



CITY OF TAMPA

Police Department

Bennie R. Holder
Chief of Police

September 11, 2000

Barabara Langland Orban, Ph.D.

Tampa, FL 33609

Dear Dr. Orban,

I am in direct receipt of your letter written to Chief Holder dated September 7, 2000. I have read it thoroughly, and will address each component via a bifurcated approach – initially technical, and subsequently, methodological.

Let me begin by preliminarily apologizing for the perceptual facet attached to all three encounters. As one of our lead ethics, professionalism and diversity instructors, I am constantly reminding our officers of the residual responsibility attached to their actions and decisions; and the need to communicate them thoroughly to avoid any direct or collateral concerns with the community. Our facilitators regularly discuss power models, and the root empowerment, which comes from our citizens and invokes us to protect and serve them, such as your self.

Regarding the citation that led to the officer's investigation and subsequent termination, once the matter was brought to our attention it was fully investigated and very definitive action was taken. Additionally, the officer's certification will be subject to a revocation hearing to ensure that someone who breaches the conduct expected of a peace officer is not afforded an opportunity to be an officer in the State of Florida. There are also reciprocity agreements that permeate into other states as well.

Reference the in-progress incident with guns drawn, in this scenario you cite an officer who appeared to be on the outer-perimeter that failed to recognize citizens about to enter a dangerous area. You also mention an officer that re-directed you, and you, in turn, responsibly re-directed another, back out of the encroached upon area. Dangerous situations are most often spontaneous in nature, and most officers are concentrating on resolving the conflict. However, if there are enough officers deployed to create an inner and outer perimeter, and their attention is allegedly distracted outside of their responsibility, then this needs to be addressed with that specific officer.



Your concern regarding the traffic crash investigation and the allegation of a bipolar decision, specifically careless driving versus following too closely, must be dissected as follows: By policy, the training officer was correct, as TPD does have a policy to attempt to identify the at-fault party, and cite accordingly. The training officer can delegate the investigation to the trainee, who also can make decisions based on investigated facts and appropriate law enforcement actions. Let me also inject that these decisions initiate upon the definition of a "traffic crash" under the State of Florida's guidelines, and are not mitigated by the amount of damage, or complaint of injury.

This is one of those cases where the training officer was using experience and available discretion to minimize your citation as much as possible by using the specific charge of following too closely. When he deferred the investigation over to the trainee, either a failure to communicate, or a different decision was made. Most likely the latter was in place due to your follow up phone conversations. Unfortunately, as long as a legal and acceptable action was taken, once an officer is granted the power and authority, it becomes a matter of style. If it is an acceptable matter of enforcement discretion, then a lesser inclusive charge may be used. It was not incorrect to cite with careless driving in this incident, but following too closely and driving too fast for conditions are also common charges used in this type of investigation as well. As an accident reconstructionist for over 10 years, I have regularly used following too closely when both vehicles are in motion upon impact, and careless driving when the vehicle/s struck were at rest upon impact. The latter was much more frequent than either charge of following too closely and/or speed too fast for conditions, recalling that none of the aforementioned by legal definition are technically incorrect, just more or less appropriate based on the circumstances.

While the decision-making theme from the training officer was based on your relationship with your insurance company, the charging officer was not wrong, either in policy or procedure. It is unfortunate that this conveyed discretionary action did not make it to finality – as once again it gives the appearance of impropriety. With specific regards to the injury block marked on the citation, I examined the accident report and noticed no complaint of injury by the other party. It appears that this was a handwritten error on the citation block, and I am forwarding a copy of this to the officers' supervisor for correction.

Next, many citations are signed in ambient light, and a copy is provided for reviewing post acceptance. I have never seen an attempt to gain a signature (which is only an acknowledgment of the charge versus an admission of guilt) in the dark to evade something on a citation in my career – hence the copy provided. Most likely, this same lighting caused the incidental error with marking the wrong block – noting injury.

