



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

Rebecca S. Murray  
*Supervisor of Records*

September 9, 2019  
**SPR19/1725**

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

Dear Attorney Douglas:

I have received a petition from Timothy McGuire appealing the denial of the Board of Registration in Medicine (BORIM) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Mr. McGuire requested incident reports. BORIM provided a response to Mr. McGuire on August 15, 2019. This office received an email from Mr. McGuire on August 24, 2019 requesting an appeal.

***The Public Records Law***

Under the Public Records Law and the Access Regulations (Regulations) all requests for public records must be met with a response within ten business days of receipt of the request. G. L. c. 66, § 10(a)-(b). The response may contain, among other things, an offer to provide records, a fee estimate for provision of the records, or a denial. G. L. c. 66, § 10(b). All records custodians must comply with both the Public Records Law and the Regulations with respect to the timeliness of response.

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) (written response must “identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based...”); 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).

***Appeal***

In BORIM’s August 15<sup>th</sup> response to Mr. McGuire they explained that “[t]here are

currently no documents responsive to your request. Your request has not identified any specific physician(s) for which you are seeking documents. The Board does have the ability to search its physician records database using a Department of Public Health incident report number.” BORIM concluded in their response, “[p]lease submit a supplemental records request if you have the name(s) of the physician( s) you are referencing in the August 13, 2019 request.”

In Mr. McGuire’s August 24<sup>th</sup> appeal he states he “had requested certain documents written by BORIM as a result of a referral from the Department of Public Health’s main office. That referral was assigned a unique numerical identifier A052-002.” Mr. McGuire also argues that a “search of the e-mail system would almost certainly produce documents relevant to the referral and allow identification of the Doctor at issue.”

It is unclear if the BORIM possesses the records requested by Mr. McGuire . See G. L. c. 66, § 10(a)(ii), (b)(ii), (iii). 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), (b)(ii). Also, the duty to comply with requests for records extends to identifying the agency or municipality that may be in possession, custody, or control of the public record sought, if known. See G. L. c. 66, § 10(b)(iii). If the records are within the BORIM’s possession and they intend to withhold the documents an exemption must be provided as stated above. See G. L. c. 66, § 10(b)(iv) (custodian has the burden of establishing the applicability of an exemption).

Accordingly, the BORIM is ordered to review the requests made by Mr. McGuire and provide any requested records in accordance with the Public Records Law, its Access Regulations and this order 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: Timothy McGuire