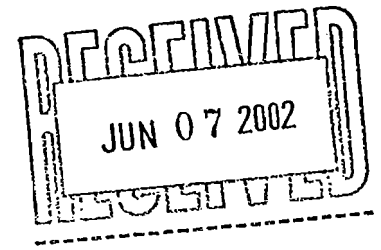


COPY



# CITY OF TAMPA

Dick A. Greco, Mayor

Police Department

Legal Unit

June 4, 2002

David J. Plante, Esq.  
Law Offices of Merkle & Magri, P.A.  
5510 W. LaSalle St.  
Tampa, FL 33607

RE: Barbara Orban's Public Records Requests

Dear Mr. Plante:

As you know, the city attorney, James Palermo, has asked me to respond to the concerns expressed in your letter to him dated April 11, 2002 regarding the report of Dr. Orban's traffic crash on March 27, 2000. We acknowledge that the citation and crash report contain errors, some of which are material in a general sense, others which are not. The location of the accident, for example, is a material fact. At your request we have prepared and filed an amended traffic crash report (Form HSMV 90004) reflecting the correct crash location. A copy is enclosed. We also consider material the erroneous notation on the citation that the crash involved an injury. We are advised that no government agency retains any copy of the citation at the present time. Enclosed is a computer printout of the clerk's record of court proceedings relative to the citation. This printout shows no injury resulted from the accident and we are aware of no existing conflicting record.

We might discuss at great length what the actual time of the accident was, whether there was enough cloud cover to characterize the weather as "cloudy" or whether the street was wet, dry, damp or something in between. We could argue strenuously over whether 5 mph is so different from 5-10 mph as to be a distinction worthy of our time and skill. Perhaps we should engage the services of a mediator to help resolve differences between the parties and the reporting officer over the acceptability of the wording of the crash report narrative.

Fortunately, all of the foregoing is unnecessary because what the drivers involved in the accident tell the investigating officer is privileged and inadmissible in any court pursuant to Florida Statute § 316.066 (subject to qualifications not applicable in this case). So the extent of the cloud cover at the moment of impact will have to be established by someone other than the investigating officer or something other than the crash report. Similarly, unless the officer witnesses the actual accident, the crash report narrative reflects only the privileged and inadmissible statements of the parties to the accident or hearsay.

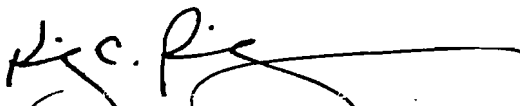
You may be right about some or all of the points raised in your letter of April 11, 2002. We have corrected essential information errors and do not pretend that the rest of the report is 100% accurate. People make mistakes, certainly rookie police officers are no exception. You and I make mistakes daily. I have no doubt that you can find mistakes within this letter. Both your letter of April 11, 2002 and letter to Kevin Howell of May 14, 2002 contain errors that you may find mildly embarrassing. On page one of your earlier letter you refer to Florida Statute Section 112.533 as a "chapter". At the top of page two you use *inter alia* twice in one sentence and in the next sentence make reference to § 112.5333 which, of course, does not exist. Footnote four does not express what I believe you intended and is not punctuated. As for the May 14<sup>th</sup> letter, your public records request is made pursuant to a nonexistent section number from a statutory chapter concerning intangible personal property taxes. There are other errors but I'm certain you get the point.

On more material issues, the clerk's records appear to show that adjudication was withheld in this case which is not exactly the same as "exonerated of any wrongdoing" as you suggest. Also, the termination of Officer Maxwell's employment had nothing whatsoever to do with a traffic citation, falsified or otherwise.

While I agree that Dr. Orban is right to expect a police report that accurately records at least the fundamental information, given the number of reports this agency generates, we simply cannot engage in protracted arguments when someone disagrees with details of a report. Obviously, any material disagreements may be resolved in court.

