



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

Rebecca S. Murray  
Supervisor of Records

June 14, 2019  
**SPR19/1120**

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

Dear Attorney Dolan:

I have received the petition of Joseph B. Bertrand, Esq. of *Murray, Kelly & Bertrand, P.C.* 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, Attorney Bertrand requested a copy of: “the complaint against my client [an identified physician] in 2016 regarding the release of medical records.”

***The Board’s response June 5, 2019***

In the Board’s June 5<sup>th</sup> response, you state:

“[f]ollowing a search of [the identified physician’s] file, Board staff was unable to locate a written complaint against [the identified physician]. I have confirmed with the Board’s Disciplinary Unit that the complaint was made by telephone. Therefore, the Board has no records responsive to your request in its possession, custody, or control.

To clarify further, there is no recording or transcript of the telephone call that initiated the complaint. Therefore, there is nothing to provide Mr. Bertrand.”

In a June 11<sup>th</sup> letter, Attorney Bertrand contends that, “[t]here must be some document that exists that shows who made the complaint, when it was made, and about whom it refers to in the complaint of disclosing records.”

***Records in its possession, custody and control; Records management and retention***

The duty to comply with requests for records extends to those records that exist and are in

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the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii). In light of the issue raised by Attorney Bertrand's June 3<sup>rd</sup> and June 11<sup>th</sup> letters, I find the Board must explain whether any responsive records existed and were destroyed, or whether the records did not initially exist. See G. L. c. 66, § 10(a)(ii), (b)(ii).

A Public Records Division staff attorney contacted you regarding this request and appeal on June 7, 2019, seeking further information on the process and documentation of complaints made by telephone, but was unable to connect directly with you.

***Conclusion***

Accordingly, the Board is ordered to provide Attorney Bertrand with a response, in a manner consistent with this order, the Public Records Law and its Regulations within 10 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,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive style with a large, looped "M" at the end.

Rebecca S. Murray  
Supervisor of Records

cc: Joseph B. Bertrand, Esq.