



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

Rebecca S. Murray  
Supervisor of Records

January 9, 2020  
**SPR19/2530**

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 Pebbles Rockford 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. Rockford requested “all documents in the file” for an identified physician.

The Board responded to Ms. Rockford on December 23, 2019 by producing responsive records with portions redacted. Unsatisfied with this response, Ms. Rockford petitioned this office and this appeal, SPR19/2530, 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.

### *Current Appeal*

In her appeal petition, Ms. Rockford states that “on page 3 the letterhead is redacted and the name of the person who sent the letter is redacted.” Ms. Rockford further indicates that “it is questionable if all the documents were sent also.” In its December 23<sup>rd</sup> response, the Board indicates that it has redacted information in the records pursuant to Exemptions (a) and (c) of the Public Records Law.

#### *Exemption (a)*

Exemption (a), known as the statutory exemption, permits the withholding of records that are:

specifically or by necessary implication exempted from disclosure by statute

G. L. c. 4, § 7(26)(a).

A governmental entity may use the statutory exemption as a basis for withholding requested materials where the language of the exempting statute relied upon expressly or necessarily implies that the public’s right to inspect records under the Public Records Law is restricted. See Attorney Gen. v. Collector of Lynn, 377 Mass. 151, 54 (1979); Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 545-46 (1977).

This exemption creates two categories of exempt records. The first category includes records that are specifically exempt from disclosure by statute. Such statutes expressly state that such a record either “shall not be a public record,” “shall be kept confidential” or “shall not be subject to the disclosure provision of the Public Records Law.”

The second category under the exemption includes records deemed exempt under statute by necessary implication. Such statutes expressly limit the dissemination of particular records to a defined group of individuals or entities. A statute is not a basis for exemption if it merely lists individuals or entities to whom the records are to be provided; the statute must expressly limit access to the listed individuals or entities.

#### *G. L. c. 66, § 10B*

The Board cites G. L. c. 66, § 10B, as it operates through Exemption (a), to support its redactions. This statute provides in relevant part:

...The home address, telephone number, personal email address or place of employment or education...of persons providing or training in family planning services...shall not be public records in the custody of a government agency which maintains records identifying such persons as falling within such categories and shall not be disclosed.

G. L. c. 66, § 10B.

In its December 23<sup>rd</sup> response, the Board states that because the identified physician “specializes in obstetrics and provides family planning services, each instance of her home address, telephone number, personal email address, and place of employment has been redacted, as this information is specifically exempted from production by statute,” citing G.L. c. 66, § 10B. The redactions identified by Ms. Rockford in her petition, specifically the letterhead and name of the letter-writer, refer to the institution where the subject doctor was a resident. As a result, this information falls within the scope of “place of employment” which may be redacted under G. L. c. 66, § 10B.

Accordingly, based on the Board’s response, I find it has met its burden to explain how it may redact this information pursuant to G. L. c. 66, § 10B, as it operates through Exemption (a). As a result, I decline to opine on the Board’s Exemption (c) claim.

*Existence of Additional Records*

In her appeal petition, Ms. Rockford questions whether the Board has produced all of the responsive records that it possesses. In a telephone conversation with a staff member of the Public Records Division, the Board confirmed that its December 23<sup>rd</sup> response contains all responsive records in its possession. Under the Public Records Law, the Board is not required to create a record in response to a public records request. See G. L. c. 66, § 6A(d). 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). As a result, I will consider this appeal closed.

Sincerely,



Rebecca S. Murray  
Supervisor of Records

cc: Pebbles Rockford