



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

Rebecca S. Murray
Supervisor of Records

October 10, 2019
SPR19/1975

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 (See SPR19/1725). BORIM provided a supplemental response to Mr. McGuire on September 13, 2019. Mr. McGuire appealed BORIM's response to this office on September 27, 2019.

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).

October 10, 2019

Appeal

In Mr. McGuire's September 27th appeal he states BORIM "still [has] not requested the name of the Doctor involved from DPH central. BORIM could easily conduct an adequate search by asking the main DPH office for a copy of referral number A052-002." BORIM explained to Mr. McGuire in their September 13th response that the "Board has no documents responsive to your requests in its possession, custody, or control. After reviewing the requests, a search of all incident report referrals to the Board from January 1 - December 31, 2018 did not find any relating to the Four Women facility. Therefore, the Board possesses no responsive records."

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).

Conclusion

Based on BORIM's September 13th response, I find BORIM has met its burden in responding to this request. See G. L. c. 66, § 10(b)(ii)-(iii).

Sincerely,



Rebecca S. Murray
Supervisor of Records

cc: Timothy McGuire