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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-60

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Maryland Health Care Commission, Custodian
Ian Riden, Complainant

Complainant Ian Riden sought, under Maryland’s Public Information Act (“PIA”), certain records related to the Delaware Health Information Network (“DHIN”) from the Maryland Health Care Commission (“MHCC”). In response, the MHCC produced some records with redactions and denied inspection of other records in their entirety. The MHCC cited numerous provisions in the PIA, including § 4-301(a),¹ which exempts records or information that are privileged or confidential “by law,” and § 4-338, which protects information about the security of an information system from disclosure. The complainant ultimately accepted that some of the records are non-disclosable, but he challenges a portion of the MHCC’s denial in this complaint—namely the denials under the attorney-client and deliberative process privileges, and those citing § 4-338 of the PIA. After review of the submissions, which include a privilege log provided by the MHCC with its response to the complaint, we conclude that, though the response was largely compliant with the PIA, the MHCC improperly withheld a record of two email communications. We explain below.

Background

The General Assembly created the Maryland Health Care Commission to “establish a streamlined health care regulatory system” so that “a single State health policy can be better articulated, coordinated, and implemented in order to better serve the citizens of this State.” Md. Code Ann., Health-Gen. (“HG”) § 19-102(b); *see also id.* §§ 19-103 and 19-109 (detailing the purpose of the MHCC and outlining its many powers and duties). Among other things, the MHCC is responsible for adopting “regulations for the privacy and security of protected health information obtained or released through a health information exchange.” HG § 4-302.2; *see also* COMAR 10.25.18 (regulations governing the privacy and security of protected health information). Maryland law provides a detailed and technical definition of “health information exchange” (“HIE”), HG § 4-301(i), which is broadly understood to be an entity that “allows authorized users to securely and electronically access and share patient health information for clinical, quality

¹ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code, unless otherwise stated.

improvement, and public health purposes,” Maryland Health Care Comm’n, Health Information Exchange, https://mhcc.maryland.gov/mhcc/pages/hit/hit_hie/hit_hie.aspx (last visited May 20, 2024).

To operate in Maryland, an HIE must register annually with the MHCC. *See* COMAR 10.25.18.09. According to the submissions, in late 2022, the complainant began corresponding with DHIN about an issue related to DHIN’s policies and procedures.² In late February of 2023, the complainant sent a complaint to the MHCC regarding concerns he had that DHIN and another entity, CommonWell, were operating in Maryland without having registered as HIEs.³ Ultimately, DHIN submitted to the registration process and is now among the fourteen HIEs currently registered in Maryland.⁴ *See* Maryland Health Care Comm’n, Health Information Exchange Registration, https://mhcc.maryland.gov/mhcc/Pages/hit/hit_hie/hit_hie_registration.aspx (last visited May 20, 2024).

The complainant’s PIA request, sent in September of last year, sought records related to his MHCC complaint, including emails exchanged between various individuals involved in DHIN’s registration as an HIE. The request was as follows:

This is a request under the Maryland Public Information Act, Title 4 of the General Provisions of the Maryland Code. I am making this request on behalf of myself, Ian Riden. I am by definition a person of interest in the matter and a citizen making a request. In this capacity, I wish to inspect all records in your custody and control pertaining to the following:

(A) any and all communication and records concerning Delaware Health Information Network, henceforth known as DHIN, from 15-9-22 to 1-8-2023, concerning their licensure to operate as a Health Information Exchange, henceforth HIE in the state of Maryland.

² Although it is somewhat unclear to us, the submissions, which include the redacted records provided by the MHCC, suggest that the MHCC was aware of some of this correspondence.

³ The submissions reveal that in mid-December 2022, the MHCC notified DHIN of a change to the definition of HIE and asked, if DHIN felt that it “does not meet the statutory definition of an HIE in Maryland,” that DHIN send a letter “detailing [its] rationale.” In early January 2023, DHIN apparently notified the MHCC that it intended to submit an application for HIE registration. The records show that that application was submitted on February 7, 2023, and approved on April 17, 2023.

⁴ Based on the records provided by the MHCC, it appears that the MHCC determined that the other entity, CommonWell, did not meet the statutory definition of an HIE.

(B) any and all subsequent records of investigation, complaints or discussion of the above mentioned record against DHIN operating in the state of Maryland with out registration.