I am uncertain as to whether you will still require the public records identified in the two letters mentioned above. If you want the records, please forward your firm's check in the amount of \$200.00 payable to the City of Tampa to cover anticipated statutory fees. Please be specific if you want less than all documentation previously requested. I will attempt to expedite the delivery of all requested public records.

Sincerely,

  
KIRBY C. RAINSBERGER  
Assistant City Attorney

KCR/jc

Enclosures

# FLORIDA TRAFFIC CRASH REPORT

UPDATE  CONTINUATION

MAIL TO: DEPT. OF HIGHWAY SAFETY & MOTOR VEHICLES, TRAFFIC CRASH RECORDS, NEIL KIRKMAN BUILDING, TALLAHASSEE, FL 32399-0500

DO NOT WRITE IN THIS SPACE

DATE OF CRASH: 03/27/00 COUNTY / CITY CODE: 03/50 INVEST. AGENCY REPORT NUMBER: 00-23137 HSMV CRASH REPORT NUMBER: 56172774

**Section 1 - Vehicle**

DRIVER ACTION: 1. Phantom 2. Hit & Run 3. N/A  3 YEAR: MAKE: TYPE: USE: VEH. LICENSE NUMBER: STATE: VEHICLE IDENTIFICATION NUMBER: 2 3 4 5 6 7 18. Undercarriage 19. Overtum 20. Windshield 21. Trailer

TRAILER OR TOWED VEHICLE INFORMATION: TRAILER TYPE: SHOW FIRST POINT OF VEHICLE DAMAGE AND CIRCLE DAMAGED AREA(S)

VEHICLE TRAVELLING ON AT Est. MPH Posted Speed EST. VEHICLE DAMAGE 1. Disabling 2. Functional 3. No Damage EST. TRAILER DAMAGE DAMAGE AND CIRCLE DAMAGED AREA(S)

MOTOR VEHICLE INSURANCE COMPANY (LIABILITY OR PIP) POLICY NUMBER VEHICLE REMOVED BY: 1. Tow Rotation List 3. Driver 2. Tow Owner's Request 4. Other

NAME OF VEHICLE OWNER (Check Box If Same As Driver)  CURRENT ADDRESS (Number and Street) CITY AND STATE ZIP CODE

NAME OF OWNER (Trailer or Towed Vehicle) CURRENT ADDRESS (Number and Street) CITY AND STATE ZIP CODE

NAME OF MOTOR CARRIER (Commercial Vehicle Only) CURRENT ADDRESS (Number and Street) CITY, STATE AND ZIP CODE US DOT or ICC MC IDENTIFICATION NUMBERS

NAME OF DRIVER (Take From Driver License) / PEDESTRIAN CURRENT ADDRESS (Number and Street) CITY, STATE & ZIP CODE DATE OF BIRTH

DRIVER LICENSE NUMBER STATE DL TYPE REQ. END. ALC/DRUG TEST TYPE RESULTS ALC/DRUG PHYS. DEF. RES. RACE SEX INJ. S. EQUIP. EJECT.

HAZARDOUS MATERIALS BEING TRANSPORTED PLACARDED IF YES, INDICATE NAME OR 4 DIGIT NUMBER FROM DIAMOND OR BOX ON PLACARD, AND 1 DIGIT NUMBER FROM BOTTOM OF DIAMOND. WAS HAZARDOUS MATERIAL SPILLED? RECOMMEND DRIVER RE-EXAM, IF YES EXPLAIN IN NARRATIVE DRIVER'S PHONE NO.

