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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 25-13
January 2, 2025
Delegate Benjamin Barnes, Custodian
Bruce Sartwell, Complainant

Complainant Bruce Sartwell sent a Public Information Act (“PIA”) request to Delegate Benjamin Barnes asking for records related to a specific legislative grant, including records of correspondence between Del. Barnes (or his staff) and individuals from the recipient organization. Del. Barnes ultimately denied inspection of responsive records on legislative privilege grounds, which the complainant challenges in this complaint. As explained further below, we conclude that some, but not all, of the responsive records are subject to the legislative privilege and therefore not disclosable. We direct Del. Barnes to produce the records not subject to the legislative privilege detailed below, to the complainant.

Background

On April 5, 2024, the complainant sent the following by email to Del. Barnes:

Please consider this to be an official request under the Maryland Public Information Act.

In House Bill 201^[1] that was passed by the Maryland Legislature in the 2023 session, there is the following language:

¹ House Bill 201 of the 2023 legislative session was passed in the House and Senate between January 20, 2023, and April 10, 2023, before being approved by the Governor on April 24, 2023. The Bill is also known as the “Maryland Consolidated Capital Bond Loan of 2023, and the Maryland Consolidated Capital Bond Loans of 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, and 2022,” and authorized the Board of Public Works to “borrow money and incur indebtedness” on behalf of the State. House Bill 201 authorized the creation of a State Debt in the amount of \$1,218,639,000, the proceeds of which are to be used for certain necessary building, construction, demolition, planning, renovation, conversion, replacement, and capital equipment purchases of the State. Additionally, the proceeds are to be used for acquiring certain real estate, and for grants to certain subdivisions and organizations for development and improvement purposes. Such bills are passed annually to allow the State to fund, e.g., State-owned capital improvements. 107 Md. Op. Att’y Gen. 117, 122 (2022); *see also* Md. Const.,

“(AL) Laurel Advocacy and Referral Services, Inc. Provide a grant to the Board of Directors of Laurel Advocacy and Referral Services, Inc. for the acquisition, planning, design, construction, repair, renovation, reconstruction, site improvement, and capital equipping of the Laurel Advocacy and Referral Services facility, including the acquisition of 309 Laurel Avenue (Prince George’s County)..... 500,000”

I am requesting copies of all documentation related to this specific grant, including, but not limited to, correspondence between Delegate Barnes (or any member of his staff) and employees or members of the Board of Directors of Laurel Advocacy and Referral Services, Inc. By correspondence, I mean via regular mail, email, text or any other type of electronic communication. This also includes any type of correspondence between Delegate Barnes (or any member of his staff) and other Maryland legislators or their staff related to this grant.

Thank you for your attention to this request.

After receiving no response, the complainant contacted the Public Access Ombudsman.² While the dispute was pending with the Ombudsman, Del. Barnes issued a response in which he provided links to various committee reports and recordings of hearings and voting sessions.³ However, Del. Barnes indicated that any “[o]ther materials related to legislative activities about this grant” were “subject to an absolute constitutional legislative privilege and cannot be disclosed.” Del. Barnes cited § 4-301(a)(1)⁴ as authority for his denial of inspection of these “other materials.” The complainant disagreed that the legislative privilege applied. Ultimately, the Ombudsman issued a final determination

Art. III, § 34 (placing limitations on the State’s ability to incur debt and generally requiring, among other things, that the debt be authorized by a law that provides for the collection of taxes).

² The Public Access Ombudsman is charged with making “reasonable attempts to resolve disputes between applicants and custodians relating to requests for public records.” Md. Code Ann., Gen. Provisions § 4-1B-04(a). Before filing a complaint with our Board, a complainant must attempt to resolve the dispute through the Ombudsman and receive a final determination that the dispute was not resolved. *Id.* § 4-1A-05(a).

³ In response to this complaint, counsel for Del. Barnes provides more detail about the legislative history of the specific grant authorization the complainant identified in his PIA request, noting that “the amendment was added by the House Capital Subcommittee, approved by the House Appropriations Committee, and then voted favorably by the House.” Then, “[w]hen the bill worked its way through the Senate, the item remained and was included in the final bill, which was passed enrolled on April 10, 2023.”

⁴ Statutory citations are to the General Provisions Article of Maryland’s Annotated Code, unless otherwise stated.

stating that the dispute over Del. Barnes's denial of inspection on legislative privilege grounds was not resolved and the complainant filed this complaint with our Board.