(C) copies of any email correspondence between MHCC employee Justine Springer, DHIN, Ian Riden

(D) copies of any email communication between MHCC employees and Union Hospital concerning CommonWell HIE

(E) copies of any emails from MHCC employees and Robert Asante, Christiana Care

The complainant indicated that he anticipated wanting copies of some or all of the responsive records. He asked the MHCC to explain the reasons for any denials in writing, and to provide disclosable portions of records, if only some parts were exempt from disclosure.

The MHCC responded to the PIA request on September 22, 2023, and produced responsive records, many with redactions. The MHCC denied inspection of five emails in their entirety under §§ 4-301(a), 4-343, and 4-344, stating that the records were subject to both the attorney-client and deliberative process privileges, and qualified as intra-agency memoranda. The MHCC also denied inspection of DHIN's financial statements under § 4-335, and explained that the statements were "customarily and actually treated as private and are provided to the [MHCC] under an assurance of privacy." In addition, the MHCC withheld and redacted records based on both §§ 4-335 and 4-338. The MHCC described these records as relating to "DHIN's HITRUST certification" and "information regarding DHIN's information system contained in its registration application, exemption request, registration approval, and email exchanges with [MHCC] staff." The MHCC invoked the deliberative process privilege and intra-agency memoranda exemption as justification for withholding additional "email exchanges between [MHCC] staff about DHIN's registration as an HIE." The MHCC asserted that disclosure of those records would be contrary to the public interest because "it would discourage debate and discussion within the [MHCC] and impair the integrity of the [MHCC's] decision-making process."

Finally, the MHCC withheld three records, and redacted several others, because they contained medical information exempt under § 4-329 of the PIA, were hospital records exempt under § 4-306 of the PIA, or fell within the definition of "medical record" in the Maryland Confidentiality of Medical Records Act, and were thus exempt under § 4-301 of the PIA because disclosure would be "contrary" to a State statute. Though the complainant

indicated in his PIA request that he was a “person in interest”⁵—meaning that he might have a broader right of access to these records—the complainant apparently refused to verify his identity with the MHCC. Thus, the MHCC did not provide the records.

The complainant disagreed with the MHCC’s denials and so contacted the Public Access Ombudsman for assistance resolving the dispute. In January of this year, the Ombudsman issued a final determination stating that the dispute was partially resolved. As a result of the mediation process, the MHCC provided the privilege log it attaches with its response to this complaint. After he reviewed the log, the complainant ceased to dispute the MHCC’s denials of medical records and information, but continued to dispute the denials grounded in §§ 4-301 (attorney-client privilege), 4-335 (confidential commercial or financial information), 4-338 (information about the security of an information system), 4-343, and 4-344 (deliberative process privilege) of the PIA.

After receiving the Ombudsman’s final determination, the complainant filed this complaint. He alleges that MHCC has applied the deliberative process privilege too broadly, and that the privilege should not encompass actions that have been decided. He contends that the attorney-client privilege has also been applied too broadly and lacks “possible merit unless independently reviewed.” Turning to § 4-338, the complainant argues that this exemption too has been interpreted too broadly and that there is “little to no actual confidential information in the report,” and that blocking access to the information “prevents [M]arylanders from assessing if this licensed foreign state is complying with best practices for PHI handling.” The complainant stresses that the PIA request is “from the citizen who revealed [that] the licensed party is operating in blatant disregard for Maryland law,” and that he is “attempting to make sure the [S]tate of Maryland properly acted to make the state agency of Delaware come into compliance.”

In response to the complaint, the MHCC provides general information about HIEs and the registration process. The MHCC explains that an HIE must “provide confidential commercial information and private information about the security of their information system to MHCC during [the] registration process so that MHCC can assess compliance with regulatory requirements.” This information, the MHCC states, is not voluntarily provided. The MHCC also provides broader information about the context in which responsive records were generated, explaining that, at the time the complainant submitted his complaint to the MHCC, DHIN was not registered as an HIE but that, “[f]ollowing [the] complaint, DHIN registered with MHCC.” The MHCC defends each of the bases for withholding or redaction in turn.

⁵ See § 4-101(g), which defines “person in interest” as, among other things, a person “that is the subject of a public record.” *See also* HG § 4-301(n) (defining “person in interest” to include “[a]n adult on whom a health care provider maintains a medical record”).

Addressing first § 4-335, the PIA’s exemption for confidential commercial or financial information, the MHCC states that the records and information withheld under this exemption are “the financial statements of DHIN.” The MHCC asserts that these financial statements are “both customarily and actually treated as private by its owner,” and that their disclosure would cause “substantial harm” to DHIN’s competitive position.

