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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 25-93
October 24, 2025
Montgomery County Office of Procurement, Custodian
Jeffrey Schmid, Complainant

In January of this year, complainant Jeffrey Schmid asked the Montgomery County Office of Procurement (“MCOP”) for records related to a specific contract. MCOP produced responsive records, but with redactions applied, under §§ 4-335 and 4-336¹ of Maryland’s Public Information Act (“PIA”), to confidential commercial information and confidential personal financial information, respectively. In this complaint, the complainant alleges that MCOP improperly applied § 4-335, specifically to redact direct hourly rates and billable rates of the contracting company. In response to the complaint, MCOP, through counsel, denies that its application of § 4-335 violated the PIA. MCOP contends that it was required to redact the company’s rate information under § 4-335 because that company customarily and actually keeps that information confidential. Though not without a significant degree of hesitation, we find no violation in MCOP’s application of § 4-335. We explain below.

Background

On January 2, 2025, the complainant sent an email to a Montgomery County Procurement Specialist stating that he was “trying to get the latest contract, 1152448, but again the documents are ‘unavailable’ on the County site.” The complainant asked the Procurement Specialist to email the documents to him, specifying that the contract number related to “O’Connell & Lawrence” (“OCL”) and “Public Works Support Service.” The Procurement Specialist responded the same day and advised that she was “forwarding [the] request to [the] MPIA contact.” Initially, the complainant responded that he had obtained a copy from another County employee, but then, on January 13, 2025, he notified the Procurement Specialist that he “did not end up getting the full set of documents,” and would appreciate help with getting the “full contract including all Attachments, Schedules, and rates.”

On January 13, 2025, MCOP sent the complainant an email formally acknowledging his request for the contract documents and providing information about the timing of the

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

response and possible fees.² About two weeks later, the complainant sent MCOP an email asking about the status of his PIA request. MCOP responded and explained that the records had “been received from the contractor with their redactions” and were “currently with [the] County Attorney’s Office for review.” On February 13, 2025, the complainant sent another email asking about the status of MCOP’s response. Presumably not having received a response, the complainant sent a similar email again on February 21, 2025. On March 3, 2025, the complainant sent an email asking for an update and noting that they were “at 49 days now,”³ and that he had not “received any communication at all since day 17.” MCOP responded by email on March 5, 2025, apologizing for the delay, stating that it had been working with its attorneys and vendors “to ensure the released material are in compliance with the MPIA.” MCOP provided the complainant a link to use to download the redacted contract and explained that the information redacted was “the type of information that a firm in the industry would ordinarily hold as confidential, and the release of which would likely result in unfair substantial competitive harm to the Contractor.” MCOP cited §§ 4-335 and 4-336 of the PIA as authority for the redactions.

The complainant disputed the redactions that MCOP applied to the contract records, so on May 9, 2025, he contacted the Office of the Public Access Ombudsman to request dispute resolution assistance.⁴ On June 25, 2025, the Ombudsman issued a final determination stating that the dispute was not resolved and the complainant then filed this complaint with our Board. The complainant focuses his complaint on the redactions to the direct hourly rates and billable rates in the contract and alleges that MCOP improperly applied § 4-335 to this information. Broadly, the complainant argues that MCOP has not met the standard articulated by the United States Supreme Court, and adopted by our appellate courts, i.e., that an entity must both customarily and actually treat information as private for § 4-335 to apply.

Turning to the specific language in the relevant request for proposals, the complainant points out that the contracting company, OCL, was on notice that it had the responsibility to “clearly identify each part of the offer that it believes is confidential commercial or financial information by stamping the bottom right-hand corner of each

² See § 4-203(b)(2), which requires a custodian who “reasonably believes” that it will take longer than ten working days to produce records to notify the requester of this fact in writing and provide certain information, including “the reason for the delay” and “an estimate of the range of fees that may be charged to comply with the request for public records.”

³ The PIA requires that a custodian “grant or deny” a PIA request “promptly, but not more than 30 days after receiving the [request].” § 4-203(a)(1).

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

pertinent page with large boldface letters stating the words ‘confidential’ or ‘proprietary.’” The contracting company, the complainant stresses, did not do this for the rate information in the contract bid here, or for bids in previous years. In addition, the complainant emphasizes language that “[t]he offeror agrees, with regard to any portion of the proposal that is not stamped as proprietary or confidential, that it expressly permits the County to deem it not to be proprietary or confidential, and to release the information to the public in accordance with the MPIA.”