The complainant challenges Del. Barnes's application of the legislative privilege, suggesting that "it appears to be a way for a Maryland legislator to hide from a Maryland resident any meaningful documents related to the expenditure of taxpayer funds." The complainant contends that "the Maryland PIA is quite toothless, with taxpaying residents of Maryland in reality having no right to information related to the expenditure of their tax dollars."

In response to this complaint, counsel explains that Del. Barnes was "elected to represent District 21 in the Maryland General Assembly and is also Chair of the House Appropriations Committee." Noting that the complainant "sought public records about an item in the 2023 Capital Budget Bill," counsel for Del. Barnes argues that those records "fall solidly within the absolute legislative privilege accorded Chair Barnes as to his legislative activities," and that therefore denial of inspection was warranted.

Stressing that § 4-301(a)(1) requires a custodian to deny inspection of records that are legally privileged or confidential, counsel for Del. Barnes cites numerous appellate cases that have addressed the contours of the legislative privilege in Maryland. Counsel states that Maryland legislators and their staff are afforded "absolute immunity, and a corresponding privilege, with respect to legislative activities and related communications." Quoting from caselaw, counsel emphasizes that Maryland courts have read the constitutional provisions underpinning the legislative privilege broadly so as to protect "anything generally done in a session of the House by one of its members in relation to the business before it." Counsel reiterates that the complainant's PIA request "seeks disclosure concerning Chair Barnes' legislative activities and, as such, falls within the legislative privilege" and was "appropriately denied."

In reply, the complainant suggests that Del. Barnes's position "would imply that virtually any document or record produced by legislators or their staffs could fall under [legislative privilege] and therefore could be withheld from the public." The complainant takes the view that such reading is "extremely broad" and essentially renders the PIA's pro-disclosure provisions "meaningless with respect to the legislature." The complainant argues that withholding information "related to the how and why of expending 'our' money flies in the face of 'our' right to know in a free society."⁵

⁵ In his reply, the complainant also provides some information about the reasons for his PIA request. The complainant explains that he was formerly on the Board of Directors of the grant recipient organization, Laurel Advocacy and Referral Services, or "LARS." The complainant maintains that "[i]t was in fact the executive director of LARS who made this request and the ultimate 'grantee' was not involved in the approval process," and suggests that there was no effort "to contact the Board to determine if this grant was actually necessary for the operation of

Analysis

The PIA authorizes us to review and resolve complaints alleging certain violations of its provisions, including that a custodian improperly denied inspection of a public record. § 4-1A-04(a)(1)(i). After considering the complaint, response, and any additional information before us, we must determine whether the alleged violation occurred and issue a written decision. §§ 4-1A-04(a)(2), 4-1A-07(a)(1). If the submissions alone do not provide enough information for us to resolve a complaint, the PIA empowers us to ask for more, including “a copy of the public record” or a “descriptive index of the public record.” § 4-1A-06(b)(2)(ii). When we determine that a custodian has wrongfully denied inspection of a public record, the PIA directs us to “order the custodian to . . . produce the public record for inspection.” § 4-1A-04(a)(3)(i).

The PIA is meant to afford “access to information about the affairs of government and the official acts of public officials and employees.” § 4-103(a). Such access is accomplished through inspection of public records, § 4-201(a), which the PIA defines as “the original or any copy of any documentary material” that is “in any form,” and that is made or received by “a unit or an instrumentality of the State or of a political subdivision . . . in connection with the transaction of public business,” § 4-101(k)(1). Maryland’s Supreme Court has said that “the PIA reflects the need for wide-ranging access to public records, and therefore, the statute should be construed in favor of disclosure for the benefit of the requesting party.” *Ireland v. Shearin*, 417 Md. 401, 408 (2010). At the same time, the General Assembly has “carefully carved out for non-disclosure” certain “kinds or categories” of records or information “for which it necessarily found some supervening public policy that justified their shielding.” *Stromberg Metal Works, Inc. v. Univ. of Maryland*, 382 Md. 151, 160 (2004). In addition, the PIA defers to certain other laws outside of these specific exceptions when those laws require non-disclosure. See § 4-301(a); see also § 4-201(a) (“Except as otherwise provided by law, a custodian shall allow a person or governmental unit to inspect any public record at any reasonable time.”).

