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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 26-29
February 26, 2026
Worcester, Custodian
David Anderson, Energy & Policy Institute, Complainant

In January 2025, complainant David Anderson, the Policy and Communications Manager for the Energy and Policy Institute (“EPI”), sent a Public Information Act (“PIA”) request to Worcester County (“County”). The PIA request sought records of communications between named County administrative staff concerning efforts to oppose the development of offshore wind, as well as records of financial pledges and private donations connected to wind opposition campaigns. After the complainant paid the County’s estimated fee, the County produced a USB drive with responsive records consisting of emails and email attachments. The County advised that certain email records were subject to the deliberative process privilege and thus exempt from disclosure under §§ 4-344 and 4-301¹ of the PIA, and that some of the email records were also protected by the attorney-client privilege and exempt under § 4-301. The complainant, through counsel, challenges the application of these exemptions in this complaint. In response, the County, also through counsel, defends its invocation of both the deliberative process and attorney-client privilege, and states that redaction of the privileged material may be possible if the complainant agrees to pay for the staff time to do so. After review of the submissions, we find that the County properly applied § 4-301(a)(1) to deny inspection of three email records subject to the attorney-client privilege. As to the remaining records, we find that the County improperly applied § 4-344 and direct the County to produce those records to the complainant, as addressed in more detail below.

Background

We take the following facts from the parties’ submissions. On January 27, 2025, the complainant sent the PIA request below to the County by email, and stated that he was seeking only records created between January 1, 2024, and January 27, 2025:

I am writing to request copies of the following public records from Worcester County Administrative Staff - including Weston Young, Candace Savage, Kimberly Reynolds, Lynn Wright, Dhara Patel, Nicholas Rice, Charlene

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

Sharpe, Karen Hammer, and Ja'Kayla Jones - and Director of the Office of Tourism & Economic Development Melanie Pursel:

- all email and text message communications, including carbon copied messages and attachments, sent to and received from representatives of Bedrock Advocacy Communications, including but not limited to Bernie Merrit, Jim Weber, Phil Armstrong, Chris Smith, David Weber, Lee Brinckley, Cheryl Pellegrino, Gary Bivings, Chris Lisi, and Jona Van Deun
- all email and text message communications, including carbon copied messages and attachments, with representatives of the Caesar Rodney Institute, including, but not limited to, David Stevenson
- all email and text message communications, including carbon copied messages and attachments, regarding Stop Offshore Wind, Inc.
- all email and text message communications, including carbon copied messages and attachments, regarding the Maryland's Coast Wind Opposition Fundraiser hosted by Worcester County Economic Development on December 4, 2024
- all other email and text message communications, including carbon copied messages and attachments, that mention "Bedrock Advocacy"
- all other electronic communications, including carbon copied messages and attachments, that mention "Caesar Rodney Institute"
- all electronic and hard copy records and documentation of RSVPs, financial pledges, and private donations received by Worcester County in connection with the Maryland's Coast Wind Opposition Fundraiser, Stop Offshore Wind, Inc., and the Worcester County's offshore wind opposition campaign, including information identifying the source by name and the amount of each private pledge and donation received

The complainant asked the County to waive any fees, stating that he was submitting the PIA request "for noncommercial purposes on behalf of a nonprofit media organization,"²

² EPI's website states that it is a "watchdog organization that exposes the harms posed by fossil-fuel and monopoly utility interests to ratepayers, democracy, and the climate." Energy & Policy Institute, Our Mission, <https://energyandpolicy.org/about/> (last visited Feb. 26, 2026).

and that disclosure of the records could benefit the public interest by “increasing public awareness about the political and economic factors influencing the public debate over offshore wind power locally and nationally.”

On February 7, 2025, the County sent the complainant a letter in which it denied his request for a fee waiver, stated that the initial search returned 1,017 email records, and asked the complainant to pay an estimated fee of \$1,084.44 for the anticipated costs associated with responding to his PIA request. On April 4, 2026, the County sent a second letter to the complainant in which it acknowledged receipt of the estimated fee and advised that it was producing a USB drive containing the responsive records.³ The County denied inspection of 256 emails exchanged “between entities that include the County Attorney, the tourism and economic development director, advertising and destination marketing specialist, public information officer, chief administrative officer, deputy chief administrative officer, and Bedrock Advocacy Communications.” The County took the position that those communications were “covered by the deliberative process privilege, and thus exempt from disclosure under GP Sec 4-344 and GP § 4-301 and/or are subject to the attorney-client privilege and are therefore protected from disclosure by GP § 4-301.” The County also took the position that redaction was not possible because “the entirety of these materials and their associated attached memorandums are covered by the privileges and exemptions.” Noting that “the actual scope of work exhausted a total of 34 hours of staff time,” the County asked the complainant to pay an additional \$775.78 fee.