**Section 2 - Vehicle**

DRIVER ACTION: 1. Phantom 2. Hit & Run 3. N/A  3 YEAR: MAKE: TYPE: USE: VEH. LICENSE NUMBER: STATE: VEHICLE IDENTIFICATION NUMBER: 2 3 4 5 6 7 18. Undercarriage 19. Overtum 20. Windshield 21. Trailer

TRAILER OR TOWED VEHICLE INFORMATION: TRAILER TYPE: SHOW FIRST POINT OF VEHICLE DAMAGE AND CIRCLE DAMAGED AREA(S)

VEHICLE TRAVELLING ON AT Est. MPH Posted Speed EST. VEHICLE DAMAGE 1. Disabling 2. Functional 3. No Damage EST. TRAILER DAMAGE DAMAGE AND CIRCLE DAMAGED AREA(S)

MOTOR VEHICLE INSURANCE COMPANY (LIABILITY OR PIP) POLICY NUMBER VEHICLE REMOVED BY: 1. Tow Rotation List 3. Driver 2. Tow Owner's Request 4. Other

NAME OF VEHICLE OWNER (Check Box If Same As Driver)  CURRENT ADDRESS (Number and Street) CITY AND STATE ZIP CODE

NAME OF OWNER (Trailer or Towed Vehicle) CURRENT ADDRESS (Number and Street) CITY AND STATE ZIP CODE

NAME OF MOTOR CARRIER (Commercial Vehicle Only) CURRENT ADDRESS (Number and Street) CITY, STATE AND ZIP CODE US DOT or ICC MC IDENTIFICATION NUMBERS

NAME OF DRIVER (Take From Driver License) / PEDESTRIAN CURRENT ADDRESS (Number and Street) CITY, STATE & ZIP CODE DATE OF BIRTH

DRIVER LICENSE NUMBER STATE DL TYPE REQ. END. ALC/DRUG TEST TYPE RESULTS ALC/DRUG PHYS. DEF. RES. RACE SEX INJ. S. EQUIP. EJECT.

HAZARDOUS MATERIALS BEING TRANSPORTED PLACARDED IF YES, INDICATE NAME OR 4 DIGIT NUMBER FROM DIAMOND OR BOX ON PLACARD, AND 1 DIGIT NUMBER FROM BOTTOM OF DIAMOND. WAS HAZARDOUS MATERIAL SPILLED? RECOMMEND DRIVER RE-EXAM, IF YES EXPLAIN IN NARRATIVE DRIVER'S PHONE NO.

PROPERTY DAMAGED - OTHER THAN VEHICLES	EST. AMOUNT	OWNER'S NAME	ADDRESS	CITY	STATE	ZIP
PROPERTY DAMAGED - OTHER THAN VEHICLES	\$	OWNER'S NAME	ADDRESS	CITY	STATE	ZIP
PROPERTY DAMAGED - OTHER THAN VEHICLES	\$	OWNER'S NAME	ADDRESS	CITY	STATE	ZIP
PROPERTY DAMAGED - OTHER THAN VEHICLES	\$	OWNER'S NAME	ADDRESS	CITY	STATE	ZIP

WITNESS NAME (1) CURRENT ADDRESS CITY & STATE ZIP CODE WITNESS NAME (2) CURRENT ADDRESS CITY & STATE ZIP CODE

WAS INVESTIGATION MADE AT SCENE? 1. YES  2. NO  IF NO, THEN WHERE? IS INVESTIGATION COMPLETE? 1. YES  2. NO  IF NO, THEN WHY? DATE OF REPORT: 05/13/02 PHOTOS TAKEN: 1. YES  2. NO  IF YES, BY WHOM? 1. INVESTIGATING AGENCY  2. OTHER

INVESTIGATOR - RANK & SIGNATURE: OFC. K. Howell ID/BADGE NUMBER: 41732/286 DEPARTMENT: Tampa Police Dept FHP SO PD OTHER:

