

# Annual Report



## *Annual Report* Fiscal Year 2018



Office of the  
**INDEPENDENT  
POLICE AUDITOR**

BAY AREA RAPID TRANSIT DISTRICT



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# Welcome



Russell Bloom  
*Independent Police Auditor*

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Patrick Caceres  
*Independent Police Investigator*

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Sarah Celso  
*Senior Administrative Analyst*

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During our seventh year of operation, the Office of the Independent Police Auditor (OIPA) has benefitted from the stability of our staff, and from the continued development of an effective working relationship with the Chief of the BART Police Department (BPD), Carlos Rojas, as he marked the end of his first year with the Department. OIPA has adjusted to a number of shifts in appointees to the BART Police Citizen Review Board (BPCRB) and has worked with the BART Board of Directors to facilitate the replacement, appointment, or reappointment of BPCRB members as necessary.

As in prior years, OIPA has worked with both the BPCRB and BPD to craft and implement new or revised policies intended to improve policing and to maintain individual and departmental accountability, and to increase transparency. It remains important for OIPA to work toward upholding the established reform and progressive policing practices in place within the Department, even as Chief Rojas adjusts practices and procedures, including shifts in staffing assignments and evolving priorities. OIPA has, for example, been tasked with conducting reviews of BPD activity related to the enforcement of an October 2017 BART Ordinance requiring BART riders to provide proof of payment upon request.

This fiscal year included two BPD officer-involved shootings, one of which resulted in a fatality. OIPA's role after the first incident in November of 2017 was limited to the monitoring of the BPD Internal Affairs Bureau investigation because that use of deadly force did not result in a complaint of misconduct to OIPA. Changes to the BART Citizen Oversight Model regarding the eligibility of complainants allowed OIPA to initiate an independent investigation into a fatal officer-involved shooting that occurred in West Oakland in January 2018.

July 2018 marked one year since the implementation of a revised Use of Force Policy at BPD. The establishment of "minimal" force was predicted by some to result in additional personal legal liability to individual officers, increased complaints of misconduct, increased injury to officers and subjects, and a significant reduction of proactive policing due to fears of repercussions for using traditionally acceptable levels of force. BPD data show that in the period following implementation of the revised policy the number of complaints, reported uses of force, and injuries to officers and subjects have decreased, while overall arrests and citations have increased.

Notably, an independent third-party evaluation of the BART police citizen oversight system was completed by the OIR Group in July 2017, and on March 8, 2018 the Board of Directors voted unanimously to approve and implement 50 of the 54 recommendations for improvement that were submitted by the evaluators. OIPA is in the process of working toward full implementation of the recommendations, the substance of which are discussed in more detail elsewhere in this year's report.

Toward the end of the fiscal year, OIPA, BPD, the BPCRB and local media outlets began closely examining data showing that African-Americans were subjected to more arrests, uses of force, and prohibition orders than people of other races and ethnicities. Analysis of these data will be a priority for OIPA in the immediate future, and we look forward to providing recommendations to BPD for improved training, practice, or policies if biases or profiling are shown to play a role in the disparate impact.

It is my expectation that the approved revisions to our mandate and practices and procedures will allow OIPA to improve our responsiveness to the various communities served by BART, to increase and expand our outreach activities, and to provide even more thoughtful well-designed recommendations for improvements to the policing of the District.

A handwritten signature in blue ink, appearing to read "Russell G. Bloom".

RUSSELL G. BLOOM  
Independent Police Auditor



# About Our Office

## The Office of the Independent Police Auditor

Driven by the Bay Area community's need for restored public confidence and trust in the BART Police Department, and by the call for systemic change to address that need, BART's Office of the Independent Police Auditor (OIPA) was created.

## What is OIPA?

OIPA was formed by Assembly Bill 1586, signed by the Governor of California in 2010 to provide effective, independent oversight of the BART Police Department (BPD) by ensuring that internal police accountability systems function properly, that behavioral, procedural and policy deficiencies are identified and appropriately addressed, and that complaints are investigated through an objective and fair process. The operation of OIPA and the scope of its duties are defined by the BART Citizen Oversight Model (Model). The Model also defines the role of the 11-member BART Police Citizen Review Board.

## Mission & Duties

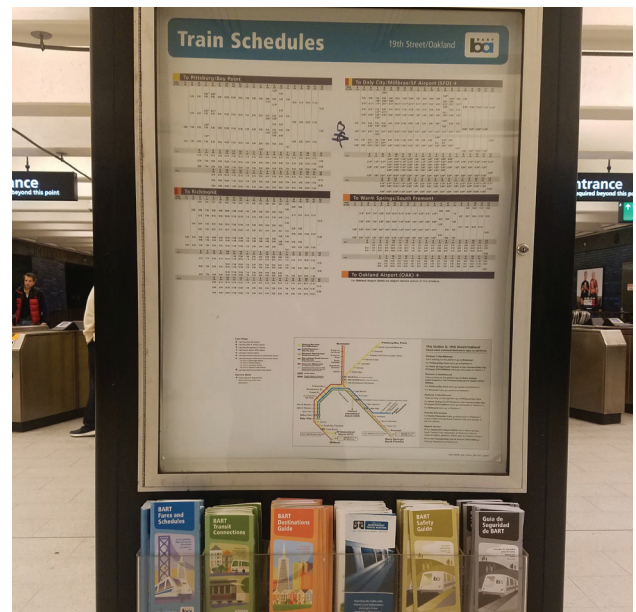
### Mission Statement

It is OIPA's mission to provide all members of the public with effective and independent oversight of the BART Police Department by conducting unbiased and thorough independent investigations and reviews of police department investigations, making policy recommendations to improve the performance of the police department, and maintaining continual communication with members of the public in the BART service area.

### Duties

As defined by the BART Citizen Oversight Model adopted by the BART Board of Directors and significantly revised in June 2018, OIPA is charged with a number of different specific duties and responsibilities. Among them are the following:

- Accept complaints of misconduct against BART Police Officers
- Independently investigate complaints or ensure that complaints are timely, thoroughly, objectively, and fairly investigated by BPD
- Review Internal Affairs Bureau investigations conducted by BPD, including those cases where the complainant has sought to appeal the findings issued by BPD Internal Affairs Bureau

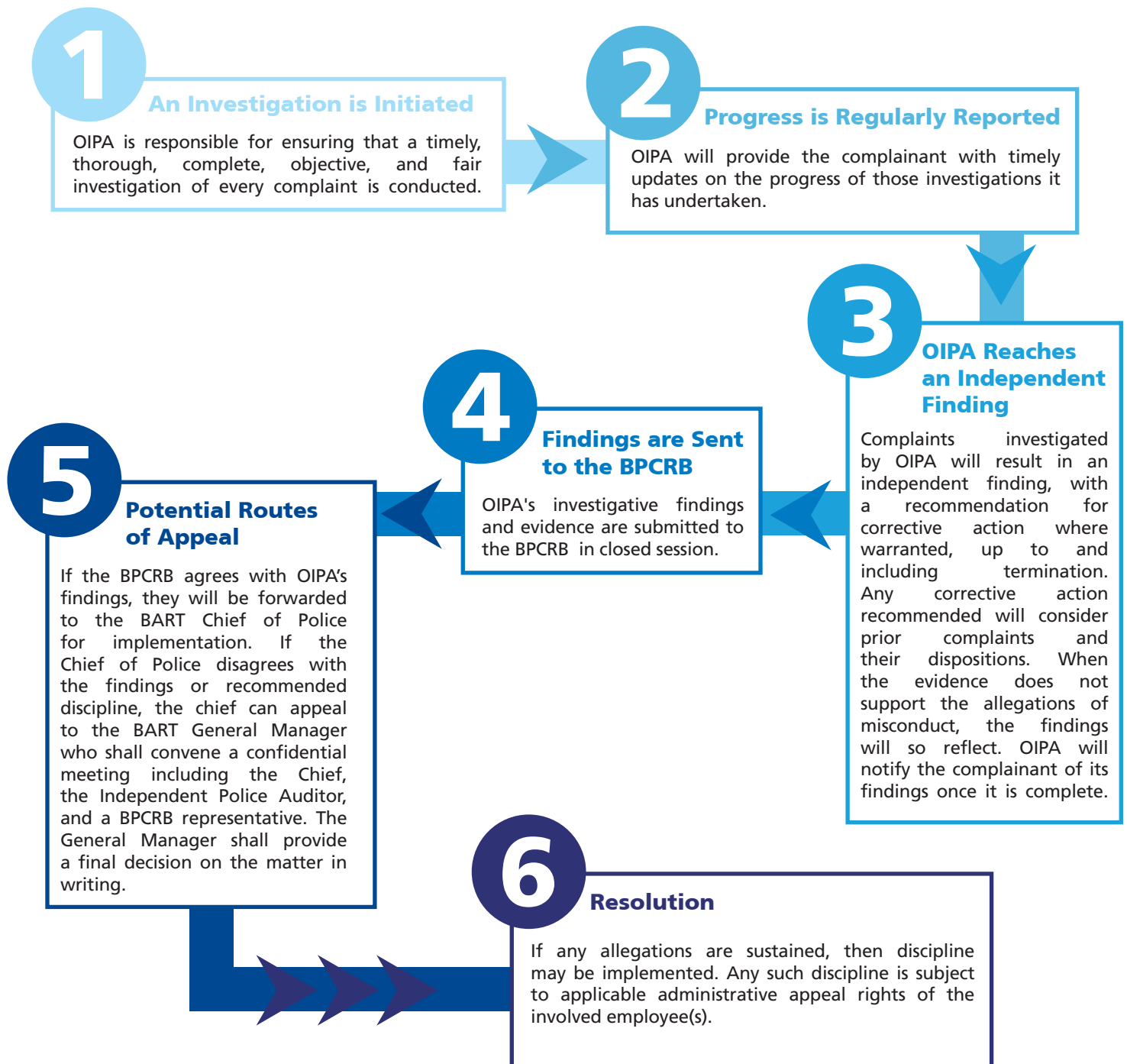


Above: 19th Street BART Station Brochure Kiosk

- Develop an alternative dispute resolution process for resolving some complaints, and provide that option to complainants where appropriate
- Respond to the scene of officer-involved shooting incidents and monitor the ensuing BPD investigation
- Independently investigate any officer-involved shooting incidents and/or monitor the ensuing BPD investigation
- Develop recommendations to improve BPD policies and craft new policy proposals where appropriate
- Maintain a regular program of community outreach
- Prepare annual reports for the public and the BART Board of Directors, and report regularly to the BPCRB at their monthly meeting

*Every individual regardless of religion, race, immigration or documentation status, or national origin should feel safe to seek and obtain assistance from OIPA. A complaint can be filed if you are not a citizen and regardless of your immigration status.*

# Complaint Process



# Executive Summary

## Community Outreach

The Office of the Independent Police Auditor maintained its ongoing commitment and responsibility to conduct community outreach, including a focus on connecting with young people and underrepresented groups in the region. Our goal during outreach events and meetings is to listen, learn, and engage in meaningful discussion about policing in various communities with different perspectives, experiences, and histories. OIPA staff also use these meetings to inform attendees about the various functions and responsibilities of both OIPA and the BPCRB, and to answer questions about the growing field of civilian oversight of law enforcement.

## Use of Force Update

OIPA continues to monitor and review the impact of 2017 revisions to the BPD Use of Force policy, including a shift in reporting requirements related to the establishment of a tiered system of identification and review of each incident.

## OIR Report

This year's report includes a description of revised policies, practices, and procedures related to the implementation of 50 recommendations for improvement to the oversight system that were approved by the BART Board of Directors in 2018.

## Body-Worn Cameras

Because of the importance of body-worn camera video to OIPA's work, we continue to work toward increased activation rates prior to law enforcement contacts. OIPA is also closely following the department's response to hardware issues that are causing cameras to detach from officers' uniforms during some contacts involving use of force.

## Policy

Related to the value of capturing every law enforcement contact, regardless of whether the contact is the subject of a complaint or an investigation, OIPA is working on a policy revision to eliminate ambiguities in the language of the existing policy.

OIPA also continues to monitor the impact of its recommendations for changes to the BPD policy regarding aggressive panhandling contacts and the maintenance of Constitutional policing practices.

OIPA is working with BPD to create consistent reporting standards for the Watch Commanders who are responsible for summarizing activity during each shift.

## OIPA Staff Training

As in past years, OIPA remained committed to studying and integrating the latest scholarship and best practices with regard to policing and oversight of law enforcement. Some of the training activities included:

- Accountability & Transparency in Law Enforcement
- Implicit Bias Workshop
- Use of Force Investigations

## BPCRB Training

This year's Oversight Model revision signals the end of the era in which OIPA facilitated and arranged training sessions for the BPCRB. A list of sessions provided during this reporting period is included elsewhere herein.



## By the Numbers

In FY2018, there were a total of 115 new or re-opened cases initiated by OIPA or BPD's Internal Affairs Bureau. OIPA's share of all complaints received as compared with BPD Internal Affairs Bureau increased from 17% to 19% for this reporting period.

The three most common categories of alleged misconduct were (in order):

1. Conducting Unbecoming an Officer (25%),
2. Policy/Procedure (24%), and
3. Unnecessary or Excessive Use of Force (15%).

A total of 100 cases were closed by BPD's Internal Affairs Bureau in FY2018. Sixty-seven of those cases were formal complaints and a total of 27 individual allegations were sustained.

The three most common sustained allegations were (in order):

1. Conduct Unbecoming an Officer (41%),
2. Performance of Duty (33%), and
3. Policy/Procedure (19%).

Note that no allegations were sustained for Unnecessary/Excessive Force or Racial Profiling/Bias-based Policing.

The three most common types of discipline issued by BPD's Internal Affairs Bureau included (in order):

1. Informal Counseling (9),
2. Written Reprimand (4), and
3. Letter of Discussion (2).

There were no terminations, suspensions or demotions issued.

OIPA independently investigated six complaints and conducted one case review filed by a complainant as an appeal to BPD's Internal Affairs Bureau investigative findings. Two of the seven complaints investigated or reviewed by OIPA resulted in at least one sustained allegation. OIPA's recommendations for discipline in those cases included Letters of Discussion for the officers.

