



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

# MONTHLY REPORT

March 2023

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Issue date: May 8, 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 **March 1, 2023 through March 31, 2023**.<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 <sup>2</sup>	Open Cases <sup>3</sup>	Investigations Resolved	OIPA Investigations Concluded <sup>4</sup>	Cases Appealed to OIPA <sup>5</sup>	Cases Appealed by BPCRB <sup>6</sup>
March 2022	6	73	14	1	0	0
April 2022	10	79	6	1	0	0
May 2022	14	86	6	1	0	0
June 2022	8	87	7	1	0	0
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

### TYPES OF CASES FILED

Citizen Complaints (Formal)	9
Informal Complaints <sup>7</sup>	0
Administrative Investigations	1
Inquiries <sup>8</sup>	0
<b>TOTAL</b>	<b>10</b>

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

OIPA	4
BART Police Department	5
<b>TOTAL</b>	<b>9</b>

## COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During March 2023, **4 Citizen Complaints** were received by OIPA:

Complaint # (OIPA Case #) (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (OIPA #23-06) (IA2023-021)	Unknown Employee #1: <ul style="list-style-type: none"> <li>Unknown Allegation(s)</li> </ul>	OIPA notified BPD which contacted complainant and determined there was no misconduct complaint. BPD initiated a Supervisor Referral. <sup>10</sup>	54
2 (OIPA #23-05) (IA2023-022)	Officers #1-5: <ul style="list-style-type: none"> <li>Bias-Based Policing</li> <li>Conduct Unbecoming an Officer</li> </ul> Officers #1&5 <ul style="list-style-type: none"> <li>Arrest/Detention</li> </ul> Officers #2&5: <ul style="list-style-type: none"> <li>Force</li> </ul> Officer #5: <ul style="list-style-type: none"> <li>Search/Seizure</li> <li>Policy Procedure (Body Worn Camera)</li> </ul>	OIPA notified BPD which initiated an investigation.	55
3 (OIPA #23-07) (IA2023-024)	Officer #1: <ul style="list-style-type: none"> <li>Performance of Duty</li> </ul>	OIPA notified BPD which initiated an investigation.	48
4 (OIPA #23-08) (IA2023-029)	Officer #1: <ul style="list-style-type: none"> <li>Conduct Unbecoming an Officer</li> </ul> Officer #2: <ul style="list-style-type: none"> <li>Arrest/Detention</li> <li>Force</li> </ul>	OIPA notified BPD which had already initiated an investigation after receiving the same complaint.	40

During March 2023, **5 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-019)	Officer #1: <ul style="list-style-type: none"> <li>Arrest/Detention</li> <li>Search/Seizure</li> </ul>	BPD initiated an investigation.	61
2 (IA2023-020)	Employee #1: <ul style="list-style-type: none"> <li>Policy/Procedure</li> <li>Performance of Duty</li> </ul>	BPD initiated an investigation.	60
3 (IA2023-023)	Employee #1: <ul style="list-style-type: none"> <li>Performance of Duty</li> <li>Bias-Based Policing</li> </ul>	BPD initiated an investigation.	48

4 (IA2023-026)	Officers #1-2: • Performance of Duty • Bias-Based Policing	BPD initiated an investigation.	42
5 (IA2023-028)	Officer #1: • Search/Seizure	BPD initiated an investigation.	40

During March 2023, **1 Administrative Investigation** was initiated by BPD:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Days Elapsed Since Investigation Initiated
1 (IA2023-025)	Officer #1: • Conduct Unbecoming an Officer • Performance of Duty • Policy/Procedure	BPD initiated an investigation.	44

## COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During March 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 #18-08) (IA2018-001)*	Officer used excessive and unnecessary force and was untruthful when interviewed about the use of force. Supervisor returned officer to duty prematurely after critical incident and improperly promoted officer. Supervisor's public comments violated media relations policy.	Officer #1: • Force – Exonerated • Truthfulness – Exonerated  Officer #2: • Supervision – Exonerated • Policy/Procedure (Officer-Involved Shooting Media Relations) – Sustained	1876	1816†

\* The BPD Internal Affairs investigation of this officer-involved shooting remains open as of this reporting. BPD Policy 310.7 (Administrative Investigation) provides that “[i]n addition to all other investigations associated with an officer-involved shooting or death, this department will conduct an internal administrative investigation of BART PD officers to determine conformance with department policy. The investigation will be conducted under the supervision of the Internal Affairs Division and will be considered a confidential officer personnel file.

† Separate criminal investigations were conducted and completed by the Oakland Police Department (OPD) and Alameda County District Attorney’s Office (ACDA) regarding this officer-involved shooting. There were also civil proceedings that resolved on October 5, 2022. This OIPA investigation was tolled during those proceedings and resumed at the conclusion of the civil litigation. Tolling of this investigation was in reliance on Government Code section 3304(2)(F), also known as the California Peace Officers’ Bill of Rights, which provides, “If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.”

During March 2023, **2 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2023-013)	Officer inappropriately requested the name of a person in medical distress.	Officers #1-2: • Policy/Procedure – Supervisor Referral	83	21
2 (IA2022-016)	Officers witnessed a crime and failed to take law enforcement action.	Officers #1-2: • Performance of Duty – Administratively Closed <sup>11</sup>	398	332

### COMPLAINTS/INVESTIGATIONS CONCLUDED DURING A PRIOR REPORTING PERIOD BUT NOT PREVIOUSLY RECORDED BY INTERNAL AFFAIRS

During February 2023, **1 Informal Complaint** was concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2022-056)	Officers did not wear face coverings as required	Officers #1-5: • Policy/Procedure – Supervisor Referral	282	208

### DISCIPLINE ISSUED DURING REPORTING PERIOD

During March 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 (AXON Camera)	Officer #1: • Oral Counseling <sup>12</sup>

### ADDITIONAL NOTES

‡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).

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	0
BPD-Initiated Appeals	0
Investigations Being Monitored	22
Investigations Reviewed During Current Month	8†

†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.<sup>13</sup> 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.

<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 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.

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<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> 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 IA.

<sup>11</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>12</sup> 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.

<sup>13</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.