule changes. The evidence supports that the employee's manager did not immediately complete the administrative process to update the baseline schedule when the employee first changed their schedule to the day shift. Due to this administrative error, the employee continued to earn swing shift differential pay they were no longer entitled to, resulting in a \$1,302 overpayment. The employee repaid the District for this overpayment. As such, we have no recommendations for this investigation.

### Allegation Four of Seven

The fourth whistleblower complaint we received alleged that an employee used a BART vehicle for personal use. Although the initial review of the evidence supported that the allegation had merit, we were able to obtain further evidence that the appearance of misuse was misleading. Therefore, we determined the allegation to be unsubstantiated. As such, we have no recommendations for this investigation.

### Allegations Five and Six of Seven

The fifth and sixth whistleblower complaints alleged that two former employees accepted employment offers from firms doing business with the District and then approved phases of the contracting process for those firms. Section XV of the District's Employee Code of Conduct and Government Code § 87407 both prohibit public officials from using their official positions to influence any governmental decision directly relating to any person with whom they are negotiating, or have any arrangement concerning, prospective employment. Neither employee appears to have provided work under the contracts they influenced after they left District service.



We substantiated that the first former employee accepted employment from a District contractor in February 2021 and retired under the District Retirement Incentive Program (DRIP) in March 2021. The former employee approved the issuance of a workplan for the contractor 11 days before their retirement. The workplan was initiated by the project manager and approved by both the group manager and agreement manager in December 2020, prior to the former employee's approval and acceptance of employment with the contractor. The workplan was issued under an on-call contract that was awarded in 2019 and we verified that the former employee was not on the selection panel for that contract award series. Likewise, the former employee did not perform work under the workplan after their retirement. The District made \$384,321 in payments under the workplan, which was completed in August 2022.

We also substantiated that the second former employee accepted employment from a different District contractor in November 2021 and separated from the District in January 2022. The former employee approved the transfer of an individual working for the contractor from one BART workplan to another 16 days prior to the former employee's District separation date. Both workplans were awarded to the contractor prior to the former employee's acceptance of the job offer. Further, the former employee was not part of the approval workflow for the workplan in question. The contract worker voluntarily separated from the contractor and stopped providing services under the workplan in October 2022. The District made \$74,270 in payments under the workplan, which was completed in November 2022.

Based on the evidence available to us, neither former employee financially benefited from their official actions. Further, as they are no longer employed by BART, they cannot be disciplined for violating the Employee Code of Conduct. Nor can the District void the workplans as they are already complete. As such, we have no recommendations for this investigation.

District executives took independent corrective action to stop the former employees from doing work under District contracts. Additionally, we previously made several comprehensive recommendations to improve internal controls that prevent and prohibit conflicts of interest. As such, we have no recommendations for these investigations. We issued two prior reports concerning financial and other conflicts of interest. We issued the first on [April 8, 2022](#) and the second on [February 3, 2023](#).<sup>2</sup> The District agreed to 11 of our recommendations, eight of which they have implemented and three of which they are in the process of implementing. Our recommendations include revising and updating the Employee and Contractor Codes of Conduct, requiring clearer written conflict of interest disclosures, improving contractors obligations to identify conflicts of interest, increasing conflict of interest training, and banning former employees from entering into new contracts with the District for a minimum of one year post-employment.

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<sup>2</sup> Caution is Needed to Avoid Conflict-of-Interest Violations (2/3/23) and Potential Conflict of Interest May Require Voiding a \$40 Million Construction Management Contract and Not Paying \$5.4 Million of Invoices (4/8/22)



## Allegation Seven of Seven

The seventh whistleblower complaint we received alleged an employee forwarded official District personnel records to their spouse's private email account. The email contained private employment information regarding the complainant, and the District's Operations Rules and Procedures prohibit disclosing District records without appropriate approval. However, District policy does not prohibit employees from sending information to their personal emails for the purpose of conducting work from home so long as it does not cause harm to the District. Although the initial review of the evidence supported that the allegation had merit, we obtained sufficient evidence to support that the employee's spouse did not access these official records. We also determined that the employee sent the email to their personal email address for the purpose of conducting work from home on the weekend. Therefore, we determined the allegation to be not substantiated. As such, we have no recommendations for this investigation.