



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

Rebecca S. Murray
Supervisor of Records

January 17, 2020

SPR20/0042

Gerard 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 Mike Shortsleeve 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. Shortsleeve requested “the address of record for an identified physician.”

On December 23, 2019, the Board provided responsive records from a December 14, 2019 request for “all records in the file of an identified physician.” In its December 23, 2019 response the Board explained that it withheld the identified physician’s address of record pursuant to Exemption (a) and G. L. c. 66, § 10B. As a result, Mr. Shortsleeve petitioned the Supervisor of Records (Supervisor), and this appeal was opened. Mr. Shortsleeve asks the Supervisor to obtain this address of record for him.

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) (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).

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.

After this appeal was opened, the Board sent a January 14th email response to this office and Mr. Shortsleeve. In its January 14th response, the Board reiterated that it withheld the address of record, and that the Board also withheld the home address and home telephone number of the identified physician under Exemption (a) and G. L. c. 66, § 10B.

G. L. c. 66, § 10B

This statute provides in relevant part:

"...[t]he home address, phone number or place of employment or place of 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.

The Board further explained that the identified person provides family planning services.

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Therefore, the Board withheld the place of employment for the identified physician under G. L. c. 66, § 10B.

Conclusion

Accordingly, based on the Board's responses, I find that the Board has met its burden of specificity in withholding the requested address of record, which is the physician's employment address, under G. L. c. 66, § 10B as it operates through Exemption (a) of the Public Records Law. I will consider this appeal closed.

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive style with a long, sweeping tail on the "y".

Rebecca S. Murray
Supervisor of Records

cc: Mike Shortsleeve