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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 26-16

December 5, 2025

Maryland State Board for Professional Engineers, Custodian
James Hurt, Complainant

Complainant James Hurt sent a Public Information Act (“PIA”) request to the Maryland State Board for Professional Engineers (“BPE”) asking for records related to BPE recommendations, investigations, and decisions concerning certain complaints against an engineer. The BPE granted the request and produced records but withheld two records under § 4-301(a)(1)¹ of the PIA, citing the attorney-client privilege. The complainant challenges the BPE’s denial of inspection of those records in this complaint. In response, the BPE maintains that its denial was appropriate because the records, which counsel for the BPE describes as summaries of discussions at Complaint Committee meetings, contain deliberative discussions and legal advice. After review of the submissions, we find that the BPE improperly withheld the records. We explain below.

Background

To practice engineering in the State of Maryland, one must have a license issued by the State Board for Professional Engineers. Md. Code Ann., Bus. Occ. & Prof. (“BOP”) § 14-301(a). In addition to issuing licenses, the BPE also investigates complaints against engineers, *id.* § 14-206(a) and has the power to suspend or revoke a license under certain circumstances, *id.* § 14-317(a). Starting in May 2022, the complainant submitted a series of complaints against a certain engineer.² On December 8, 2022, the BPE sent the complainant a letter in which it stated that the Complaint Committee had reviewed the complaints and concluded that they did not “allege facts that are adequate grounds for Board disciplinary action,” and therefore the BPE was required to dismiss the complaints. According to this PIA complaint, the complainant submitted additional complaints against the engineer after receipt of this letter but did not receive a response from the BPE regarding those complaints.

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

² We understand that those complaints were submitted to the Maryland State Board for Professional Land Surveyors (“BPLS”), *see* BOP §§ 15-201 through 15-211, but that that body determined that it did not have jurisdiction over the complaint and therefore referred the complaints to the BPE.

Thereafter, on August 14, 2024, the complainant sent a PIA request to the BPE asking for the following information related to his complaints against the engineer:

- (a). The name of the Professional Board Member and the name of the consumer board member assigned by the Presiding Officer. [C.O.M.A.R. 09.13.02.03. A].
- (b). A copy of the recommendation made by the above assigned persons. [C.O.M.A.R. 09.13.02.03. B].
- (c). A copy of any investigation done by the above assigned persons. [C.O.M.A.R. 09.13.02.03. C].
- (d). A copy of any decision made by the full Board or by executive decision by any one of the Professional Board Members.
- (e) A complete pro-forma copy of any F.O.I.A. document/form required by this agency for the production of agency records.

The BPE responded to the complainant's PIA request in a letter dated March 4, 2025. The BPE provided the names of the board members (for both the BPE and the BPLS) the complainant requested in part (a) of his PIA request. The BPE also produced meeting minutes responsive to parts (b) and (d) of the PIA request, as well as "[t]he complete investigatory file," which was responsive to part (c) of the PIA request. The BPE advised that two documents were withheld under § 4-301(a)(1) as "privileged attorney-client communication and advice." Those documents were described as "reports regarding the status of pending complaints to the Complaint Committees," one for the BPE and one for the BPLS. The BPE explained that the "documents reflect legal advice from the Office of the Attorney General to their client, the respective Complaint Committees, regarding the receipt of and response to pending complaints." The BPE took the position that redaction was not possible because "the entirety of the documents reflects legal advice regarding complaints."

On March 5, 2025, the complainant sent the BPE a letter in which he expressed concern about the validity of the BPE's application of the attorney-client privilege to withhold certain records.³ The BPE responded on March 17, 2025. The BPE acknowledged that the members of the Complaint Committee were not attorneys but explained that the committee was advised by an attorney, and that the reports that were withheld contained "the advice and recommendations offered by the attorney to the

³ The complainant's letter to the BPE is not in the record before us. However, the BPE's response to that letter, dated March 17, 2025, is in the record and describes the complainant's March 5 letter.