The complainant argues that it is “difficult to imagine a more clear and indeed literal failure” to treat billing information as private than to fail to mark it as such under circumstances like these. Based on these circumstances, the complainant argues, the rate information he has requested “does not qualify as ‘confidential’ under the standard followed by Maryland for exemptions to disclosure, as it has not been ‘actually treated as private by its owner.’” The complainant also contends that the contracting company did not provide the direct hourly rates and billable rates to MCOP under any assurance of privacy, citing the language from the request for proposals quoted above. Instead, the complainant maintains, MCOP “gave an express indication that they *would* disclose any information not so marked [confidential] to the public.” The complainant asserts that MCOP must disclose the contracting company’s direct hourly rates and billable rates as reflected in the contract records he requested.

In response to the complaint, counsel for MCOP first provides some factual background. Counsel states that, in December 2024, Montgomery County entered into a contract with the firm OCL “for the provision of public works support services for the County’s Department of Transportation, Division of Highway Support Services.” OCL was the “incumbent vendor providing the same services under the prior contract.” The firm’s proposal, submitted in response to the request for proposals, and its hourly rate sheet, were attached to the contract. Counsel for MCOP explains that, after it received the complainant’s PIA request for these records, MCOP sent a “reverse MPIA” letter to OCL, and the firm “identified portions of the contract, including portions of its proposal, that it considered to be confidential commercial and financial information.” Thereafter, the requested redactions were reviewed by the Office of the County Attorney, which “agreed that the hourly rates fell within the scope of information protected by § 4-335.” Thus, that hourly rate information was redacted in the records provided to the complainant. Counsel for MCOP provides the redacted record with MCOP’s response to this complaint.

In defending the redactions applied under § 4-335, counsel for MCOP argues that the contracting company, OCL, “does, in fact, keep its pay and billing hourly rates confidential, as is customary in their industry.” To support that argument, counsel attaches an affidavit by Stanley Martin (“Martin Affidavit”), president of the “privately-held engineering and consulting firm,” which avers, among other things, that the firm “goes to great lengths to safeguard its confidential labor classification pay and billing rates from disclosure,” and that if the information is “improperly disclosed there can be significant

damage to [the firm's] legitimate business interests.” In addition to this affidavit, counsel for MCOP contends, there is “a significant amount of case law discussing, and often affirming, the confidential nature of a public contractor’s hourly billing rates, profit margins, etc. under FOIA Exemption 4.”⁵ Noting that courts have rejected a *per se* rule approach that would classify certain types of information as always confidential or not confidential, counsel for MCOP suggests that the complainant urges us to adopt such an approach by arguing that “any information in an offeror’s sealed proposal that is not marked as confidential is not ‘actually treated as’ confidential” and cannot be subject to § 4-335.

Asserting that a “sealed proposal is not a public document,” counsel for MCOP argues that a company’s “failure to mark any portion of its sealed proposal as confidential does not mean that the [company] does not actually hold the information confidential in the normal course of its business operations.” Returning to the Martin Affidavit, counsel points out that the firm has “never taken any action to make its hourly pay and billing rates public,” that the information is not posted to the firm’s website or in marketing materials, and that the firm “specifically restricts access to that information to senior-level employees with a ‘need to know.’” Counsel for MCOP urges us to give little weight to the language in the request for proposals that the complainant relies upon, maintaining that the language does not mean that “any information not stamped confidential is not, in fact, confidential.” Counsel underscores that § 4-335 requires MCOP to deny inspection of confidential commercial or financial information, and that MCOP must make its own assessment as to whether information falls within the scope of the exemption. The language the complainant cites, counsel states, “merely protects the County in the event of a situation where the County, after making its own assessment, discloses information because it did not recognize its confidential nature and the offeror had not pointed it out.” The language does not, counsel maintains, “allow the County to disclose information that it should reasonably recognize as confidential.”

