



Office of the
**INDEPENDENT
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT

MONTHLY REPORT

April 2023

Issue date: June 12, 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 **April 1, 2023 through April 30, 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
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
April 2023	12	99*	10	1	0	0

TYPES OF CASES FILED

Citizen Complaints (Formal)	12
Informal Complaints ⁷	0
Administrative Investigations	0
Inquiries ⁸	0
TOTAL	12

* The BPD Internal Affairs investigation of a 2018 officer-involved shooting remained open as of March 30, 2018. 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. A separate OIPA investigation was tolled during those proceedings and resumed at the conclusion of the civil litigation. OIPA completed its investigation in March 2023 and those findings are included in OIPA’s report for that period. Tolling of that OIPA 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.” BPD elected to defer its investigation to OIPA and has now closed their internal review process by adopting the findings and recommendations of OIPA. The number of open IA investigations listed here now reflects that closure.

CITIZEN COMPLAINTS RECEIVED PER DEPARTMENT⁹

OIPA	4
BART Police Department	8
TOTAL	12

COMPLAINTS/INVESTIGATIONS INITIATED DURING REPORTING PERIOD

During April 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 #23-11) (IA2023-033)	Unknown Officers #1-2: • Conduct Unbecoming an Officer	OIPA notified BPD which initiated an investigation.	66
2 (OIPA #23-13) (IA2023-038)	Employee #1: • Bias-Based Policing • Conduct Unbecoming an Officer	OIPA notified BPD which initiated an investigation.	49
3 (OIPA #23-10) (IA2023-039)	Officer #1: • Bias-Based Policing • Arrest/Detention • Courtesy	OIPA notified BPD which initiated an investigation.	67
4 (OIPA #23-09) (IA2023-044)	Officer #1: • Conduct Unbecoming an Officer	OIPA notified BPD which initiated an investigation.	69

During April 2023, **8 Citizen Complaints (Formal)** were received by BPD:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2023-030)	Unknown Officers #1-3: • Performance of Duty	BPD initiated an investigation.	72
2 (IA2023-031)	Officers #1-2: • Policy/Procedure • Performance of Duty	BPD initiated an investigation.	69
3 (IA2023-032)	Officer #1: • Force	BPD initiated an investigation.	71
4 (IA2023-034)	Officers #1-2: • Force	BPD initiated an investigation.	61
5 (IA2023-036)	Officer #1: • Force • Policy/Procedure	BPD deferred the investigation to OIPA. [†]	60

[†] Complainant was frustrated by the IA process and OIPA, IA, and Interim Chief Franklin conferred and agreed to transfer the investigation to OIPA at complainant's request.

6 (IA2023-037)	Officers #1-2: • Bias-Based Policing • Arrest/Detention • Conduct Unbecoming an Officer	BPD deferred the investigation to OIPA.‡	60
7 (IA2023-040)	Officer #1: • Conduct Unbecoming an Officer	BPD initiated an investigation.	45
8 (IA2023-041)	Officers #1-3: • Arrest/Detention	BPD initiated an investigation.	45

COMPLAINTS/INVESTIGATIONS RECEIVED DURING PRIOR REPORTING PERIOD

During March 2023, 1 **Citizen Complaint (Formal)** was received by BPD but not previously reported:

Complaint # IA Case #	Nature of Complaint	Action Taken	Days Elapsed Since Complaint Filed
1 (IA2022-031)	Officers #1-2: • Force	BPD initiated an investigation.	53

COMPLAINTS/INVESTIGATIONS CONCLUDED DURING REPORTING PERIOD

During April 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 #22-21)	OIPA completed an investigation into a whistleblower complaint that was forwarded by the BART Office of the Inspector General. [The details of the complaint will remain confidential to protect the involved parties from retaliation].	• There were no sustained allegations of misconduct.§	396	329

‡ Complainant was frustrated by the IA process and OIPA, IA, and Interim Chief Franklin conferred and agreed to transfer the investigation to OIPA at complainant's request.

§ The investigation resulted in recommendations for improvements to the operations of the police department that were submitted to the BART General Manager on May 1st, 2023. The General Manager's responses to those recommendations will be incorporated into a public report.

