



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

Rebecca S. Murray
Supervisor of Records

June 16, 2020
SPR20/0880

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 Colman Herman 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. Herman requested the disciplinary file for Dr. Robert S. Hanley.

The Board responded on June 1, 2020, providing a link to responsive information held by the Maryland Board of Physicians. Unsatisfied with this response, Mr. Herman petitioned this office and this appeal, SPR 20/0880, 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 his appeal petition, Mr. Herman states that the Board did not provide “the responsive records generated by BORIM in the Hanley matter.”

Subsequent to the opening of this appeal, the Board informed this office that it intends to provide Mr. Herman with a supplemental response providing further information regarding its responsive records.

Conclusion

Accordingly, whereas the Board has indicated that it intends to provide a supplemental response, I will consider this administrative appeal closed. Said response must be made in accordance with the Public Records Law and its Access Regulations. It is preferable to send an electronic copy of this response to this office at pre@sec.state.me.us. Mr. Herman may appeal the substantive nature of the Board’s response within 90 days. See 950 C.M.R. 32.08(1).

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive, flowing style.

Rebecca S. Murray
Supervisor of Records

cc: Colman Herman