CONTRIBUTING CAUSES - DRIVER / PEDESTRIAN		VEHICLE DEFECT		VEHICLE MOVEMENT		VEHICLE SPECIAL FUNCTIONS	
01. No Improper Driving / Action	<input type="checkbox"/>	01 No Defects	<input type="checkbox"/>	01 Straight Ahead	<input type="checkbox"/>	1 None	<input type="checkbox"/>
02. Careless Driving (Explain in Narrative)	<input type="checkbox"/>	02 Def. Brakes	<input type="checkbox"/>	02 Slowing / Stopped / Stalled	<input type="checkbox"/>	2 Farm	<input type="checkbox"/>
03. Failed To Yield (Right - of - Way)	<input type="checkbox"/>	03 Worn / Smooth Tires	<input type="checkbox"/>	03 Making Left Turn	<input type="checkbox"/>	3 Police Pursuit	<input type="checkbox"/>
04. Improper Backing	<input type="checkbox"/>	04 Defective / Improper Lights	<input type="checkbox"/>	04 Backing	<input type="checkbox"/>	4 Recreational	<input type="checkbox"/>
05. Improper Lane Change	<input type="checkbox"/>	05 Puncture / Blowout	<input type="checkbox"/>	05 Making Right Turn	<input type="checkbox"/>	5 Emergency Operation	<input type="checkbox"/>
06. Improper Turn	<input type="checkbox"/>	06 Steering Mech.	<input type="checkbox"/>	06 Changing Lanes	<input type="checkbox"/>	6 Construction / Maintenance	<input type="checkbox"/>
07. Alcohol - Under Influence	<input type="checkbox"/>	07 Windshield Wipers	<input type="checkbox"/>	07 Entering / Leaving / Parking Space	11 Passing	SOURCE OF CARRIER INFORMATION	
08. Drugs - Under Influence	<input type="checkbox"/>	08 Equipment / Vehicle Defect	77 All Other (Explain in Narrative)	08 Properly Parked	12 Driverless or Runaway Vehicle		
09. Alcohol & Drugs - Under Influence	<input type="checkbox"/>	POINT OF COLLISION		09 Improperly Parked	77 All Other (Explain in Narrative)	2 Shipping Papers	<input type="checkbox"/>
10. Followed Too Closely	<input type="checkbox"/>	01 On Road	<input type="checkbox"/>	10 Making U-Turn		3 Vehicle Side	<input type="checkbox"/>
11. Disregarded Traffic Signal	<input type="checkbox"/>	02 Not On Road	<input type="checkbox"/>	PEDESTRIAN ACTION		4. Driver	<input type="checkbox"/>
12. Exceeded Safe Speed Limit	19 Improper Load	03 Shoulder	<input type="checkbox"/>	01 Crossing Not at Intersection	07 Working In Road	5. Other	<input type="checkbox"/>
13. Disregarded Stop Sign	20 Disregarded Other Traffic Control	04 Median	<input type="checkbox"/>	02 Crossing at Mid-block Crosswalk	08 Standing/Playing In Road		<input type="checkbox"/>
14. Failed To Maintain Equip. / Vehicle	21 Driving Wrong Side / Way	05 Turn Lane	<input type="checkbox"/>	03 Crossing at Intersection	09 Standing In Pedestrian Island		<input type="checkbox"/>
15. Improper Passing	22 Fleeting Police	WORK AREA		04 Walking Along Road With Traffic	77 All Other (Explain in Narrative)		<input type="checkbox"/>
16. Drove Left of Center	23 Vehicle Modified	01 None	<input type="checkbox"/>	05 Walking Along Road Against Traffic	88 Unknown		<input type="checkbox"/>
17. Exceeded Stated Speed Limit	24 Driver Distraction (Explain in Narrative)	02 Nearby	<input type="checkbox"/>	06 Working on Vehicle In Road			<input type="checkbox"/>
18. Obstructing Traffic	77 All Other (Explain in Narrative)	03 Entered	<input type="checkbox"/>				<input type="checkbox"/>