# Areas of Focus



*Left: Russell Bloom presenting to Lao Family Community Development, Oakland, CA (June 2018)*

*Right: Barbershop Forum, Antioch, CA (October 2017)*



## Community Outreach

The Citizen Oversight Model requires that OIPA maintain a regular program of community outreach and communication for the purpose of listening to and communicating with members of the public and educating the public about the services provided by OIPA, and the functions of the BPCRB. The importance of outreach is regularly illustrated in a number of ways. There are occasions when BPD activity may be the subject of significant community concern, as was the case this year in connection with a January officer-involved shooting in West Oakland. This and other BPD activities were discussed widely on social media and in traditional news outlets including television news. In some instances, an incident or conduct giving rise to the community's concerns may not result in a complaint of misconduct to OIPA, in part due to a lack of awareness of the services provided by our agency. OIPA seeks to inform community members about our mandate, authority, and processes by meeting and talking with groups throughout the Bay Area, particularly students and young people who may be able to help us expand awareness among their peers, organizations, and families. In recent years, OIPA became aware that key BART employees, including station agents, had limited awareness of our existence and role within the BART structure. Because station agents are frequently the primary contact for BART patrons who have any type of complaint about the system, including policing

therein, OIPA maintained its program of education and outreach to the station agents and worked with BART management to supply each station with OIPA informational brochures and complaint forms for appropriate distribution to the public. This program of internal outreach is ongoing as OIPA staff delivers presentations during the station agent recertification program. Further, BART management has recently updated its system for identifying those station agent booths that need to have the supply of brochures and forms re-stocked, which we expect will streamline the process and ensure that information is more readily and reliably available. OIPA worked with BART's Office of External Affairs to redesign and install 140 "car cards" in the trains throughout the BART system. The redesigned cards encouraged riders to contact OIPA with comments and concerns regarding policing in addition to any specific complaint of misconduct or policy violations. In this way, OIPA is better able to participate in the overall mission of improving policing by understanding more about the experiences and impressions of riders separate from individual experiences that may result in a complaint and related investigation.

## Use of Force Update

In our last report, OIPA described its participation in the lengthy BPD Use of Force policy revision. The Citizen Oversight Model requires that any proposed changes to BPD policy initiated by the Department must be submitted to the BART Police Citizen Review Board (BPCRB) for its review and comment. In early 2017, BPD sought to revise its policy governing use of force by officers, and specifically sought to create a tiered system for reporting differing levels of force employed by its officers. This revision was reportedly intended to minimize the amount of time that supervisors were required to commit to generating supervisory use of force reports, and created a more cursory "checklist" system for certain lower level force applications. When the language revision was presented to the BPCRB, that body determined that other revisions were appropriate for consideration at that time.

The BPCRB formed a subcommittee which engaged with key BPD personnel and trainers in an effort to craft new policy language. OIPA staff attended and participated in these meetings, mainly delivering relevant data and research to inform the discussion. In July 2017, after extensive public discussion and input from community advocates, attorneys, BPD officers, and union representatives, new policy language was finalized and approved by Chief Carlos Rojas. The new language included a requirement that BPD officers "must strive to use the minimal amount of force necessary" to accomplish a legitimate law enforcement purpose. The new, progressive language "builds upon the Supreme Court's broad principles in *Graham v. Connor* (1989) 490 U.S. 3868 and is more restrictive than the constitutional standard and state law." The revised policy includes a statement of commitment to safeguarding the life, dignity and liberty of all persons. The Department also reaffirmed its commitment at that time to improve its practices by using rapport-building communication, crisis intervention, and de-escalation tactics before resorting to force whenever feasible.

Specific requirements regarding de-escalation include a stated commitment to potentially reducing or eliminating the need to use force and to the prevention of injuries to subjects, officers, and the public. The new policy requires that officers continually assess the dynamics of a situation and make appropriate adjustments as circumstances shift. The policy suggests specific tactics, including slowing down the pace of an incident, waiting out subjects, creating distance and requesting additional resources such as mental health care providers to help resolve

the incident. Notably, the policy now includes language which suggests a number of important considerations when assessing non-compliance. These include medical condition, mental, physical or hearing impairment, language barrier, drug interaction, or emotional crisis. It is noted within the policy that "understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety." In an era of increased awareness of the importance of public trust, and a deeper understanding of the factors that contribute to the diminution of that trust, the new BPD Use of Force Policy acknowledges and "recognizes that transparency and accountability in the use of force is essential to preserving the trust of the community and to maintaining professional standards." To that end the policy also requires rigorous reporting and review of all instances of the use of force. The revised policy further states that at least annually, the BPD Operations Bureau Deputy Chief should prepare an analysis report on use of force incidents to include the identification of any trends, any training needs recommendations, any equipment needs recommendations, and any policy revision recommendations. That report should be submitted to the Chief of Police, the OIPA, and the BPCRB. The first of these reports was delivered to the BPCRB in March 2018 with an addendum that was delivered in June including a detailed demographic breakdown. The addendum revealed that 66% of all uses of force by BPD officers during the 2017 calendar year were applied to African-American males. As of this writing, BPD, OIPA, and the BPCRB are anticipating a deeper analysis of disparate impact in a report from the University of California Los Angeles Center for Policing Equity.

The collaborative process of revising and implementing the BPD Use of Force Policy is illustrative of the value of involving civilian oversight professionals and volunteers in the process of crafting Department policy. OIPA is committed to remaining attuned to the effect of the policy on individual contacts and has monitored the impact of the implementation and revised training in addition to applying the new standard in our analysis of complaints alleging excessive or unnecessary use of force. BPD is also working toward refining a system by which de-escalation efforts can be tracked and quantified, and OIPA expects to provide input in connection with the design, implementation, and accuracy of that program.

During the public discussions that were held in advance of the approval and implementation of the revised policy, certain specific concerns were presented including a perception that

## Use of Force Update (continued)

BPD officers would become tentative in their efforts to control subjects, and that such tentativeness would reduce officers' ability to protect themselves from injury. BPD data show that contacts involving use of force by officers dropped from 329 between July 2016 and June 2017 to 214 from July 2017 through June 2018, and that injuries to officers related to these incidents dropped from 52 to 41. However, while the overall number of officer injuries was reduced after the implementation of the revised policy, the percentage of officer injuries in relation to use of force incidents increased from 15.8% to 19%.

The Department was significantly understaffed in July of 2017, and there were concerns expressed that recruitment and retention of sworn officers would be negatively impacted by the policy revision. BPD reports that the number of officer vacancies has been reduced from a high of 41 to 25, reflecting the Department's best recruitment period in four years. It is reassuring that some of the predicted negative effects of the policy revision have not come to pass and that BPD is successfully eliminating vacancies and engaging in fewer uses of force overall.

## The OIR Group Report

OIPA previously reported on the completion of an extensive independent review of the BART oversight system that was conducted by the OIR Group and which was completed and delivered to the Board of Directors in July 2017. The evaluation process was undertaken in compliance with a provision of the BART Citizen Oversight Model and was intended to determine whether the need existed to adjust the system in order to improve its continued performance. After delivery of the report to the Board of Directors, OIPA, in consultation with Chief Rojas provided the Board of Directors with an assessment of the anticipated resources necessary to implement each of the 54 recommendations included in the final report. Over the course of 12 months the Board of Directors collected impressions and input from Chief Rojas, BART General Manager Grace Crunican, the BART Police Officers Association, the BART Police Managers Association, and the BART Police Citizen Review Board before ultimately approving adoption and implementation of 50 of the 54 recommendations. The Citizen Oversight Model was revised by BART's Office of the General Counsel to reflect the adoption of those recommendations, and the document was finalized and ratified as the fiscal year closed. OIPA is now in the process of making appropriate adjustments to practices and procedures and has worked with BPD to draft policy and practice revisions reflecting the adoption of certain recommendations.

The revised Model is appended to this report, but significant changes include the following:

OIPA may now accept complaints from any person, where previously complainants were required to be victims of or witnesses to alleged officer misconduct. As an illustration of the limitations of the prior system: under the original Model, the spouse of a person who died in police custody was deemed ineligible to file a complaint of excessive force having not been present at the scene of the arrest. OIPA is now authorized to move forward with an independent investigation regardless of the complainant's presence at the scene of the alleged misconduct.

OIPA may now independently investigate complaints of any type of alleged officer misconduct. OIPA was formerly limited to investigating complaints of unnecessary or excessive force, racial profiling, sexual orientation bias, sexual harassment, deadly force, or suspicious and wrongful deaths. OIPA is no longer prevented from providing an independent review of incidents that may implicate other serious issues such as truthfulness, improper arrest, unreasonable search, or failures to report misconduct.

One practical effect of the adopted recommendations allows the Chief of Police to eliminate parallel investigative processes where OIPA and the Internal Affairs Bureau may be investigating the same complaint. The Chief of Police may now defer an investigation to OIPA, eliminating the dual processes and removing the possibility of reaching two different findings on different completion dates. OIPA is pleased that BPD officer and manager union leadership supported this shift, signifying confidence in the quality and objectivity of OIPA's investigative process and the expertise of our staff.

While OIPA has always been authorized to review any Internal Affairs investigations and to require follow-up investigation, the revised Model provides that OIPA may now present monitored IA investigations to the BPCRB in closed session for its review, comment and input. This adjustment is valuable in its provision of another independent analysis of the investigative process and findings should BPD disagree with OIPA's assessment and/or attempt to reject OIPA's request for additional investigation.

Historically, should the Chief of Police disagree with OIPA's findings and recommendations after the BPCRB has concurred, he or she had the option of appealing to the BART General Manager for a final determination. The revised Model requires the Chief to put forward the reasons for the appeal in writing,





## BART BOARD OF DIRECTORS APPROVES 50 RECOMMENDATIONS FOR POLICE OVERSIGHT IMPROVEMENT

about the delineated roles of each entity. Some of the confusion was attributed to the existence of the staff support function described above, and it was suggested that responsibility for administrative support be removed from OIPA. For this reason, staff support functions are now being shifted to the BART District Secretary's Office and will include the assignment of a specific employee who will manage and perform all support tasks including management of the process for solicitation of applications for appointments to the BPCRB as well as any financial matters related to the BPCRB's performance of its duties.

and for OIPA and a BPCRB representative to be present at a meeting with the General Manager prior to the issuance of any decision on the appeal. Such appeals were previously reviewed behind closed doors without any opportunity for discussion of the merits or analysis of the evidence. Additionally, the Model now requires that the General Manager must set out his or her findings in writing, which was not previously required.

While OIPA previously had access to BPD's internal use of force review documentation, the revised Model provides OIPA with the express authority and responsibility to review each use of force by BPD officers and to publicly report on the results of that review.

The approved recommendations also include a number of suggestions for improvements to the internal practices and procedures of both OIPA and the BPCRB. For example, OIPA has increased the level of detail included in closeout letters to complainants such that there is more information about the quantity and type of evidence reviewed while details protected by state law and other confidentiality

requirements are not revealed. In this way a complainant may have more confidence in the quality of the investigation and may be better positioned to accept that the findings are supported by all the available evidence.

With regard to disciplinary proceedings, the BPCRB previously reported only whether they agreed with OIPA's findings and recommendations by a majority vote. That body must now publicize each member's vote, which allows the public and BPD officers to have further insight into the disciplinary process and outcomes. BPCRB members are now also encouraged to provide a public minority opinion explaining the rationale for dissent from the majority.

Historically, OIPA was required to provide staff support for the BPCRB, including clerical and ministerial duties, preparation and maintenance of meeting minutes, meeting setup, expense reimbursement, distribution of stipends, and more. The OIR report recognized the value in having two entities with complementary oversight roles that are independent of each other and also noted that there existed some confusion



Above: AXON Body 2 Camera

### Detaching Body Camera

As OIPA began devising and implementing a process by which each use of force could be reviewed, it became apparent that the body cameras issued to BPD officers tended to detach from officers' uniforms during many force applications, no matter how minor. The cameras are designed to attach to the center of an officer's uniform shirt with a magnet that sandwiches the material of the shirt. The magnet was not strong enough to consistently remain attached during physical contact. OIPA discovered that while some officers were aware of the relatively frequent detachments, it was not systematically conveyed to supervisory staff and was not consistently recorded by supervisors during their review of uses of force. Further, because a single supervisor does not have access to the use of force reports entered by other supervisors, and because other reviewers in the supervisory chain rotated, there were limited opportunities for reviewers other than OIPA staff to recognize the frequency of the detachments. OIPA brought the concerns to the attention of appropriate BPD personnel, and viable solutions are currently being considered.

### Body Camera Activation Policy

BPD Policy requires that officers activate their body camera prior to engaging in a law enforcement contact. OIPA's expanded use of force review process revealed that there were occasions when the cameras were activated after the initiation of a contact for which the explanation provided was that the contact was "consensual" and rapidly evolved to include a use of force. OIPA is currently working to craft new policy language that clarifies the requirements for activation to include all contacts that typically escalate to enforcement activity and/or uses of force. Within the context of a transit system, such contacts would include clearing trains at the end of the line or clearing stations prior to nightly closures. We anticipate the delivery of a draft policy to the BPCRB during the winter of 2018 for its review and comment, and OIPA is confident that BPD will move forward with an understanding that the absence of video connected with a use of force or any law enforcement contact is an issue requiring a remedy.

### BPD Watch Commander Reporting Requirements

In an effort to maintain transparency, BPD provides a subscription-based service to the public by which daily activity is reported to subscribers including media outlets via email. OIPA recognized that there were certain reporting inconsistencies with regard to the types of events that were included in the emails and the level of detail regarding each reported event. OIPA is currently working with BPD to revise the applicable policy such that the BPD Watch Commanders responsible for generating the public reports will be required to adhere to specific criteria when determining what to report and what to include. For example, in the absence of such guidance one Watch Commander may only include an event in the log if it resulted in an arrest, while another Watch Commander may include a significant crime where the suspect remained out of custody. OIPA believes that by creating specific criteria, BPD and the BART District may better insulate themselves from assertions that certain events or details are being intentionally withheld, when an inconsistency may actually be the inadvertent and unintentional result of a lack of defined reporting criteria.

### OIPA Review of Each Use of Force

Though still in the early stages, OIPA is enacting a process by which each use of force is reviewed and tracked. OIPA has had access to the BPD internal use of force review process historically, but limited resources resulted in an incapacity to thoroughly review all incidents. We have now developed an internal system by which a number of different aspects are examined including:

- The use of force, itself



- The application of the appropriate standard
- De-escalation efforts
- The accuracy of officers' narratives regarding the use of force
- The timeliness of body camera activations
- The quality of the supervisor-level initial review and associated supervisory report
- The ultimate determination regarding justification for the use of force and any mitigation for failed body camera activations
- Whether appropriate discipline is imposed for any policy violations, including in relation to body camera activation failures
- The effectiveness of the internal BPD review process
- The proper and consistent entry of data related to each use of force

As OIPA moves forward with implementation of the many improvements to the system, we will be able to assess the impact, success and practicality of each such that the next evaluation, scheduled every 3 years, will be able to address whether further adjustments or revisions may be appropriate. With the adoption and implementation of the recommended improvements, OIPA is confident that the BART civilian oversight system is among the most robust in the nation, and that our agency and the volunteers on the BPCRB are better situated to contribute to the improvement of policing of the BART District than ever before.

