

# OLIVER & OLIVER

ATTORNEYS AT LAW

Lewis B. Oliver, Jr.  
156 Madison Avenue  
Albany, New York 12202  
(518) 463-7962

Gideon Orion Oliver  
c/o 200 East 10<sup>th</sup> St. #917  
New York, New York 10003  
(646) 602-9242

July 10, 2006

VIA FACSIMILE TO (718) 391-2709

Ms. Maura McCarthy  
Queens Borough Commissioner  
New York City Department of Transportation  
30-30 Thomson Avenue, 5<sup>th</sup> Floor North  
Long Island City, New York 11101

Re: The Removal of the Memorial Recognizing Andre Anderson's Death

Dear Commissioner McCarthy:

As you know, while riding his bicycle on Shore Front Parkway near Beach 77 Street on September 24, 2005, 14-year-old Andre Anderson was killed when Mr. Jose Vicens struck Andre from behind with his black Lincoln Navigator Sports Utility Vehicle. Despite strong evidence that Mr. Vicens's reckless driving was the principal cause of the crash that killed Andre, neither the New York City Police Department ("NYPD") nor the Office of the District Attorney of Queens County has conducted a substantive investigation of the incident. Indeed, Mr. Vicens has never been served so much as a traffic summons.

I represent Audrey Anderson, Andre's mother, in connection with making the below-described requests.

In terms of general background, I understand that there are no traffic control devices or stop signs on the section of Shore Front Parkway where Andre was riding, and that Shore Front Parkway is a beach access street that becomes quite crowded with pedestrians and cars during the spring, summer and early fall months. I understand that, prior to Andre's death, local elected officials and other members of the community had been campaigning for the installation of traffic lights along a 20-block stretch of Shore Front Parkway including the location at which Andre was killed<sup>1</sup>.

---

<sup>1</sup> For example, according to a front page article in the September 30, 2005 edition of The Wave, the DOT surveyed the area in 2004 at the request of Councilman Joseph Addabbo's office, but "concluded traffic signals were unwarranted according to Federal guidelines." The article also indicates that the DOT reopened its investigation into the need for traffic lights following the death of a man in a drag racing

I have been informed that, earlier this year, a number of members of the community, including members of Andre’s family, placed a small, white “ghost bicycle”, along with a small sign bearing the words “Andre Anderson, 14 years old, killed by SUV, Sept. 24, 2005, rest in peace” on a metal pole in an area of the median near where Andre was run down. As the following photograph indicates, the memorial is not placed in a manner that would interfere with vehicular or pedestrian traffic:



The following photograph of Andre’s stricken bicycle ran on the front page of the September 30, 2005 edition of The Wave:



---

incident prior to September in 2005, and that Assemblywoman Audrey Pheffer’s Office has circulated a petition addressed to Mayor Bloomberg calling for the immediate installation of traffic lights along the stretches of roadway in question.

The ghost bike and plaque are a memorial<sup>2</sup> to Andre. I understand that on July 6, 2006 you had a conversation with Andre's mother during which you informed her that members of the NYPD's 100<sup>th</sup> Precinct would remove the memorial.

I am sure you will agree that bicycle safety in New York City is a matter of great public concern, and that the majority of car drivers who kill bicyclists on the City's streets claim not to have seen them. For bicyclists, and with respect to bicycle safety, *to be seen* is a matter of life and death. It should be beyond cavil that the memorial to Andre constitutes activity protected by the First Amendment and speech on a matter of great public concern and its proposed removal implicates Andre's mother's constitutional rights.

I have heard conflicting reports as to the City's rationale for removing the memorial. I understand that you informed one person that the memorial is illegally attached to a City street sign. I have also heard both that a redesign of the street and/or the signage on the street is imminent and that no street or signage redesign are in the works, but the DOT has received complaints about the memorial.

Accordingly, this is to request clarification from you as to why the DOT plans to have the NYPD remove the memorial, and pursuant to what purported legal authority the plans are proceeding. Alternatively, please indicate simply that you intend to respect the wishes of the family and the community by leaving the memorial where it belongs.

This is also to request copies of records<sup>3</sup> from your agency as set forth more fully below pursuant to Article 6 §§ 84-90 of the New York State Public Officers Law ("FOIL"). If there are any fees for copying the records I am requesting, please supply those records without informing me if said fees do not exceed \$100.00.

