



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Rebecca S. Murray  
*Supervisor of Records*

May 31, 2019  
**SPR19/994**

Tara Douglas, Esq.  
Assistant General Counsel  
Board of Registration in Medicine  
200 Harvard Mill Square, Suite 330  
Wakefield, MA 01880

Dear Attorney Douglas:

I have received the petition of Benita Sanchez appealing the response of the Board of Registration in Medicine (Board) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Ms. Sanchez requested a copy of the “. . . Offer of Proof sent by the court to [the Board] pertaining to [an identified individual] in case 1984CV00119, Davis, Amanda vs. Mark, M.D., Alice.” The Board responded on May 21, 2019, indicating there are no responsive records. Unsatisfied with the Board’s response, Ms. Sanchez petitioned this office and this appeal, SPR19/994, was opened as a result.

***The Public Records Law***

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). “Public records” is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

***The Board's May 21<sup>st</sup> response***


In its May 21, 2019 response, the Board indicates that “[t]here are currently no public documents responsive to your request. Please be advised that mandated reports maintained in the Board’s Data Repository are confidential, unless otherwise required by law. *See* M.G.L. c. 4, § 7(26)(A); *see also* 243 CMR 2.13(2).” The Board explains that “[m]andate reports include, but are not limited to, closed claim reports by medical malpractice insurers, as well as court reports of medical malpractice matters. *See* M.G.L. c. 112, §§ 5A-5J. Therefore, to the extent that the Board possesses any responsive records described in this paragraph, they are withheld.”

Based on its response, although the Board indicates that “[t]here are currently no public documents responsive to [Ms. Sanchez’s] request” and references the confidentiality of mandated reports, it remains unclear whether the Board possesses the “Offer of Proof . . .,” and if so, how the document falls within the confidentiality provision of 243 C.M.R. 2.13(2). The Board must clarify these issues. The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii).

***Conclusion***

Accordingly, the Board is ordered to provide Ms. Sanchez with a response to the request, provided in a manner consistent with this order, the Public Records Law, and its Regulations within ten business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us).

Sincerely,



Rebecca S. Murray  
Supervisor of Records

cc: Benita Sanchez