## Aggressive Panhandling Policy Update

On February 22, 2017 OIPA submitted a draft recommendation to the BART Police Department regarding BPD Policy #453 - Aggressive Panhandling. This recommendation for revision was spurred by examination of a specific complaint of officer misconduct and subsequent OIPA review of enforcement contacts related to California Penal Code §647(c) which prohibits aggressive panhandling. The final OIPA recommendation was developed with significant input from Bay Area District Attorneys, and review and input from BPD command staff, the BART Police Citizen Review Board (BPCRB), the BART Police Officers Association, the BART Police Managers' Association, and a number of advocates and scholars including the San Francisco-based Coalition on Homelessness.

Regarding the single excessive force complaint that spurred the review, OIPA discovered that the initial contact was related to the perception by the officer that the subject was panhandling in violation of state law. Closer examination of the underlying panhandling activity revealed that there

was no violation of the law, and that the existing BPD policy regarding enforcement of the law which prohibits aggressive panhandling did not sufficiently differentiate between illegal aggressive conduct and communication protected by the First Amendment to the Constitution. A person may solicit donations but may not "accost" people in an effort to solicit. Our deeper review of contacts initiated in connection with panhandling activity exposed a gap in some officers' understanding, much of which was reasonably attributable to the inaccurate examples of aggressive panhandling included in the language of the existing policy. OIPA conferred with representatives of the District Attorneys for Contra Costa, Alameda, Santa Clara, San Francisco, and San Mateo Counties that citations issued in the absence of aggressive or "accosting" conduct were insupportable under state law.

OIPA drafted a revised policy which offered accurate examples of illegal conduct, and which required additional training for officers. The draft revision was presented to the BPCRB at its regular meeting on February 13, 2017, and that body voted unanimously to accept the proposed draft. OIPA then submitted the revised recommendations to BPD, and the Department adopted and implemented the revised policy.

Panhandling remains a source of concern and irritation for many BART riders, and BPD appropriately responds to those concerns by remaining attentive to panhandling activity and responding to calls for service regarding aggressive panhandling activity. The language of the revised policy ensures that officers recognize and appropriately differentiate between illegal conduct and the freedom of expression that is guaranteed by the US Constitution. It is important to note that a use of force by an officer that is employed to detain an individual without probable cause or reasonable suspicion of criminal activity cannot be justified. An increased awareness of the existence or absence of criminal activity has the potential to reduce the application of unjustified force, which in turn limits opportunities for physical injury to subjects, bystanders, and officers alike while also reducing potential liability to the District for the unjustified application of force in these cases.

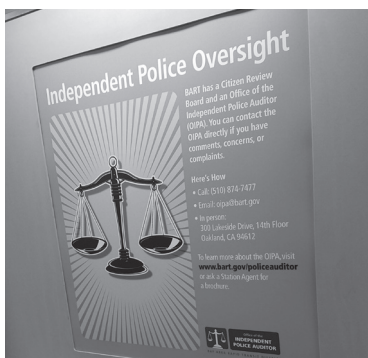
Last year, OIPA continued to review the contacts connected with aggressive panhandling activity to ensure that the distinctions between protected and illegal conduct were being recognized and that the additional training required by the new policy was administered by the Department. BPD reported that it has provided updated face-to-face training of 132 officers in the past year, and that each of its sworn officers reviewed and acknowledged the revisions using a required

## Aggressive Panhandling Update (continued)

online process. Use of force related to panhandling activity has decreased, and overall contacts for panhandling have decreased as well. Overall, the number of BPD calls for service and responses to on-viewed panhandling activity decreased by nearly 15% (from 1571 in FY2017 to 1337 in FY2018). While BPD and the District remain attentive to customer concerns regarding panhandling, the revised policy has not limited officers' ability to respond appropriately to any activity that includes "accosting," and officers may continue to address any conduct that reasonably creates feelings of fear or intimidation.

## Collaboration

While civilian oversight of law enforcement remains a relatively small community when compared with the number of national and international law enforcement agencies, it is a rapidly growing field. More and more communities and municipalities have come to recognize the value of independent review and oversight, and those jurisdictions with existing oversight systems continue to refine and improve their structures and systems. In an effort to support the growth and improvement of oversight, OIPA has gladly engaged in discussions with existing agencies, including the Austin (TX) Office of the Police Monitor, the San José (CA) Independent Police Auditor, the City of Berkeley (CA) Police Review Commission, and the Sonoma County (CA) Independent Office of Law Enforcement Review and Oversight as they consider revisions to their systems. OIPA has engaged with community groups and advocates in jurisdictions seeking to establish civilian review of law enforcement for the first time. And OIPA has been consulted by researchers working to make recommendations about staffing and deployment of officers within the BART District. OIPA takes great pride in the work we do, and we are extremely encouraged that the BART Board of Directors expressed confidence in our ability to implement important revisions and improvements to our system. As always, OIPA remains committed to working collaboratively toward improving policing within the BART District and the 4 (soon to be 5) counties through which it runs by applying a thorough, fair, and objective approach to all the tasks for which we are responsible. We look forward to maintaining a healthy working relationship with all stakeholders including complainants, community members, advocates, the Chief of Police, BPD officers and employees, and the dedicated volunteers that make up the BPCRB.



Left: OIPA Car Card

Center: BART to Antioch Opening Ceremony (May 2018)

Right: MacArthur BART Station Platform (Oakland)

# OIPA STAFF

## Training

As in past years, OIPA remained committed to studying and integrating the latest scholarship and best practices with regard to policing and oversight of law enforcement. Some of the training activities included:

- NACOLE 23rd Annual Training Conference - Civilian Oversight in a Changing Landscape
- Accountability & Transparency in Law Enforcement
- Role of Journalism in Police Accountability
- Implicit Bias Workshop
- Mindful Policing
- Updates on New Case Law Regarding Law Enforcement
- Diversity Awareness
- Use of Force Investigations
- 2018 Axon Accelerate Annual Conference
- BPD Beat Review & Public Safety Outlook

## Green Policy

OIPA is committed to making a positive impact on the environment and has developed and implemented effective practices and procedures.

Over the past fiscal year, OIPA has taken the following actions to achieve its green vision by reducing its carbon footprint, reducing the amount of waste it produces, and increasing its green knowledge.

Some of the departmental changes OIPA has instituted include:

- Telecommuting
- Utilizing webinars for training
- Using local vendors that use recyclable products & resources
- Printing department stationary, brochures & forms on recyclable paper
- Using applications to facilitate paperless meetings

## Diversity Employee Resource Group

The District is committed to ensuring diversity and supporting the Diversity Employee Resource Group (ERG) in its efforts to promote diversity. BART's Diversity Initiative (est. 2015) supports and encourages diversity and its value to the organization. Through outreach, education, and training, the Diversity Initiative promotes the benefits of working productively in a culturally diverse environment.

The Diversity Initiative:

1. Promotes workforce diversity and organizational effectiveness.
2. Enhances the diversity, cultural competence skills, and performance of our current workforce.
3. Expands recruitment resources by assessing and monitoring inclusive hiring practices and employment opportunities.

In January 2018, OIPA's Senior Administrative Analyst, Sarah Celso joined ERG and has helped to plan and organize the Dr. Martin Luther King, Jr. Celebration, Asian Pacific Heritage Celebration, Women's History and LGBTQ+ Pride Celebration. Being a part of ERG has proven to be educational and collaborative. Working together with employees from a variety of cultures and different departments within BART, helps OIPA to promote the Diversity Initiative and expands its understanding of the different people and cultures that make up BART.



Above: (From left to right) Malcom Penton/Transportation, Terrance Massey/Office of Civil Rights (OCR), Yvonne Rusting/BPD, Sharon Moore/OCR, Pejman Noroozi/Transportation, Sarah Celso/OIPA, Kay Tate/OCR, and Jennella Sambour-Wallace/OCR at the ERG LGBTQ+ Event (June 2018)



# BART Police Citizen Review Board



Above: BART Police Citizen Review Board Meeting (August 2017)

## Commitment to Effective Training for BPCRB

OIPA facilitated training for the BPCRB. In the fiscal year 2018, the following training topics were presented to them at the BPCRB's monthly meetings:

- Mindful Policing
- BART Citizen Oversight Model Basics
- Investigation Processes of BPD Internal Affairs Bureau & OIPA
- BPD Beat Review & Public Safety Outlook

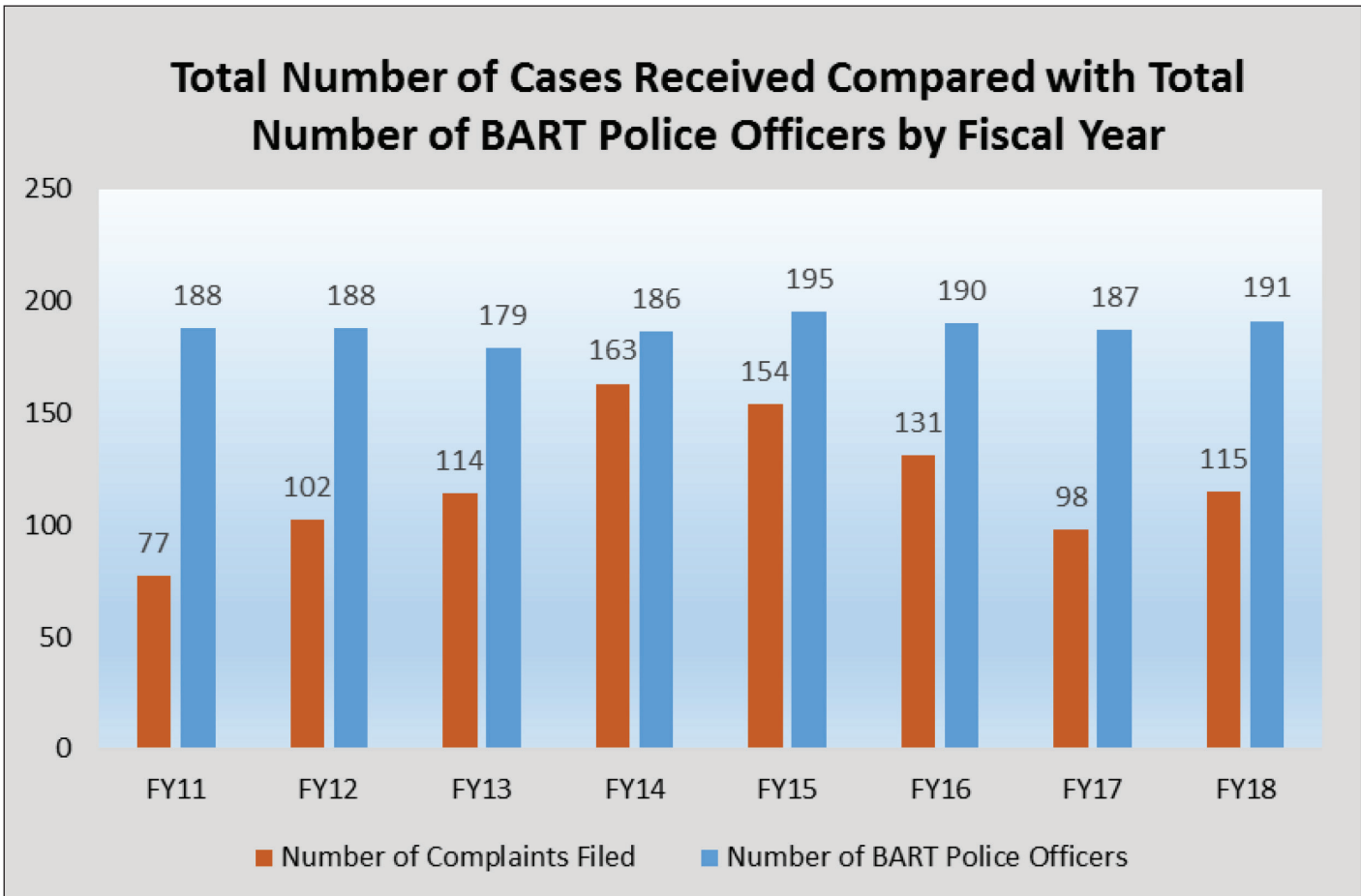


Above: BART Police Citizen Review Board (From left to right) Richard Knowles/BART Police Officers Association & BART Police Managers Association, Erin Armstrong/Public-At-Large, Christina Gomez/BART District 7, Lester Mensinger/BART District 6, George Perezvelez/BART District 9, Darren White/BART District 4, and Kenneth Loo/BART District 1 (Not pictured: Pete Longmire/BART District 2, William White/BART District 3, and David Rizk/BART District 8)

Since the adoption and implementation of the Citizen Oversight Model in 2011, OIPA's duties included the provision and facilitation of training for the BART Police Citizen Review Board Meeting (BPCRB). It became apparent in early years that it was challenging to arrange training sessions for the BPCRB volunteers outside of the time allotted for their regularly scheduled monthly meetings. Each BPCRB member had differing demands on their schedules outside of the monthly time commitment for meetings and separate from the hours spent preparing for these meetings, reading agenda materials, and reviewing OIPA investigative reports. In 2015, OIPA presented a plan to deliver training sessions to the BPCRB at every other monthly meeting over a two-year period. A schedule was generated and the BPCRB voted to approve the training plan in January 2016. Since that time, OIPA has endeavored to produce presenters on a number of topics related to policing and to the effective administrative of BPCRB's duties and interests. With the

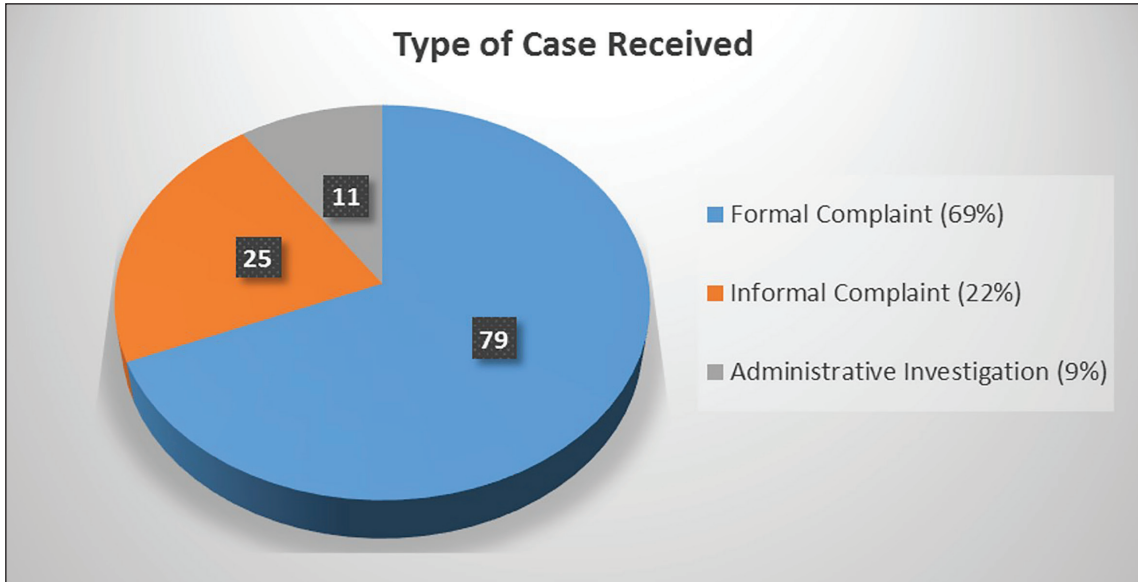
shifting of staff support from OIPA to the BART District Secretary's Office which became effective this year, OIPA will no longer be responsible for the provision of training sessions, but we are aware that the plan for bimonthly delivery of relevant presentations remains in place as originally designed by OIPA and approved by the BPCRB. A list of the trainings provided by OIPA is included in this report and the original plan as presented to the BPCRB is attached as Appendix C.