The complainant disputed the County’s response to his PIA request, so on May 12, 2025, the complainant, through counsel, contacted the Public Access Ombudsman to request dispute resolution assistance.⁴ While the County did produce additional email records to the complainant as a result of the mediation process, the Ombudsman ultimately issued a final determination stating that the dispute over the denial of inspection was not resolved.⁵ The complainant then filed this complaint with our Board.

Counsel for the complainant asserts that the County “is claiming (1) the deliberative process privilege, and (2) the attorney-client privilege as a blanket bar to communications

³ The complainant attaches only one of the County’s letters to his complaint. That letter is dated February 7, 2025, but appears to be the letter sent on April 4, 2025, as it refers to having received the complainant’s payment on February 28, 2025, and details the records disclosed.

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

⁵ The complainant also disputed the County’s additional fee, but the final determination indicates that that dispute was resolved.

with an external advocacy firm that [the County] hired to conduct an anti-offshore wind campaign.” Counsel contends that “[f]acially, the request does not seek deliberative materials,” stressing that it sought “communications of ‘Worcester County Administrative Staff.’” Counsel for the complainant takes the position that the deliberative process privilege concerns material that is typically “shared among decisionmakers, not among lower-level employees who do not have decision making authority such as Worcester County administrative staff members.” In addition, counsel argues that the County has not shown that the email records “actually reveal the ‘deliberative process.’”

Noting that the County “appears to rely on the consultant corollary doctrine,” counsel for the complainant states that, as far as she knows, the Maryland courts have not addressed this concept in a binding way. Counsel suggests that the courts would take a “strict view,” as many federal courts have, and “exercise[] caution when applying the doctrine.” Counsel cites several federal cases for the proposition that a consultant must have been hired by the agency to perform work similar to that of the agency, and not have any interests of its own apart from that of the hiring agency. Counsel argues that this “high standard” ought to apply when determining whether communications between agency employees and outside consultants may fall within the deliberative process privilege.

Turning to the attorney-client privilege, counsel for the complainant maintains that the County has provided no justification for its application. Counsel argues that the County has “not identified an attorney-client relationship, has not demonstrated that the emails withheld contain legal advice, nor has it explained why emails that include outside parties do not result in a waiver of the privilege.” Counsel for the complainant asks that we review the records *in camera* to determine whether the County properly applied the privileges under §§ 4-301 and 4-344.

In response to the complaint, counsel for the County defends the County’s application of §§ 4-301 and 4-344 to deny inspection of the email records. Counsel first emphasizes that the County “identified approximately 1,200 responsive communications” and that “approximately 1,000 have been produced in two rounds of production.” Counsel advises that the County withheld 182 “internal communications between County officials and Bedrock Advocacy Communications,” which counsel states is “the County’s consultant for the development and execution of a public relations campaign.” Counsel for the County describes the communications as involving “pre-decisional matters related to the retention of Bedrock and the development of the scope of work of Bedrock, including potential advocacy methods and materials.” Counsel contends that the communications fall within the consultant corollary doctrine, but notes that records of email communications “between Bedrock, the County, and third parties were produced because third party inclusions waived the deliberative process privilege,” and that “communications occurring regarding the execution of the planned campaign were produced.”

As to the attorney-client privilege, counsel for the County states that “communications regarding contract review between the County Attorney and staff were not produced as protected by the attorney-client privilege.” Counsel suggests that it may be possible to redact the privileged material, but only if the complainant agrees to pay for the staff time necessary to do this. Counsel for the County advises that the complainant “was not receptive for prior requests by the County for additional required compensation of County staff time.”

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 the complaint and response to the complaint do not supply enough information to resolve the complaint, we may ask for additional information, including “a copy of the public record.” § 4-1A-06(b)(2)(ii). After consideration of the submissions and all information before us, if 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).