Counsel for MCOP also argues that the process by which the records were generated contained implicit assurances of privacy. Citing the §§ 11B-9 and 11B-10 of the Montgomery County Code, counsel notes that the firm’s proposal was submitted in response to a request for proposals, and not an invitation for bids, which “seeks bids that will be publicly opened.” Requests for proposals, counsel explains, solicit “sealed proposals that are not publicly opened.” Counsel also contends that the complainant ignored an important “caveat” in the language he cites, namely that “the County, by law, must apply the MPIA’s requirements for public information disclosure deemed proprietary and confidential; therefore, even information marked as such by the Offeror may still

⁵ “Exemption 4” in the federal Freedom of Information Act, or “FOIA,” is similar to § 4-335. See 5 U.S.C.A. § 552(b)(4) (FOIA’s general rule of disclosure “does not apply to matters that are . . . trade secrets and commercial or financial information obtained from a person and privileged or confidential”).

require public disclosure.” This, counsel states, “clearly affirms that the County will comply with the MPIA,” and “may be taken as an ‘assurance of privacy’ to the extent any information is protected by the MPIA.” Counsel for MCOP points to the Martin Affidavit’s assertion that the contracting company, OCL, “has experience with MPIA requests for its public contracts,” and “knows that the County will comply with the MPIA.” Based on this knowledge, counsel states, OCL reasonably believed its proposal was submitted under an assurance of privacy by the County.” Counsel asks that we affirm MCOP’s redaction of the hourly and billable rates.

The complainant, in reply, disputes MCOP’s assertion that he has asked us to apply a *per se* rule, arguing that “information with confidential markings would not be a ‘type of information,’ but rather a description of how a particular piece of information . . . was ‘actually treated.’” This, the complainant asserts, is “exactly the criteria by which MPIA exemption [§ 4-335] must be decided.” The complainant also insists that the information in the Martin Affidavit does little to meet MCOP’s burden, arguing that “[n]o business publishes their government contracted hourly rates and billables on their website, or in their public marketing materials, or share[s] such information with all of their employees.” But, the complainant states, “such information is routinely published by the government,” thus these facts alone cannot render information confidential “when it comes to government publication and disclosure.”

Returning to the language in MPOC’s request for proposals, the complainant contends that it means that both the contracting company and MPOC “have agreed, in writing, that this particular information will be ‘deem[ed]’ not confidential, and released to the public under the terms of the MPIA, which requires disclosure of such non-confidential financial information.” The complainant disagrees that MPOC has made its own assessment as to the applicability of § 4-335, arguing that, instead, that assessment was “largely if not entirely based on the document’s owner’s identification, in response to the County’s notification of an MPIA request, of the information as confidential.” As to MPOC’s argument that the contracting company believed that its rate information was submitted under assurance of privacy given the company’s past experience contracting with the County, the complainant urges us to reject this argument as “entirely circular.” In the complainant’s view, MPOC’s argument is essentially that “[t]he information satisfies the assurance of privacy prong, and is thus confidential, because it was submitted under the assurance that it would be withheld *if it is confidential*.” The complainant represents that, in 2017, MPOC provided records of the previous contract with the same firm, OCL, to him without redaction to the direct hourly rates and billable rates. The complainant alleges that OCL “was aware of this” and emphasizes that the firm “still did not take the required step of stamping the information ‘confidential’ on their subsequent submission at issue.”

Analysis

The PIA directs us to review and resolve complaints alleging certain violations of its provisions, including that a custodian improperly denied inspection of public records, either by withholding the record entirely or by redacting information within a record that is otherwise disclosed. § 4-1A-04(a)(1)(i). We must review the submissions from the complainant and custodian, determine whether the alleged violation occurred, and issue a written decision. § 4-1A-04(a)(2). If find that a violation occurred, we must order a remedy as provided in the PIA. § 4-1A-04(a)(3). When we determine that a custodian improperly denied inspection of a public record, we must order the custodian to “produce the public record for inspection.” § 4-1A-04(a)(3)(i).