# 2018 By The Numbers

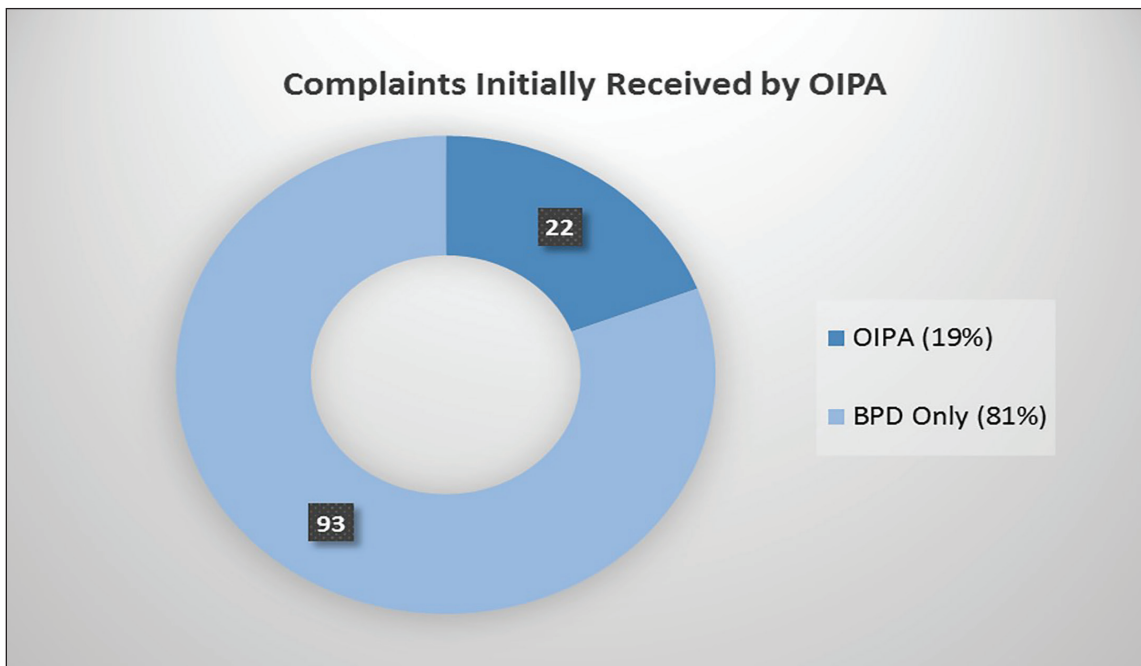


Graph 1. The total number of cases received by BPD annually includes all formal complaints, informal complaints, and administrative investigations.<sup>1</sup> The total number of sworn BPD officers annually is provided for comparison with the total number of complaints received. The total number of BPD officers is the number of positions budgeted minus the vacant positions. There was a 17% increase in the total number of complaints filed with BPD in FY2018 compared with the prior fiscal year, up from 98 to 115.

<sup>1</sup> Administrative investigations are cases internally generated and initiated by BPD after a review of an incident. Complaints by BPD officers against other BPD officers are also classified as Administrative Investigations.

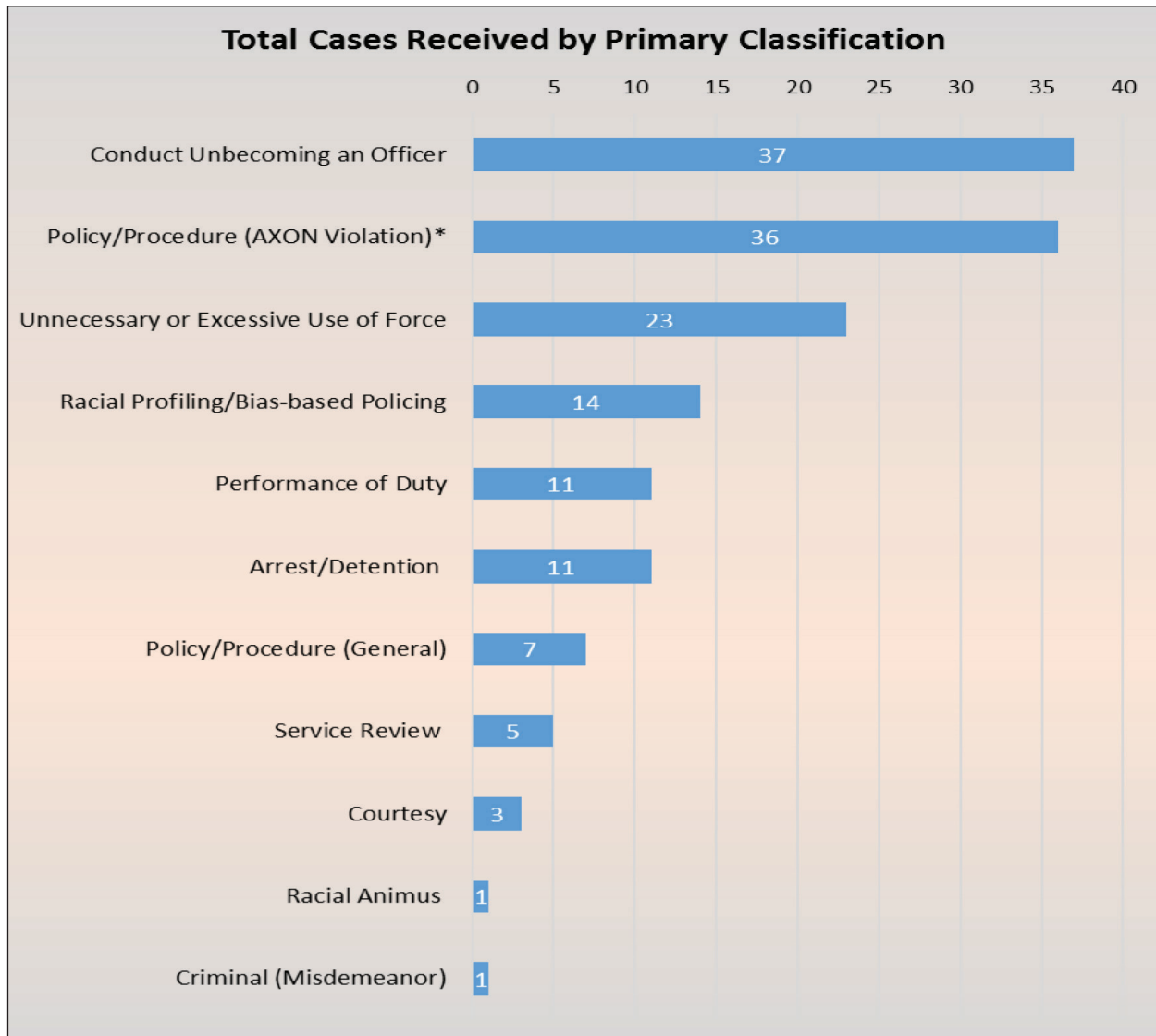


Graph 2. Complainants may choose to have their complaint addressed informally or formally by the BPD Internal Affairs Bureau. Formal complaints represent the largest percentage of cases received during this reporting period. 22% of all cases filed in FY2018 were informal complaints and were addressed through a Supervisor Referral process requiring the supervisor of the subject officer(s) to discuss with the officer(s) the nature of the complaint and document that the conversation occurred.



Graph 3. Complaints received by OIPA are a subset of the total number of cases addressed by BPD. Approximately 19% of all complaints were initially received by OIPA. OIPA received 22 total complaints in FY2018. OIPA does not investigate all the complaints received. Complaints received by OIPA that are not investigated by OIPA are referred to BPD and the investigation is monitored by OIPA.

