



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

Rebecca S. Murray
Supervisor of Records

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SPR19/1230

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

Dear Attorney Dolan:

I have received the petition of S. Howey 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, S. Howey requested “. . . all complaints, disciplines, medical malpractice lawsuits, applications and reapplications, references, resumes and everything else in your file pertaining to” an identified individual. S. Howey included several potential responsive categories of records. The Board responded on June 6, 2019 by providing responsive records with portions redacted under Exemptions (a) and (c) of the Public Records Law. G. L. c. 4, § 7(26)(a), (c).

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.

Appeal

In its June 6th response the Board provided 56 pages of records and noted “[p]lease 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), as specified below. . . .” The Board cited Exemption (c), and with respect to Exemption (a), cited G. L. c. 66A, § 2; G. L. c. 93H; G. L. c. 112, § 5; 243 C.M.R. 2.13(2)-(4) and 2.14(2); 243 C.M.R. 1.02(8)(c)(I); the Health Information Portability and Accountability Act (“HIPAA”); 45 C.F.R. 164.514(B)(2)(i) and G. L. c. 66, § 10B.

In the appeal petition, S. Howey asserts “I’m appealing the redacted portions of the Roncari file. No where [sic] on Roncari’s profile does it say she is does Family Planning. That was evidently created out of thin air. Please send the unredacted file.”

A review of the records included with the Board’s June 6th response reveals a reference to a “Family Planning Fellow.” Further, based on the appeal petition, S. Howey appears to only object to redactions made under G.L. c. 66, § 10B. However, the Board cites several exemptions, statutes, regulations other than G. L. c. 66, § 10B to justify the redactions within the records provided; therefore, it is uncertain whether S. Howey seeks the records without any redactions.

For these reasons, I find that S. Howey’s petition for an appeal is unclear. Consequently, this office is unable to opine on this matter at this time. See 950 C.M.R. 32.08(1)(f) (all petitions for appeal shall be in writing and shall specifically describe the nature of the requestor’s objections to the response or failure to issue a timely response). Accordingly, I will consider this appeal closed. S. Howey may petition this office for a new appeal by providing this office with the necessary clarification of the request for an appeal.

Sincerely,



Rebecca S. Murray
Supervisor of Records

cc: S. Howey