Section 4-301(a)(1) of the PIA, the exemption invoked by Del. Barnes, provides that “a custodian shall deny inspection of a public record or any part of a public record if . . . by law, the public record is privileged or confidential.” The “privilege” at issue here is the legislative privilege, which has its roots in Maryland’s Constitution as well as the Speech and Debate Clause of the federal Constitution. See U.S. Const. art. I, § 6, cl. 1 (providing of Senators and Representatives, “for any Speech or Debate in either House, they shall not be questioned in any other Place”); Md. Const., Art. III, § 18 (“No Senator or Delegate shall be liable in any civil action, or criminal prosecution, whatever, for words spoken in debate.”); Md. Decl. Rights art. 10 (“That freedom of speech and debate, or proceedings in the Legislature, ought not to be impeached in any Court of Judicature.”).

the organization.” In the complainant’s view, “this grant was not an appropriate expenditure of taxpayer funds.”

Our State’s constitutional provisions are “construed in *pari materia*” with the federal provision, which has been interpreted to preclude “inquiry into acts which occur in the regular course of the legislative process and into the motivation for those acts.” *Blondes v. State*, 16 Md. App. 165, 175-77 (1972).

As far as we know, no appellate court in Maryland has considered the legislative privilege in the context of a PIA request made to a state legislator.⁶ There is, however, a long line of Maryland cases that have discussed and defined the legislative privilege in other contexts. The Supreme Court of Maryland most recently drew from many of these cases in *In re 2022 Legislative Districting of the State*, which considered, among other issues, whether a Special Magistrate correctly found that certain information about map drafting was subject to the legislative privilege and therefore not discoverable. 481 Md. 507, 559-61 (2022). In holding that the legislative privilege did apply to the information sought—which included (1) “who was responsible for the actual drawing or construction of the specific legislative districts,” (2) “if a computer program was used, what criteria was the program instructed to use to draw the legislative districts” (3) “who provided instructions to the actual map drawer(s) regarding what factors or other criteria were to be used in drawing the legislative districts,” and (4) “what specific instructions were given to the map drawer(s) regarding the various legislative districts,” *id.* at 559—our Supreme Court explained that:

[L]egislative privilege has long been regarded as an important protection of the independence and integrity of the legislature, and, in this country, as also reinforcing the core doctrine of separation of powers. The legislative privilege is to be read broadly to serve that purpose; it applies not only to words spoken in debate but anything generally done in a session of the legislature by one of its members in relation to the business before it.

Id. at 587 (cleaned up). The Court found that, “[c]onsistent with these principles, confidentiality is a core feature of the drafting process before a bill is filed,” and that there was “no question that the privilege applies to the information sought” as it was “non-public information concerning the drafting of legislation.” *Id.* at 588.

Maryland’s Supreme Court observed that “[t]ransparency is already built into the legislative process, which involves public committee hearings and votes on proposed legislation and public proceedings on the floor of each house to debate and vote on proposed legislation.” *Id.* at 589. In the process, the Court explained, “[t]he sponsoring

⁶ Del. Barnes does not dispute that the public records in his custody are subject to the PIA. *Cf. Office of the Governor v. Wash. Post Co.*, 360 Md. 520, 534-35 (2000) (concluding that the Office of the Governor was subject to the PIA because the PIA applies to “public records,” unlike the federal Freedom of Information Act, which applies more narrowly to “agency records”); *see also* 5 U.S.C.A. § 551(1) (excluding, among others, Congress from the definition of “agency”).

legislator's motives or communications with staff are not probed" because "it is the body, not the individual legislator, that ultimately adopts legislation." *Id.* at 590; *see also* *Montgomery County v. Schooley*, 97 Md. App. 107, 123 (1993) (finding that the legislative privilege extends to "a meeting with citizens or private interest groups"). Ultimately, in *In re 2022 Legislative Districting*, the Supreme Court found that questions about the drafting of the contested legislation "fell within the legislative conduct protected by the Speech and Debate Clause," and that "[t]herefore, under State law, inquiries into [the Department of Legislative Services's] drafting process properly belonged in the General Assembly." 481 Md. at 593.

Notably, however, the Appellate Court of Maryland decades ago explained, based on cases from the United States Supreme Court, that the legislative privilege does not "prohibit inquiry into activities which are causally or incidentally related to legislative affairs but not a part of the legislative process itself." *Blondes*, 16 Md. App. at 177; *see also* Letter from Deputy Attorney General Ralph S. Tyler to Hon. Leo Green (July 22, 1991) (explaining that, generally, "routine constituent service . . . is not ordinarily an integral part of the legislative process as such and therefore is not within the scope of legislative privilege," and thus "letters written on a constituent's behalf or letters from constituents are disclosable" under the PIA).