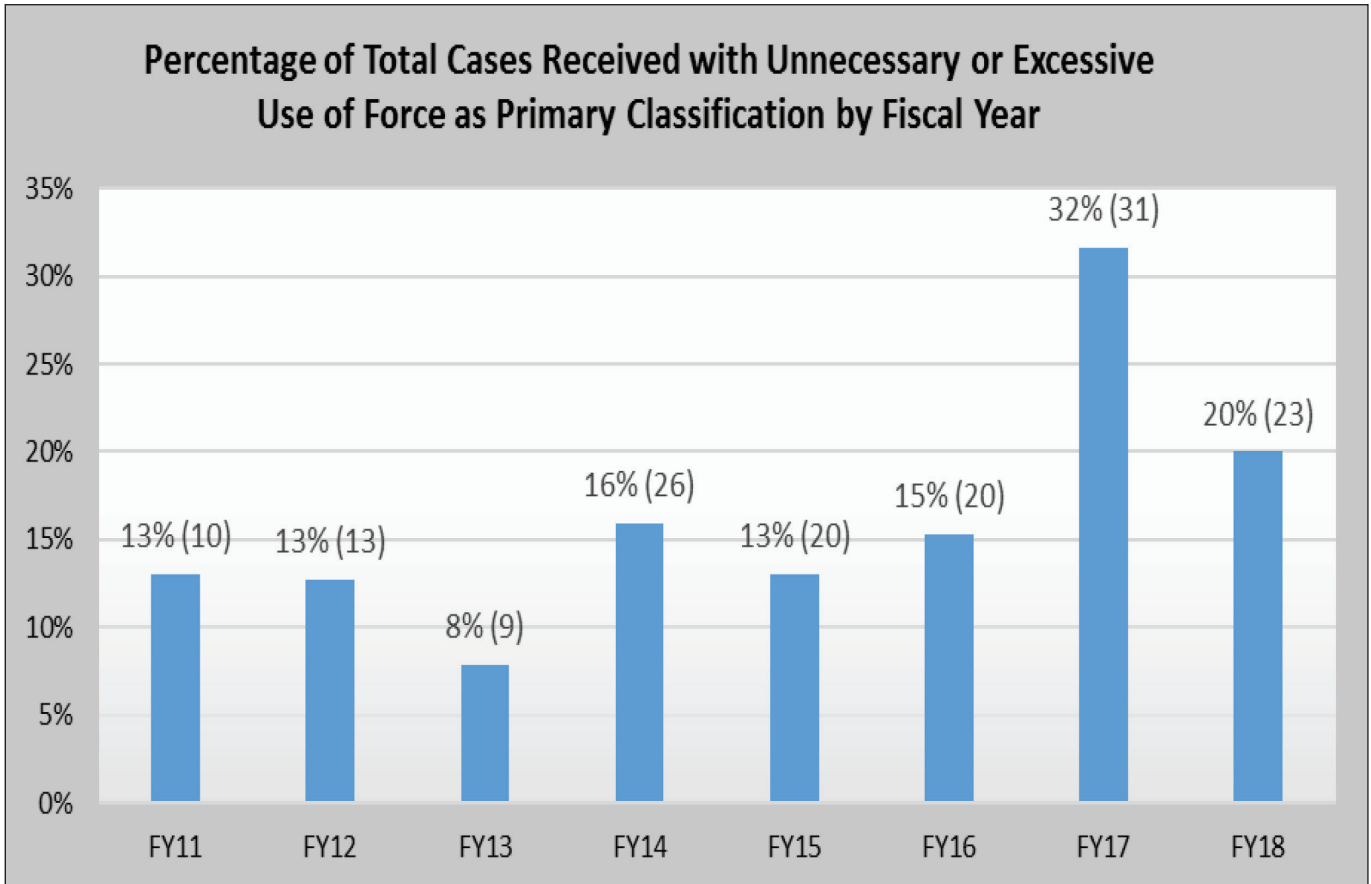




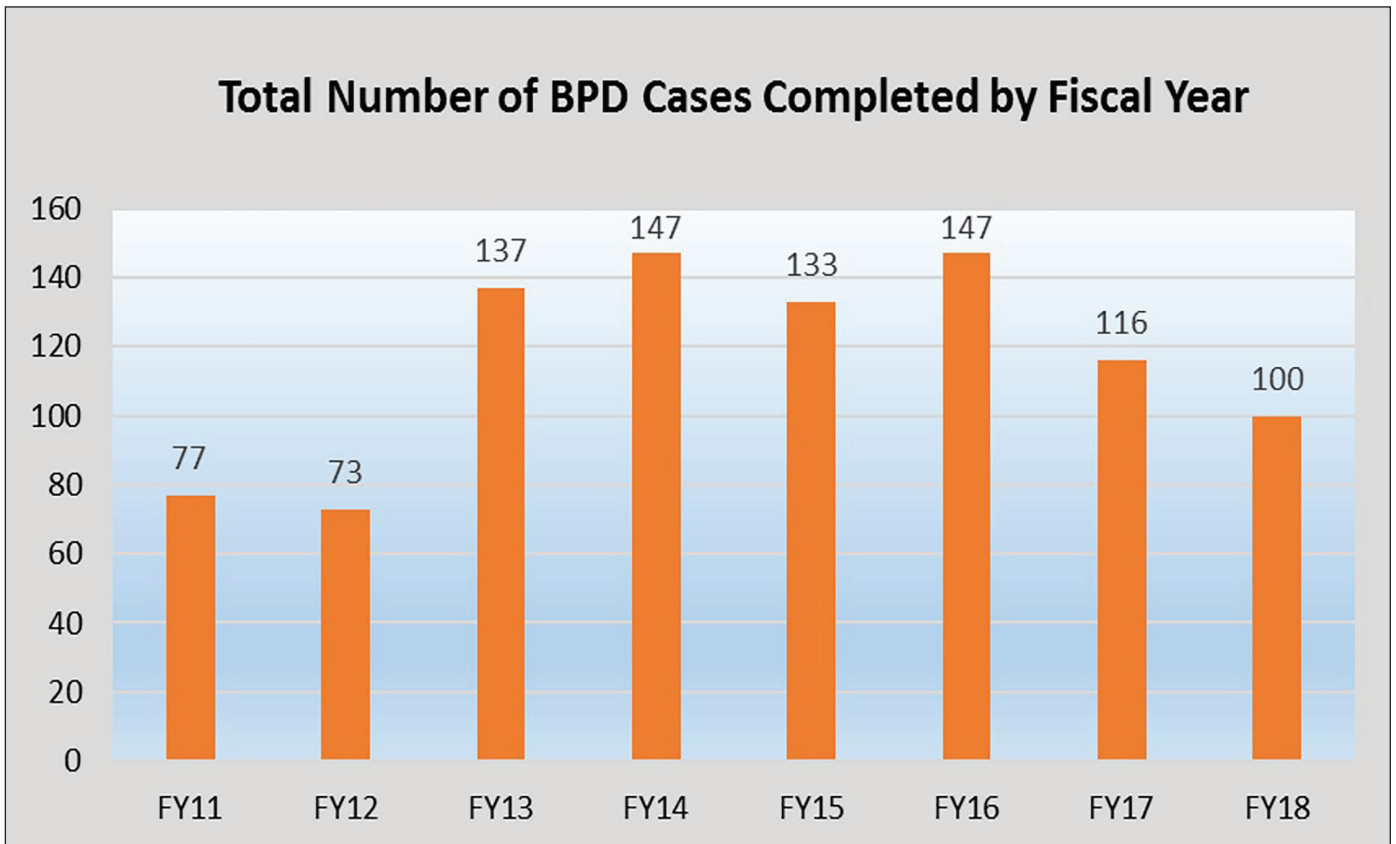
Graph 4. Complaints of misconduct are classified by specific allegations. Complaints often include multiple types of allegations but are given a primary classification by BPD for data keeping purposes. The primary classification is generally the most serious type of misconduct that has been alleged in the complaint. This graph is a breakdown of the cases alleging misconduct that were filed or reopened during the FY2018 reporting period, separated by primary classification.

The three most common primary classification allegations received were: Conduct Unbecoming an Officer, Policy/Procedure for AXON Camera Violations and Unnecessary or Excessive Use of Force. 23 cases included an allegation of Unnecessary or Excessive Use of Force. 14 cases included an allegation of Racial Profiling/Bias-Based policing during this reporting period.

\*Added to the list of Primary Classifications are Policy/Procedure violations for not properly activating officer body-worn cameras (AXON Camera). BPD's Internal Affairs Bureau reviews and documents late and failed camera activations.



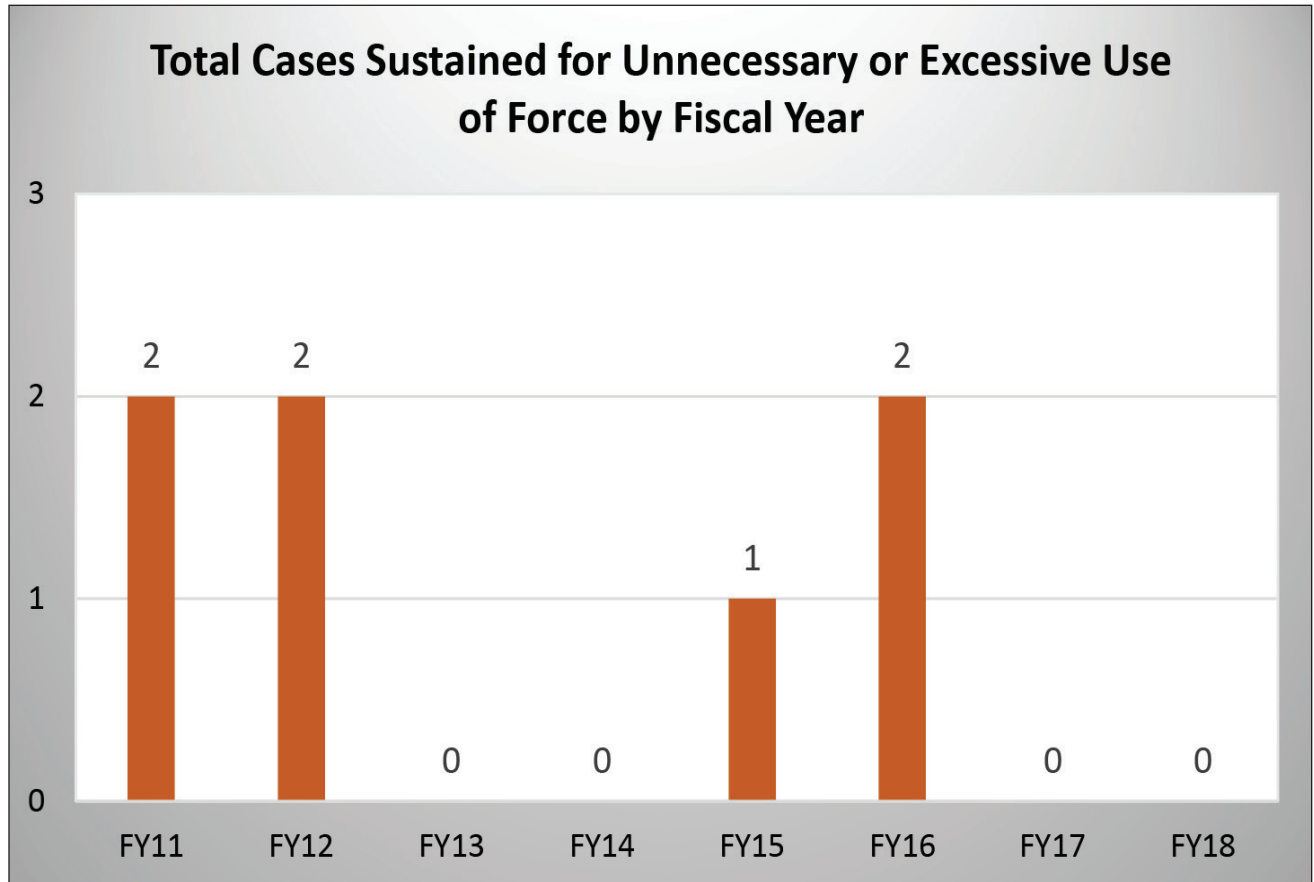
Graph 5. 20% percent or 23 cases received in FY2018 included at least one allegation of Unnecessary or Excessive Use of Force. This percentage is down from 32% from the prior fiscal year.



Graph 6. There were 100 cases closed or re-closed in FY2018. There were more cases received than completed during this reporting period, creating a caseload challenge into the next fiscal year. According to Graph 1, there were 115 cases received compared to 100 cases closed in FY2018.

<b>TOTAL SUSTAINED ALLEGATIONS FY2018</b>	
<b>ALLEGATION</b>	
Arrest or Detention	0
Conduct Unbecoming an Officer	11
Courtesy	0
Criminal	0
Unnecessary or Excessive Use of Force	0
Performance of Duty	9
Policy/Procedure	5
Property	2
Racial Profiling/Bias Based Policing	0
Racial Animus	0
Supervision	0
Untruthfulness	0
<b>TOTAL</b>	<b>27</b>

Chart 1. The two allegations with the highest number of sustained findings in FY2018 were Conduct Unbecoming an Officer and Performance of Duty.



Graph 7. In FY2018, there were no allegations of Unnecessary or Excessive Use of Force sustained. Since FY2011 a total of seven cases included at least one sustained allegation of Unnecessary or Excessive Use of Force.

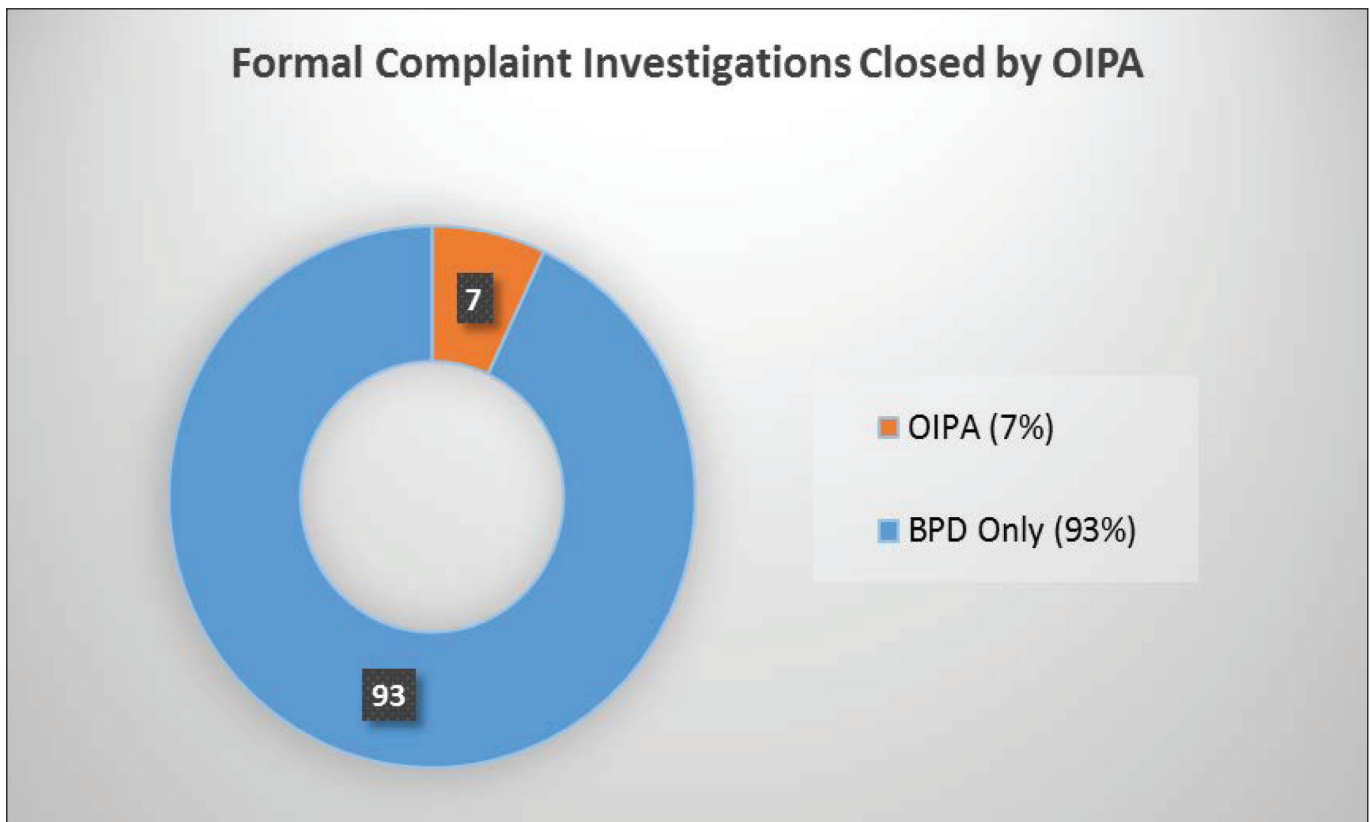
TYPES OF DISCIPLINE	NUMBER
Demotion	0
Informal Counseling	9
Letter of Discussion	2
Oral Counseling	1
Pay Step Reduction	0
Resign Prior to Discipline	0
Retire Prior to Discipline	1
Supervisor Addressed through Training	1
Suspensions	0
Suspension in Abeyance	0
Termination	0
Written Reprimand	4
<b>TOTAL</b>	<b>18</b>

Chart 2. In some cases, there were multiple officers that received discipline in a single case. In FY2018, nine officers received Informal Counseling which is not documented in the officer's personnel file but is addressed by the officer's supervisor.

Four officers received Written Reprimands, one received Oral Counseling and two received Letters of Discussion. All are forms of formal discipline.

There were no terminations, suspensions, demotions or pay reductions. Suspension in Abeyance refers to a suspension unimposed in consideration of specific terms or agreements between the officer and department intended to ensure that the behavior resulting in the suspension is discontinued, otherwise the suspension and/or additional discipline will be imposed.





Graph 8. Complaints investigated and closed by OIPA represent a percentage of the total number of cases closed. 7% of all formal complaints closed in FY2018 were also closed by OIPA. OIPA closed seven total complaints.

OIPA CASE DISPOSITIONS						
Case No.	OIPA Case No.	Nature of Complaint	Allegation Types	Findings	Discipline	Action Taken by BPD
1	17-09	Officer used excessive force while improperly detaining the complainant.	-Unnecessary or Excessive Use of Force -Arrest or Detention	-Exonerated  -Exonerated	N/A	N/A
2	17-29	Officer improperly detained the complainant based on the complainant's race. Officer was discourteous by failing to reply to the complainant's question and did not properly record the contact on their body-worn camera.	-Racial Profiling -Arrest or Detention -Policy/Procedure -Policy/Procedure -Courtesy	-Not Sustained -Unfounded -Exonerated -Sustained -Sustained	Letter of Discussion	Accepted
3	17-34	Officer improperly detained, cited and mistreated complainant based on the complainant's race.	-Racial Profiling -Arrest or Detention -Courtesy	-Unfounded -Exonerated -Exonerated	N/A	N/A
4	17-35	Officers used excessive force to handcuff and arrest a subject. Officers unnecessarily used WRAP device to prevent subject from kicking.	-Unnecessary or Excessive Use of Force (4) -Policy/Procedure (2)	-Exonerated (4)  -Exonerated (2)	N/A	N/A
5	17-44	This complainant was an appeal of BPD Internal Affairs Bureau's findings. Officers used excessive force when using the baton, tasing and handcuffing the complainant.	-Unnecessary or Excessive Use of Force (2)	-Exonerated (2)	N/A	N/A
6	17-39	Officer improperly detained and mistreated subjects based on the subjects' race.	-Racial Profiling -Arrest or Detention -Courtesy	-Unfounded -Sustained -Sustained	Letter of Discussion	Accepted
7	17-42	Office improperly detained a juvenile based on the juvenile's race. Officer also failed to provide proper identification during the detention.	-Racial Profiling -Arrest or Detention -Policy/Procedure	-Exonerated -Unfounded -Exonerated	N/A	N/A

Chart 3. OIPA independently investigated six complaints and conducted one case review filed by a complainant as an appeal to BPD Internal Affairs Bureau's Bureau investigative findings. Two of the seven complaints investigated or reviewed by OIPA resulted in at least one sustained allegation. OIPA's recommendations for discipline in those cases included Letters of Discussion for the officers. BPD agreed and imposed the OIPA recommended discipline.