The PIA is intended to provide “access to information about the affairs of government and the official acts of public officials and employees.” § 4-103(a). To effectuate this intent, custodians of public records must allow inspection and copying of those records, unless an exemption from disclosure applies. §§ 4-201(a), 4-205(b). The PIA favors disclosure of public records. *See* §4-103(b); *see also Kirwan v. The Diamondback*, 352 Md. 74, 80 (1998) (stating the “general presumption in favor of disclosure of government or public documents”); *Cranford v. Montgomery County*, 300 Md. 759, 771 (1984) (“Without a doubt the bias of the [PIA] is toward disclosure.”). At the same time, the PIA contains provisions that exempt certain types of records and information from disclosure. *See* §§ 4-301 through 4-358. Some exemptions are mandatory, meaning that a custodian generally may not allow 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 are discretionary and may be invoked only when disclosure of the records or information would be “contrary to the public interest.” § 4-343; *see, e.g.,* § 4-351 (certain law enforcement records). No matter the nature of the exemption, a custodian has the burden to show 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 applies to records covered by 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.” *See Abell Found. v. Baltimore Dev. Corp.*, 262 Md. App. 657, 711-12 (2024). To come within the privilege,

the communications must “relate to professional advice and to the subject-matter about which such advice is sought.” *Harrison v. State*, 276 Md. 122, 132 (1975). If the attorney-client privilege applies to records requested under the PIA and has not been waived, a custodian has no choice but to deny inspection of the records under § 4-301(a)(1).

Unlike § 4-301(a), the second exemption invoked by the County, § 4-344, is discretionary. Section 4-344 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; *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). Our State’s Supreme Court has explained that this discretionary 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 Metal Works, Inc. v. Univ. of Maryland*, 382 Md. 151, 163 (2004). To fall within the scope of the deliberative process privilege, records generally must be pre-decisional and deliberative in nature. *Id.* at 165. Information that is “purely factual” is normally not exempt under § 4-344, although this is not always the case. *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)).

The deliberative process privilege is intended to benefit the public by facilitating better government decision-making. *Maryland Bd. of Physicians v. Geier*, 451 Md. 526, 568 (2017). When applied appropriately, the privilege allows room for 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 “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). When its elements are met, the deliberative process privilege applies equally to communications of higher- and lower-level government employees. *See Stromberg*, 382 Md. at 163 (discussing application of the deliberative process privilege to records of an employee who was “seven rungs down in the chain of command and responsibility within one State agency”). Looking to federal cases interpreting a similar exemption in the Freedom of Information Act (“FOIA”),⁶ the

⁶ We note that our appellate courts generally find courts’ interpretations of federal statutes persuasive “[w]here the purpose and language of [the] federal statute are substantially the same as that of a later state statute.” *Faulk v. State’s Attorney for Harford County*, 299 Md. 493, 506 (1984). *Faulk* observed that the purpose of the PIA is “virtually identical to that of the FOIA,”

Maryland Supreme Court has observed that “the exemption is limited to documents created by government agencies or agents, or by outside consultants called upon by a government agency ‘to assist it in internal decisionmaking.’” *Office of the Governor v. Washington Post Co.*, 360 Md. 520, 552 (2000) (quoting *County of Madison v. United States Dep’t of Justice*, 641 F.2d 1036, 1040 (1st Cir. 1981)).

The submissions did not provide enough information for us to resolve this complaint, so we asked the County to provide the records it withheld under § 4-301(a)(1) (attorney-client privilege) and § 4-344 (deliberative process privilege). See § 4-1A-06(b)(2)(ii). As required by law, we will maintain the confidentiality of the records we received from the County. See § 4-1A-06(b)(5); COMAR 14.02.06. Any references to these records will be general in nature, so as not to reveal information that the County maintains is privileged and not subject to inspection under the PIA. See COMAR 14.02.06.05. Because neither the complaint nor the County’s response addressed the public interest analysis under § 4-343, we also asked counsel for the parties to provide additional information and argument as to that element of § 4-344.

