



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

Rebecca S. Murray
Supervisor of Records

December 3, 2020
SPR20/2249

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.”

Previous Appeal

This request has been the subject of previous appeals. See SPR20/1266 Determination of the Supervisor of Records (August 12, 2020); SPR20/0926 Determination of the Supervisor of Records (June 25, 2020). I closed my August 12th determination by ordering the Department to provide a response clarifying whether it possesses the specific information requested by Mr. Rocheleau. The Department responded on November 13, 2020, stating that “[a]s of November 6, 2020, the Department is now sharing cumulative cases and deaths by facility, from March 10, 2020 through October 24, 2020,” and providing a link to this information. Unsatisfied with this response, Mr. Rocheleau petitioned this office and this appeal, SPR20/2249, 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. 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 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.” Mr. Rocheleau additionally asserts that “DPH hasn't reported the cumulative numbers of cases/deaths in elder care facilities.”

Although the Department has provided an additional spreadsheet, the records do not contain specific numbers within the range of 1-4 for cases or deaths. While the Department states that “[t]his data is self-reported by facilities as part of the G.L. Chapter 93 Elder Facility reporting requirements,” it remains unclear whether the Department possesses the specific data requested by Mr. Rocheleau, and if it does, why it has not produced it. The Department must clarify this matter.

Conclusion

Accordingly, the Department is ordered to provide Mr. Rocheleau with a supplemental response to this request, to be provided in a manner consistent with this order, 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.

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*