



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

Rebecca S. Murray  
*Supervisor of Records*

July 1, 2020  
**SPR20/0965**

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 documents pertaining to Dr. Russell L. R. Ryan.

The Board provided a response on June 15, 2020, providing responsive records with portions redacted pursuant to Exemption (a) of the Public Records Law. Unsatisfied with this response, Mr. Herman petitioned this office and this appeal, SPR20/0965, 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 its June 17, 2020 response, the Board indicates that it has redacted portions of the records pursuant to Exemption (a) of the Public records Law. The Board cites 243 C.M.R. 1.02(8)(c)(1) in support of its Exemption (a) claim.

#### ***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.

The regulations cited by the Board provide, in pertinent part:

(c) The Board's records of disciplinary matters, as limited by 243 CMR 1.02(8)(a) and (b), include the following:

1. Closed complaint files, which contain the complaint and other information in matters which have been dismissed or otherwise resolved without adjudication, are public records. The name of a complainant or patient and relevant medical records shall be disclosed to the Respondent, but this information is otherwise confidential. The names of reviewers and the contents of complaint reviews shall be confidential.

243 C.M.R. 1.02(8)(c)(1).

In its June 15<sup>th</sup> response, the Board explains that it has redacted “[i]nformation that could be used to identify complainants, mandated reports, patents, and/or victims of crimes....”. In his appeal petition, Mr. Herman objects to the redactions made to one portion of the document that identify individuals whom an alleged victim contacted regarding their complaint.

Based on the Board’s response, I find it has not met its burden of specificity in redacting each portion of the responsive records. Specifically, it is unclear how the names of the individuals that have been redacted in the portions identified by Mr. Herman fall within the categories identified in 243 C.M.R. 1.02(8)(c)(1). The Board must clarify this matter.

### ***Conclusion***

Accordingly, the Board is ordered to provide Mr. Herman with a response to the request, to be provided in a manner consistent with this order, the Public Records Law, and its Regulations as soon as practicable. 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,

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