

#2017-57



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June 8, 2017

Nova Dubovik
State Records Committee Executive Secretary
Utah State Archives Records and Service
346 South Rio Grande St.
Salt Lake City, Utah 84101

Re: Appeal of GRAMA Decision dated May 12, 2017

Dear Ms. Dubovik

Mountain Crane, LLC ("Mountain Crane") respectfully submits the following appeal of Utah Transit Authority's ("UTA") denial of Mountain Crane's GRAMA request seeking video of the "crane/pedestrian" accident that occurred on April 4, 2016, at approximately 3300 South 300 West, Salt Lake City, UT. Mountain Crane submitted its initial request on April 25, 2017. See Exhibit 1. That request was denied by UTA. See Exhibit 2. Mountain Crane appealed to the chief administrative officer of UTA on May 3, 2017. See Exhibit 3. On May 12, 2017, UTA's President and CEO affirmed UTA's refusal to produce the portion of the video which shows the pedestrian being struck by a UTA crossing arm and bystanders coming to her aid. See Exhibit 4.

UTA asserts that it cannot release the unredacted video because it would constitute a clearly unwarranted invasion of the pedestrian's and bystanders' personal privacy. Records "containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy" are private. See Utah Code Ann. § 63G-2-302(2)(d). "In determining whether a record is properly classified as private under Subsection 63G-2-302(2)(d), the governmental entity, State Records Committee, local appeals board, or court shall consider and weigh: (a) any personal privacy interests, including those in images, that would be affected by disclosure of the records in question; and (b) any public interests served by disclosure." *Id.* § 63G-2-201(13).

The burden is on the custodian to justify why the record sought should not be furnished. See *KUTV, Inc. v. Utah State Bd. of Educ.*, 689 P.2d 1357, 1362 (Utah 1984). The GRAMA statute expressly states that "[i]t is the intent of the Legislature to... favor public access when, in the application of this act, countervailing interests are of equal weight." Utah Code Ann. § 63G-2-102(3)(e).

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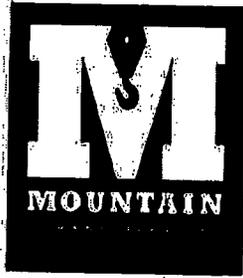
Utah courts have emphasized that a record may not be withheld merely because its contents invade personal privacy. *See Deseret News Pub. Co. v. Salt Lake Cty.*, 2008 UT 26, ¶ 33, 182 P.3d 372. Instead, the invasion must be "clearly unwarranted." *Id.* "The presence of this limiting provision inevitably calls on a governmental entity, when classifying a record, to consider matters other than whether and to what degree a record invades personal privacy." *Id.* Section 63-2-302(2)(d) requires an expansive and searching evaluation of the interests that might make an invasion of personal privacy warranted. *Id.*

In *Deseret News*, the Utah Supreme Court found that denying access to an investigative report of a sexual harassment allegation was improper under Utah Code Ann. § 63G-2-302(2)(d) because the legitimate public interest in releasing the report outweighed the potential personal privacy intrusion suffered. *Id.* ¶ 53. The court observed that, by its nature, the content of an investigative report of sexual harassment could be expected to invade privacy. *See id.* ¶ 30. However, the disclosure of the identities of witnesses in the report and the alleged victims and perpetrators did not amount to a "clearly unwarranted invasion of personal privacy." *See id.* ¶ 37. The sexual harassment allegations had been publicized in other forums, and personal details of the same nature as the investigative report could be found in several publicly available documents. *See id.* ¶ 38.

Further, in *Deseret News*, considerations of public interest pushed aside concerns "over even the most intimate, embarrassing, and humiliating episodes of human sexual behavior." *Id.* ¶ 30. The court found that disclosure of the information would likely provide relevant context to fairly evaluate the conduct of the persons involved. *See id.* ¶ 40. The contents of the report would also provide a window into the conduct of public officials that would not be available by other means. *See id.* ¶ 47. Unsubstantiated assertions that disclosure of a record would be embarrassing and possibly detrimental to certain individuals is insufficient to support a ruling that disclosure would be contrary to the public interest. *See KUTV, Inc. v. Utah State Bd. of Educ.*, 689 P.2d 1357, 1361 (Utah 1984).

In this case, the portion of the video showing the pedestrian being struck by the crossing arm and bystanders coming to her aid is not properly classified as private. Disclosure of this portion of the video would not amount to a "clearly unwarranted" invasion of personal privacy, and any privacy concerns are outweighed by the public interest in access to that information. Even in *Deseret News*, where the most "intimate, embarrassing, and humiliating episodes" were at issue, the Utah Supreme Court found that disclosure of the investigative report did not amount to a "clearly unwarranted" invasion of personal privacy. Here, the privacy implications are far less. The pedestrian and the bystanders were in a public place, and were not engaging in any private or potentially intimate behavior. It is unlikely that the quality of the video will render their identities immediately recognizable. While producing the unredacted video may





invade the pedestrian's and bystanders' privacy, it falls far short of the "clearly unwarranted" standard.

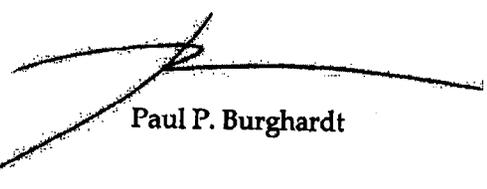
UTA cites *Becker v. Washington Co. Sheriff's Office*, State Records Committee decision No. 17-15, in support of its decision. In *Becker*, the petitioner was stopped by a police officer and charged with driving under the influence. The petitioner sought access to a police officer's body camera video which included images of a passenger inside Mr. Becker's vehicle. The *Becker* decision merely states that the release of the video unredacted would constitute a clearly unwarranted invasion of personal privacy of Mr. Becker's passenger. The privacy implications in *Becker* are different than the privacy implications in the instant case. The passenger in *Becker* was in a private vehicle, rather than on out in public. Further, the video takes place in the context of a DUI arrest, which is more highly charged, embarrassing, and potentially incriminating than an accident on public streets.

Any invasion of personal privacy in this case is also outweighed by the public interest favoring disclosure of the unredacted video. This accident involves equipment maintained by UTA, and implicates the safety of both motor vehicles and pedestrians. The unredacted video will show the full context of the accident and the extent to which members of the public were affected by and involved in the accident.

Thank you for your consideration. Please let me know if we can provide any additional information that would aid in your decisionmaking.

Sincerely,

MOUNTAIN CRANE, LLC



Paul P. Burghardt

Requestor's information:

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