# Looking Forward

The BART Police Department under the leadership of Chief Rojas has demonstrated a clear commitment to working collaboratively with OIPA in our shared effort to maintain the safety of BART ridership while protecting the rights of all those whom the Department has pledged to serve.

OIPA's unfettered access to BPD records and materials will continue to allow and facilitate efforts to identify and address any areas for improvement of the services, practices, policies, and procedures of the Department. In particular, the implementation of 50 recommendations for improved oversight of the police department that were approved by the Board of Directors will allow OIPA to expand individual review of specific misconduct allegations, expand accessibility of the oversight system to more people, enhance the real-time monitoring of Internal Affairs investigations, and review all use of force incidents as well as the effectiveness of BPD's internal use of force review processes. The delineation between OIPA and the BART Police Citizen Review Board will strengthen the complementary roles of each of these two prongs of the civilian oversight system and will allow OIPA to re-allocate resources to investigations, and review of policing practices and policies as required by the Citizen Oversight Model.

BPD's enhanced effort to recruit and hire additional personnel provides an opportune moment for the Department and the oversight system to work toward continuing to shift and advance the culture of the agency and set the expectations of officers to fit with the continuing national movement toward 21st Century Policing tenets and the preservation of life and the dignity of policed communities.

No effort or OIPA project is offered for its own sake, and we believe that our work serves the purposes of improving safety while maintaining trust and accountability. As always, OIPA is open to learning and adjusting as knowledge and best practices shift over time in this dynamic national landscape. What remains constant, however, is OIPA's commitment to conducting fair, thorough, objective and timely investigations with reasoned analysis and evidence-based conclusions. We look forward to generating more awareness of our function and role within the BART District and we are excited to engage in our work in the upcoming year.



# Appendices

## **APPENDIX A**

- Independent Review of the BART Oversight Structure - OIR Group: Executive Summary

## **APPENDIX B**

- BART Citizen Oversight Model

## **APPENDIX C**

- BART 2016 Training Proposal



## ***APPENDIX A***

Independent Review of the BART Oversight Structure - OIR Group: Executive Summary  
*For the full report, please visit [www.oirgroup.com](http://www.oirgroup.com).*

# Independent Review of the BART Police Oversight Structure

**June 2017**



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# I. Executive Summary

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**Overview of the review:** Chapter 3-01 of the BART oversight model (hereinafter the “Model”) provides as follows:

The Board of Directors, with input from the BART Police Citizen Review Board, Auditor, BART Police Associations, complainants and the public, will evaluate the BART Police citizen oversight structure after the first year of implementation to determine if the need exists to make changes and or otherwise make adjustments to the system to improve its continued performance. This evaluation shall in no way be intended to eliminate the BART Police citizen oversight structure.<sup>1</sup>

This review and report were commissioned and conducted in furtherance of BART’s compliance with this provision of the Model; that is, to facilitate the Board of Directors’ evaluation of the oversight structure.

Our review began in January 2017. We interviewed the stakeholders whose input is expressly set out in the Model, but we conducted many additional interviews with a broad range of other significant parties. We ensured that the evaluation takes account of the original impetus for the establishment of the oversight system – the January 1, 2009, shooting of Oscar Grant by a BART Police Department (BART PD) officer – as well as the subsequent systemic reviews of policies and practices. Because oversight’s effectiveness depends heavily on the community’s trust, engagement, and support, we placed a high premium on community attitudes and concerns regarding the oversight system. We measured these factors in a variety of ways.

During our review, all individuals we met were generous with their time, accessibility, and candor. Representatives of the Board of Directors, the BART Police Citizen Review Board, and the BART PD were particularly helpful in providing both relevant documents and important insights regarding the issues discussed herein. The Office of the Independent Police Auditor (OIPA) was especially helpful in facilitating the mechanics of our work, and was continually available to provide documents and important perspective. To the degree that our findings and recommendations may help enhance the current civilian oversight system, it reflects the cooperation, assistance, and acumen provided by these stakeholders.

**The oversight system:** The BART PD oversight system, established in July 2010 following a process that involved community input, consists of the OIPA and the BART Police Citizen Review Board. According to the Model, OIPA (with a current staffing level of three) is to conduct investigations of complaints alleging serious officer misconduct, make recommendations on BART PD policies and practices, audit Internal Affairs (IA) investigations, conduct close monitoring of officer-involved shootings, conduct community outreach, issue

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<sup>1</sup> The Oversight Model is available on the website of the Office of the Independent Police Auditor: <https://www.bart.gov/about/policeauditor> and attached to this report as Attachment A.

public reports on investigation outcomes and trends, and provide staffing and other resources to the BART Police Citizen Review Board.

The BART Police Citizen Review Board consists of 11 members. Each of the nine Directors selects one member, while one is appointed by the police associations, and one is “at-large.” According to the Model, the Review Board is to hold monthly public meetings, review OIPA’s investigations, review BART PD and OIPA recommendations regarding BART PD policies, make its own recommendations regarding BART PD policies, conduct community outreach, and issue reports on its activities. Its members are also authorized under the Model to participate in officer and executive hiring.

**Overview of findings:** We found that the Model devised in response to the tragic shooting of Oscar Grant created two oversight entities that have served a valuable purpose in establishing effective civilian oversight over an agency that had no such previous external influences. The fact that we offer numerous recommendations designed to strengthen and clarify the original Model should in no way diminish the work of those who have worked diligently to fulfill the overarching objectives of accountability, advancing progressive police practices, and fostering greater community trust in law enforcement. Instead, this Report seeks to fulfill a key part of the Model’s original vision: one that recognized that a constructive re-assessment of BART’s nascent oversight program should be built into the design.

From that starting point, we found several areas in which the Model could benefit from revision and reform. These include significant omissions in the Model relating to investigations and auditing authority, and the ambiguities in provisions relating to outreach, reporting, investigations, and policy recommendations.

The review features a total of fifty-three recommendations. They range in scope from broad issues of jurisdiction and structure to more particular or technical adjustments to specific provisions in the Model. Among the key categories that produced specific suggestions for reform are the following:

**Recommendations to expand authority and related findings:** We recommend expanding the oversight system’s authority in two areas:

- **Broader audit authority:** First, we recommend expanding the auditing authority to allow OIPA to review any operational aspect of BART PD – as opposed to merely reviewing IA’s operations.
- **Investigations absent a complaint:** Second, we recommend authorizing OIPA to conduct its own independent investigation or review into any use of force or potential act of misconduct without the need to await receipt of a qualifying citizen complaint.

**Other recommendations and findings:**

- **Independence** from each other’s roles and responsibilities should be reinforced through structural changes to OIPA and the BART Police Citizen Review Board for the sake of their respective and mutual effectiveness. OIPA’s obligations relating to staffing the



Review Board should be removed, the requirement of a Review Board performance evaluation of the IPA should be eliminated, and orientation and training for Review Board members should be enhanced to delineate roles and responsibilities.

- **Case Auditing** should be conducted in a more consistent and thorough manner that allows for not only pre-completion input into the IA investigation, but also the ability to influence dispositions and discipline prior to BART PD's final decision.
- A **Systemic Auditing** protocol should be developed and implemented. OIPA should analyze trends and patterns, and it should be involved in BART PD procedures relating to use-of-force reviews and early identification of officers who may require remedial interventions.
- **Investigations** should address a broader range of complaints; any person should be able to file a complaint; and written protocols should be developed regarding investigative techniques, procedures, and coordination with other BART components to ensure confidence in OIPA's investigations and to ensure that it receives all complaints coming in to BART.
- **Use of Force Review** should become an arena in which OIPA more regularly participates, including assessing individual incidents, and contributing to holistic discussions of tactics and training, and other potential elements of constructive feedback.
- **Policy, procedure, and practice recommendations** should constitute a regular and formalized element of OIPA's interactions with and influence on BART PD.
- **Public reporting** by OIPA should be enhanced, in the form of greater detail with regard to its case monitoring role of internal investigations initiated by BART PD. Similarly, OIPA should report on the increased activities proposed in this report.
- **Mediation** should continue to be studied for ways to make it more attractive to complainants and officers.
- **An oversight system evaluation** should be conducted periodically.

***APPENDIX B***

BART Citizen Oversight Model

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**  
**CITIZEN OVERSIGHT MODEL**

**Purpose:** To provide an effective independent citizen oversight system that promotes integrity and encourages systemic change and improvement in the police services that the San Francisco Bay Area Rapid Transit District (BART) provides to the public by ensuring that internal police accountability system functions properly; that behavioral, procedural, and policy deficiencies are identified and appropriately addressed, including racial profiling and allegations of racially abusive treatment; and, that complaints are investigated through an objective and fair process for all parties involved. The system will analyze allegations of misconduct; utilize data to identify trends, including disciplinary outcomes and trends; recommend corrective action and or training; maintain confidentiality; make policy recommendations; and report regularly to the BART Board of Directors and the public. The essential community involvement component of the system shall be accomplished through the inclusion of a BART Police Citizen Review Board.

**Chapter 1:**

- 1-01 OFFICE OF THE INDEPENDENT POLICE AUDITOR
- 1-02 APPOINTMENT OF THE INDEPENDENT POLICE AUDITOR
- 1-03 SCOPE
- 1-04 DUTIES AND RESPONSIBILITIES
- 1-05 RELATIONSHIP BETWEEN OIPA AND THE BART POLICE CITIZEN REVIEW BOARD
- 1-06 RELATIONSHIP BETWEEN OIPA, BPD, DISTRICT SECRETARY, AND OTHER DISTRICT DEPARTMENTS
- 1-07 COOPERATION WITH OIPA
- 1-08 INDEPENDENCE OF OIPA
- 1-09 CONFIDENTIALITY OF RECORDS AND INFORMATION
- 1-10 CODE OF ETHICS
- 1-11 TIMELINESS

**Chapter 2:**

- 2-01 BART POLICE CITIZEN REVIEW BOARD
- 2-02 APPOINTMENT OF BPCRB MEMBERS
- 2-03 BPCRB MEMBER QUALIFICATIONS AND RESTRICTIONS
- 2-04 BPCRB MEMBER MEETING ATTENDANCE
- 2-05 BPCRB VACANCIES
- 2-06 SCOPE
- 2-07 DUTIES AND RESPONSIBILITIES
- 2-08 RELATIONSHIP BETWEEN THE BPCRB AND OIPA
- 2-09 CONFIDENTIALITY OF RECORDS AND INFORMATION
- 2-10 CODE OF ETHICS

**Chapter 3:**

- 3-01 PERIODIC OVERSIGHT SYSTEM EVALUATION

## **Chapter 1-01 OFFICE OF THE INDEPENDENT POLICE AUDITOR**

Pursuant to California Public Utilities Code Section 28767.8, the Office of the Independent Police Auditor (OIPA) shall be established by the Board of Directors (Board) in keeping with the Core Principles for an Effective Police Auditor's Office.<sup>1</sup>

## **Chapter 1-02 APPOINTMENT OF THE INDEPENDENT POLICE AUDITOR**

The Independent Police Auditor (IPA) shall be appointed by and report directly to the Board.

## **Chapter 1-03 SCOPE**

OIPA shall have the authority to exercise its duties and responsibilities as outlined below, regarding any and all law enforcement and police activities or personnel operating under the authority of the BART Police Department (BPD). OIPA shall be authorized to investigate any complaints alleging police officer misconduct that implicate the policies of the BPD. OIPA shall be committed to the prompt, timely, and efficient resolution of all complaints, including, but not limited to, adherence to all applicable statutory requirements. OIPA's scope of authority shall not extend beyond the BPD.

## **Chapter 1-04 DUTIES AND RESPONSIBILITIES**

### **A. Complaints Received from Members of the Public**

Any person may file a complaint or allegation of wrongdoing with the OIPA against any BPD employee. Upon receipt of a complaint or allegation, OIPA shall:

- i) Ensure that a timely, thorough, complete, objective, and fair investigation into the complaint is conducted by OIPA or BPD.
- ii) Provide the complainant and all other officers who are the subject(s) of the investigation with timely updates on the progress of all investigations conducted by OIPA, unless the specific facts of the investigation would prohibit such notification.
- iii) Reach an independent finding as to the facts of an investigation.
- iv) The OIPA shall assess the conduct of the BPD employee considering the facts discovered through investigation, the law, the policies, and training of the BPD.

### **B. Recommendations for Corrective Action**

- i) Independent investigative findings of "Sustained" made by OIPA shall include recommendations for corrective/punitive action, up to and including termination where warranted, and shall include prior complaints and their disposition. When the evidence does not support the allegations of misconduct, the IPA shall recommend a finding of Unfounded, Exonerated, or Not Sustained.
- ii) In a confidential personnel meeting, the IPA shall submit his/her investigative findings and recommendations to the BART Police Citizen Review Board (BPCRB) for review. Should the BPCRB agree by simple majority with the findings and recommendations, the report will be submitted to the Chief of Police for appropriate action. The Chief of Police shall implement the recommended action, absent appeal.
- iii) The BPCRB shall announce each member's vote regarding its acceptance of the OIPA findings and recommendations for discipline in open session, and in cases in which a non-unanimous majority agrees with the OIPA findings and recommendations, the dissenting

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<sup>1</sup> Report of the First National Police Auditors Conference, March 26-27, 2003, Prepared by Samuel Walker

- members should generate a memorandum including the rationale for diverging from the majority opinion without divulging privileged or confidential information and evidence.
- iv) Should the Chief of Police disagree with the findings and recommendations of OIPA and the BPCRB, the Chief of Police may appeal to the General Manager (GM) within 45 calendar days of the issuance of the findings and recommendations. The Chief of Police will submit his/her appeal in a writing setting forth his/her disagreements with the findings and provide recommendations to the IPA, the BPCRB, and the GM. After receipt of the appeal, the GM shall convene a confidential personnel meeting to include the Chief of Police, the IPA, and a representative of the BPCRB. After receiving input from the Chief of Police, the IPA, and the BPCRB representative, the GM shall rule and submit his/her decision in writing to the Chief of Police, the IPA and the BPCRB. The Chief of Police shall implement the GM's decision.
  - v) Should the BPCRB disagree with the OIPA findings by simple majority, in a confidential personnel meeting, the IPA and the BPCRB shall attempt to come to a consensus. If the BPCRB and the IPA fail to come to a consensus, by simple majority, the BPCRB may appeal. The efforts made to achieve consensus shall be documented by the BPCRB and shall be forwarded to the GM as a part of the appeal. All appeals regarding findings and recommendations for corrective/punitive action or dismissal, between the BPCRB and the IPA will be appealed to the GM, in a confidential personnel meeting to include the Chief of Police. At the confidential personnel meeting, The BPCRB Chair and the IPA will submit their disagreements and recommendations to the GM. The GM shall rule on the matter and make his/her decision known to the Chief of Police, the BPCRB and the IPA. The Chief of Police shall implement the GM's decision, which will be final.
  - vi) Discipline recommended pursuant to these processes shall be subject to an administrative hearing prior to implementation in a manner consistent with addressing the due process rights of public employees, when applicable. Any final determinations that modify or rescind initial dispositions and arbitration determinations shall be evaluated by the IPA to identify any systemic issues and/or potential for the serious erosion of accountability related to such modifications, and shall be included in a public IPA report. The IPA shall work with BPD to remedy any such issues identified by the evaluation.