We were unable to resolve the complaint based on the submissions alone, so we asked Del. Barnes to provide a confidential descriptive index of any records that Del. Barnes claimed were subject to the legislative privilege and withheld. *See* § 4-1A-06(b)(2)(ii) (empowering the Board to request "a copy of the public record" or "descriptive index" from the custodian). We will maintain the confidentiality of the descriptive index that Del. Barnes provided, as the PIA and our regulations require. *See* § 4-1A-06(b)(5); COMAR 14.02.06. Any references to the descriptive index in our decision will be general in nature so as not to disclose any information that Del. Barnes maintains is protected by the legislative privilege. COMAR 14.02.06.05.

Based on the submissions, in particular the confidential descriptive index that Del. Barnes provided, and the teachings of the cases discussed above, we find that the legislative privilege was applied in an overly broad way here. We start by stressing that Del. Barnes bears the burden of demonstrating that the legislative privilege applies to the records, and that § 4-301(a)(1) therefore prevents their disclosure. *Lamson v. Montgomery County*, 460 Md. 349, 367 (2018). Moreover, we are mindful that "[i]n a doubtful case, the party requesting information under the [PIA] is favored." *Immanuel v. Comptroller*, 449 Md. 76, 88 (2016). Before explaining our reasons, we also note that Del. Barnes's descriptive index divides the records into three categories of records. The first two are labeled "Series #1" and "Series #2," respectively. The third category is unlabeled, so we will refer to it as "Series #3."

The records in Series #2 appear to us to fall within the bounds of the legislative privilege. Those records were generated during the legislative session and, more importantly, based on the description provided, relate to “acts which occur in the regular course of the legislative process,” *Blondes v. State*, 16 Md. App. at 177, including the legislative drafting process, *In re 2022 Legislative Districting*, 481 Md. at 588. We find that inspection of these records was thus permissibly denied.

For the records in Series #1 and Series #3, however, we think the legislative privilege does not apply. The description provided, including the dates of generation and the parties involved, strongly suggests that these records were not “part of the legislative process itself,” *Blondes*, 16 Md. App. at 177, but rather more matters of “routine constituent service,” Letter from Deputy Attorney General Ralph S. Tyler to Hon. Leo Green (July 22, 1991). Further, for Series #3 in particular, we do not think the vague and general description provided is sufficient for Del. Barnes to meet his burden to show that the records are subject to the privilege.⁷ *Lamson*, 460 Md. at 367. Disclosure of the information in Series #3 would, as we see it, be more akin to the information that would be disclosed if, hypothetically, a legislative public body was questioned about compliance with the Open Meetings Act—questions our Appellate Court has said would not be covered by the legislative privilege. *See Floyd v. Baltimore City Council*, 241 Md. App. 199, 214 (2019).

In our view, disclosure of the records described in Series #1 and Series #3 would not result in the impermissible scenarios described by the courts above—e.g., disclosure would not compromise the confidentiality of “the drafting process before a bill is filed,” *In re 2022 Legislative Districting*, 481 Md. at 588, or probe a “legislator’s motives or communications with staff,” *id.* at 590. Nor would disclosure implicate any of the motivating purposes of the legislative privilege, such as protecting the “independence and integrity of the legislature” and respecting the doctrine of separation of powers. *Id.* at 587. And, though the complainant provides some information about the reasons for his PIA request, including his belief that the legislative grant was inappropriate, *see supra*, note 5, we note that the PIA generally forbids conditioning a response on “a disclosure by the applicant of the purpose for [the request].” § 4-204(a). We thus direct Del. Barnes to disclose the records described in Series #1 and Series #3 of his descriptive index to the complainant.

Finally, with regard to the records in Series #2, which we find were not improperly withheld, we do not necessarily disagree with the complainant’s argument that the legislative privilege’s broad reach might undermine some of the PIA’s core principles regarding government transparency and “access to information about the affairs of government and the official acts of public officials,” § 4-103(a), which include State

⁷ It is also not clear to us that the records described in Series #3 are responsive to the complainant’s PIA request.