Maryland’s General Assembly enacted the PIA so that people could access “information about the affairs of government and the official acts of public officials and employees.” § 4-103(a). As Maryland’s courts have repeatedly explained, the PIA’s provisions thus “reflect the legislative intent that citizens of the State of Maryland be accorded wide-ranging access to public information concerning the operation of their government.” *Amster v. Baker*, 453 Md. 68, 76 (2017) (quotations and citations omitted); *see also Kirwan v. The Diamondback*, 352 Md. 74, 80 (1998) (“The Maryland Public Information Act establishes a public policy and a general presumption in favor of disclosure of government or public documents.”). To provide this access to information, the PIA requires that custodians allow inspection and copying of public records, unless an exemption from disclosure applies. §§ 4-201(a), 4-205(b). Generally, the PIA’s provisions must be “construed in favor of allowing inspection of a public record,” § 4-103(b), and a custodian bears the burden of justifying a decision to deny inspection of records or information, *Lamson v. Montgomery County*, 460 Md. 349, 366-67 (2018). “In a doubtful case, the party requesting information under the [PIA] is favored.” *Immanuel v. Comptroller*, 449 Md. 76, 88 (2016).

Section 4-335, at issue here, requires a custodian to deny inspection of “the part of a public record that contains,” among others, “confidential commercial information” or “confidential financial information,” when that information is “provided by or obtained from any person or governmental unit.” Maryland’s Supreme Court has observed that this exemption “requires courts to strike a balance between government transparency and the protection of private commercial interests.” *Amster*, 453 Md. at 71. Section 4-335 typically applies “at least as long as the information in question is legitimately ‘confidential’ in the sense that it ‘is customarily kept private, or at least closely held, by the person imparting it,’ and ‘the party receiving the information provides some assurance that it will remain secret.’” *Abell Found. v. Baltimore Dev. Corp.*, 262 Md. App. 657, 696-97 (2024) (quoting *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 434 (2019)). Thus, assuming that the information is commercial or financial in nature, and that it is

provided to the government by a “person or governmental unit,”⁶ § 4-335 will apply if the information is “both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy.” *Id.* at 701 (citation omitted). While the first prong of this test must be satisfied—that is, the information must be “customarily and actually treated as private” by the party providing it—courts have not decided whether assurances of confidentiality are strictly necessary for information to fall within the ambit of the exemption. *See Argus Leader*, 588 U.S. at 434-35 (finding it unnecessary to decide whether privately held information might “lose its confidential character . . . if it’s communicated to the government without assurances that the government will keep it private”).

As Maryland’s Appellate Court has noted, the test articulated by the U.S. Supreme Court in *Argus Leader* “requires more than a mere request for confidentiality by a private business.” *Abell Found.*, 262 Md. App. at 701 n.20; *see also* 63 Md. Op. Att’y Gen. 355, 359 (1978) (“To allow a person submitting information or that person and a custodian to definitively characterize information as ‘confidential’ would allow the liberal disclosure policy of the Act to be defeated merely by an assertion of one party or the agreement of both.”). In *Abell Found.*, the Appellate Court considered factual information supplied by affidavits from the developer who provided the information and the agency that received it, and determined that the information was confidential. Specifically, the developer stated that it “would not customarily release [the] documents to the public, that it had conspicuously marked the documents as Confidential and understood that the City would treat them accordingly, and that it provided [the information] to the City only after it understood that the City recognized the sensitivity of the analysis and would protect it with the highest level of confidentiality.” *Abell Found.*, 262 Md. App. at 701-02 (cleaned up). The agency’s affidavit averred that “privately-held companies like the Developer customarily never share these types of documents with the general public, that the documents consist almost entirely of the private financial data of the Developer, that the Developer had specifically requested that the documents remain confidential and not be publicly disclosed, and that the documents were given to the City on the condition of confidentiality.” *Id.* at 702 (cleaned up).

Turning to the complaint here, we first detail the disputed information. MCOP redacted the “direct hourly rate,” “billable rate,” and “overtime billable rate” for dozens of specific “labor categories” such as “Civil Engineer,” “Highway Construction Inspector III (7+ years),” “IT Support Technician,” “Public Outreach Specialist,” and “Geospatial Web Developer.” This rate information was provided by OCL, the firm that was awarded a contract for “the provision of public works support services for the County’s Department of Transportation, Division of Highway Support Services.” Among other confidential

⁶ Under § 1-114 of the General Provisions Article, a “person” includes a “corporation, partnership, business trust, statutory trust, limited liability company, firm, association, or other nongovernmental entity.”

information, § 4-335 exempts from disclosure confidential commercial and financial information. The parties do not dispute that the redacted information contains commercial and financial information, or that it was provided by a “person” for purposes of § 4-335. Thus, the exemption would apply if the redacted information is also confidential. We must apply a two-pronged test to determine if the redacted commercial and financial information is confidential. We must first decide if the information is customarily kept private by OCL or, at a minimum, is closely held by it. *See Abell Found.*, 262 Md. App. at 696-97 (quoting *Argus Leader*, 588 U.S. at 434). For the second prong of the analysis, we must determine whether the MCOP, as the recipient of the information, provided some assurance that it would keep the information secret. *See id.* After review, we find that the redacted information may not be disclosed because both prongs are met.