#### C. Review Legal Claims, Lawsuits, and Settlements

- i) 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.
- ii) OIPA shall be authorized to review any significant settlements and adverse judgments involving BPD.
- iii) OIPA shall work with BPD to develop corrective action intended to remediate any systemic issues identified through review of any significant settlements or adverse judgements involving the BPD.
- iv) OIPA shall publicly report its involvement in the review of legal claims, lawsuits and settlements in a manner consistent with all applicable confidentiality requirements.

#### D. Review Investigations Conducted by BPD

- i) OIPA shall be authorized to review BPD Internal Affairs Bureau (IA) investigations to determine whether the investigations are complete, thorough, objective, and fair.

- ii) The IPA shall, subject to his or her discretion, have authority to monitor or require follow-up investigation into any citizen complaint or allegation that is investigated by BPD.
  - iii) OIPA should provide recommendations to the BPD regarding investigative quality and/or appropriateness of disciplinary recommendations prior to the finalization of the investigative report and notification of disposition to subject officers and complainants.
  - iv) OIPA is authorized to publicly report any resistance by the BPD to conduct reasonable additional investigative tasks, including by way of notification to the Board, the BPCRB, and the GM.
- E. Review Uses of Force by BPD Officers
- i) OIPA shall have the authority and responsibility to review all Use of Force (UOF) incidents by BPD officers to determine whether the UOF should be the subject of an IA investigation and/or whether other issues are implicated for the individual officer or for BPD, including but not limited to training, equipment, supervision, and policy.
  - ii) OIPA shall be authorized to regularly participate in the BPD UOF Review Board process by attending meetings and/or reviewing determinations made by the BPD UOF Review Board.
  - iii) OIPA shall report publicly on its involvement in the BPD UOF review process including determinations made by BPD UOF reviewers in a manner consistent with all applicable confidentiality requirements.
- F. BPD Early Intervention Systems
- i) OIPA shall be involved in the review and evaluation of data, alerts, and reports related to the BPD Early Intervention System (EIS).
  - ii) The OIPA may use the EIS data to determine whether conduct or disciplinary issues regarding BPD or individual officers exist.
  - iii) OIPA shall regularly report on the status and effectiveness of the BPD EIS in a manner consistent with all applicable confidentiality requirements.
- G. Auditing
- i) OIPA shall have the necessary access and authority to review BPD data, records, and staffing information for the purpose of conducting systemic audits of BPD functions that impact the quality of the Department and the services provided by BPD to the public.
  - ii) OIPA shall have the necessary access and authority to monitor any audits conducted by the BPD regarding BPD functions that impact the quality of the Department and the services provided by the BPD to the public.
  - iii) OIPA shall be authorized to publicly report on the results of any audits or monitored audits as described in this section in a manner consistent with all applicable confidentiality requirements.
- H. Mediation
- OIPA shall develop a voluntary alternative dispute resolution (ADR) process for resolving complaints which involve conduct that may most appropriately be corrected or modified through alternative means. OIPA shall review a draft of the voluntary ADR process with the BPCRB and BART Police Associations and secure their concurrence prior to implementation.



#### I. Appeal of IA Findings

Any complainant may file an appeal of an internal investigation conducted by BPD with the OIPA. Upon receipt of an appeal, OIPA shall:

- i) Review the completed BPD investigation.
- ii) Determine whether further investigation is warranted and, if necessary, ensure that a timely, thorough, complete, objective and fair follow-up investigation into the complaint or allegation is conducted. A follow-up investigation may, at the discretion of the IPA, be conducted by the OIPA, the BPD or any other competent investigative agency.
- iii) Provide timely updates on the progress of the review and any follow-up investigation to the complainant and the BPD employee who was the subject of the original investigation, to the extent permitted by law unless the specific facts of the investigation would prohibit such notification.
- iv) Based on the review of the original investigation and, where appropriate, the results of any follow-up investigation, OIPA shall reach an independent finding as to the facts of the underlying allegation or complaint.
- v) Independent investigative findings of "Sustained" made by OIPA shall include recommendations for corrective/punitive action, up to and including termination where warranted. When the evidence does not support the allegations of misconduct, the IPA shall recommend a finding of Unfounded, Exonerated, or Not Sustained.
- vi) All BPD investigative findings that are appealed to OIPA shall be subject to the procedures defined in Chapter 1-04(B).

#### J. Critical Incidents

- i) The IPA shall be notified immediately by BPD personnel to respond to the investigative scene(s) of any BPD officer-involved shooting, use of force resulting in life threatening injury, use of force resulting in bodily injury requiring transportation and admittance to a hospital, , or in-custody death.
- ii) The BPD officer in charge at the investigative scene(s) shall provide the IPA and OIPA staff with access to the investigative scene(s) equivalent to BPD Internal Affairs Investigators upon their arrival at the investigative scene.
- iii) The OIPA shall have the authority to monitor all aspects of the ensuing investigation that the BPD Internal Affairs investigators have authority to monitor while the investigation is in progress. The BPD will grant the OIPA access equivalent to BPD Internal Affairs investigators to the site(s) of all interviews related to a critical incident involving BPD personnel.
- iv) The IPA may observe interviews of employees, public complainants, and witnesses that are conducted by BPD Internal Affairs Investigators and may submit questions to the interviewer to be asked by the interviewer in accordance with state and federal law.

#### K. Recommendations on Procedures, Practices and Training

- i) OIPA shall develop specific recommendations concerning policies, procedures, practices, and training of BPD personnel. The goal of the above OIPA recommendations, shall be improving the professionalism, safety record, effectiveness, and accountability of BPD employees. OIPA shall consult with the Chief of Police and other stakeholders and shall present its recommendations to the BPCRB for review and comment.

- ii) Should BPD reject policy recommendations submitted by OIPA, the IPA may forward the recommendations to the GM and/or the Board for further consideration.
- iii) OIPA shall have the authority and responsibility to provide input to the BPD during the development of any significant BPD-initiated policy creation or revision.
- iv) OIPA shall publicly report on its involvement in the development and revision of BPD policies and shall report annually regarding any outstanding recommendations and the degree to which they were endorsed by the BPCRB and accepted by BPD.

L. BART Police Associations

- i) The IPA shall meet periodically with and seek input from the BART Police Managers Association (BPMA) and the BART Police Officers Association (BPOA) regarding the work of OIPA.
- ii) OIPA shall report annually on whether meetings with BPMA and BPOA occurred.

M. Community Outreach

OIPA shall develop and maintain a regular program of community outreach and communication for the purpose of listening to and communicating with members of the public in the BART service area. The OIPA community outreach program shall set out to educate the public regarding the responsibilities and services of OIPA and the functions of the BPCRB.

N. Reporting

The IPA shall prepare annual reports to the Board and the public in a manner consistent with all applicable confidentiality requirements, which prior to being finalized shall be reviewed, in draft form, by the BPCRB. To the extent permitted by law, reports shall include the number and types of cases filed, number of open cases, the disposition of and any action taken on cases including recommendations for corrective/punitive action, and the number of cases being appealed; findings of trends and patterns analyses; and recommendations to change BPD policy and procedures, as appropriate. The reports shall include all complaints regarding police officers received by OIPA, BPD, BART District Secretary (DSO), and other District departments.

O. Public Statements

The IPA shall be authorized to make public statements regarding any aspect of BPD policies and practices, the Citizen Oversight Model, and in conjunction with any public report or findings in a manner consistent with all applicable confidentiality requirements.

## **Chapter 1-05 RELATIONSHIP BETWEEN OIPA AND THE BPCRB**

- A. OIPA and the BPCRB shall be established and operated as separate, complementary entities with different roles that are and shall remain independent of one another.
- B. On a no less than monthly basis, the BPCRB shall receive reports from OIPA in a manner consistent with all applicable confidentiality requirements, including the number and types of cases filed, number of open cases, the disposition of and any action taken on cases, recommendations for corrective/punitive action, including discipline and dismissals, and the number of independent investigations concluded by OIPA. The report shall also include the

number and outcome of cases being appealed either to OIPA by members of the public, the BPCRB or the Chief of Police pursuant to the appeals process described in Chapter 1-04(B), above.

- i) Reports shall include all complaints received by OIPA, BPD, BPCRB, DSO, and other District departments.
  - ii) For tracking and timeliness purposes, this report shall include the number of days that have elapsed between the date of the complaint and the date of the written report to the BPCRB.
- C. OIPA may present reports related to OIPA-monitored BPD investigations to the BPCRB in closed session for its input and feedback. BPD personnel may be present during the closed session to respond to any BPCRB inquiries regarding the investigation and/or related investigative processes.
  - D. OIPA shall, for informational purposes, promptly notify the Chair of the BPCRB whenever the IPA is informed of a critical incident as described in Chapter 1-04(J).
  - E. The BPCRB and OIPA will coordinate community outreach activities and communication with the public.

#### **Chapter 1-06 RELATIONSHIP BETWEEN OIPA, BPD, DSO, AND OTHER DISTRICT DEPARTMENTS**

- A. The Chief of Police, DSO and other Executive Managers with employees that routinely receive comments/complaints from the public shall each, jointly with the IPA, develop standard operating procedures to govern the relationship and flow of communication regarding complaints involving police officers between OIPA and each of their respective departments.
- B. OIPA and the Chief of Police shall provide each other with timely notification of complaints, investigations, appeals and findings and with such information and cooperation as is appropriate and necessary.

#### **Chapter 1-07 COOPERATION WITH OIPA**

- A. OIPA shall have unfettered access to police reports and police personnel records. All parties who have access to confidential information shall comply with all confidentiality requirements of the BPD, the District, and all state and federal laws.
- B. During an investigation, all involved BPD personnel shall be compelled to meet and cooperate with OIPA in accordance with Government Code Section 3300-3313.
- C. No person shall directly or indirectly force, or by any threats to person or property, or in any manner willfully intimidate, influence, impede, deter, threaten, harass, obstruct or prevent, another person, including a child, from freely and truthfully cooperating with OIPA.

#### **Chapter 1-08 INDEPENDENCE OF OIPA**

- A. The IPA and any employee of the OIPA shall, at all times, be totally independent. All investigations, findings, recommendations, and requests made by OIPA shall reflect the views of OIPA alone.
- B. No District employee or Director shall attempt to unduly influence or undermine the independence of the IPA or any employee of the OIPA in the performance of his or her duties and responsibilities set forth herein.

- C. DSO staff shall perform administrative and organizational tasks for the BPCRB, which will be intended to clarify, strengthen, and maintain the delineation and separation of the BPCRB and OIPA.

## **Chapter 1-09 CONFIDENTIALITY OF RECORDS AND INFORMATION**

OIPA shall comply with all state and federal laws requiring confidentiality of law enforcement records, information, and confidential personnel records, and respect the privacy of all individuals involved.

## **Chapter 1-10 CODE OF ETHICS**

The employees of OIPA shall adhere to the National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics.

## **Chapter 1-11 TIMELINESS**

Nothing in this Model is intended to delay or interfere with the timely investigation and disposition of internal affairs investigations of alleged police misconduct. OIPA and the BPCRB shall jointly develop a timeline for completion of the disciplinary process that will be concluded within 365 days from the time of discovery by BPD Internal Affairs, BPD supervisory level personnel, the OIPA, or the BPCRB.

## **Chapter 2-01 BART POLICE CITIZEN REVIEW BOARD**

A BART Police Citizen Review Board shall be established by the Board of Directors to increase visibility for the public into the delivery of BART police services, to provide community participation in the review and establishment of BPD policies, procedures, practices and initiatives, and to receive citizen complaints and allegations of misconduct by BPD employees. Results of investigations into allegations of misconduct by BPD employees and recommendations for corrective/punitive action, including discipline, will be reviewed by the BPCRB. The members of the BPCRB shall adhere to the National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics and comply with all applicable state and federal laws regarding confidentiality.

## **Chapter 2-02 APPOINTMENT OF BPCRB MEMBERS**

- A. The BPCRB shall report directly to the Board.
- B. The BPCRB shall consist of eleven (11) members appointed as follows:
  - i) Each BART Director shall appoint one (1) member.
  - ii) The BPMA and BPOA shall jointly appoint one (1) member.
  - iii) There shall be one (1) Public-at-Large member to be appointed by the Board.
  - iv) All appointments or re-appointments to the BART Police Citizen Review Board shall be for two-year terms. Those members appointed by Directors representing odd numbered

Districts, as well as the Public-at-Large member shall have their terms expire on June 30th of the respective even numbered year. Those members appointed by Directors from even numbered Districts, as well as the BART Police Associations' member, shall have their terms expire on June 30th of the respective odd numbered year.

- v) Service on the BPCRB shall be voluntary.
- vi) A newly-elected Director may replace the seated BPCRB appointee representing their District within ninety 90 calendar days of taking office, otherwise the seated BPCRB member will continue to serve until expiration of the applicable term, unless otherwise disqualified as described herein

## **Chapter 2-03 BPCRB MEMBER QUALIFICATIONS AND RESTRICTIONS**

- A. Members of the BART Police Citizen Review Board must reside within Alameda, San Francisco, Contra Costa, or San Mateo County.
- B. BPCRB members shall agree to adhere to the Code of Ethics described in Chapter 2-10.
- C. BPCRB members must be fair-minded and objective with a demonstrated commitment to community service.
- D. No person currently employed in a law enforcement capacity, either sworn or non-sworn, shall be eligible for appointment to the BPCRB.
- E. No current or former BPD employee shall serve on the BPCRB, and no relative of any current or former BPD employee shall serve on the BPCRB.<sup>2</sup>
- F. All appointees to the BPCRB shall be subject to background checks.
- G. No person convicted of a felony shall serve on the BPCRB.
- H. Members serving on the BPCRB are not required to be U.S. citizens.

