



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

Rebecca S. Murray
Supervisor of Records

August 13, 2021
SPR21/1978

Tara R. 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 Attorney Brian E. Sopp 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). On February 22, 2021 Attorney Sopp, on behalf of his client, requested “all material in [the Board’s] possession related to BORIM Complaint Nos. 17-153, 17-354, 19-530, and 20-030 and DALA Adjudicatory Case No. RM-20-0258.” He also requested “[a] copy of any and all documents and materials, including but not limited to all investigative files, administrative filings and decisions, and audio and video recordings, pertaining to [a named] M.D.”

The Board responded on March 1, 2021, providing a number of responsive records, and claiming to withhold others pursuant to Exemption (a) of the Public Records Law, citing G. L. c. 112, § 5 and 243 C.M.R. 1.02(8)(c)(2), and also pursuant to Exemption (f) of the Public Records Law. Attorney Sopp reiterated his request on July 7, 2021, narrowing the number of complaints he was seeking. The Board again replied on July 20, 2021, referring back to its previous March 1st response. Unsatisfied with the Board’s response, Attorney Sopp appealed, and this case 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 agency 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.

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

Pending Administrative Matter

950 C.M.R. 32.08(2)(b) provides in pertinent part:

the Supervisor may deny an appeal for, among other reasons if, in the opinion of the Supervisor:

1. the public records in question are the subjects of disputes in active litigation, administrative hearings or mediation.

In an email to this office on August 12, 2021, an attorney for the Board confirmed that the cases listed in Attorney Sopp's request are currently pending before the Division of Administrative Law Appeals.

In light of the pending matters, it is my determination that the records at issue in this appeal are the subjects of disputes in an active administrative proceedings. Accordingly, I decline to opine on this matter at this time. See 950 C.M.R. 32.08(2)(b). It should be noted that a change in the status of these actions could impact the applicability of 950 C.M.R. 32.08(2)(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: Brian E. Sopp, Esq.