



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

Rebecca S. Murray
Supervisor of Records

October 22, 2020
SPR20/1266

Helen Rush-Lloyd
Records Access Officer
Department of Public Health
250 Washington Street
Boston, MA 02108

Dear Ms. Rush-Lloyd:

I have received the petition of Matthew Rocheleau of the *Boston Globe* appealing the response of the Department of Public Health (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, Mr. Rocheleau requested:

“Any spreadsheet/database, list, or other record showing the most up-to-date and precise counts of both the number of COVID-19 infections and (separately) the number of COVID-19 deaths among patients/residents and staff at each nursing home, rest home, skilled nursing facility, and assisted living facility in Massachusetts for which the department has data.”

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.

Previous Appeal

This request has been the subject of a previous appeal. See SPR20/0926 Determination of the Supervisor of Records (June 25, 2020). I closed my June 25th determination by ordering the Department to provide a response clarifying whether it possesses information responsive to Mr. Rocheleau's requests. The Department responded on July 13, 2020, stating that additional information had been posted to the Mass.gov Covid-19 Response Reporting website, including information related to elder care facilities. Unsatisfied with this response, Mr. Rocheleau petitioned this office and this appeal, SPR20/1266, was opened as a result.

In this appeal Mr. Rocheleau states that the information contained in the link provided by the Department contains some, but not all, of the information requested. Specifically, in his July 28th petition, Mr. Rocheleau states that "DPH is still reporting numbers in categories, like 1-4 deaths. The law specifically requires the agency to report the precise number of cases and deaths. And death information is public, as DPH has acknowledged." Mr. Rocheleau additionally asserts that "DPH hasn't reported the cumulative numbers of cases/deaths in elder care facilities." Accordingly, the Department was ordered to provide Mr. Rocheleau with said response in compliance with the Public Records Law as soon as practicable. See SPR20/1266 Determination of the Supervisor of Records (August 12, 2020).

Order

Mr. Rocheleau has informed this office that he has yet to receive a response from the Department. Accordingly, the Department is again ordered to provide Mr. Rocheleau a response in a manner consistent with this order, the August 12, 2020 order described above, the Public Records Law, and its Regulations within 10 business days. 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. Failure to comply with this order may result in referral of this matter to the Office of the Attorney General. See G. L. c. 66, § 10A (b).

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: Matthew Rocheleau, *Boston Globe*