During April 2023, **11 Citizen Complaints** were concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2022-022)	Officer contacted and harassed complainant based on complainant's race.	Officer #1: • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Not Sustained	421	359
2 (IA2022-024)	Officers taunted complainant.	Officers #1-2: • Conduct Unbecoming an Officer – Not Sustained	416	362
3 (IA2022-025)	Officers were dismissive and unhelpful to complainant because of complainant's race and one officer did not properly document a law enforcement contact.	Officers #1-2: • Bias-Based Policing – Unfounded • Conduct Unbecoming an Officer – Not Sustained Officer #2: • Policy/Procedure (Body Worn Camera) – Sustained • Performance of Duty – Not Sustained	421	359
4 (IA2022-027)	Officers acted unprofessionally and used excessive force when they drew their weapons.	Officers #1-3: • Conduct Unbecoming an Officer – Unfounded Officers #1-2: • Force – Exonerated Officer #3: • Force – Unfounded	408	361
5 (IA2022-030)	Officer acted unprofessionally and did not properly handle a call for service.	Officer #1: • Performance of Duty – Not Sustained • Conduct Unbecoming an Officer – Not Sustained	396	342
6 (IA2022-031)	Officers used excessive force.	Officers #1-2: • Force – Exonerated	417	365
7 (IA2022-033)	Officer made an unprofessional comment and prevented complainant from recording the contact.	Officer #1: • Conduct Unbecoming an Officer (Comment) – Exonerated • Conduct Unbecoming an Officer (Recording) – Unfounded	388	334
8 (IA2022-036)	Officers did not provide adequate assistance to patron upon request.	Officers #1-2: • Performance of Duty – Exonerated	382	395
9 (IA2022-039)	Officers used excessive force during an arrest.	Officers #1-4: • Force – Exonerated	384	335

10 (IA2022-046)	Employee made an unprofessional comment during fare inspection.	Employee #1: • Conduct Unbecoming an Officer – Exonerated	388	334
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COMPLAINTS/INVESTIGATIONS CONCLUDED DURING A PRIOR REPORTING PERIOD BUT NOT PREVIOUSLY RECORDED BY INTERNAL AFFAIRS

During March 2023, **1 Formal Complaint** was concluded by BPD:

(IA Case #)	Nature of Complaint	Disposition	Days Elapsed Since Complaint Filed	Days Taken to Complete Investigation
1 (IA2022-018)	One officer unlawfully detained a subject, another officer was aggressive and threatening toward complainant, three officers used excessive force, and one officer unlawfully arrested complainant.	Officers #1-3: • Force – Exonerated Officer #2: • Conduct Unbecoming an Officer – Not Sustained Officer #3: • Arrest/Detention (Count 1) – Not Sustained • Arrest/Detention (Count 2) – Exonerated • Search/Seizure – Not Sustained	428	355

DISCIPLINE ISSUED DURING REPORTING PERIOD

During April 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 fully perform investigative duties, was untruthful in related documentation and was untruthful when questioned about the alleged misconduct.	Officer #1: • Truthfulness • Conduct Unbecoming an Officer • Performance of Duty	Officer #1: • Resigned prior to termination pursuant to settlement agreement.††

** 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).

†† OIPA reported in October 2022 that the subject officer in this case had been issued a “Skelly” Notice for formal discipline. The Skelly pre-discipline process is intended to provide the employee with an opportunity to present a written

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	0
BPD-Initiated Appeals	0
Investigations Being Monitored	25
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.¹⁰ 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.

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

or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline (BPD Policy Manual). The officer was terminated from employment in February 2023. In April 2023, the subject officer entered an agreement with the BART District under which the officer's status was changed from "termination" to "resignation." The BART Citizen Oversight Model Chapter 1-04(C) provides that OIPA shall be authorized to review any legal claims and/or lawsuits against BART that relate to the conduct of BPD personnel to ensure that all allegations of misconduct are thoroughly investigated by OIPA and/or BPD, and to identify any systemic issues regarding BPD practices and/or policies; that OIPA shall be authorized to review any significant settlements and adverse judgments involving BPD; that OIPA shall work with BPD to develop corrective action intended to remediate any systemic issues identified through review of any significant settlements or adverse judgments involving the BPD; and that OIPA shall publicly report its involvement in the review of legal claims, lawsuits and settlements in a manner consistent with all applicable confidentiality requirements. In keeping with the requirements of this chapter of the Model, OIPA reports that it had no involvement in the negotiation of this settlement agreement and was not consulted by the BART Office of General Counsel, the General Manager or Chief Alvarez.

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 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.