Upon reviewing the information before us, it is clear that OCL customarily keeps its hourly pay and billing rate information private. The Martin Affidavit avers that OCL maintains the confidentiality of its hourly pay and billing rates, and that these rates are not published to the public in any form. Like other companies in its industry, OCL closely protects its hourly pay and billing rates from disclosure, including by limiting access to this information to a few senior OCL employees on a strictly need-to-know basis. *See* 63 Md. Op. Att’y Gen. at 365 (noting that “in a highly competitive business it might be customary for a firm to carefully protect . . . its pricing data”). Reviewing the Martin Affidavit in light of the fact that it is customary for engineering firms in the highly competitive construction compliance industry to treat hourly pay and billing rate information as private, it is evident that OCL keeps this information private. At the least, the fact that only select senior OCL employees are privy to the sensitive hourly pay and billing rates information indicates that this information is closely held by OCL. Therefore, the first prong of our analysis is satisfied.

The complainant’s argument that OCL does not actually keep the hourly pay and billing rates information private is unpersuasive. While the complainant correctly notes that OCL failed to adequately stamp the information as confidential in accordance with the instructions of the Request for Proposals (“RFP”), this failure cannot relieve the custodian of its independent obligations under § 4-335. Section 4-335 is mandatory in nature, meaning a custodian may not waive its application on behalf of the submitting person. Thus, as long as the information is covered by § 4-335, the custodian has no discretion to disclose it, even if it lacks adequate markings per the RFP instructions.

Moving next to the second prong of the confidentiality analysis, the recipient of the information must have provided some assurance that it would keep the information secret. As § 4-335 is analogous to the federal provision, we find cases interpreting FOIA Exemption 4 as persuasive when applying § 4-335. Notably, a plain reading of the requirement outlined in the second prong, as described in *Argus Leader* and later adopted by the Appellate Court of Maryland in *Abell Foundation*, only requires that the party receiving the information provide *some* assurance of secrecy. *See Abell Found.*, 262 Md.

App. at 697 (quoting *Argus Leader*, 588 U.S. at 434). It is not necessary that the party receiving the information provide an explicit assurance that it will keep specific details secret. Indeed, as long as the party disclosing the information does so “under the express or implied promise of confidentiality,” from the receiving party, the second prong is satisfied. *See Argus Leader*, 588 U.S. at 435 (citing *GSA v. Benson*, 415 F.2d 878, 881 (1969)). Here, when the MCOP requested OCL to provide its sensitive hourly and billing rate information in response to the RFP, it provided an implicit assurance that it would keep that information secret.

The Martin Affidavit states that § 4.3.1.1 of the RFP advised OCL that confidential commercial or financial information, as defined under the PIA, would be exempt from disclosure if OCL could show that its release would cause OCL substantial competitive harm. Such language in the RFP plainly amounts to an assurance of secrecy, implying that OCL would be afforded an opportunity to demonstrate that it would suffer substantial competitive harm from disclosure before MCOP would disclose its confidential commercial or financial information. If OCL were successful in its showing, the information would be exempt from disclosure. MCOP not only afforded OCL this opportunity in the face of the complainant’s present PIA request but also provided such opportunities in the past. Specifically, in the parties’ previous dealings, when MCOP received a PIA request for information concerning OCL, it notified OCL and allowed it to recommend redactions to the requested documents. The Martin Affidavit indicates that OCL based its decision not to mark any particular portion of its proposal as confidential at least partially on this past experience.

