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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 26-21
February 3, 2026
Montgomery County, Office of the County Executive, Custodian
Danuta Wilson, Complainant

In January 2025, complainant Danuta Wilson sent a Public Information Act (“PIA”) request to the Montgomery County Office of the County Executive (“MCOCE”) asking for records of correspondence between certain Montgomery County employees and other members of the Regan National Community Noise Working Group (“Working Group”). In June, the MCOCE produced 137 pages of records and also offered to produce a large Excel spreadsheet of noise complaints separately. Later, after the complainant disputed the MCOCE’s production, the MCOCE issued a supplemental response explaining that some responsive email records had been withheld under §§ 4-301 and 4-344¹ of the PIA, as subject to the executive and deliberative process privileges, respectively. The complainant now challenges the MCOCE’s application of these exemptions in this complaint. In response, the MCOCE, through counsel, states that the MCOCE appropriately applied the exemptions to email records that contain deliberative and pre-decisional recommendations. After review of the submissions, we find that the records are not covered by the executive privilege, and thus § 4-301(a)(1) does not apply. We further find that, although most of the email records are pre-decisional and deliberative in nature such that § 4-344 may apply, the MCOCE has not sufficiently shown that disclosure of these specific records would be contrary to the public interest, as it must under § 4-343.

Background

We take the following facts from the parties’ submissions, as well as information available in the public domain. On January 27, 2025, the complainant sent a PIA request to the MCOCE seeking:

All emails and other correspondence between Montgomery County employees Messrs. Ken Hartman and Pete Fosselman with other members of the Reagan National Community Noise Working Group and those working on flight path changes, including community representatives (list attached),

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

Mr. Jim Allerdice of Vianair, Inc, the FAA and MWAAA from October 1, 2024 to the present.

The complainant provided a link to a list of community members, which appears to have been current through January 6, 2025.² The complainant stated that she would “like to receive copies of the e-mails electronically at no cost.”

The MCOCE acknowledged receipt of the complainant’s PIA request the following day. About one month later, the MCOCE sent an email to the complainant apologizing for a lapse in communication and advised that staff were still reviewing the records and that the MCOCE hoped to have the information for the complainant “when [the] final reviewer is back in the office in two weeks.” On March 18, 2025, the complainant contacted the MCOCE by email to ask for an update on her PIA request. The MCOCE responded that the reviewers had not “had a chance to review and redact the information,” and that that the MCOCE would “reach out to follow up with them again [that] week.” On April 11, 2025, the complainant again contacted the MCOCE to ask for a status update. The MCOCE apologized again, stating that the reviewers had been unexpectedly out of the office. The MCOCE stated that a “check in” was scheduled for that afternoon regarding the amount of time needed to finish reviewing and redacting the records. Later that same day, which was April 14, 2025, the MCOCE advised that it aimed to have the complainant’s PIA request answered within fifteen days.

On May 9, 2025, the complainant sent an email to the MCOCE stating that she was following up on her PIA request, emphasizing that the request was from January 2025. The MCOCE responded the same day, stating that it was “with no excuse on the delay in finalizing the review, redaction, and providing [the complainant] with the results,” and that the reviewers would be given “a hard deadline to provide the results.” The complainant replied that she intended to contact the Public Access Ombudsman,³ noting that there was “absolutely nothing confidential in the documents,” and that the information “should be communicated regularly to members of the public.” The MCOCE responded by email a few days later, stating that it should “be able to get this information reviewed and signed

² See *Metropolitan Washington Airports Authority, Reagan National Community Noise Working Group Appointed Voting Members*, (Jan. 6, 2025), https://www.flyreagan.com/sites/flyreagan.com/files/2025-01/Reagan%20National%20Noise%20Working%20Group_Voting%20Members_06Jan2025.pdf. The list contained the names of twenty-six individuals, including Mr. Hartman and Mr. Fosselman.

³ The PIA charges the Public Access Ombudsman with making “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).

off on for [the complainant] without having to connect the ombudsman.” The following week, the complainant sent an email to follow up, and the MCOCE advised that it had given the reviewers “a deadline of on or before June 1,” which would allow “time to ensure the custodian of the records has time to review and approve before releasing them.”

