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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 24-111
September 26, 2024
Carroll County Public Schools, Custodian
Barbara Krupiarz, Complainant

Complainant Barbara Krupiarz requested, under the Public Information Act (“PIA”), copies of invoices for two individual private attorneys who worked on a special education case for Carroll County Public Schools (“CCPS”). CCPS ultimately provided copies of the invoices in redacted form, which the complainant challenges in this complaint. In response, CCPS cites several exemptions in the PIA that, according to CCPS, prohibit disclosure, including § 4-301(a)(2)(ii)¹ (disclosure contrary to federal law), § 4-313 (prohibiting disclosure of student records), and § 4-301(a)(1) (records subject to attorney-client privilege). After review of the submissions, we find that CCPS improperly redacted information about the general nature of the work the attorneys performed. We explain in more detail below.

Background

In February of this year, the complainant sent CCPS a PIA request asking for copies of “all invoices for attorneys David Burkhouse and Rochelle Eisenberg from December 1, 2023 through the present” for a specific special education case. CCPS initially denied inspection of the invoices on grounds that the Family Educational Rights and Privacy Act (“FERPA”) prohibited CCPS from releasing them to the complainant because she was not a parent or guardian. CCPS offered to release its retainer agreement with the law firm, the “cumulative legal fees to date,” or the “cumulative legal fees related to special education matters.” The complainant advised that she had received invoices for legal fees from other school systems with specific student information redacted. After consulting with legal counsel, CCPS disclosed “the most recent invoice responsive to [the] request,” without “acknowledging any personally identifiable information related to a student.” The invoice contained information about the number of hours worked on certain dates in January 2024 and the amounts billed for those hours. The invoice also reflected the “net fees billed,” as well as information about a previous balance and payments made.

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

Prior to receiving the redacted records, the complainant contacted the Public Access Ombudsman for dispute resolution assistance.² The Ombudsman issued a final determination stating that the dispute was not resolved and the complainant filed this complaint with our Board.³ The complainant contends that the redactions are improper and provides an invoice from the same law firm with fewer redactions that she obtained from the Howard County Public School System. Among other information, the complainant contends that the initials of the attorneys working on the case and the Maryland State Department of Education (“MSDE”) or Office of Administrative Hearings (“OAH”) case numbers should be disclosed, as well as some information about what kind of work was performed, e.g., reviewing emails or attending hearings.

CCPS, in response, explains that the complainant’s PIA request identified a special education due process case involving a CCPS student, which was before the OAH. After initially denying the request, CCPS determined that it could produce an invoice reflecting the dates work was done, the amounts charged, and the total amounts owed by CCPS for the legal services for the case. In response to this complaint, CCPS provides the invoice with fewer redactions and explains that the initials of the attorneys, the general file number, and the invoice number are no longer redacted. Redactions remain to the specific matter number for the student, the student’s name, and “the specific narrative entries explaining the legal services provided.” CCPS maintains that FERPA precludes disclosure of the student’s information and that the information about what legal services were provided is protected by the attorney-client privilege. CCPS states that the invoice it produced is the only one responsive to the complainant’s PIA request.

In reply, the complainant stresses that the PIA must be construed in favor of disclosure. Though the complainant acknowledges that CCPS has now disclosed the attorneys who performed the work, she maintains that there is still information in the invoice that has been improperly redacted. The complainant provides several cases in which courts held that the attorney-client privilege does not extend to attorney billing records or expense reports. The complainant attaches invoices obtained from Harford County Public Schools in which only student information was redacted. Noting that public schools “often hire private law firms to handle complex special education cases,” the complainant argues that the public has a right to know “if their public dollars are being

² The PIA charges the Ombudsman with making “reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records.” § 4-1B-04(a). Before filing a complaint, a complainant must attempt to resolve the dispute through the Ombudsman and receive a final determination stating that the dispute was not resolved. § 4-1A-05(a).

³ We understand that, after the complainant contacted the Ombudsman, but before a file was formally opened, the complainant and CCPS continued to exchange emails regarding the propriety of the redactions. Through those exchanges, CCPS apparently provided the complainant with the total cost for legal services rendered for the case identified in her PIA request and a “summary invoice.”

spent appropriately by high priced private attorneys.” The complainant urges that we find that CCPS violated the PIA by redacting the information in the invoice about the work performed by the attorneys hired by CCPS.

