



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

Rebecca S. Murray  
*Supervisor of Records*

June 12, 2018  
**SPR18/771**

Gerard F. Dolan, Esq.  
Assistant General Counsel  
Board of Registration in Medicine  
200 Harvard Mill Square, Suite 330  
Wakefield, MA 01880

Dear Attorney Dolan:

I have received the petition of Cheryl Fiandaca of *WBZ-TV* 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). Specifically, Ms. Fiandaca requested "any and all records, documents, licenses, complaints, certifications, malpractice claims, disciplinary actions, health care facility discipline, out of state discipline or Massachusetts Board discipline, criminal convictions, along with any pleas and felony or misdemeanor complaints" regarding an identified individual.

In its initial response dated March 9, 2018 the Board provided 45 pages of records with portions redacted or withheld under Exemptions (a) and (c) of the Public Records Law. G. L. c. 4, § 7(26)(a), (c). The Board submitted a supplemental response on June 6, 2018.

***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 responses***

In its March 9<sup>th</sup> response the Board asserted “[e]nclosed are 45 pages of records responsive to your request. Please be advised that certain portions of the records have been redacted and/or some records withheld from production due to an exemption pursuant to G.L. c. 4, § 7(26). . . .” Specifically, the Board cites G. L. c. 66A, § 2; G. L. c. 93H; G. L. c. 112, § 5, and 243 C.M.R. 2.13(2)-(4), and 2.14(2) as they operate through Exemption (a) of the Public Records Law to withhold and redact portions of responsive records. The Board also cited Exemption (c) in support of its position. In its June 6<sup>th</sup> response, the Board cites 243 C.M.R. 1.02(8)(b) as well as Exemption (f) to withhold records.

In her appeal petition, Ms. Fiandaca objects to the Board’s decision “to withhold or redact information regarding disciplinary records, complaints and character evaluations” regarding the identified individual.

### ***In camera review***

It is my determination that an *in camera* review of the records would facilitate a review as to the applicability of exemption claim made by the Board. See 950 C.M.R. 32.08(4). After I complete my review of the documents, I will return the records to the Board’s custody and issue an opinion on the public or exempt nature of the record.

The authority to require the submission of records for an *in camera* inspection emanates from the Code of Massachusetts Regulations. 950 C.M.R. 32.08(4); see also G. L. c. 66, § 1. This office interprets the *in camera* inspection process to be analogous to that utilized by the judicial system. See Rock v. Massachusetts Comm’n Against Discrimination, 384 Mass. 198, 206 (1981) (administrative agency entitled deference in the interpretation of its own regulations). Records are not voluntarily submitted, but rather are submitted pursuant to an order by this office that an *in camera* inspection is necessary to make a proper finding.

Records are submitted for the limited purpose of review. This office is not the custodian of records examined *in camera*, therefore, any request made to this office for records being reviewed *in camera* will be denied. See 950 C.M.R. 32.08(4)(c).

This office has a long history of cooperation with governmental agencies with respect to *in camera* inspection. Custodians submit copies of the relevant records to this office upon a promise of confidentiality. This office does not release records reviewed *in camera* to anyone under any circumstances. Upon a determination of the public record status, records reviewed *in camera* are promptly returned to the custodian. To operate in any other fashion would seriously impede our ability to function and would certainly affect our credibility within the legal community.

The Board is ordered to provide unredacted copies of the records to this office for *in camera* inspection without delay. The Board may provide this office with an explanation of its

Gerard F. Dolan, Esq.

SPR18/771

Page 3

June 12, 2018

position regarding the applicability of an exemption to the responsive records. Please be advised that, unlike the materials provided for *in camera* review, any such additional correspondence would be placed in the file for this appeal and would be subject to public disclosure as a public record.

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive, flowing style with a long, sweeping tail on the "y".

Rebecca S. Murray  
Supervisor of Records

cc: Cheryl Fiandaca