In response, counsel for the County states that “the County hired a firm to provide it with advice on public relations strategy,” and that the deliberative process privilege should apply to the communications the County has withheld under § 4-344 “to encourage a frank discussion regarding the formulation of the strategy.” Counsel argues, “[i]f county officials and a hired consultant can’t be open and frank with each other without fear that all of their thoughts will be public records, then the entire relationship is undermined.” Counsel also takes the position that the County need not “separately prove disclosure would be contrary to the public interest” because “the public interest is embedded in the existence of the privilege.” Quoting from case law,⁷ “[t]here is a public interest which underlies each legally recognized privilege and, if the privilege applies, it would be at best difficult to say that an agency decision to withhold was contrary to the public interest,” counsel for the County states that “Maryland courts agree with this analysis.” Counsel urges, “[i]f the privilege doesn’t apply here, then it applies nowhere,” suggesting that, “[i]f governments can’t hire firms for decision-making advice without worrying about all pre-decisional ideas being disclosed, there will be no point of seeking advice.”

In response, counsel for the complainant contends that “the County still has provided insufficient justification for its withholdings” and asks that we “order the release of records where the application of the privilege by the County remains in doubt.” Counsel for the complainant maintains that “it does not undercut the privilege to add transparency to a process where an outside entity with its own interests is influencing government action,

which was enacted before the PIA, and that, like the PIA, FOIA’s “basic policy was in favor of disclosure.” *Id.*

⁷ *Cranford v. Montgomery County*, 300 Md. 759 (1984).

even if the entity is labeled as and paid as advisor.” In addition, counsel for the complainant argues that the County has not described “with specificity as it relates to the withheld documents, the agency decision (relating to an agency function) at issue and/or predecisional nature of communications.” Rather, counsel stresses, “the County states that [the] material concerns the creation of a public relations strategy,” which counsel maintains is alone “insufficient to show that the documents fall within the privilege.”

After review of the records that the County withheld, we find that the County has justified the application of § 4-301(a)(1) to three of the email records. However, the County has failed to meet its burden show that it properly applied § 4-344 to the remaining records.⁸ We begin by noting that comparatively few of the email records included the County Attorney as a sender or recipient. Some of those emails include individuals outside of County government, and are thus not confidential attorney-client communications subject to that privilege, although they may still be subject to a different exemption. *See E.I. du Pont de Nemours & Co. v. Forma-Pack, Inc.*, 351 Md. 396, 416 (1998) (“[F]or a communication to be confidential, it is essential that it not be intended for disclosure to third persons.”). Our review identified only three email communications that were solely between the County Attorney and County employees. All of those emails appear to “relate to professional advice and to the subject-matter about which such advice is sought,” *Harrison*, 276 Md. at 132, and are thus exempt from disclosure under § 4-301(a)(1) of the PIA.⁹

Moving to the records withheld under § 4-344 as subject to the deliberative process privilege, we start with the threshold question of whether the County employees’ communications with individuals from Bedrock Advocacy may fall within the scope of the privilege under the consultant corollary doctrine. Although, in *Washington Post Co.*, our State Supreme Court at least recognized the consultant corollary for purposes of the PIA, 360 Md. at 552, we are unaware of any State cases that address the doctrine in an in-depth way. Federal courts have, however, “held that communications between an agency and non-agency consultants may qualify as ‘intra-agency’ communications” for FOIA purposes under the consultant corollary doctrine. *American Oversight v. U.S. Dep’t of Treasury*, 474 F.Supp.3d 251, 262 (D.D.C. 2020). Communications qualify as such only if “(1) the agency solicited the records from the non-agency party or there exists ‘some indicia of a consultant relationship between the outsider and the agency,’ and (2) the records were ‘created for the purpose of aiding the agency’s deliberative process.’” *Id.*

⁸ We note, at the outset, that there were numerous duplicative emails in the records that the County provided for our review. This tends to occur when emails are sent to multiple recipients, and when those recipients each contribute to the email chain. We do not identify all of the duplicates by date or sender in our decision. Thus, where we have determined that an email communication is exempt from disclosure, we do not identify each time that email communication appears.

⁹ We identify those emails by sender and the date on which they were sent: (1) Stacy Norton, Dec. 31, 2024; (2) Roscoe Leslie, Dec. 10, 2024; and (3) Weston Young, Oct. 30, 2024.