Analysis

The PIA charges us with reviewing and resolving complaints that allege certain violations of its provisions, including that a custodian improperly denied inspection of a public record. § 4-1A-04(a)(1)(i). Disputes about redactions fall within this provision. *See, e.g.*, PIACB 24-09 (Oct. 6, 2023). If, after review of the submissions, we find that the alleged violation occurred, we must issue a written decision and order a remedy as provided in the PIA. § 4-1A-04(a)(2) and (3). When we conclude that a custodian denied inspection of a public record in violation of the PIA, we must “order the custodian to . . . produce the public record for inspection.” § 4-1A-04(a)(3)(i).

Section 4-201(a) of the PIA provides, “[e]xcept as otherwise provided by law, a custodian shall allow a person or governmental unit to inspect any public record at any reasonable time.” As the modifying language of this provision implies, the PIA does not provide for “complete *carte blanche*, unrestricted disclosure of all public records.” *Immanuel v. Comptroller*, 449 Md. 76, 88 (2016). Rather, the PIA contains provisions that exempt certain records or information from disclosure. Some of those exemptions are mandatory, meaning that inspection must be denied. *E.g.*, § 4-301(a)(1) (mandatory exemption for records that are “by law” privileged or confidential); § 4-329(b)(1) (mandatory exemption for “medical or psychological information about an individual”). Other exemptions are discretionary, allowing a custodian to deny inspection only if it would be “contrary to the public interest.” § 4-343; *e.g.*, § 4-351(a) (discretionary exemption for certain law enforcement records).

Ordinarily, the PIA’s provisions—including exemptions—must be “construed in favor of allowing inspection of a public record.” § 4-103(b); *see also Immanuel*, 449 Md. at 88 (“The legislative purpose underpinning the MPIA is that citizens of the State of Maryland be accorded wide-ranging access to public information concerning the operation of their government,” (cleaned up)). The custodian bears the burden of justifying its decision to withhold or redact records. *Lamson v. Montgomery County*, 460 Md. 349, 367 (2018). “In a doubtful case, the party requesting information under the Act is favored.” *Immanuel*, 449 Md. at 88.

In the final invoice record produced, CCPS redacted the student’s name and identifying information and the narratives of the work that the attorneys performed for the student’s case. CCPS cites FERPA (as applied via § 4-301(a)(2)(ii)), § 4-313 (the PIA’s exemption for student records), and the attorney-client privilege (as applied via § 4-301(a)(1)) as reasons for the redactions. As discussed briefly below, the primary point of contention appears to be the redactions applied to the work narratives. Based on the

submissions alone, we were unable to resolve whether any of the exemptions CCPS cites justifies those redactions, so we asked CCPS to provide us with a partially unredacted copy of the invoice. See § 4-1A-06(b)(2)(ii) (allowing the Board to request additional information, including “a copy of the public record”). Specifically, we directed CCPS to remove the redactions to the work narratives only, and to keep any of the student’s identifying information redacted (including if it appeared in the work narratives). As required by both the PIA and our regulations, we will maintain the confidentiality of the partially unredacted record that CCPS provided. See § 4-1A-06(b)(5); COMAR 14.02.06.

We start by addressing the redactions to the identifying information of the student whose special education case the attorneys were handling. The complainant—rightfully—does not appear to dispute that such information should not be disclosed. Under 20 U.S.C.A. § 1232g, which is commonly known as FERPA, an educational agency or institution will not receive federal funding if it has a “policy or practice of permitting the release of education records (or personally identifiable information contained therein . . .) of students without the written consent of their parents.” See also 34 C.F.R. § 99.3 (defining “personally identifiable information” to include “[a] personal identifier, such as the student’s social security number, student number, or biometric record”). A student’s identifying information is thus exempt under § 4-301(a)(2)(ii) of the PIA, which prohibits disclosure of records or information if “contrary to . . . a federal statute or a regulation that is issued under the statute and has the force of law.” See also 34 C.F.R. § 99.30 (generally precluding disclosure of personally identifiable information from a student’s education records without written consent); 92 Md. Op. Att’y Gen. 137, 146 (2007) (“[The PIA] incorporates any restrictions under FERPA.”).

The real dispute here is whether the information about the work performed by the attorneys is disclosable. CCPS has redacted *all* of that information. The complainant, for her part, has provided invoices obtained from other school systems that disclose that type of information, at least generally—for example, that an attorney worked on a settlement agreement, prepared for a hearing, or conducted legal research. CCPS claims that the “detailed narrative information . . . about the IDEA⁴ dispute involving [the] student” and the “legal services provided” are subject to the attorney-client privilege, which CCPS declines to waive. Thus, CCPS contends, § 4-301(a)(1) prohibits disclosure of this information to the complainant.