Complaint Committee regarding what actions to take on a list of complaints received by the Committee.” Noting that “[a]dvice from an attorney to their client is highly confidential and protected,” the BPE stated that disclosure of the records would violate the attorney-client privilege.⁴

The complainant continued to disagree with the BPE’s response to his PIA request so, on June 11, 2025, he contacted the Public Access Ombudsman to request dispute resolution assistance.⁵ On August 21, 2025, the Ombudsman issued a final determination stating that the dispute was not resolved and the complainant filed this complaint with our Board. The complainant alleges that he is “aggrieved by a partial denial of his request for information from the [BPE].” Stating that the BPE’s initial response to his PIA request “contained nearly completely useless Board meeting minutes,” the complainant contends that the BPE did not fully address parts (a), (b), (c), or (d) of his PIA request. As example, the complainant notes that the BPE’s response “failed to mention that Karl J. Rickert^[6] was the board member assigned to investigate the [complaint].” Addressing the records withheld on attorney-client privilege grounds, the complainant argues that the BPE’s “committee (or Rickert) and the A.G.’s contributions to the Board’s decision are separate and distinguishable,” and that the BPE did not provide “even a ‘good faith’ redaction of legal advice from the engineering/surveyor facts.” The complainant asks that we direct the BPE to produce “a copy of any written or transcribed oral report that Karl J. Rickert made to the [BPE].”⁷

The BPE, through counsel, responds to the complaint and maintains that the BPE and the BPLS have produced all responsive, non-privileged records. First, the BPE states explicitly that there are no additional responsive records not produced or identified as

⁴ The BPE’s March 17, 2025, letter also addressed apparent concerns about notices of remedies and appeal rights, which are not relevant to this complaint.

⁵ 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 that the dispute was not resolved. § 4-1A-05(a).

⁶ According to the BPE website, Mr. Rickert is currently a member of the BPE. *See* Maryland Department of Labor, Board Business – Professional Engineers, <https://labor.maryland.gov/license/pe/pebd.shtml> (last visited Dec. 4, 2025). We note that the BPE’s March 4, 2025, response indicated that, at the time of the complainant’s complaints to the BPE, the BPE Complaint Committee consisted of Mr. Ricket and Edward Hubner. The BPE also provided the names of the two BPLS members who served on the BPLS Complaint Committee.

⁷ The complainant also asks that we instruct the BPE to “make a fair and complete reporting of the findings of facts for each of the ten (10) cited incidences” and order the BPE to pay the costs of the complainant’s appeal. Both of these actions are beyond the scope of our jurisdiction. *See* § 4-1A-04.

having been withheld. Counsel explains that “all records related to a specific complaint are maintained within a folder specifically for that complaint,” and that “the entirety of the folder for [the complainant’s] underlying complaint was produced,”⁸ save for the two attorney-client privileged records identified in the BPE’s response letter. As to those records, counsel for the BPE asserts that the BPE properly applied § 4-301(a)(1) because the records are subject to the attorney-client privilege. Counsel advises that the records “contain summaries of legal advice from the Complaint Committee’s AAG,” and stresses that preservation of the attorney-client privilege is in the public interest because it “encourages agency client[s] to operate within Maryland law by giving them a safe and private way to understand their legal obligations and rights from their attorney.”

Counsel for the BPE now claims, in response to this complaint, that the records are also covered by the deliberative process privilege, which permits denial of records that “contain deliberations or advice among government officials to assist in making a decision.” Counsel notes that the purpose of the privilege is to “allow government officials to speak freely when making a decision.” Therefore, counsel states, the records were also properly withheld under § 4-344 because they “contain the Committee’s internal deliberations on what recommendations to make to the full Board to proceed on the complaints.” Counsel asserts that redaction of the records would “useless as the summaries only contain deliberative discussions, requests for legal advice, and legal advice.”

The complainant, in reply, contends that the BPE has misapplied and misused § 4-301(a)(1). Alleging that “[t]ens, (and hopefully not hundreds), of hours were charged on the tax payer’s dime” in the process of answering and considering this complaint, the complainant states that “[t]hese wasted salaries could have been avoided simply by providing the raw report (*sans* the AAG input) of the Complaint committee per C.O.M.A.R. 09.13.02.02.”

