



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

Manza Arthur
Supervisor of Records

April 20, 2023
SPR23/0690

Stacy Book
Records Access Officer
Massachusetts Parole Board
12 Mercer Road
Natick, MA 01760

Dear Ms. Book:

I have received the petition of Andrew Quemere appealing the responses of the Massachusetts Parole Board (Board) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On April 5, 2023, Mr. Quemere requested, “[a]ll letters, emails, and other communications with [an identified individual], or any legal counsel or other representative of [the identified individual].” The Board provided two responses on April 6, 2023. Unsatisfied with the Board’s responses, Mr. Quemere petitioned this office and this appeal, SPR23/0690, 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 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); 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 April 6th Responses

In its initial April 6, 2023 response, the Board stated, “[p]lease be advised that there are no Records of Decision for [an identified individual].” In a supplemental response on April 6, 2023, the Board asserted, “[o]nly the inmate’s Record of Decision (of an initial or review hearing) is considered a public document.”

Current Appeal

In his appeal, Mr. Quemere states:

The board declined to cite an exemption to the public records law that allows it to withhold communications....

Furthermore, the board failed to identify all responsive records in its possession. It is not clear from the board’s response what communications it possesses and is withholding. The board must identify all responsive records even if it withholds those records under an applicable exemption.

Based on the Board’s responses, in conjunction with Mr. Quemere’s appeal, it is unclear what records responsive to the request are being withheld from disclosure. Under the Public Records Law, the burden shall be upon the records custodian to identify records being withheld and prove with specificity the exemption which applies. 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 ...”); see also Globe Newspaper Co. v. Police Comm’r, 419 Mass. 852, 857 (1995); Flatley, 419 Mass. at 511. Consequently, I find the Board did not meet its burden of specificity to withhold the responsive records.

Conclusion

Accordingly, the Board is ordered to provide Mr. Quemere with a response to the request, provided in a manner consistent with this order, the Public Records Law and its Regulations within ten 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,



Manza Arthur
Supervisor of Records

cc: Andrew Quemere