Maryland has long recognized that communications between an attorney and client that relate to legal advice are privileged. See *Harrison v. State*, 276 Md. 122, 131-35 (1975). Records containing such communications are thus exempt from disclosure under § 4-301(a)(1) because they are “by law . . . privileged or confidential.” Not every communication or document exchanged between a lawyer and client is covered by the privilege, however. For instance, the fees a government agency pays to a private firm for

⁴ Individuals with Disabilities Education Act. See 20 U.S.C.A. § 1400 through 1482.

legal work are not considered confidential attorney-client communications protected from disclosure. See *Moberly v. Herboldsheimer*, 276 Md. 211, 226 (1975) (adopting the trial court’s opinion that “[t]he communication by the client to the attorney is privileged, not the fee which the lawyer charges the client”); see also 62 Md. Op. Att’y Gen. 579, 586 (1977) (“[T]he entire subject of fees is outside the ambit of the attorney-client privilege.”). The invoice CCPS disclosed complies with a very narrow application of this principle, as it provides information about how much the lawyers working on the special education case charged CCPS.

The question, then, is whether any of the information related to what those fees were for may be disclosed. We think it can. Our Appellate Court has explained that “the identity of the client, the amount of the fee, the identification of payment by the case file name, and *the general purpose of the work performed* are usually not protected from disclosure by the attorney-client privilege.” *Maxima Corp. v. 6933 Arlington Dev. Ltd. P’ship*, 100 Md. App. 441, 457 (1994) (quoting *Clarke v. Am. Com. Nat’l Bank*, 974 F.2d 127, 129 (9th Cir. 1992)) (emphasis added). Rather, only information which reveals “the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching *particular areas of the law*, fall within the privilege.” *Id.* (emphasis added). The Appellate Court explained further that “[t]he fact that a motion was prepared or research was completed on an issue in a motion that was obviously already filed is a mere description of the work and is not privileged.” *Id.* at 458; see also, e.g., *100 Harborview Drive Condo. Council of Unit Owners v. Clark*, 224 Md. App. 13, 62 (2015) (concluding that the attorney-client privilege did not apply to “detailed [attorney] billing reports”).

After review of the partially unredacted invoice, we find that the work narratives in the invoice are not subject to the attorney-client privilege and thus CCPS improperly redacted those narratives. In our view, the information is “a mere description of the work” that the attorneys performed, *Maxima Corp.*, 100 Md. App. at 458, and does not disclose client motive or litigation strategy. Nor does it disclose the “*specific nature of the services provided*,” e.g., “researching *particular areas of the law*.” *Id.* at 457 (emphases added). These work narratives do not contain or themselves constitute protected communications between the law firm and its client, CCPS, that the attorney-client privilege is designed to protect. See *Moberly*, 276 Md. at 226..

State ex rel. Dawson v. Bloom-Carroll Local Sch. Dist., an Ohio case relied upon by CCPS, does not persuade us to the contrary. 959 N.E.2d 524 (Ohio 2011). First, we are not bound to follow the case law of other states. Moreover, it appears that the invoices in that case contained far more detailed and potentially privileged information than the invoice at issue here—those invoices contained “descriptions of the work performed by the attorneys” which included “statements regarding their communications to each other and insurance counsel . . . the areas and issues the attorneys researched; and the legal issues upon which they focused their attention.” *Id.* at 526. In short, we find that the work

narratives in this invoice are not so detailed and thus not subject to the attorney-client privilege as defined in *Harrison*, 276 Md. at 131-35, *Maxima Corp.*, 100 Md. App. at 457-58, and other Maryland cases identified above.⁵

Conclusion

After review of the submissions and a partially unredacted version of the disputed invoice, we conclude that CCPS improperly redacted the work narratives from that invoice. With one exception, those work narratives are not subject to the attorney-client privilege. Rather, they are general descriptions of the work performed in connection with the fees charged, neither of which fall within the ambit of the privilege. Thus, CCPS must disclose the work narrative information to the complainant. The personal identifying information of the student is protected under FERPA and thus exempt under § 4-301(a)(2)(ii). That information must therefore remain redacted in the copy of the invoice produced to the complainant.

Public Information Act Compliance Board

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⁵ There is one exception. In a line item for local travel on the unredacted invoice we reviewed, there is reference to a particular type of proceeding conducted under the IDEA. That reference should remain redacted pursuant to FERPA.