The MHCC next addresses § 4-338, which requires a custodian to deny inspection of “the part of the public record that contains information about the security of an information system.” A comparatively large number of records were either withheld or redacted under this exemption. Three of those records, which MHCC states were withheld in their entirety, related to DHIN’s “HITRUST certification.” The MHCC explains that “HITRUST assesses an organization’s compliance with various data security and privacy-related regulations and standards,” and that a HITRUST certification “indicates that an entity’s information system meets HITRUST’s rigorous standards and framework.”⁶

Turning to the redactions it applied under § 4-338, the MHCC states that the exemption applies to certain information redacted in DHIN’s HIE registration application, which included requests for exemptions from some HIE regulations. The MHCC states that this is “sensitive information” about the security of DHIN’s information system. The MHCC details this information as information about “vulnerability management practices, status of risk management activities, how often [DHIN] monitor[s] third-party vendors to reduce risk of security incidents, whether [DHIN] has increased its security insurance coverage within the last 12 months, and which provisions of the regulations they are seeking exemption.” Focusing on the exemption requests in particular—which the MHCC states “highlight specific information about an HIE’s information system which does not meet specific regulatory requirements”—the MHCC argues that disclosing this information “might expose areas of vulnerability,” and might also “deter HIEs from providing sensitive information to MHCC” and “expose HIE’s to security breaches.” The MHCC explains that this sort of information was also redacted from the registration approval and email exchanges with MHCC staff.

Finally, the MHCC addresses the records it maintains are subject to certain privileges. Stressing that no record was withheld in its entirety under the deliberative process privilege, the MHCC explains that it redacted the deliberative portions of emails between MHCC staff about DHIN’s registration as an HIE. The MHCC argues that disclosure of this information would be contrary to the public interest because disclosure

⁶ See HITRUST, <https://hitrustalliance.net/> (last visited May 20, 2024) (stating that “[o]rganizations are under increasing pressure to prove they use security and privacy practices capable of managing information risk in an ever-changing threat and regulatory environment,” and that “HITRUST’s assessment and certification process gives organizations—and their stakeholders, customers, and regulators—the confidence they’re looking for in their risk management and compliance programs”).

would “discourage debate and discussion within the [MHCC] and impair the integrity of the [MHCC’s] decision-making process.” The MHCC also notes that the complainant is aware of the outcome of the discussions at issue—“requesting DHIN to register with the State.” The MHCC also argues that five emails that were withheld in their entirety are subject to the attorney-client privilege and therefore exempt under § 4-301. The MHCC states that the emails “spanned from December 15, 2022, to January 3, 2023 and included legal advice regarding DHIN’s registration as an HIE.”

Analysis

The PIA authorizes us to review and resolve complaints from PIA requesters that allege certain violations of its provisions, including that a custodian improperly denied inspection of a public record.⁷ § 4-1A-04(a)(1)(i). After reviewing the complaint and all submissions, we must issue a written decision and order a statutory remedy, if we find that the alleged violation occurred. § 4-1A-04(a)(2) and (3). If we determine that the custodian wrongfully denied inspection of a public record, we must order the custodian to “produce the public record for inspection.” § 4-1A-04(a)(3)(i).

The PIA “establishes a public policy and a general presumption in favor of disclosure of government or public documents.” *Kirwan v. Diamondback*, 352 Md. 74, 80 (1998); *see also* § 4-103(b) (“[U]nless an unwarranted invasion of the privacy of a person in interest would result, this title shall be construed in favor of allowing inspection of a public record.”). A custodian must thus “disclose certain records unless the requested records are within the scope of a statutory exemption.” *Immanuel v. Comptroller*, 449 Md. 76, 81 (2016). Some of those exemptions are mandatory in nature, meaning that if a record or information falls within their scope, a custodian has no choice but to withhold it. *See* §§ 4-301, 4-304 through 4-341. Other exemptions are discretionary, meaning that a custodian may withhold certain records or information only if a custodian believes that inspection “would be contrary to the public interest.” § 4-343; *see* §§ 4-344 through 4-356. Regardless of the nature of the exemption, a custodian bears the burden of justifying its application. *Cranford v. Montgomery County*, 300 Md. 759, 780 (1984).