(quoting *Judicial Watch v. U.S. Dep't of State*, 306 F.Supp.3d 97, 106-07 (D.D.C. 2018)). Given that our appellate courts tend to find persuasive cases interpreting federal FOIA provisions that are similar to those in the PIA, *see supra*, note 6, we will use this general rule as a guide in this matter.

Based on the records we have reviewed, it is clear that there is an ‘indicia of a consultant relationship,’ *id.*, between the County and Bedrock Advocacy. Thus, the County’s communications with Bedrock may fall within § 4-344 and the deliberative process privilege, provided that they were also “created for the purpose of aiding [the County’s] deliberative process,” *id.*, and disclosure would be contrary to the public interest, § 4-343. However, there were, among the email records we reviewed, some that were also exchanged with private individuals, either alone or as additional recipients of communications between Bedrock and the County. Under these circumstances, any privilege would be waived. The County appears to recognize this as counsel advises, in the County’s response to the complaint, that “[r]esponsive documents between Bedrock, the County, and third parties were produced because third party inclusions waived the deliberative process privilege.” These email records are not privileged or subject to § 4-344, thus the County must produce those records to the complainant.¹⁰ As to the remaining email records, exchanged between County employees and Bedrock or County employees alone, the primary question is whether the County has shown that the elements of § 4-344 are met. That is, that the email communications are pre-decisional and deliberative, and that disclosure would be contrary to the public interest.

In response to this complaint, counsel for the County states that the email records withheld “involved pre-decisional matters related to the retention of Bedrock and the development of the scope of work with Bedrock, including potential advocacy methods and materials.” As noted above, counsel for the County represents that the County disclosed records that included third parties. In addition, counsel states that the County produced “communications occurring regarding the execution of the planned campaign.”

¹⁰ For identification purposes, those emails were sent by: (1) Melanie Pursel, Jan. 3, 2025, 15:01; (2) Bernie Merritt, Dec. 17, 2024, 09:41; (3) Melanie Pursel, Dec. 16, 2024, 11:20; (4) Bernie Merritt, Dec. 9, 2024, 09:21; (5) Melanie Pursel, Dec. 3, 2024, 08:37; (6) Janet Stephenson, Dec. 3, 2024, 11:07; (7) Melanie Pursel, Dec. 2, 2024, 15:37; (8) Melanie Pursel, Dec. 2, 2024, 12:58; (9) Melanie Pursel, Dec. 2, 2024, 11:51; (10) Melanie Pursel, Dec. 2, 2024, 10:25; (11) Melanie Pursel, Nov. 27, 2024, 11:54; (12) Melanie Pursel, Nov. 27, 2024, 11:44; (13) Melanie Pursel, Nov. 26, 2024, 12:32; (14) Ruth Waters, Nov. 25, 2024, 14:40; (15) Melanie Pursel, Oct. 30, 2024, 09:44. Given counsel for the County’s representation that the County disclosed emails with third parties, it may be the case that some of these records have already been produced to the complainant. We further note, as to the email sent by Ruth Waters on Nov. 25, 2024, that this email contains information that must be redacted under § 4-336. *See In re: Mayor & City Council of Baltimore*, 265 Md. App. 318 (2025) (involving financial information of donors to a campaign). To the extent that we direct disclosure of email records containing donor information below, § 4-336 applies to those records as well.

After review, we agree with the County that some of the email records it withheld contain pre-decisional, deliberative content related to the County's work with Bedrock Advocacy.¹¹ The complainant points out that the County has not identified the specific agency decision at issue, but it is evident from the records that there were numerous decisions in play at various points. To come within the privilege, the records need not pertain to only one "big" decision, e.g., whether to design its campaign in a certain way. *See Cranford*, 300 Md. at 771 n.3 (observing that nobody had disputed "whether decisions made or to be made by the County concerning matters such as requests for progress payments, change orders, additional compensation or extensions of time are the kinds of decisions which [what is now § 4-344] is designed to protect"); *see, e.g.*, PIACB 24-83, at 8 (June 28, 2024) ("While the ultimate hiring decision may be to whom to make a job offer, there are many other decisions made along the way—e.g., which candidates are qualified, which candidates to interview, and which to move along for further consideration.").