## **Chapter 2-04 BPCRB MEMBER MEETING ATTENDANCE**

- A. BPCRB members may not miss three regularly scheduled meetings per year.
  - i) The appointment of any BPCRB member who has been absent from three (3) regular meetings during the fiscal year, shall automatically expire effective on the date that such absence is reported by the OIPA to the DSO, except in the case of an approved absence or leave of absence as described herein.
  - ii) The DSO shall notify any BPCRB member whose appointment has automatically terminated, and report to the Board and the BART Police Associations that a vacancy exists on the BPCRB. The vacancy shall then be filled in accordance with Chapter 2-06.
- B. Excused Absences from Regularly Scheduled Meetings
  - i) A BPCRB Member may request an excused absence from their appointing Director, and that excuse shall be transmitted to the DSO. Such excused absences shall be granted by the Board President regarding the Public-at-Large appointee, or from the Police Associations regarding the Police Associations' appointee. Such excused absences will not count against the member's absence limitations.
  - ii) BPCRB members may be granted a leave of absence by their appointing Director not to exceed three (3) months. When such a leave of absence is granted, the seat may be

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<sup>2</sup> Relatives include spouse, domestic partner, child, parent, brother, sister, grandparent, step-parent, step-child, legal guardian, father-in-law and mother-in-law.

filled for the period of such leave and may be filled in accordance with the procedure described herein, subject to ratification by the Board. Such leaves of absence shall be granted by the Board President regarding the Public-at-Large appointee, or from the Police Associations regarding the Police Associations' appointee.

## **Chapter 2-05 BPCR B VACANCIES**

- A. Vacancies on the BPCR B shall be filled for the unexpired portion of the term, subject to ratification by the Board.
- B. A vacancy in a seat representing one of the nine BART Districts shall be filled by the Director whose appointee has ceased to serve.
- C. A vacancy in the seat that represents the BART Police Associations shall be filled by the BART Police Associations.
- D. A vacancy in the seat representing the Public-at-Large shall be filled by the Board from the pool of qualified applications submitted during the most recent application period for the Public-at-Large seat. If no qualified Public-at-Large applicants are available or willing to serve, the Board shall solicit new applications.
- E. The IPA may provide input to the Board regarding the performance of any BPCR B member who seeks reappointment.
- F. The Board should consider a BPCR B member's annual outreach activity when deciding whether to reappoint a member to the BPCR B.

## **Chapter 2-06 SCOPE**

The BPCR B shall have the authority to exercise its duties and responsibilities as outlined below, regarding law enforcement and police activities or personnel operating under authority of BART.

## **Chapter 2-07 DUTIES AND RESPONSIBILITIES**

- A. Complaints Received from Members of the Public  
Any person may file a complaint or allegation of wrongdoing against any BPD employee with the BPCR B. Upon receipt of a complaint or allegation, the BPCR B shall immediately turn the complaint or allegation over to the OIPA, and OIPA shall proceed according to Chapter 1-04 above.
- B. Recommendations for Corrective Action
  - i) The IPA shall submit his/her investigative findings and recommendations to the BPCR B for review in a confidential personnel meeting, where the processes described in Chapter 1-04(B)(ii-vi) including, but not limited to, appeal procedures shall apply.
  - ii) The BPCR B shall announce each member's vote regarding its acceptance or rejection of the OIPA findings and recommendations for discipline in open session, and in cases in which a non-unanimous majority agrees with the OIPA findings and recommendations, the dissenting members should generate a memorandum including the rationale for diverging from the majority opinion without divulging privileged, protected, or confidential information and evidence.



- C. Recommendations on Policies, Procedures, Practices and Training
- i) The BPCRB shall develop and review recommendations as to the policies, procedures, and practices of BPD in consultation with the IPA.
  - ii) The goal of BPCRB recommendations shall be to improve the professionalism, safety record, effectiveness, and accountability of BPD employees.
  - iii) The BPCRB may make recommendations to the Chief of Police, GM, and Board, as appropriate.
  - iv) The BPCRB shall review and comment on all additions and changes to policy, procedures and practices as well as all new initiatives (including training and equipment) proposed by BPD or OIPA and make recommendations to the Board.
- D. Disagreements Regarding Proposed Policies, Procedures, Practices, and Training
- The Board shall review and resolve all disagreements regarding proposed policies, procedures, practices and training that may arise between the BPCRB and the Chief of Police, IPA, or GM. The Board shall make the final determination in all such instances.
- E. BART Police Associations
- The BPCRB shall meet periodically with and seek input from the BPMA and BPOA on issues of interest to the parties. The BPCRB shall report annually on whether meetings with the BPMA and the BPOA occurred.
- F. Community Outreach
- The BPCRB shall develop and maintain a regular program of community outreach and communication for the purpose of listening to and communicating with members of the public in the BART service area. The BPCRB community outreach program shall seek to educate the public about the responsibilities and services of OIPA and functions of the BPCRB.
- i) The DSO will provide staff support to and facilitate training for the BPCRB.
  - ii) The BPCRB should endeavor to conduct meetings in varying locales, where feasible to increase exposure of its work to a wider array of community members.
- G. Reporting
- The BPCRB shall file quarterly reports of its activities with the DSO for distribution to the Board and shall prepare an annual report on its accomplishments and activities (including recommendations to improve BPD services) for presentation to the Board and the public.
- H. Monitor Study Recommendations
- The BPCRB shall report on the accomplishments and progress made by BPD in implementing recommendations resulting from periodic studies that may be conducted to look at departmental policies, procedures, practices, and training.
- I. Public Statements
- The Chair of the BPCRB shall be authorized to make public statements on behalf of the BPCRB regarding the role and processes of the BPCRB when an exigency to respond to an inquiry is presented.

- J. Selection of the Chief of Police  
The BPCRB (as well as the BART Police Associations) shall participate in an advisory role in the selection of the Chief of Police by interviewing finalist candidates.
- K. Staff Support for the BPCRB  
The DSO will provide staff support to the BPCRB including but not limited to the following:
  - i) Facilitation of training for the BPCRB.
  - ii) Preparation and maintenance of records of meetings of the BPCRB.
  - iii) Distribution of reports by the BPCRB to the Board and the public.
  - iv) Facilitation of the application process for appointment to the BPCRB and coordination of the selection and ratification processes with the Board.
  - v) Provision of training including a curriculum designed for newly-appointed BPCRB members.
  - vi) Provision and maintenance of an ongoing in-service training program.

## **Chapter 2-08 RELATIONSHIP BETWEEN THE BPCRB AND OIPA**

- A. No less than monthly, the BPCRB shall receive reports from the IPA including the number and types of cases filed, number of open cases, the disposition of and any action taken on cases, recommendations for corrective/punitive action, including discipline and dismissals, and the number of independent investigations concluded by OIPA.
  - i) The report shall also include the number of cases being appealed either to OIPA by members of the public or by the BPCRB pursuant to the appeals process described in Chapter 1-04(B), above.
  - ii) OIPA reports to the BPCRB shall include all complaints received by OIPA, BPD, the BPCRB, DSO, and other District departments.
  - iii) This report shall also include the number of days that have elapsed between the date of the complaint and the report to the BPCRB.
  - iv) OIPA reports shall include the degree to which OIPA and BPCRB disciplinary recommendations were implemented by BPD.
- B. The Chair of the BPCRB shall, for informational purposes, be promptly informed by the OIPA of all critical incidents involving BPD.
- C. The BPCRB may report to the Board of Directors' Personnel Committee on the performance and effectiveness of OIPA.
- D. The BPCRB (as well as the BART Police Associations) shall participate in an advisory role in the process of selecting all successors to the first IPA.
- E. The BPCRB will participate in a regular program of community outreach and communication with the public, in conjunction with OIPA.
- F. The BPCRB shall make forms available at BPCRB meetings to accept complaints and allegations of police misconduct from the public and shall forward any received complaints to OIPA for appropriate action.

## **Chapter 2-09 CONFIDENTIALITY OF RECORDS AND INFORMATION**

Members of the BPCRB shall comply with all state and federal laws requiring confidentiality of law enforcement records, information, and confidential personnel records, and shall respect the privacy of all individuals involved.

### **Chapter 2-10 CODE OF ETHICS**

The members of the BPCRB shall adhere to the National Association for Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics.

### **Chapter 3-01 OVERSIGHT SYSTEM EVALUATION**

The Board, with input from the BPCRB, IPA, BART Police Associations, GM, DSO, complainants and the public will evaluate the BART Police citizen oversight structure every 3 years to determine whether the need exists to make changes and/or otherwise make adjustments to the system to improve its continued performance. These evaluations shall in no way be intended to eliminate the BART Police citizen oversight structure.

***APPENDIX C***

BART 2016 Training Proposal

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

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**MEMORANDUM**

TO: BART Police Citizen Review Board                      DATE: December 29, 2015

FROM: BART Office of the Independent Police Auditor

SUBJECT: **Proposal re Facilitation of Training for BART Police Citizen Review Board**

The BART Citizen Oversight Model (Model) states that the BART Office of the Independent Police Auditor (OIPA) will facilitate training for the BART Police Citizen Review Board (BPCRB). In consideration of the limited time available to the volunteer BPCRB members outside of their regular monthly meetings, it seems practical to provide the BPCRB with opportunities for training during the meetings, and that these trainings would be scheduled every other month for a total of 6 sessions per calendar year<sup>1</sup>.

OIPA suggests that a schedule of proposed trainings be developed on an annual basis and presented to the BPCRB by the Chairperson as an agenda item for discussion and action at the first regular meeting of each calendar year. During that meeting BPCRB members may elect to accept the proposed trainings as presented, or they may choose to re-arrange, replace, or eliminate certain sessions. OIPA also recommends that every other month the Chairperson agendize a discussion of whether to move forward and confirm the training session scheduled for the following meeting in order to avoid late cancellations and other unnecessary expenditures of funds, time, and labor by OIPA and its staff. This will also allow the BPCRB to focus its attention on any unanticipated issues or concerns that may arise during the course of the year without unreasonably extending the length of monthly meetings to a degree that becomes unmanageable for individual members.

The BPCRB chair would be able to weigh and balance the time requirements for each meeting at which a training session has been approved and scheduled, and would be able to adjust the agenda to accommodate such trainings. Because this proposal contemplates scheduling a training session every other month, OIPA can plan and facilitate the upcoming training session while remaining positioned to address its other duties and responsibilities, including but not limited to complaint intake and investigation, generation of policy recommendations, and regular outreach to the community.

It is OIPA's opinion that trainings should be limited to 30-45 minutes in order to permit discussion and action on other agenda items, including disciplinary recommendations and an opportunity to fully entertain monthly reports from the Chairperson, the Independent Auditor and the Chief of Police.

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<sup>1</sup> This proposal also includes one additional training to be presented at the January 2016 meeting, and to consist of an introduction to the Dropbox Business web-based document distribution software.

The National Association for Civilian Oversight of Law Enforcement (NACOLE) has generated recommendations for the orientation and training of civilian oversight board members, on which OIPA has relied heavily in developing the proposed list of 2016 trainings for the BPCRB<sup>2</sup>. It is noted within the NACOLE recommendation that “[p]roviding new members with the information they need to perform effectively is a critical step in the development of a strong board or commission. The responsibilities for developing and implementing an effective program of board orientation are shared between oversight practitioners and the board itself. There must be a commitment to developing a well-informed board, one with the knowledge needed to lead an effective organization.” For this reason OIPA believes that a dynamic and interactive process that allows for adjustment and redirection during the course of the year is well-suited to providing valuable sessions for BPCRB members. As a matter of course and in keeping with this viewpoint, BPCRB members in addition to the Chairperson are welcome and invited to provide specific suggestions for substitutions and/or enhancements to any of the tentatively scheduled sessions for the upcoming year, and those suggestions can be presented as motions to the entire body for discussion and action.

Once the BPCRB has voted and determined how they wish to proceed, OIPA will move forward with arrangements for board-approved training sessions. OIPA will also research, collect and distribute appropriate materials for each training session as dictated by the topic of the training and/or the direction of the trainers.

#### **Suggested Training Schedule for 2016 BPCRB Meetings:**

**Note:** Though this proposal suggests scheduled trainings every other month, the proposed schedule for 2016 would include sessions in both March and April in order to allow sufficient time for BPCRB discussion and action, session planning, and general preparation.

- ❖ January 11
  - Presentation of proposed training schedule for 2016
  - **Dropbox Business**
    - Introduction and demonstration of document distribution software
- ❖ February 8
  - No Training
- ❖ March 14
  - **Oversight Agency Basics**
    - Model establishing oversight of BART Police Department (BPD)
      - Comparison with other oversight models
    - Public records and public meeting laws (Brown Act)
      - Sturgis review
    - Laws relating to peace officers’ personnel actions, rights, and privacy
      - POBOR Review

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<sup>2</sup> <https://nacole.org/resources/recommended-training-for-board-and-commission-members/>



- Copley Press and other applicable case law
- Confidentiality requirements
- ❖ April 11
  - **BPD Structure and organization**
    - BPD Chain of command and supervisory responsibilities
    - Patrol practices and procedures
      - Duties of officers, sergeants, command staff, Community Service Officers, civilian personnel, and dispatchers
    - BPD Technology
      - CAD
      - RMS
      - MDC
      - Trittech FBR
      - Radios
      - MVR – AXON Flex
        - ◆ Operation
        - ◆ Policy requirements
- ❖ May 9
  - No training
- ❖ June 13
  - **Crowd Management / Crowd Control**
    - First Amendment activities
    - Policy review and discussion
    - Mutual Aid considerations
      - Review of existing policies and procedures in other local jurisdictions
- ❖ July 11
  - No training
- ❖ August 8
  - **Use of Force**
    - Policy review and discussion
    - Defensive tactics
    - Use of Force review process
      - Reporting by officers
      - Supervisor’s Use of Force Reports and approval process
- ❖ September 12
  - No training
- ❖ October 10 (Columbus Day Holiday – Possible move to October 17 TBD by BPCRB)
  - **OIS and In-Custody Death Investigations**
    - Responsibilities of responding personnel
      - First supervisor on scene
      - Other officers on scene

- IA
  - OIPA
  - District Attorney
- ❖ November 14
    - No training
  - ❖ December 12
    - **Bias-based policing / Racial profiling**



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