On May 29, 2025, the MCOCE sent the complainant an email advising that it was “finally on the home stretch,” but that the custodian still needed to review the records before they were released. The MCOCE told the complainant that it needed an additional week for this review. Finally, on June 6, 2025, the MCOCE provided the records by email. The MCOCE stated that “[i]n all transparency a large excel spreadsheet with the noise complaints was pulled out, as it was about 8000 pages and impossible to read as PDFs.” The MCOCE asked the complainant to advise if she wanted the MCOCE to provide that spreadsheet separately.

After reviewing the records she received, the complainant contacted the MCOCE on June 10, 2025, to express her belief that records production was incomplete, noting that the records included “several letters from residents raising important issues about aviation noise and MoCo advocacy,” and observing that those emails were “not acknowledged, discussed or even mentioned.” The complainant found it “hard to believe that there was no communication regarding the letters in question,” and asked the MCOCE to determine if there was “any additional correspondence that was missed by staff.” On June 18, 2025, the MCOCE responded, stating that it would work with staff to look into the issues the complainant raised.

The day prior, on June 17, 2025, the complainant contacted the Public Access Ombudsman, *see supra*, note 3, to request dispute resolution assistance. On July 3, 2025, the MCOCE sent the complainant an email advising that her PIA request had been “granted in part and denied in part.” The request was “denied to the extent it seeks information protected by executive privilege, or information constituting interagency or intra-agency letters or memoranda,” under § 4-344 of the PIA. The MCOCE took the position that “[d]enial of information falling within any of these categories is necessary as disclosure would be contrary to the public interest.” The MCOCE assured the complainant that “[a]ll responsive records not privileged or otherwise protected were provided.” On September 22, 2025, the Ombudsman issued a final determination stating that the dispute was not resolved and the complainant filed this complaint with our Board.

The complaint alleges that the MCOCE wrongfully denied inspection of the records that the complainant requested. She explains that the records she asked for “primarily concern communications between employees of the [MCOCE], Mr. Hartman and Mr. Fosselman, who sit on the [Working Group], and several volunteers from Montgomery County on that same committee.” The complainant contends that the information withheld is “very much in the public interest,” and disputes that it is of an advisory or deliberative nature. The complainant asserts that “the process of [the] County’s engagement with the

Working Group as it stands now is untransparent and serves primarily the interests of one selected group represented on the Working Group.” The complainant maintains that disclosure of the email records she requested will “shed light on how this process works and will aid in broadening citizen participation and improve decision making.”

The MCOCE, through counsel, responds that the MCOCE conducted a thorough search of Mr. Hartman’s and Mr. Fosselman’s email accounts using key terms and produced a PDF containing 137 pages of responsive records. The records that were not disclosed, counsel explains, “related to pre-decisional internal discussions relating to the governing body.” Counsel for the MCOCE states that the records “contain deliberative, pre-decisional advisory recommendations that are protected from release” by both the executive privilege and § 4-344 of the PIA, as “records of the officials discussing internal matters relating to governmental function.” Citing caselaw observing that “[t]he making of candid communications by the subordinate may well be hampered if their contents are expected to become public knowledge,”⁴ counsel maintains that the MCOCE appropriately applied these exemptions to the undisclosed records.

In reply, the complainant suggests that the MCOCE’s response to her PIA request is “boiler plate,” and “does not reflect the circumstances surrounding this situation.” The complainant asserts that the public has very little understanding of the Working Group’s activities, and Montgomery County’s engagement with the Working Group. The complainant takes the position that, because the Working Group is a “community-led, not a government-led initiative,” there is “no governmental action to be taken,” and the officials referenced are “very much in a support role only.” The complainant stresses that “no other local government has employees holding seats on the Working Group as those seats are reserved for community members.” The complainant contends that the only way she can access the information she seeks is “via the requested government/citizen communications,” and that access “would help address the imbalance in knowledge and decision-making regarding important quality of life issues between a select group of privileged citizens, and the broader population of the County.”