Finally on this matter, the State of Florida authorizes officers to cite motorists during an accident investigation that they did not witness. The officers in these enforcement circumstances are not required to attend the court hearing, as their testimony is only latent in nature. The first hand information is provided by direct party testimonials and the written accident report. A withhold of adjudication is not synonymous with "not guilty," it is simply kept off the driving record, either due to previous, positive driving records or mitigating circumstances such as the driving conditions described in your letter.

Switching topics to enforcement priorities, and the allegation of mission irresponsibility - I will begin with the focus on traffic related law enforcement and the perception of revenue generation. Our agency has many major thoroughfares as ingress and egress points within the city. Our residential population is slightly under 300,000, with a workers daily influx of another 128,000 plus. The number then can be tripled due to tourism and motorists travelling through the jurisdiction. Without spending too much time on enforcement philosophies, the best remedy for aggressive driving and crash prevention is traffic law enforcement. This is not only the local philosophy, but one which is nationwide. We have two traffic law enforcement squads that review driving patterns and statistics, then deploy accordingly, which was recently increased last budget year from only one squad. Traffic citations are also generated via officers on regular patrol, when time and priorities permit.

Upon comparing traffic law enforcement to violent and non-violent crime under Chief Holder's regime: Both have been steadily on the decline. In 1999, non-violent crimes (larceny, auto-theft, and burglary) were down an average of 10.6%, and for the first half of 2000, down another 6.7%. Violent crimes (murder, rape, robbery, and aggravated assaults) in 1999 went down 12.5%, and in 2000, are down another 9.5% thus far. We all know people that have been victims of crime, including us personally. That does not equate with mission irresponsibility because some good people get traffic citations and are victims of crime. Also, the Uniformed Crime Report tends to outweigh speculation and conjecture with the community.

In summary, you have stated you have only resided here for the last three years, and have the luxury of commenting both personally and professionally about our missions, including less than one half of Chief Holder's tenure. Using news clippings to formulate a theory is not necessarily the most comprehensive investigation of your police department.

You had an unfortunate experience with an unethical police officer, and upon notification and investigation, he was terminated by the chief of police, and is up for de-certification. This is not an every day occurrence. You witnessed a possible lack of attention on a dangerous situation that needs to be investigated further for negligence and policy violations.

You received a citation for being at-fault in a traffic crash, where the senior officer was *attempting* to minimize the experience with your insurance company. Unfortunately, it never made it to fruition. The charge was appropriate for the incident investigated however, the originating officer mistakenly marked a block that needs to be remedied. The accident report properly reflects no injury or complaint/possible injury.

My final point with the aforementioned summary is that some unfortunate experiences have occurred, but they do not add up to the level of negligence that you purport about our agency. Situational ethics should prevail, and our professional community should be cognizant of completely investigating each independent set of facts and evaluating the conclusions. Reversing the roles, I am certain many have had perceived and realized negative experiences with the medical profession, but hopefully they have isolated each one, then handled it accordingly. Despite the circumstances you have conveyed, the next officer may risk his or her life for yours, or a member of your family, as most of us are here for all of the appropriate reasons.

Action: Although somewhat moot due to the accident report being correct and the court case being resolved, I plan to send the citation copy to the appropriate supervisor for correction. If you have a name of an officer on the perimeter safety concern, you can contact myself at 813.276.3785 to initiate an inquiry. Even without a name, a date, time and location can possibly help identify the officer - if you can provide/confirm a description. As far as the written statement, we are not in policy of providing alternative, discretionary options in writing, especially when the final decision was correct, both legally and by policy. The only forum for the statement by the training officer would be under appropriate subpoena, where he could confirm that the other charges could have been an acceptable alternative. Normally, this would apply in a civil proceeding and the accident report, which was accurately recorded, would prevail.

Sincerely,

BENNIE R. HOLDER
Chief of Police


By: Sergeant J.A. Bennett, Jr.
Executive Officer
Office of the Chief

CC: Mayor Greco
Major K.C. Newcomb
Sergeant Minnax
Internal Affairs Bureau