We take the MHCC’s argument in reverse order, starting with the attorney-client privilege. Maryland has long recognized the privileged nature of certain communications between attorneys and their clients. *See Harrison v. State*, 276 Md. 122, 131-35 (1975). The privilege exists “to protect not only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him [or her] to give sound and informed advice.” *Upjohn v. United States*, 449 U.S. 383, 390 (1981). To qualify for protection, a communication must “relate to professional advice and to the subject-matter about which such advice is sought.” *Harrison*, 276 Md. at 132 (quoting

⁷ Before filing a complaint, a requester must attempt to resolve the dispute through the Ombudsman and receive a final determination that the dispute was not resolved. § 4-1A-05(a).

Lanasa v. State, 109 Md. 602, 617-18 (1909)); see also *P.&B. Marina, LP v. Logrande*, 136 F.R.D. 50, 53 (E.D.N.Y. 1991) (“The privilege protects communications that keep the attorney advised of developments regarding an ongoing matter for the purpose of rendering a legal opinion as well as express requests for legal advice.”). When a record responsive to a PIA request is subject to the attorney-client privilege, it is exempt from disclosure under § 4-301(a)(1) because the record is considered “by law . . . privileged or confidential.”

The MHCC’s privilege log indicates that five email records were withheld in their entirety on attorney-client privilege grounds. Given the complainant’s assertion that the application of the attorney-client privilege seemed “overly broad and lacking in possible merit unless independently reviewed,” we asked the MHCC to provide a copy of those specific records.⁸ See § 4-1A-06(b)(2)(ii)(1) (allowing the Board to request “a copy of the public record”). After review, we are satisfied that the privilege applies to all but two of those communications. All of the communications were exchanged between an MHCC employee and an Assistant Attorney General (“AAG”) representing the MHCC. One email, which the MHCC describes in its index as an “[e]mail seeking legal advice on DHIN’s registration as an HIE,” was sent on December 16, 2022. Our review confirms that this email indeed sought legal advice. The AAG’s response, sent on January 3, 2023, provides an analysis of the question posed, complete with legal citations. These exchanges are clearly protected by the attorney-client privilege. However, there were two additional emails exchanged outside of this thread that seem to us to be purely procedural in nature—i.e., they do not detail a request for advice or the advice given. In our view, these two communications, though exchanged between an attorney and client, fall outside of the attorney-client privilege and should therefore be disclosed.⁹ Otherwise, based on our review of the records themselves, we find no improper denial of inspection under § 4-301(a)(1).

The MHCC redacted information in six records that it maintains is subject to the deliberative process privilege. For purposes of the PIA, the deliberative process privilege is encompassed by §§ 4-343, 4-344, which, read together, allow a custodian to deny inspection of a record covered by the privilege if the custodian believes that inspection of the record would be contrary to the public interest. *Stromberg Metal Works, Inc. v. Univ. of Maryland*, 382 Md. 151, 163-64 (2004); see also *Admin. Office of the Courts v. Abell Found.*, 480 Md. 63, 92 (2022) (“As a threshold matter, GP § 4-344 is a conditional exemption. To invoke it, a custodian must ‘believe[]’ that the requested inspection ‘would be contrary to the public interest.’”). The privilege exists primarily to encourage “open, frank discussion between subordinate and chief concerning administrative action.”

⁸ As required by law, we will maintain the confidentiality of these records. See § 4-1A-06(b)(5); COMAR 14.02.06.01.

⁹ For identification purposes, this is the email labeled by the MHCC as “AAG email #1.”

Stromberg, 382 Md. at 164 (cleaned up); *see also Nat'l Lab. Relations Bd. v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-51 (1975) (privilege is premised on the notion that “those who expect public dissemination of their remarks may well temper candor with a concern for appearances . . . to the detriment of the decisionmaking process,” (quotation and citation omitted)). To qualify for protection, the communication in question must be both pre-decisional and deliberative in nature—i.e., it must consist of “confidential opinions, deliberations, advice or recommendations from one governmental employee or official to another official for the purpose of assisting the latter official in the decision-making function.” *Office of the Governor v. Washington Post Co.*, 360 Md. 520, 551 (2000).