Analysis

The PIA directs 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). When we receive a complaint from a PIA requester, we must forward it to the relevant custodian and ask for a written response. § 4-1A-06(a). If, after review of the parties’ submissions, we determine that a custodian has wrongfully denied inspection of a public record, we must issue a written decision and “order the custodian to . . . produce the public record for inspection.” § 4-1A-04(a)(2) and (3)(i). In making such

⁴ See *Hamilton v. Verdow*, 287 Md. 544, 558 (1980).

determination, the PIA authorizes us to ask the custodian to provide copies of the withheld public records for our confidential review.⁵ See § 4-1A-06(b)(2)(ii).

The General Assembly enacted the PIA as a means to provide “access to information about the affairs of government and the official acts of public officials and employees.” § 4-103(a). The PIA requires that custodians of public records allow inspection and copying of those records, unless an exemption from disclosure applies. §§ 4-201(a), 4-205(b). Though the PIA favors disclosure, its provisions contain numerous disclosure exemptions for certain types of records and information. See §§ 4-301 through 4-358. Some exemptions are mandatory, meaning that a custodian ordinarily must deny inspection of the records or information falling under the exemption. See, e.g., § 4-311 (individuals’ personnel records); § 4-336 (individuals’ financial information). Other exemptions, such as § 4-344, at issue here, are discretionary. To invoke a discretionary exemption, a custodian must demonstrate that disclosure of the records or information would be “contrary to the public interest.” § 4-343. Regardless of the type of exemption at issue, a custodian bears the burden of showing that the exemption was properly applied. See *Lamson v. Montgomery County*, 460 Md. 349, 367 (2018).

Section 4-301(a)(1) of the PIA requires that a custodian 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 encompasses the executive privilege, which may apply to “records made in connection with the deliberative decision-making process used by chief or high Executive officials—Presidents, Governors, and their immediate advisors.” *Stromberg Metal Works, Inc. v. Univ. of Maryland*, 382 Md. 151, 161 (2004); see, e.g., 66 Md. Op. Att’y Gen. 98, 102 (1981) (concluding that “budget recommendations submitted in confidence to the Governor, at his request, would be presumptively privileged as confidential executive communications of an advisory nature”). The executive privilege may also apply to “diplomatic, military, and security-laden secrets that may not involve those officials.” *Stromberg*, 382 Md. at 162. Our State’s Supreme Court has observed of this “Constitutionally-based privilege,” that, “when invoked, [the executive privilege] must be given the most serious attention and, when properly invoked by the person holding the privilege, require the custodian to deny inspection.”⁶ *Id.*

⁵ Under § 4-1A-06(b)(3), “[i]f the complaint alleges that the custodian denied inspection of a public record under § 4-301(a)(2)(ii)” —which concerns records made non-disclosable by federal law— “the custodian may not be required to produce the public record for Board review.” This exception is not relevant here.

⁶ In a prior decision, we suggested, given the courts’ focus on the Constitutional separation of powers doctrine, that the executive privilege did not apply via § 4-301(a)(1) at the county or municipal level. See PIACB 25-20, at 6-7 (Jan. 22, 2025). On appeal, the Circuit Court for Harford County disagreed, finding that the executive privilege also rests “upon the interest in protecting confidential executive matters, an interest that can apply equally to local governments.” *In the Matter of Harford County*, Case No. C-12-CV-25-000109 (Cir. Ct. Harford

Section 4-344 is a discretionary exemption that permits a custodian to 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,” if inspection would be “contrary to the public interest.” § 4-343. Maryland’s Supreme Court has explained that this exemption encompasses “the broader deliberative process privilege that arose from the common law, from rules of evidence, and mostly from rules governing discovery in civil judicial proceedings.” *Stromberg*, 382 Md. at 163; *see also Abell Found. v. Admin. Office of the Courts*, 480 Md. 63, 92 (2022) (describing § 4-344 and the deliberative process privilege as a “conditional exemption” that may be invoked only when the custodian believes inspection would be against the public interest). To qualify for withholding under § 4-344, the records generally must be pre-decisional and deliberative in nature. *Stromberg*, 382 Md. at 165. Information that is “purely factual” normally does not fall within § 4-344, although under certain circumstances, it might. *See id.* at 166 (explaining that “some factual material is entitled to a degree of protection under the privilege,” for example “facts obtained upon promises or understandings of confidentiality, investigative facts underlying and intertwined with opinions and advice, and facts the disclosure of which would impinge on the deliberative process,” (quotation and citation omitted)).