⁸ We note that, under § 4-333(a)(1), ordinarily a custodian must deny inspection of “the part of the public record that . . . contains information about the licensing of an individual in an occupation or a profession.” However, under § 4-333(c), a custodian may disclose information if it finds a “compelling public purpose” and has adopted rules or regulations governing such inspection. The Department of Labor has adopted a regulation that permits disclosure of “[c]omplaints, reports of investigation, and expert reports concerning the individual person who is the subject of the occupational and professional licensing record” if “the person requesting the inspection . . . [h]as filed a complaint against the person who is the subject of the occupational and professional licensing record and the request is limited to only these documents relating to this complaint.” COMAR 09.01.04.11C(1). In addition, a custodian may disclose to anyone “[t]he number, nature, and administrative status of complaints filed against the individual person who is the subject of the occupational and professional licensing record.” COMAR 09.01.04.11B.

Analysis

We are authorized to review and resolve complaints alleging certain violations of the PIA's provisions, including that a custodian improperly denied inspection of public records. § 4-1A-04(a)(1)(i). When we receive a complaint, we must forward it to the relevant custodian and ask for a written response. § 4-1A-06(a). 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 find that a custodian has wrongfully denied inspection of a public record, we must "order the custodian to . . . produce the record for inspection." § 4-1A-04(a)(3)(i).

Maryland's General Assembly enacted the PIA to provide "access to information about the affairs of government and the official acts of public officials and employees." § 4-103(a). Our courts have repeatedly explained that the PIA "establishes a public policy and a general presumption in favor of disclosure of government or public documents." *Kirwan v. The Diamondback*, 352 Md. 74, 80 (1998); *see also* § 4-103(b) (provisions of the PIA to be "construed in favor of allowing inspection of a public record"). Thus, records custodians must allow inspection and copying of all public records, unless an exemption from disclosure applies. §§ 4-201(a), 4-205(b). Some exemptions are mandatory in nature, *e.g.*, § 4-311 (individuals' personnel records), while others are discretionary, permitting a custodian to deny inspection only if inspection would be "contrary to the public interest," § 4-343; *e.g.*, § 4-351 (certain law enforcement records). When a custodian is alleged to have improperly denied inspection of public records, the custodian bears the burden of showing compliance with the PIA. *See Lamson v. Montgomery County*, 460 Md. 349, 367 (2018). "In a doubtful case, the party requesting information under the [PIA] is favored." *Immanuel v. Comptroller*, 449 Md. 76, 88 (2016).

As noted above, the PIA contains provisions that either require or permit a custodian to deny inspection of certain records or information. Section 4-301(a)(1) directs a custodian to "deny inspection of a public record or any part of a public record if . . . by law, the public record is privileged or confidential." This exemption is mandatory and encompasses the attorney-client privilege. *See Abell Found. v. Baltimore Dev. Corp.*, 262 Md. App. 657, 711-12 (2024). The second exemption cited by counsel only in response to this complaint, § 4-344, is discretionary. Under § 4-344, a custodian may deny inspection of "any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the unit." The deliberative process privilege, which applies to pre-decisional and deliberative communications concerning government decision-making, falls within the scope of § 4-344. *See Stromberg Metal Works, Inc. v. Univ. of Maryland*, 382 Md. 151, 165 (2004); *see also Admin. Office of the Courts v. Abell Found.*, 480 Md. 63, 92 (2022) (observing that § 4-344 is a "conditional exemption" that may be invoked only if the custodian believes that "the requested inspection would be contrary to the public interest").

We were unable to resolve this complaint based on the parties' submissions, so we asked the BPE to provide us with copies of the Complaint Committee reports that the BPE withheld. *See* § 4-1A-06(b)(2)(ii)(1) (allowing our Board to request "a copy of the public record" from the custodian). As required by law, we will maintain the confidentiality of the records we received from the BPE. § 4-1A-06(b)(5); *see also* COMAR 14.02.06 (regulations governing treatment of confidential records or information received from custodians). Any references to the records in this decision will be general in nature so as not to disclose any information that the BPE maintains is privileged. COMAR 14.02.06.05.