The MHCC argues that disclosure of the information it redacted pursuant to the deliberative process privilege would be contrary to the public interest because disclosure would “discourage debate and discussion with the [MHCC] and impair the integrity of the [MHCC’s] decision-making process.” After review of the privilege log and the records, and in light of the cases discussed above, we cannot find that the MHCC has improperly invoked §§ 4-343, 4-344. It is clear from the content that was not redacted that the emails relate to DHIN and questions about its registration as an HIE. Moreover, the unredacted information suggests that deliberation and the exchange of ideas or questions occurred—for example, one of the email closes with a statement that “[m]ore information is definitely needed,” and an intention to “loop” others into the conversation. The unredacted portion of a different email provides information about how an MHCC employee learned certain information, which suggests that, consistent with what the PIA requires, only the deliberative parts of communications have been withheld, with the “purely factual” information disclosed. *See Stromberg*, 382 Md. at 166 (noting that “both the [US] Supreme Court, with respect to FOIA, and this Court, with respect to PIA, have drawn a general distinction between purely factual data and deliberative opinions, noting, however, that the distinction is not always a clear one and is not rigid”).

The complainant contends that the deliberative process privilege “should not encompass decided actions,” thus suggesting that, because the MHCC ultimately decided that DHIN was required to register as an HIE, all of the deliberative communications preceding that decision are no longer protected by the deliberative process privilege. However, a record that falls within the ambit of the deliberative process privilege—i.e., one that contains pre-decisional, deliberative communications—remains subject to the privilege even after the final decision is made. *See May v. Dep’t of the Air Force*, 777 F.2d 1012, 1014-15 (5th Cir. 1985). This makes sense in light of the purpose of the privilege. In general, employees and officials worried about “public dissemination of their remarks” would be no less inclined to “temper candor with a concern for appearances,” *Sears, Roebuck & Co.*, 421 U.S. at 150-51, just because disclosure occurred after the decision was made, rather than before.

Next, we turn to § 4-338, the PIA’s mandatory exemption for “information about the security of an information system.”¹⁰ The MHCC withheld three records related to DHIN’s HITRUST certification in their entirety, and redacted information in other records, e.g., information about DHIN’s request for exemptions from certain regulations. After review of the submissions, we conclude that the MHCC has sufficiently justified the application of this exemption. First, the broader context suggests that the records would contain at least some “information about the security of an information system.” DHIN operates a health information exchange—i.e., an “information system.” One of the MHCC’s duties is to adopt and enforce regulations that govern the “*privacy and security* of protected health information obtained or released through a health information exchange.” HG § 4-302.2 (emphasis added). It is not surprising that there would be information in these records about the “privacy and security” of DHIN’s “information system.”

Second, the privilege log, when read together with the records that were disclosed, supports the application of § 4-338 to the records and information that MHCC withheld under that exemption. As to the records withheld in their entirety, the log indicates that they are records about DHIN’s HITRUST certification. The HITRUST certification process is solely focused on assessing and improving the security of stored data and information. *See supra*, note 6. DHIN’s HITRUST records would thus fall within § 4-338.

The information redacted in the records also falls within § 4-338, as cited by the MHCC. Some of those redactions were applied to information in DHIN’s application for HIE registration—for instance, answers to certain security-related questions and DHIN’s requests for exemptions from some of the regulations that govern the “privacy and security of protected health information.” COMAR 10.25.18. The information that the MHCC has *not* redacted surrounding these redactions supports this conclusion. For example, redactions were applied to DHIN’s answers to questions about the “methods, frequency, last occurrence” of DHIN’s “cybersecurity testing procedures” and its “disaster recovery testing process,” and to the response to “select the option that best describes your organization’s policy for paying a ransom.” It is clear that the answers to such questions provide “information about the security of an information system.” As to the exemption requests, we note that the MHCC did not redact all of the requests—which were contained in the cover letter accompanying DHIN’s HIE registration application—but only a handful,

¹⁰ The exemption for information about the security of an information system has been in the PIA for quite some time—since before 1984, when the PIA was moved from Article 76A to the newly-created State Government Article. *See* 1984 Md. Laws, ch. 284 (noting that § 5-108 of the State Government Article was “new language derived without substantive change from former Art. 76A, § 3(c)(i), (v), (x), (xi), (xii), and (xiv)”). Despite its age, we are unaware of any caselaw interpreting the exemption.

which it states relate to the security of DHIN's system. We see no reason to doubt that representation in light of the security-focused nature of the regulations.