FIRST / SUBSEQUENT HARMFUL EVENT(S)			
01 Collision With MV In Transport( Rear End)	15 Collision With Animal	29 MV Ran Into Ditch/Cutvert	<input type="checkbox"/>
02 Collision With MV In Transport( Head On)	16 MV Hit Sign / Sign Post	30 Ran Off Road Into Water	<input type="checkbox"/>
03 Collision With MV In Transport( Angle)	17 MV Hit Utility Pole / Light Pole	31 Overturned	<input type="checkbox"/>
04 Collision With MV In Transport( Left Turn)	18 MV Hit Guardrail	32 Occupant Fell From Vehicle	<input type="checkbox"/>
05 Collision With MV In Transport( Right Turn)	19 MV Hit Fence	33 Tractor/Trailer Jackknifed	<input type="checkbox"/>
06 Collision With MV In Transport( Sideswipe)	20 MV Hit Concrete Barrier Wall	34 Fire	<input type="checkbox"/>
07 Collision With MV In Transport( Backed Into)	21 MV Hit Bridge/Pier/Abutment/Rail	35 Explosion	<input type="checkbox"/>
08 Collision With Parked Car	22 MV Hit Tree /Shrubbery	36 Downhill Runaway	<input type="checkbox"/>
09 Collision With MV on Roadway	23 Collision With Construction Barricade Sign	37 Cargo Loss or Shift	<input type="checkbox"/>
10 Collision With Pedestrian	24 Collision With Traffic Gate	38 Separation of Units	<input type="checkbox"/>
11 Collision With Bicycle	25 Collision With Crash Attenuators	39 Median Crossover	<input type="checkbox"/>
12 Collision With Bicycle (Bike Lane)	26 Collision With Fixed Object Above Road	77 All Other (Explain In Narrative)	<input type="checkbox"/>
13 Collision With Moped	27 MV Hit Other Fixed Object		<input type="checkbox"/>
14 Collision With Train	28 Collision With Moveable Object On Road		<input type="checkbox"/>

(ADDITIONAL NARRATIVE)

Corrected Information:

Section 1: Vehicle #1 was travelling  $\frac{S}{W}$  on S. Howard Ave. when it struck vehicle #2 with its front end.

Section 2: Vehicle #2 was stopped on S. Howard Ave. when it was struck by vehicle #1 on its rear.

ADDITIONAL PASSENGERS

SEC#	PASS#	PASSENGER'S NAME	CURRENT ADDRESS	CITY & STATE	ZIP CODE	DATE OF BIRTH	RACE	SEX	LOC	INJ	S. EQUIP.	EJECT.

Violator(s)	SECTION #	NAME OF VIOLATOR	FL STATUTE NUMBER	CHARGE	CITATION NUMBER

# FLORIDA TRAFFIC CRASH REPORT NARRATIVE/DIAGRAM

MAIL TO: DEPARTMENT OF HIGHWAY SAFETY & MOTOR VEHICLES, TRAFFIC CRASH  
RECORDS SECTION, NEIL KIRKMAN BUILDING, TALLAHASSEE, FL 32399-0500

DO NOT WRITE IN THIS SPACE

TIME EMS NOTIFIED (FATALITIES ONLY) <input type="checkbox"/> AM <input type="checkbox"/> PM	TIME EMS ARRIVED (FATALITIES ONLY) <input type="checkbox"/> AM <input type="checkbox"/> PM	DATE OF CRASH 03   27   00	COUNTY / CITY CODE 03 / 50	INVEST. AGENCY REPORT NUMBER 00-23137	HSMV CRASH REPORT NUMBER 56172774
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(NARRATIVE)

See page 2 for details

SEC#	PASS#	PASSENGER'S NAME	CURRENT ADDRESS	CITY & STATE	ZIP CODE	DATE OF BIRTH	RACE	SEX	LOC	INJ	S. EQUIP.	EJECT.

