



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

Manza Arthur
Supervisor of Records

September 2, 2022
SPR22/1934

Tara Douglas, Esq.
Assistant General Counsel
Board of Registration in Medicine
178 Albion Street, Suite 330
Wakefield, MA 01880

Dear Attorney Douglas:

I have received the petition of Lexi Fuller appealing the response of the Board of Registration in Medicine (Board) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On August 11, 2022, Ms. Fuller requested "...all correspondence, emails, frivolous complaints and all communication documents regarding [an identified physician]."

The Board provided an August 19, 2022 response asserting, "[t]here are no public documents responsive to your request. Please be advised that one complaint filed is withheld, because it was determined to be frivolous or lacking in legal merit or factual basis, or records of complaints that have been determined to fall outside of the Board's jurisdiction of investigat[ion]; such complaints are not docketed and are exempt from disclosure. G. L. c. 4, § 7(26)(a); see also G. L. c. 112, § 5, and 243 C.M.R. 1.03(8)."

As a result of the Board's denial to produce the frivolous complaint, Ms. Fuller petitioned the Supervisor of Records (Supervisor), and this appeal was opened. In her petition, Ms. Fuller questions the legal citing of the Board to withhold the record.

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 or municipality 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) (written response must “identify any records, categories of records or portions of records that the agency or municipality intends to withhold, and provide the specific reasons for such withholding, including the specific exemption or exemptions upon which the withholding is based...”); 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).

Based upon a September 2, 2022 conversation between this office and a member of the Board’s Legal Counsel, the Board intends to provide a further response to Ms. Fuller.

Conclusion

Accordingly, the Board is ordered to provide Ms. Fuller with said response in a manner consistent with the Public Records Law, and its Regulations within ten (10) business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of the response to this office at pre@sec.state.ma.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Manza Arthur", written in a cursive style.

Manza Arthur
Supervisor of Records

cc: Lexi Fuller