We could not resolve this complaint based on the information supplied by the submissions alone. Thus, we asked the MCOCE to provide (1) the PDF of the 137 pages of records disclosed to the complainant and (2) the remaining responsive records that were withheld under §§ 4-301(a)(1) and 4-344. *See* § 4-1A-06(b)(2)(ii). As required by law, we will maintain the confidentiality of the records that the MCOCE did not disclose. *See* § 4-1A-06(b)(5); COMAR 14.02.06. Any references to the undisclosed records will be general in nature, so as not to reveal information that the MCOCE maintains is privileged and not subject to inspection under the PIA. *See* COMAR 14.02.06.05.

The email records the MCOCE withheld comprise thirty-nine pages.⁷ Within those pages are thirty-three unique email communications that the MCOCE claims are subject to the executive privilege under § 4-301(a)(1) of the PIA and the deliberative process privilege, as recognized in § 4-344. We start with the executive privilege which, as discussed above, falls within § 4-301(a)(1), a mandatory exemption that requires a

County Nov. 14, 2025). The circuit court also noted that “the assertion of the analogous legislative privilege by officials of local governments has been repeatedly sustained.” *Id.* (citing *Floyd v. Baltimore City Council*, 241 Md. App. 199 (2019); *Matter of 2022 Legislative Districting of State*, 481 Md. 507 (2022); *State v. Holton*, 193 Md. App. 322 (2010)). The circuit court’s ruling is currently pending appeal in the Appellate Court of Maryland. *See In the Matter of Harford County*, Sept. Term, 2025, No. 2215 (App. Ct. Md.).

⁷ At the same time that the MCOCE transmitted these email records for our confidential review, the MCOCE also disclosed to the complainant eight additional email records, stating that they “included an outside consultant in addition to the Montgomery County representatives on the MWAA Advisory Group, and are therefore arguably not privileged.”

custodian to deny inspection of records or information when they are privileged or confidential “by law.” While it may be the case that the executive privilege can apply in the context of a County Executive, *see supra*, note 6, and is not reserved for the President or Governors, we do not think the privilege applies to these communications. First, the email communications do not strike us as ones “made in connection with the deliberative decision-making process used by chief or high Executive officials.” *Stromberg*, 382 Md. at 161. The County Executive is not a sender or recipient of any of these emails, and is not even mentioned in any of the emails. Moreover, the emails’ subject matter does not concern any decisions or policies that the County Executive was in the process of making or forming. While we recognize that two County employees in the executive branch were involved in the email discussions—specifically the Assistant Chief Administrative Officer in the County Executive’s Office and the Director of Regional Services for Montgomery County—in our view, they were not, in this context, discussing matters that would fall within the executive privilege. *Cf. id.* at 163 (noting that the decision-maker at issue was “seven rungs down in the chain of command and responsibility within one State agency,” and that there was no indication that the reports prepared “were used, or even seen, by anyone up the line for their decision-making”). We thus find that § 4-301(a)(1) does not apply to these records.

In *Stromberg*, Maryland’s Appellate Court rejected the application of the executive privilege, observing, “[w]hat is really at issue here is the broader deliberative process privilege.” 382 Md. at 163. The same is true for this complaint. As discussed above, to qualify for protection by the deliberative process privilege, material must be pre-decisional and deliberative in nature. *Id.* at 165. In addition, to withhold a record under § 4-344, a custodian must demonstrate that disclosure would be “contrary to the public interest.” § 4-343. After review of the email records, we find that many, if not most, of the records are pre-decisional in nature and deliberative in that they reflect Working Group members’ suggestions and opinions as to how to proceed with a certain issue. Many of the emails contain “candid advice” and could be described as members’ “think[ing] out loud,” which are the types of communications that the deliberative process privilege is meant to encourage in the context of government decision-making.⁸ *Abell Found.*, 480 Md. at 92. Thus, at least part of § 4-344’s requirements are satisfied.

