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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 26-12
November 24, 2025
Office of the Attorney General, Custodian
Justin Holder, Complainant

Complainant Justin Holder submitted a Public Information Act (“PIA”) request to the Office of the Attorney General (“OAG”) seeking any communications between the OAG and the General Assembly related to legislation proposed by the Attorney General to modify the PIA. The OAG withheld several documents based on legislative privilege, citing §4-301(a)(1) of the PIA.¹ The Complainant has questioned the applicability of that privilege when the documents at issue are in the custody of an agency outside of the Legislative Branch. After reviewing the submissions, we conclude that the OAG has not violated the PIA. We explain below.

Background

On April 12, 2025, the Complainant submitted a request for all communications between any member of the General Assembly, including their staff and attorneys, and the Attorney General and any of his staff related to any legislation proposed by the Attorney General that would modify the PIA. On May 13, 2025, the OAG responded that committee chairpersons had introduced two sets of bills and cross-filed bills during the 2025 legislative session at the request of the Attorney General: (1) House Bill 806 and Senate Bill 554 – Public Information Act – Frivolous, Vexatious, or Abusive Requests – Remedies; and (2) House Bill 821 and Senate Bill 555 – Public Information Act – Denials – Pending Litigation.

In response to the Complainant’s PIA request, the OAG produced 17 pages of documents, including an email thread between an Assistant Attorney General and an individual constituent that had been forwarded by a legislator, and the written testimony submitted by the OAG on the bills. The OAG also shared links to publicly available information about the bills, including witness lists, written testimony, and bill files maintained by the Department of Legislative Services. The OAG withheld 70 pages of documents consisting of emails, including attachments, about meetings between OAG staff, legislators, and legislative staff, draft language for bills and amendments, notice of

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

hearings, and potential evidence and witnesses. The OAG withheld these documents based on the legislative privilege, citing §4-301(a)(1) of the PIA.

The Complainant's position is that the OAG may not assert legislative privilege because that privilege belongs solely to the Legislative Branch. In his view, communications between the Attorney General and members of the General Assembly are no different than if a constituent had drafted legislation and sent it to his legislator. The OAG explains that it does not have discretion to disclose the documents at issue because counsel for the General Assembly has advised that they are subject to legislative privilege and, thus, withholding the documents is mandatory under the PIA. Indeed, the Complainant requested the same documents from Senator Brian Feldman, asking him to waive privilege, and that request was denied.

Analysis

Section 4-301(a)(1) of the PIA, the exemption invoked by the OAG, 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 we discussed recently in the context of a PIA request made to a state legislator. *See* PIACB 25-13 (Jan. 2, 2025). As explained in that decision, the legislative privilege is derived from both the U.S. Constitution and the Maryland Constitution. *See* U.S. Const. art. I, § 6, cl. 1; Md. Const., Art. III, § 18; Md. Decl. Rights art. 10. These provisions provide legislators with immunity from suit for legislative activities and operate as an evidentiary and testimonial privilege that prevents disclosure of certain information. *Montgomery County v. Schooley*, 97 Md. App. 107, 118 (1993). The Maryland Supreme Court has described legislative privilege as “an important protection of the independence and integrity of the legislature” that “reinforc[es] the core doctrine of separation of powers.” *In re 2022 Legislative Districting of the State*, 481 Md. 507, 587 (2022) (quoting *Schooley*, 97 Md. App. at 114).

The legislative privilege is broad but not boundless. Although it is textually derived from the Speech and Debate Clause, the privilege “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.” *In re 2022 Legislative Districting*, 481 Md. at 587. While the privilege prohibits “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), it does not prohibit “inquiry into activities which are causally or incidentally related to legislative affairs but not a part of the legislative process itself.” *Id.* at 177. Relying on this distinction, we have directed production of records that “were not part of the legislative process itself but rather more matters of routine constituent service.” PIACB 25-13, at 7 (Jan. 2, 2025) (internal quotation marks and citations omitted).

At the heart of the legislative process is proposing legislation and drafting bills. Consistent with the principles underlying the legislative privilege, “confidentiality is a core feature of the drafting process before a bill is filed.” *In re 2022 Legislative Districting*, 481 Md. at 588. After a bill is filed, “[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. “The sponsoring legislator’s motives or communications with staff are not probed—or even considered relevant” because “it is the body, not the individual legislator, that ultimately adopts legislation.” *Id.* at 590. This underscores the extent to which legislative privilege applies throughout the legislative process, from identifying proposals and drafting bills to preparing for hearings on those bills.

A request for communications between the OAG and the General Assembly related to proposed legislation, by its very terms, implicates documents that are “part of the legislative process itself.” *Blondes*, 16 Md. App. at 177. The responsive documents identified by the OAG and withheld—emails showing draft language for bills and setting meetings to discuss proposed legislation—reflect the essence of the legislative process and are subject to legislative privilege. The fact that legislators were corresponding with the OAG does not waive that privilege. It is well established that privilege can extend to “meetings with political officials called to discuss pending or proposed legislation.” *Schooley*, 97 Md. App. at 123. If an email could be obtained simply by requesting it from another agency with whom a state legislator is discussing proposed legislation, it would undermine the legislative function.

The Complainant argues that the Attorney General is just a constituent seeking aid from a legislator who can modify the PIA. We observe two important distinctions here. First, the Attorney General was not engaging in an activity “incidentally related to legislative affairs,” but rather was facilitating the “legislative process itself” by proposing legislation and discussing draft bills with committee chairs who introduced them in public session. *Blondes*, 16 Md. App. 177. Second, unlike a private citizen, the OAG is subject to the PIA and therefore obligated to comply with § 4-301(a)(1) by denying inspection of documents that are subject to legislative privilege. We decline to interpret the PIA as a means through which one can make an “inquiry into acts which occur in the regular course of the legislative process and into the motivation for those acts.” *Blondes*, 16 Md. App. at 177. This would be at odds with how Maryland courts view legislative privilege.

Conclusion

Based on the submissions, we conclude that the OAG has not violated the PIA. Because communications between the OAG and the General Assembly related to proposed legislation are subject to legislative privilege, §4-301(a)(1) required the OAG to withhold the documents.

Public Information Act Compliance Board

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