Contrary to counsel for the County's assertion, however, to properly deny inspection of the records identified *supra*, note 11, the County must explain why disclosure of the records subject to the deliberative process privilege would be contrary to the public interest. Section 4-344 is found in Subtitle 3, Part IV of the PIA. Section 4-343 provides that, "if a custodian believes that inspection of a part of a public record by the applicant would be *contrary to the public interest*, the custodian may deny inspection by the applicant of that part of the public record, *as provided in this part*." (Emphases added); *see also Cranford*, 300 Md. at 772 (noting that, although a record might meet the requirements of what is now § 4-344, "withholding it might serve no public interest so that it is to be produced," as when, e.g., a record relates to "agency action taken so long ago that disclosing it no longer makes any difference").

Though counsel points to language in *Cranford* and essentially argues that it stands for the proposition that *any* public record that contains pre-decisional, deliberative communications is always properly withheld under § 4-344, such argument is incompatible with *Cranford* itself, *see* 300 Md. at 772 (describing the public interest analysis as a

¹¹ For identification purposes, these emails were sent by: (1) Bernie Merritt, Jan. 27, 2025, 14:28; (2) Bernie Merritt, Jan. 27, 2025, 11:28; (3) Bernie Merritt, Jan. 13, 2025, 08:02; (4) Kim Moses, Jan. 3, 2025, 09:31; (5) Bernie Merritt, Dec. 13, 2024, 08:11; (6) Melanie Pursel, Dec. 13, 2024, 07:47; (7) Nicholas Rice, Dec. 10, 2024, 09:08; (8) Jim Weber, Dec. 10, 2024, 08:47; (9) Bernie Merritt, Dec. 9, 2024, 16:49; (10) Candace Savage, Dec. 9, 2024, 15:55; (11) Weston Young, Dec. 9, 2024, 15:52; (12) Melanie Pursel, Dec. 5, 2024, 13:42; (13) Melanie Pursel, Dec. 4, 2024, 14:00; (14) Bernie Merritt, Dec. 4, 2024; (15) Bernie Merritt, Dec. 4, 2024, 11:07; (16) Bernie Merritt, Dec. 4, 2024, 11:01; (17) Bernie Merritt, Dec. 4, 2024, 09:49; (18) Bernie Merritt, Dec. 4, 2024, 09:34; (19) Bernie Merritt, Dec. 2, 2024, 10:54; (20) Kim Moses, Nov. 25, 2024, 10:46; (21) Jim Weber, Nov. 20, 2024, 13:19; (22) Melanie Pursel, Nov. 13, 2024, 10:29; (23) Melanie Pursel, Oct. 31, 2024, 14:20; (24) Weston Young, Oct. 31, 2024, 10:50; (25) Melanie Pursel, Oct. 30, 2024, 19:07; (26) Bernie Merritt, Oct. 30, 2024, 12:14.

“further restriction”), as well as more recent cases that make it clear that § 4-344 is a “conditional” exemption that may be invoked only when inspection is contrary to the public interest, *see Abell Found.*, 480 Md. at 92. And, for § 4-344, the purpose of the deliberative process privilege—i.e., to foster better government decision-making—is central to the public interest calculus. A custodian must show, with specificity, why the decision-making process would be jeopardized should the specific disputed records be publicly disclosed. This need to address the public interest apart from simply showing that material is pre-decisional and deliberative makes sense when considered in conjunction with the PIA’s purpose—i.e., to give “access to information about the affairs of government and the official acts of public officials and employees.” § 4-103(a). People are most often interested in how and why government officials and employees make the decisions they do. Indeed, the ability of the public to understand how and why decisions are made is one of the core purposes of the Open Meetings Act, another of Maryland’s “sunshine” laws. *See* § 3-102(a) (“It is essential to the maintenance of a democratic society that, except in special and appropriate circumstances . . . the public be allowed to observe . . . the deliberations and decisions that the making of public policy involves.”).

Counsel for the County argues that disclosure of the records it withheld under § 4-344 and the deliberative process privilege would be contrary to the public interest because public disclosure would discourage County employees and its hired consultant—Bedrock Advocacy—from being open and frank with each other. Counsel stresses that Bedrock was hired to assist the County with “the formulation of the strategy,” and argues that public disclosure its deliberative communications with Bedrock would undermine that consultant relationship. Counsel describes the emails withheld as involving pre-decisional matters related to the County’s retention of Bedrock and the development of Bedrock’s scope of work, including potential advocacy methods and materials. In our view, the public interest in understanding these decisions is strong, especially when considering the ongoing public debate surrounding offshore wind power in the County. It is also worth noting that, in this context, the County’s final decisions in these matters has already been made, as Bedrock was presumably hired with a defined scope of work. Thus, the County’s burden to show that disclosure of the records would undermine good decision-making and compromise candid communications is heavy under § 4-343.