Violator(s)	SECTION #	NAME OF VIOLATOR	FL STATUTE NUMBER	CHARGE	CITATION NUMBER
	SECTION #	NAME OF VIOLATOR	FL STATUTE NUMBER	CHARGE	CITATION NUMBER

WITNESS NAME (1)	CURRENT ADDRESS	CITY & STATE	ZIP CODE	WITNESS NAME (2)	CURRENT ADDRESS	CITY & STATE	ZIP CODE
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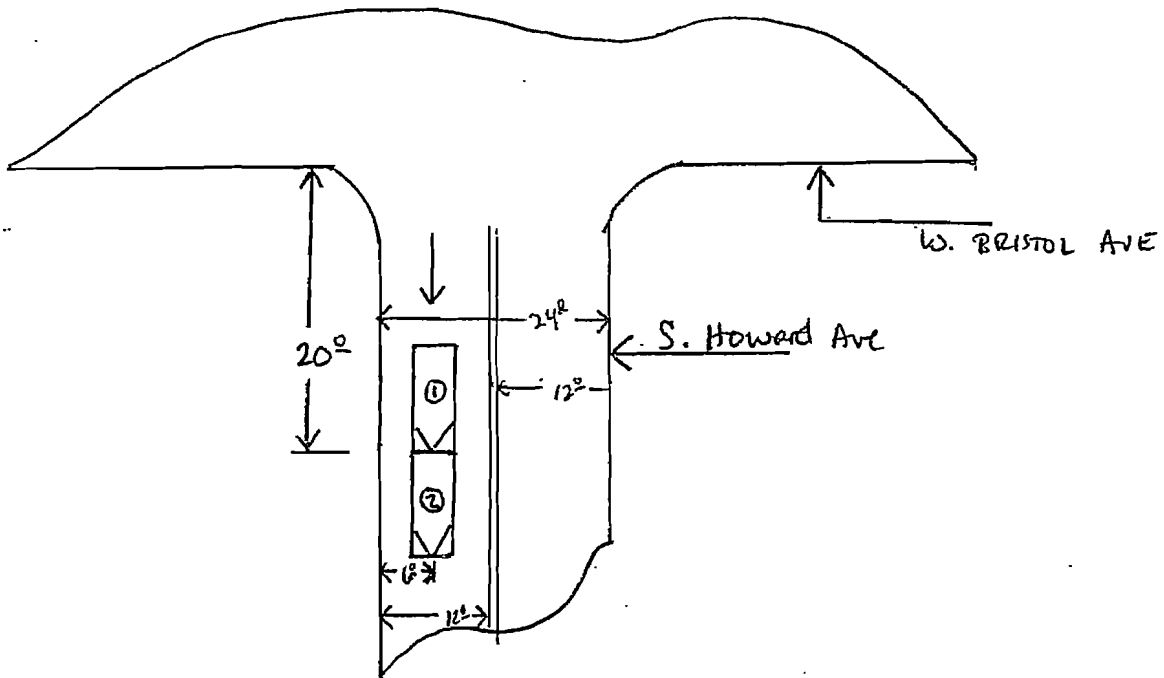
FIRST AID GIVEN BY - NAME	1. Physician or Nurse 2. Paramedic or EMT 3. Police Officer 4. Certified 1st Aider 5. Other	INJURED TAKEN TO:	BY - NAME
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WAS INVESTIGATION MADE AT SCENE? 1. YES <input type="checkbox"/> 2. NO <input type="checkbox"/>	IF NO., THEN WHERE?	IS INVESTIGATION COMPLETE? 1. YES <input type="checkbox"/> 2. NO <input type="checkbox"/>	IF NO., THEN WHY?	DATE OF REPORT	PHOTOS TAKEN 1. YES <input type="checkbox"/> 2. NO <input type="checkbox"/>	IF YES, BY WHOM? 1. INVESTIGATING AGENCY <input type="checkbox"/> 2. OTHER <input type="checkbox"/>
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INVESTIGATOR - RANK & SIGNATURE OFC. K. Howell	ID/BADGE NUMBER 41732 / 286	DEPARTMENT Tampa P.D.	FHP <input type="checkbox"/> SO <input type="checkbox"/> PD <input checked="" type="checkbox"/> OTHER <input type="checkbox"/>
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INDICATE NORTH  
WITH ARROW



NOT TO SCALE  
MEASUREMENTS ARE APPROX.

Blank