The MHCC also applied redactions to a series of emails exchanged between DHIN's general counsel and the MHCC program manager who, on April 17, 2023, ultimately notified DHIN that its HIE registration application had been approved. The emails were exchanged in March 2023, while DHIN's application was still pending. The privilege log indicates that the redacted information concerns the security of DHIN's information system, a representation that is supported by this broader context. Again, the MHCC is focused in particular on the privacy and security of HIEs. One would expect to find information related to the privacy and security of DHIN's system in emails exchanged between its counsel and those at the MHCC that are ultimately deciding whether to approve its application for HIE registration. The MHCC did not redact everything from these emails—e.g., the information about scheduling meetings and telephone calls was disclosed. This further supports the conclusion that the information that was redacted truly falls within the scope of the exemption.

The complainant argues that the MHCC applied § 4-338 too broadly and that there is “little to no actual confidential information in the report.” He also maintains that “blocking the information prevents [M]arylanders from assessing if this licensed foreign state is complying with best practices for [PHI] handling.” While we are sympathetic to the complainant's wish to know whether DHIN is carefully storing and handling the sensitive information it is entrusted to handle, we note that the exemption applies broadly to any information about the “security of an information system,” not just information that is labeled confidential by an entity or agency. *Compare* § 4-335 (mandatory exemption for “*confidential* financial information” that is “provided by or obtained from any person or governmental unit,” (emphasis added)). By enacting § 4-338, the Legislature effectively conferred a certain degree of confidentiality on this information just by virtue of its content and character. And, by tasking the MHCC with adopting and enforcing regulations for the registration of HIEs, the Legislature has said who it is that must assess whether an entity is complying with best practices—i.e., the MHCC, and not necessarily the general public.¹¹ If the information qualifies as information “about a the security of an information system,” then a custodian has no choice but to withhold it.

The MHCC also characterizes the records and information withheld under § 4-338 as “confidential commercial information” and cites § 4-335 as a second justification for its

¹¹ We note that the regulatory process requires an agency to provide for public comment during the adoption phase. *See* Md. Code Ann., State Gov't § 10-112(a)(3). Thus, the interested public has an opportunity, at least, to provide input on the security and privacy regulations that the MHCC adopts and enforces. We further note that the records and information that the MHCC disclosed here do shed some light on DHIN's compliance and the actions that the MHCC took to ensure that compliance.

denial. Our conclusion that the records and information are exempt under § 4-338 makes it unnecessary to decide, definitively, whether § 4-335 also applies.¹² However, for purposes of guidance, we address this exemption briefly. For § 4-335's exemption for confidential commercial or financial information to apply, at minimum the information must be of the kind that would "customarily not be released to the public by the person from whom it was obtained." *Amster v. Baker*, 453 Md. 68, 81 (2017). The MHCC maintains that the commercial information withheld is "both customarily and actually treated as private by its owner." The MHCC also argues that disclosure of the information could cause "substantial harm to the competitive position of DHIN," referring to a test that has since been abrogated for purposes of the comparable exemption in the federal Freedom of Information Act ("FOIA") *See Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 436-37 (2019); *see also* PIACB 24-09, at 4-5 & n.2 (Oct. 6, 2023) (discussing the evolution of the FOIA exemption for "commercial or financial information obtained from a person and privileged or confidential," 5 U.S.C.A. § 552(b)(4), and its bearing on § 4-335 of the PIA). Based on these representations alone, it is difficult to evaluate whether § 4-335 would apply. But, to the extent that the information about the security of DHIN's "information system" would also qualify as "commercial information," the General Assembly's decision to exempt such information from disclosure would support the assertion that the information is both confidential and not customarily released to the public.

Conclusion

Based on the information before us, which includes a privilege log, the redacted records that were disclosed, and copies of the records withheld under the attorney-client privilege, we conclude—with one exception—that the MHCC has not violated the PIA. Though the MHCC has sufficiently demonstrated that some of the records are protected by the attorney-client privilege and thus exempt under § 4-301(a)(1) of the PIA, we find that a record of two email communications falls outside of the privilege and should therefore be disclosed. We direct the MHCC to produce that record, *see supra*, note 9, to the complainant. § 4-1A-04(a)(3)(i). The MHCC has justified application of §§ 4-343 and 4-344 to information in records of email communications that is pre-decisional and deliberative, and thus subject to the deliberative process privilege. Finally, we find sufficient support in the record that certain records and information were properly withheld under § 4-338. Those records and information qualify as "information about the security of an information system," which may not be disclosed.

¹² We note also that the complainant does not address this exemption in his complaint. Rather, his complaint is focused on the attorney-client and deliberative process privileges, and on what he refers to as the "info sec" exemption.

Public Information Act Compliance Board

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