After review of the records, and consideration of the parties’ arguments—particularly the County’s assertion that it need not separately show that disclosure of these specific records is contrary to the public interest—we find that the County has failed to meet its burden under the PIA to justify withholding the records identified *supra*, note 11. Our role in reviewing the disputed records is to test and/or verify the claims made by the custodian to meet this burden. *Cf. Cranford*, 300 Md. at 779 (*in camera* review by a court is appropriate when needed to “make a responsible determination on claims of exemptions”). Here, the County has made only conclusory arguments as to why these records are privileged, and has not pointed us to any specific reasons why disclosure these records in particular would be contrary to the public interest. It is not our role to speculate

as to why withholding may be justified. *See* PIACB 25-15, at 10 (Dec. 9, 2024) (noting that it is for the custodian to “put forth the necessary facts and argument, and not for us to speculate” why § 4-344 might apply to records). Having not met its burden under § 4-343, we direct the County to produce the email records identified *supra*, note 11, to the complainant.

As to the remaining email records not identified *supra*, notes 9, 10, and 11, we have determined that the County also improperly applied § 4-344 to those records. In our view, these email records are not deliberative in nature—they contain no candid, confidential opinions or advice, or recommendations as to how to proceed. Many of the emails are in the nature of an update as to steps that have been taken or actions to be completed. As we see it, communications of this kind were not “created for the purpose of aiding the agency’s deliberative process.” *American Oversight*, 474 F.Supp.3d at 262. Rather, they reflect decisions that have already been made and report out as to what has been done or what has yet to be done. Some of these email records are also administrative in nature, suggesting times and places for meetings, for instance, or providing requested contact information. Such communications are not truly related to the substance of the actual decisions at hand. Thus, the emails records must be disclosed.

Finally, we observe that many of the emails we have directed the County to disclose were sent with attachments. The County has not provided those attachments for our review. In the absence of any compelling argument from the County as to why those attachments specifically are exempt from disclosure—either under § 4-344 or for other reasons—we cannot find that continued withholding is appropriate. However, we were able to discern that some of those attachments were minutes of closed County Commissioner sessions, either in final or in draft form. Those minutes are exempt from disclosure under § 4-301(a)(1) of the PIA, as the Open Meetings Act makes them confidential. *See* § 3-306(c)(3)(ii); *see also* PIACB 23-27 (June 16, 2023) (involving a PIA request for minutes and recordings from closed meetings).

In sum, we find that § 4-344 could potentially apply, under the consultant corollary doctrine, to the email records containing communications between the County and its consultant, Bedrock Advocacy. However, any privilege that may attach to those communications is destroyed when those communications are also shared with, or come from, third parties, such as outside advocacy groups. In addition, for § 4-344 to apply by way of the consultant corollary, the communications must be potentially privileged to begin with—the exemption does not apply, e.g., when the communications are not pre-decisional and deliberative in nature. *Cf.* PIACB 25-90, at 15-16 (Oct. 9, 2025) (observing that “for the common interest rule to apply in the first instance, the information exchanged must be subject to some form of privilege” and concluding that emails addressing, e.g., “scheduling concerns” or “the status of a proceeding” were not privileged). Thus, the County may not withhold, under § 4-344, email communications shared with third-parties and/or email communications that do not contain pre-decisional and deliberative material. Finally,

although some of the email communications solely between the County and Bedrock contain pre-decisional and deliberative content, we find that the County has not met its burden to show that disclosure of those emails would be contrary to the public interest, as it must under § 4-343.

Conclusion

For the reasons discussed above, we find that the County properly denied inspection of the three email records identified *supra*, note 9 because the records are subject to the attorney-client privilege and thus exempt from disclosure under § 4-301(a)(1) of the PIA. However, the County improperly applied § 4-344 to the remaining records. We direct the County to produce all of the email records with attachments, except those identified *supra*, note 9, to the complainant, subject to any redactions or withholdings we have instructed above. The County must produce these records 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