We start with the attorney-client privilege, which "bars compelled disclosure, without the client's consent, of attorney-client communications made in confidence between the attorney and client." *Abell Found.*, 262 Md. App. at 712 (citation omitted). Not every communication between a lawyer and client is protected however. Rather, only those communications that "relate to professional advice and to the subject-matter about which such advice is sought" may be withheld from disclosure. *Harrison v. State*, 276 Md. 122, 132 (1975); *see also, Maxima Corp. v. 6933 Arlington Dev. Ltd. P'ship*, 100 Md. App. 441, 457 (1994) (identity of client, fees, and "general purpose of the work performed" are generally not subject to the attorney-client privilege). Communications between a government client and its lawyer are equally protected by the attorney-client privilege. *See* 82 Md. Op. Att'y Gen. 15, 17 (1997).

In response to this complaint, counsel for the BPE describes the records as "summaries of discussion held at each board's Complaint Committee meeting," and claims that they "contain summaries of legal advice from the Complaint Committee's AAG." After review of the records, we do not see any such legal advice. There records contain no obvious communications from the BPE's or BPLS's counsel about options or recommendations for proceeding, or outlining of legal obligations or potential outcomes. Instead, the records contain facts which, based on counsel for the BPE's description of the records as "summaries of discussion," appear to have been presented at each board's Complaint Committee meeting. In fact, there are no references to counsel whatsoever in the records, or to any statements of counsel, and the Complaint Committee Reports bear no markings that their content is confidential or privileged in any way. In our view, these records do not fall within the attorney-client privilege, and thus § 4-301(a)(1) cannot apply to exempt them from disclosure.

Turning to § 4-344—which the BPE did not rely upon when it initially denied inspection of the Complaint Committee reports—we find that exemption inapplicable as well. The deliberative process privilege focuses on records that reflect "advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." *Stromberg*, 382 Md. at 165 (quoting *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1973)). Generally, "purely factual" material is not covered by the privilege, although sometimes "facts obtained upon promises or understanding of confidentiality, investigative facts underlying and intertwined with

opinions and advice, and facts the disclosure of which would impinge on the deliberative process” may fall within its scope. *Id.* at 166 (quoting *Hamilton v. Verdow*, 287 Md. 544, 564-65 (1980)). The deliberative process privilege is meant to encourage government officials and employees to “give completely candid advice by reducing the risk that they will be subject to public disclosure, criticism and reprisals, and to enable decisionmakers to think out loud uninhibited by the danger that tentative but rejected thoughts will become the subject of public discussion.” *Abell Found.*, 480 Md. at 92 (cleaned up).

The Complaint Committee reports here were generated as the BPE and BPLS considered the complainant’s complaints against the engineer. Thus, to the extent that the records were created before either of those boards made a determination as to how to proceed on the complaints, the records are pre-decisional in nature. *See Stromberg*, 382 Md. at 165. However, that alone does not qualify the records for protection under § 4-344—they must also be deliberative. *Id.* Counsel for the BPE states that the Complaint Committee Reports “contain the Committee’s internal deliberations on what recommendations to make to the full Board to proceed on the complaints.” After review of the records, we cannot agree with counsel’s assertion. We see no deliberations or recommendations in these reports. They contain no advisory opinions or candid advice. Rather, the reports’ content appears to comprise “purely factual” information that is not “intertwined with opinions and advice.” *Id.* at 166. Further, it is hard to see how disclosure of these facts would “impinge on the deliberative process,” *id.*, and counsel for the BPE has given us no specific or persuasive argument that it would. Thus, we find that § 4-344 does not apply to the BPE and BPLS Complaint Committee reports. We direct the BPE to produce those reports to the complainant.⁹ § 4-1A-04(a)(3)(i).

Conclusion

After review of the submissions, and for the reasons discussed above, we find that the Complaint Committee reports are not protected by the attorney-client privilege, thus the BPE improperly applied § 4-301(a)(1) to withhold them from disclosure. We also find that the reports are not deliberative in nature, thus § 4-344 cannot shield them from inspection. We direct the BPE to produce the Complaint Committee reports to the complainant, as stated above, within thirty days of receipt of this decision and order.

Public Information Act Compliance Board

Sareesh Rawat, Chair

⁹ In providing the records for our confidential review, the BPE redacted the substantive information about other complaints. Because the Department of Labor’s regulations allow disclosure of specific information relating to complaints only to the individuals who filed the complaint, *see supra*, note 8, this information should remain redacted in the records produced to the complainant.

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