legislators. Maryland’s Appellate Court confronted this tension in the context of a different transparency law, the Open Meetings Act. The petitioner in *Floyd* argued that the application of the legislative privilege to her case “strips the [Open Meetings] Act of all force and purpose.” 241 Md. App. at 213. In finding that the legislative privilege precluded asking Baltimore City Council members about “certain amendments to [a piece of] legislation, and why certain actions were taken in regard to its passage,” the Appellate Court was “not persuaded” by the petitioner’s argument. *Id.* Noting that “questions specifically related to compliance with the [Open Meetings] Act would not be protected by legislative privilege,” the court reasoned that “even if we perceived a tension between the doctrine of legislative privilege and the requirements of the Act, a judicial carve-out of an exception to the application of that doctrine in such cases would be inappropriate.” *Id.* at 214. It would be more inappropriate still for our Board to depart, in the context of the PIA, from the interpretation of the legislative privilege that Maryland courts have endorsed.⁸

Conclusion

Based on the submissions, including the confidential descriptive index that Del. Barnes provided for our review, we find that some, but not all, of the records are subject to the legislative privilege. Specifically, the records described in Series #2 appear subject to the privilege as it has been defined by Maryland courts. We find, however, that the records described in Series #1 and Series #3 are not subject to the legislative privilege and therefore § 4-301(a)(1) does not preclude their release. Consistent with § 4-1A-04(a)(3)(i), we direct Del. Barnes to produce the records described in Series #1 and Series #3 to the complainant.

Public Information Act Compliance Board*

Samuel G. Encarnacion
Debra Lynn Gardner
Nivek M. Johnson

* For the reasons outlined below, Board Chair Sareesh Rawat and Board Member Quinton M. Herbert do not join in the Board’s decision.

Because we believe that the legislative privilege applies to all records described in Del. Barnes’s descriptive index, we would find that the records were properly withheld, and that Del. Barnes did not violate the PIA. We will address Series #1 and Series #2 in turn.

⁸ We also feel compelled to recognize that Del. Barnes did provide the complainant with a lot of information about the legislative history of the bill referenced in the complainant’s PIA request, including links for easy access to that information, although the complainant states that he was unable to find any information about the specific grant he is interested in.

Series #1: The description provided, including the dates of generation and the parties involved, may suggest at first that these records pertain to matters of “routine constituent service.” However, when seen in the broader context of the complainant’s PIA request, these records were properly withheld under the legislative privilege, which includes a “testimonial privilege” afforded to State legislators. Maryland’s Appellate Court has described testimonial privilege as follows:

[A] legislator, even if not a party to the action and thus not subject to any direct consequence of it, cannot be compelled to explain, other than before the legislative body of which he is a member, either his legislative conduct or “the events that occurred” in a legislative session.

Montgomery County v. Schooley, 97 Md. App. 107, 117 (1993).

In his PIA request, the complainant sought “copies of all documentation related to this specific grant.” The purpose of the complainant’s PIA request to Del. Barnes is to “obtain documents related to the expenditure of taxpayer funds,” specifically in relation to the grant made to Laurel Advocacy and Referral Services, Inc. (“LARS”) in House Bill 201. Notably, the complainant does not make his PIA request to the Department of General Services (“DGS”), the agency that possesses delegated authority from the Board of Public Works (“BPW”) to administer Maryland’s grants program or even the BPW itself. Instead, the complainant directed his PIA request to Del. Barnes’s office, presumably to obtain information about Del. Barnes’s legislative actions with respect to this grant.

While the complainant expressly states in his reply that he is “not accusing Del. Barnes of any unethical actions in this case,” his use of hypothetical scenarios to overcome Del. Barnes’s assertion of legislative privilege indicates otherwise. In his own words, the complainant uses these scenarios as “examples of how legislators could hide behind legislative privilege to cover what many people would consider unethical actions, such as awarding grants to friends or campaign donors.” It follows that even if the complainant may not be accusing Del. Barnes of unethical actions explicitly, he is, at a minimum, raising questions about Del. Barnes’s legislative intent or motive with respect to the LARS grant. Put another way, through his PIA request, the complainant seeks an explanation from Del. Barnes regarding his legislative conduct concerning the grant at issue. However, as described above, testimonial privilege, which is an aspect of legislative privilege, protects Del. Barnes from such questioning outside of the legislative body of which he is a member.

When reviewed in the context of the complainant’s PIA request, the description of Series #1 documentation included in the descriptive index provided by Del. Barnes makes it evident that disclosure of these records would amount to an explanation by Del. Barnes of his legislative actions to the complainant. Consequently, the disclosure of Series #1 records in response to the complainant’s PIA request would violate Del. Barnes’s

testimonial privilege, which protects a legislator from questioning other than in the legislative body itself. Moreover, this Board requiring such a disclosure from Del. Barnes would also be in violation of the core doctrine of separation of powers as enshrined in Article 8 of the Maryland Declaration of Rights. Therefore, we would find that the records in Series #1 were properly withheld from inspection as they fall within Del. Barnes's legislative privilege.