When considering the nature of commercial or financial information at issue, § 4.3.1.1 of the RFP and OCL’s past experience contracting with the MCOP, it was reasonable for OCL to assume that MCOP had provided some assurance that it would keep the information secret, albeit on the condition that OCL could demonstrate substantial competitive harm stemming from disclosure. Significantly, as contemplated in § 4.3.1.1 of the RFP, OCL has sufficiently shown that it would suffer substantial competitive harm from disclosure of the commercial and financial information at issue. The redacted information in Attachment E of the RFP includes OCL’s direct hourly and billable rates for thirty-nine distinct labor categories. In addition to requiring OCL to provide direct hourly rates for each labor category, instructions in Attachment E also requested a breakdown of each billable rate into its components, including overhead, fringe benefits, profits, etc.

If MCOP were to reveal all the individual cost components of OCL’s billable rate, it would cause substantial harm to OCL’s economic and business interests because it would allow competitors to reverse-engineer its pricing strategy and undercut OCL on future proposals. *See* 63 Md. Op. Att’y Gen. at 365 (noting that disclosure of a private firm’s pricing and related information in a competitive environment can “harm its competitive position”). Disclosure of the redacted information may also be detrimental to OCL’s client

relations. The Martin Affidavit declares that confidentiality of the redacted commercial and financial information is critical to OCL's business relationship with its clients, presumably because OCL is offering MCOP relatively favorable terms. In fact, if MCOP adopts such a sweeping disclosure policy with respect to sensitive commercial and financial information it receives from all its offerors, it is difficult to imagine that OCL or any other experienced contractor would want to contract with it in a competitive environment. *See id.* (stating that a government agency which discloses a firm's sensitive information "might inhibit the firm from future dealings with the agency"). Therefore, the language in § 4.3.1.1 of the RFP, when viewed in conjunction with past and present MCOP conduct relating to PIA requests and the sensitive nature of the commercial and financial information requested, meant that MCOP provided OCL some assurance that it would keep the information secret. Since the second prong is also satisfied, MCOP may not disclose the redacted confidential commercial and financial information per the requirements of § 4-335.

Our ultimate conclusion notwithstanding, we note that this was an extremely close call on the facts, especially given our State Supreme Court's instruction that, "[i]n a doubtful case, the party requesting information under the [PIA] is favored." *Immanuel*, 449 Md. at 88. MCOP has, to some degree, created and advertised a process for demonstrating the applicability of § 4-335—i.e., that the owner of the confidential information clearly stamp and mark it as such. OCL did not do that here. But, in response to this complaint, MCOP appears to take the position that it may simply disregard that process and allow the owners to ignore it and claim confidentiality after the fact, when the contract records are subject to a PIA request. MCOP's attempt to have it both ways is inconsistent with the purpose of the PIA. On a slightly different set of facts, this decision could easily have come out the other way.

Conclusion

After review of the submissions, we find that § 4-335 applies to the direct hourly and billable rate information in the contract records responsive to the complainant's PIA request. While our conclusion is not entirely free from doubt, the rate information must remain redacted.

Public Information Act Compliance Board

*Sareesh Rawat, Chair**
Samuel G. Encarnacion
Debra Lynn Gardner
Nivek M. Johnson

* For the reasons outlined briefly below, Board Chair Sareesh Rawat provides additional information regarding one aspect of the Board's decision.

I firmly agree with the Board's analysis and ultimate conclusion that § 4-335 applies in this case. I write to additionally express my view that this case is not a close call. The instructions of a particular RFP regarding confidentiality markings cannot release the custodian from his obligations under a mandatory exemption of the PIA. *See* 63 Md. Op. Att'y Gen. 355, 359 (1978) ("To allow a person submitting information or that person and a custodian to definitively characterize information as 'confidential' would allow the liberal disclosure policy of the Act to be defeated merely by an assertion of one party or the agreement of both"). Agencies often direct offerors to mark confidential information to protect themselves from liability in the event of an inadvertent disclosure. In my view, even when an offeror fails to properly mark highly sensitive pricing information, such as the type of information at issue here, the confidential nature of the information is not waived due to the custodian's independent obligations under § 4-335. It is also worth noting that since the custodian's obligation to apply the mandatory exemption at § 4-335 is independent and may not be waived, requiring offerors to make markings as a precondition for the applicability of the exemption can lead to excessive markings and unnecessary cost burdens, which would ultimately be borne by the Maryland taxpayer.