



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

Rebecca S. Murray
Supervisor of Records

February 11, 2021
SPR21/0192

Gerard F. Dolan, Esq.
Assistant General Counsel
Massachusetts Board of Registration in Medicine
200 Harvard Mill Square, Suite 3301
Wakefield, MA 01880

Dear Attorney Dolan:

I have received the petition of Casandra Daye appealing the response of the Massachusetts 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). On January 26, 2021, Ms. Daye requested the following records, “all the documents in the file pertaining to [named individual], M.D.” The Board provided a response and unsatisfied with the response, Ms. Daye petitioned this office and SPR21/0192 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.

The Board's January 27th response

The Board responded on January 27, 2021 and stated that, "[a] search of the Board's records found no licensee [with requested name]. Therefore, the Board possesses no records responsive to your request."

No Duty to Create Records

Please be advised, under the Public Records Law the Board is not required to create a record in response to a public records request. See G. L. c. 66, § 6A(d). The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii).

Conclusion

Whereas the Board does not possess any records responsive to Ms. Daye's request and has no duty to create records responsive to the request, I will now consider this administrative appeal closed. If Ms. Daye is not satisfied with the resolution of this administrative appeal, she is advised that this office shares jurisdiction with the Superior Court of the Commonwealth. See G.L. c. 66 § 10(A)(c).

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: Casandra Daye