I hereby request that your agency<sup>4</sup> provide me with an opportunity to review and/or copies of any and all records or portions thereof that were prepared, received, transmitted, collected and/or maintained by your agency regarding (1) the memorial to

---

<sup>2</sup> The Third Edition of Ballentine's Law Dictionary defines "memorial" as, *inter alia*, "a manifestation of recognition of a person or an event to stand as a reminder in the future of services or sacrifices made by the person or of the importance of the event. A memorandum; a means of reminding of something to be done."

<sup>3</sup> I use the term "records" in the broadest sense the law allows. I mean it to include any information kept, held, filed, produced or reproduced by, with or for your agency, in any physical form whatsoever, including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations, codes, letters, communications, and/or emails, and other records generated, received, or maintained electronically. See Public Officers Law §86(4).

<sup>4</sup> By carbon copy to the Records Access Officer of the New York City Police Department, this FOIL request runs to that agency, as well.

Andre Anderson and (2) the placement of traffic safety signals along Shore Front Parkway, including, but not limited to, any and all of the following:

1. Records regarding Andre Anderson and/or his death;
2. Records regarding Audrey Anderson;
3. Records regarding complaints about the memorial;
4. Records regarding the placement of the memorial;
5. Records regarding the maintenance of the memorial;
6. Records regarding the proposed removal of the memorial;
7. Records regarding the environmental impact of roadside memorials;
8. Records regarding the environmental impact of the attachment of bicycles to street fixtures;
9. Records regarding the placement of traffic signals along Shore Front Parkway, including, but not limited to, any and all correspondence regarding traffic signals and Shore Front Parkway;
10. Records regarding traffic surveys of Shore Front Parkway;
11. Records regarding traffic accidents on Shore Front Parkway; and
12. Petitions or other communications regarding traffic safety and Shore Front Parkway.

Should you deny any portion of this request based on a determination that you are legally exempt from the disclosure requirement with respect to a particular document, please provide me with a written explanation specifically citing the Public Officers Law §87(2) category into which you allege that each document allegedly exempt from disclosure falls.

As I am sure you are aware, these exemptions are to be narrowly construed, and the burden to demonstrate that the requested material indeed qualifies for exemption is yours. Gould v. NYPD, 87 NY2d 267 (1996). Moreover, you may only withhold disclosure where the material requested falls squarely within the ambit of one of those statutory exemptions. Id. Accordingly, please articulate particularized and specific justifications for your withholding in each case.

Please treat this request as severable. If you deny one portion or portions of it based on an alleged exemption from disclosure, please continue the process of providing me with copies of those records you agree you are required to disclose without delaying that process based on your partial denial of the overall request.

In other words, please turn over what you agree I am entitled to as soon as possible, even if you claim exemption from disclosing some of the records requested herein. Please also provide me with the name, address, and facsimile number of the person or body to whom I should direct an administrative appeal of any such potential denial.

Andre's mother and I thank you in advance for your professional courtesy and prompt attention to this important matter.

Very truly yours,

OLIVER & OLIVER  
By: Gideon Orion Oliver

cc: VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED:

Records Access Officer  
New York City Department of Transportation  
c/o 30-30 Thomson Avenue, 5<sup>th</sup> Floor North  
Long Island City, New York 11101

Records Access Officer  
New York City Police Department  
Freedom of Information Law Unit  
Room 110c  
1 Police Plaza  
New York, NY 10038-1497

VIA FACSMILE:

Councilman Joseph P. Addabbo, Jr.  
159-53 102 Street  
Howard Beach, New York 11414  
Fax: 718-322-5760

Assemblywoman Audrey I. Pheffer  
90-16 Rockaway Beach Blvd.  
Rockaway Beach, New York 11693  
Fax: 718-945-9549

Ms. Betsy Gotbaum  
Office of the Public Advocate  
1 Centre Street, 15<sup>th</sup> Floor  
New York, New York 10007  
Fax: 212-669-4701

Delores Orr, Chairperson  
Jonathan Gaska, District Manager

Community Board 14  
19-31 Mott Avenue  
Far Rockaway, New York 11691  
Fax: 718-868-2657