



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

Rebecca S. Murray  
*Supervisor of Records*

June 24, 2019  
**SPR19/1154**

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 Ricky Hunter 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, Mr. Hunter requested "... all complaints, disciplines, lawsuits applications and reapplications, references, resumes and everything else in your file pertaining to..." and identified individual. The Board responded to his request by providing redacted responsive records. In his petition for appeal, Mr. Hunter indicates he is "appealing the redaction of the photograph."

***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.

*Specificity*

In its response, the Board explains that the records have been redacted or withheld under the following categories and exemptions: “Personal information, including but not limited to social security numbers, drug provider identification numbers, home addresses, personal telephone numbers, personal email addresses, and dates of birth (*see* G.L. c. 4, § 7(26)(a) and (c); *see also* G.L. c. 66A, § 2; *see also* G.L. c. 93H; *see also* Board Policy 98-02;” “Personal medical information (*see* G.L. c. 4, § 7(26)(c); *see also* Determination of the Supervisor of Public Records, Docket No. SPR17/570 (May 10, 2017));” and “Physician evaluations and/or evaluative efiles, including but not limited to character evaluations, academic evaluations, and academic transcripts (*see* G.L. c. 4, § 7(26)(c)).”

Under the Public Records Law, the burden is on the custodian to prove with specificity the exemption which applies. G. L. c. 66, § 10(b)(iv); *see also* Globe Newspaper Co. v. Police Comm’r, 419 Mass. 852, 857 (1995); *Flatley*, 419 Mass. at 511.

The Board’s response did not contain the specificity required in a denial of access to public records. Instead, the Board’s response merely cites Exemptions (a) and (c), G. L. c. 66A, § 2; G. L. c. 93H and Board Policy 98-02 without sufficient explanation as to the exemptions’ or statutes’ applicability to the redacted photograph. Particularly, it is unclear which exemption(s) and/or statute(s) the Board is claiming applies to withhold the redacted photograph. The Board is not permitted to issue a blanket denial without providing any further information with respect to the requested records. As a result, I find that the Board has not satisfied its burden in responding to this records request. The Board is advised that a records custodian is required to not only cite an exemption, but to specifically explain the applicability of the exemption to the requested records in order to comply with the Public Records Law and its Access Regulations.

*Order*

Accordingly, the Board is ordered to provide Mr. Hunter 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: Ricky Hunter