⁸ The complainant implies, to some extent, that § 4-344 and the deliberative process privilege should not apply because the Working Group is a “community-led” group, and not a government-led group. While it is true that the Working Group is not a government agency in the traditional sense, it seems to us that these MCOCE records may nevertheless fall within the deliberative process privilege if the requirements of the privilege are met. It is clear that the records the complainant has requested, in the custody of the MCOCE, are public records—they were made or received “by a unit or an instrumentality . . . of a political subdivision . . . in connection with the transaction of public business.” § 4-101(k)(1). Though many of the Montgomery County representatives of the Working Group are not government employees but rather appear to be volunteers, those representatives are nonetheless appointed by the County Executive to carry out a government-type function—i.e., to address “community concerns regarding aircraft noise

In its response to the complainant's PIA request, the MCOCE simply stated, in a conclusory manner, that denial of inspection was "necessary as disclosure would be contrary to the public interest." In response to this complaint, the MCOCE does little more to explain why disclosure of the Working Group's emails would be contrary to the public interest. Although counsel for the MCOCE points to case law that counsel argues makes it "clear that this exemption is both vital to the functioning of government and beneficial to the public good," counsel makes no specific arguments as to why disclosure of *these* email records will harm *this Working Group's* ability to make good-decisions, which is the focus of the public interest analysis for purposes of § 4-344. *See Abell Found.*, 480 Md. at 92; *see also Maryland Public Information Act Manual* (19th ed. Dec. 2024), at 3-38 (suggesting that a "presumption of disclosure should prevail, unless the responsible agency official can demonstrate specific reasons why agency decision-making may be compromised if the questioned records are released").

For instance, the MCOCE does not explain how the passage of time since the relevant decisions were made affects the public interest analysis. *See Cranford v. Montgomery County*, 300 Md. 759, 772 (1984) (noting that withholding "might serve no public interest" when records "relate to agency action taken so long ago that disclosing [them] no longer makes any difference"). Or, on the other hand, when agency decisions regarding certain issues or matters are still ongoing, it may well negatively affect that agency's decision-making process to publicly release internal deliberations. *Cf. Frederick v. Randall Family, LLC*, 154 Md. App. 543, 566 (2004) (recognizing that it is usually against the public interest to disclose, under § 4-351, records related to open and ongoing investigations). The MCOCE does not represent that any of the issues or matters addressed in these email records are still under consideration or up for debate. In addition, we note that when invoking a discretionary exemption, a custodian must consider the extent to which redaction of the records might "address the reasons for the denial." § 4-203(c)(1)(i)(2)(B). Here, counsel for the MCOCE has not explained why, e.g., redaction to anonymize the emails yet disclose the deliberative content, could not be in the public interest. Because the MCOCE has not sufficiently demonstrated why disclosure of the emails it withheld would be contrary to the public interest, as it must under § 4-343, we find its application of § 4-344 to withhold the records improper. We therefore direct the MCOCE to produce the email records it withheld to the complainant.⁹

affecting residential areas." *See Ronald Reagan Washington National Airport Community Working Group Organizational Charter for 2017*, https://www.flyreagan.com/sites/flyreagan.com/files/legacyfiles/reagan_national_working_group_organizational_charter_revised_dec_2016.pdf. In that respect, we think the deliberative process privilege may apply to the Working Group's public records, to the extent that its requirements are satisfied.

⁹ There are also a handful of email communications (five) that, in our view, are not deliberative in nature and thus not eligible for withholding under § 4-344. Although perhaps not necessary in light of our order that the MCOCE disclose all email records to the complainant, we nevertheless

Conclusion

For the reasons discussed above, we find that the MCOCE has not demonstrated that it properly applied §§ 4-301(a)(1) and 4-344 to withhold the disputed email records. We direct the MCOCE to produce the email records to the complainant within thirty days of receipt of this decision and order.

Public Information Act Compliance Board

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

identify those emails here, by page number of the PDF and date and time of the email: (1) page 12, Oct. 22, 2024, at 8:44 p.m.; (2) page 18, Dec. 17, 2024, at 9:21 a.m.; (3) page 23, Dec. 31, 2024, at 9:41 a.m. and 8:34 a.m.; and (4) page 35, Jan. 2, 2025, at 3:25 p.m.