Series #3: The description provided in Series #3, particularly the dates and the names of the parties involved, suggests that even if these records were responsive to the complainant's PIA request, they were properly withheld under the legislative privilege as records falling within the sphere of Del. Barnes's legitimate legislative activity, especially when viewed in the broader context of House Bill 201 and the PIA request.

Article 10 of the Maryland Declaration of Rights states that "freedom of speech and debate, or proceedings in the Legislature, ought not to be impeached in any Court of Judicature." Furthermore, Art. III, § 18 of the Maryland Constitution guarantees that "[n]o Senator or Delegate shall be liable in any civil action, or criminal prosecution, whatever, for words spoken in debate." Maryland's Appellate Court has previously held that legislative privilege afforded to State Senators and Delegates is to be construed broadly to "protect not only words spoken in debate" but also "anything generally done in a session of the House by one of its members in relation to the business before it." See *Floyd v. Baltimore City Council*, 241 Md. App. 199, 210 (2019) (quoting *Montgomery County v. Schooley*, 97 Md. App. 107, 113-14 (1993)). Legislators may invoke the legislative privilege to refuse providing testimony regarding any actions taken within "the sphere of legitimate legislative activity." See *id.* at 213 (quoting *Marylanders for Fair Representation, Inc. v. Schaefer*, 144 F.R.D. 292, 298 (D. Md. 1992)).

In his PIA request to Del. Barnes for all documentation related to the LARS grant, the complainant specifies that his request includes, but is not limited to, correspondence between Del. Barnes, his staff, and LARS Board members or employees, or other Maryland legislators and their staff. The complainant explains that by "correspondence," he means "mail, email, text, or any other type of electronic communication." First, it is unclear whether the Series #3 records, as described in the descriptive index, are actually responsive to the complainant's PIA request.

If Series #3 records are responsive to the complainant's PIA request, their disclosure could have been somewhat of a close call. For instance, had the complainant limited his PIA request to administrative details regarding Del. Barnes's legislative activities generally, it may well be the case that Del. Barnes would have produced these records without claiming the legislative privilege. Nevertheless, when seen in the context of specific areas of inquiry the complainant wishes to pursue with Del. Barnes, along with the description of the responsive records, it is increasingly apparent that even if these records were responsive, the legislative privilege would apply to shield their disclosure. Series #3

records concern Del. Barnes's legitimate legislative activities, and requiring disclosure of these records in response to the complainant's broad PIA request for "all documentation related to this specific grant" would violate Del. Barnes's legislative privilege with respect to any actions taken within the sphere of legitimate legislative activity. Additionally, this Board requiring such disclosure from Del. Barnes would also violate the core doctrine of separation of powers as enshrined in Article 8 of the Maryland Declaration of Rights. Therefore, we would find that the records in Series #3 were properly withheld from inspection as they fall within Del. Barnes's legislative privilege.

Finally, we briefly address the complainant's argument that withholding information related to the "how" and "why" of expending taxpayer funds conflicts with the "public's right to know." Again, it is worth pointing out that the complainant did not make his PIA request to DGS, the government agency responsible for administering the grant in question. If the complainant were to direct his PIA request to DGS, it is far more likely that he would obtain responsive public records that help answer some of his questions. It is also worth mentioning that Del. Barnes's office cooperated with the complainant and provided a lot of information about the legislative history of the bill referenced in his PIA request.

While the expenditure of taxpayer funds on specific grants is certainly an important issue, it is not the type of "weightier topic" contemplated by the dissent in *In re 2022 Legislative Districting of the State*, that would justify an exception to the legislative privilege in the context of a PIA request. 481 Md. 507, 649 (2022). On the contrary, the inclusion of specific grants within larger spending bills is the type of legitimate legislative activity to which the legislative privilege applies. Del. Barnes provided a descriptive index describing the withheld records for the Board's review. A review of the index indicates that the legislative privilege applies to these records, especially when seen in the context of House Bill 201, the PIA request, and the areas of inquiry that the complainant wishes to pursue with Del. Barnes. Additionally, as described above, the description of all three Series of public records provided by Del. Barnes does not suggest that the records contain the type of factual information that may be severable from its context. Therefore, we would find that the records were properly withheld from inspection as they fall within the legislative privilege.

Sareesh Rawat, Chair
Quinton M. Herbert