



OFFICE OF THE INDEPENDENT  
**POLICE AUDITOR**

**BAY AREA RAPID TRANSIT**

# **MONTHLY REPORT**

May 2024

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Issue date: September 9, 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 **May 1, 2024 through May 31, 2024.**<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 (IA)).*

## QUANTITATIVE REPORT

	Cases Filed <sub>2</sub>	Open Cases <sub>3</sub>	Investigations Resolved	OIPA Investigations Concluded <sub>4</sub>	Cases Appealed to OIPA <sub>5</sub>	Cases Appealed by BPCRB <sub>6</sub>
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
May 2024	16	123	8	0	0	0

### TYPES OF CASES FILED

Citizen Complaints (Formal)	16
Informal Complaints <sup>7</sup>	0
Administrative Investigations	0
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>16</b>

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

OIPA	8
BART Police Department	8
<b>TOTAL</b>	<b>16</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During May 2024, **8 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
<b>1</b> (OIPA #24-17) (IA2024-037)	Officers #1-3: <ul style="list-style-type: none"> <li>• Arrest/Detention</li> <li>• Force/Procedure</li> <li>• Performance of Duty</li> </ul>	OIPA initiated an investigation.	116
<b>2</b> (OIPA #24-27) (IA2024-038)	Officers #1-2: <ul style="list-style-type: none"> <li>• Force</li> <li>• Arrest/Detention</li> </ul>	OIPA initiated an investigation.	123
<b>3</b> (OIPA #24-26) (IA2024-040)	Unknown Officer(s): <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul>	OIPA initiated an investigation.	110
<b>4</b> (OIPA #24-23) (IA2024-048)	Officers #1-4: <ul style="list-style-type: none"> <li>• Policy/Procedure</li> <li>• Arrest/Detention</li> <li>• Courtesy</li> </ul>	OIPA initiated an investigation.	111
<b>5</b> (OIPA #24-31) (IA2024-051)	Officers #1-2: <ul style="list-style-type: none"> <li>• Policy/Procedure</li> <li>• Bias-Based Policing</li> <li>• Force</li> <li>• Performance of Duty</li> </ul>	OIPA initiated an investigation.	101
<b>6</b> (OIPA #24-30) (IA2024-044)	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul>	OIPA forwarded the complaint to BPD, which initiated an investigation.	104
<b>7</b> (OIPA #24-28) (IA2024-045)	Officers #1-2: <ul style="list-style-type: none"> <li>• Bias-Based Policing</li> <li>• Force</li> </ul>	OIPA initiated an investigation.	108
<b>8</b> (OIPA #24-25) (IA2024-041)	Officer #1: <ul style="list-style-type: none"> <li>• Policy/Procedure</li> </ul>	OIPA forwarded the complaint to BPD, which initiated an investigation.	129

During May 2024, **8 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2024-039)	Officer #1: • Force	BPD initiated an investigation.	112
2 (IA2024-041)	Officer #1: • Policy/Procedure (Improper Citation) • Policy/Procedure (Axon Camera)	BPD initiated an investigation.	129
3 (IA2024-042)	Officer #1: • Force	BPD initiated an investigation.	129
4 (IA2024-043)	Officers #1-3: • Force	BPD initiated an investigation.	108
5 (IA2024-046)	Officer #1: • Conduct Unbecoming an Officer • Performance of Duty	BPD initiated an investigation.	102
6 (IA2024-047)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	101
7 (IA2024-049)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	102
8 (IA2024-050)	Officer #1: • Force	BPD initiated an investigation.	101

**COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD**

During May 2024, **8 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2023-056)	Officer was rude to complainant.	Officer #1: • Conduct Unbecoming an Officer – Exonerated	441	324

<p><b>2</b> <b>(IA2023-053)</b></p>	<p>Officer acted unprofessionally and detained complainant based on complainant's race. Another officer failed to provide a badge number upon request.</p>	<p>Officer #1:  <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer (Identification Information) – Unfounded</li> </ul> <p>Officer #2  <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Conduct Unbecoming an Officer (Unprofessionalism) – Unfounded</li> </ul> </p> </p>	<p>451</p>	<p>334</p>
<p><b>3</b> <b>(IA2023-057)</b></p>	<p>Officer was disrespectful to complainant and threatened to issue a citation.</p>	<p>Officer #1:  <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Not Sustained</li> </ul> </p>	<p>459</p>	<p>355</p>
<p><b>4</b> <b>(IA2023-048)</b></p>	<p>Officer was rude to complainant because of complainant's race and officer failed to properly document the contact.</p>	<p>Officer #1:  <ul style="list-style-type: none"> <li>• Bias-Based Policing – Unfounded</li> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Policy/Procedure (Axon Camera) – Not Sustained</li> </ul> </p>	<p>478</p>	<p>370</p>
<p><b>5</b> <b>(IA2023-047)</b></p>	<p>Officer used excessive or unnecessary force.</p>	<p>Officer #1:  <ul style="list-style-type: none"> <li>• Force – Administratively Closed<sup>10</sup></li> </ul> </p>	<p>480</p>	<p>355</p>
<p><b>6</b> <b>(IA2023-046)</b></p>	<p>Officer used excessive force during a detention and inappropriately touched the complainant during a search.</p>	<p>Officer #1:  <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Force – Unfounded</li> </ul> </p>	<p>482</p>	<p>357</p>
<p><b>7</b> <b>(IA2023-028)</b></p>	<p>Officer used excessive force during a detention and inappropriately touched the complainant during a search.</p>	<p>Officer #1:  <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer – Unfounded</li> <li>• Force – Unfounded</li> </ul> </p>	<p>482</p>	<p>357</p>

<p><b>8</b> <b>(IA 2023-009)</b></p>	<p>Officer was verbally abusive and aggressive, failed to provide identification upon request, and failed to properly document a law enforcement contact. Two other officers failed to properly document the contact.</p>	<p>Officer #1:</p> <ul style="list-style-type: none"> <li>• Conduct Unbecoming an Officer (Count 1) – Sustained</li> <li>• Conduct Unbecoming an Officer (Count 2) – Not Sustained</li> </ul> <p>Officers #1-2:</p> <ul style="list-style-type: none"> <li>• Policy/Procedure (Axon Camera) – Sustained</li> </ul> <p>Officer #3:</p> <ul style="list-style-type: none"> <li>• Policy/Procedure (Axon Camera) – Not Sustained</li> </ul>	<p>579</p>	<p>457*</p>
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**DISCIPLINE ISSUED DURING REPORTING PERIOD**

During May 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	Officers did not properly document a law enforcement contact.	Officers #1-2: • Policy/Procedure (Body Worn Camera)	Officer #1: • Letter of Discussion <sup>11</sup>

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.

\*IA determined that this investigation was tolled for 264 due to an officer’s unavailability.

† 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).

Investigations Being Conducted	13
Complainant-Initiated Appeals	2
BPD-Initiated Appeals	0
Investigations Being Monitored	27
Investigations Reviewed During Current Month	25†

†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.<sup>12</sup> 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 report.

<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 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

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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> 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>11</sup> 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).

<sup>12</sup> 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.