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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 26-73

July 2, 2026

Montgomery County Public Schools, Custodian
Philip Hill, Complainant

Complainant Philip Hill alleges that Montgomery County Public Schools (“MCPS”) violated Maryland’s Public Information Act (“PIA”) by applying redactions to information in email records that MCPS produced to him. In response to the complaint, MCPS, through counsel, maintains that it properly applied § 4-301¹ (attorney-client privilege) and § 4-344 (deliberative process privilege) of the PIA, as well as § 4-313 and federal law governing disclosure of student information, to shield certain information in the responsive email records. After review of the submissions, we find that MCPS properly redacted the records with the exception of the redactions applied under § 4-344. We explain below.

Background

On July 16, 2025, the complainant sent a PIA request to MCPS asking for “copies of any documents, including emails, that contain any of the following key words or phrases: ‘Hill,’ ‘cease and desist,’ ‘lawyer,’ ‘attorney,’ and/or ‘legal counsel.’” The complainant limited the relevant email account to that of an MCPS elementary school principal, with a timeframe of January 21 to February 10, 2025. MCPS responded to the PIA request on August 6, 2025, and produced approximately fifty pages of responsive records. MCPS advised that the records had been redacted under various provisions in the PIA, including § 4-301 (attorney-client privilege), § 4-344 (deliberative process privilege), § 4-313 (student records), and under the federal Family Educational Rights and Privacy Act (“FERPA”).

The complainant disagreed with the extent of the redactions applied to the records, so he contacted the Public Access Ombudsman to request dispute resolution assistance.²

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

² 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).

The Ombudsman ultimately issued a final determination stating that the dispute was not resolved and the complainant then filed this complaint with our Board.

The complainant explains that he sought “access to records directly relate to [his] family, including communications and meetings involving MCPS personnel that appear to violate privacy laws and ethical standards.” The complaint alleges that “MCPS has produced heavily redacted documents that obscure critical information.” Calling the records “egregiously redacted,” the complainant states that “[e]ntire messages [were] blacked out, not limited to personal identifiers.” Noting that “no legal counsel was originally included in these communications,” the complainant suggests that MCPS counsel was added “after the fact, seemingly in an attempt to retroactively invoke attorney-client privilege.” Ultimately, the complainant contends that the redactions “misuse MPIA exemptions to obscure potential FERPA violations, ethical breaches, and obstruction.”

In response to the complaint, counsel for MCPS defends the redactions MCPS applied to the responsive email records. Focusing first on FERPA and § 4-313, counsel acknowledges that a “serious incident” involving a student occurred and that the complainant’s child witnessed the incident. Counsel further acknowledges that it is “reasonable” that the complainant and his wife were “concerned about the incident, the safety of their child, and the school’s response to the incident.” However, counsel for MCPS maintains, “given this was a specific student-based incident and information about this incident as it relates to [other students] is protected information under FERPA,” the complainant does not “have access to specific details about the incident, [the other student], or the school’s response to the incident.” Counsel notes that FERPA precludes disclosure of “personally identifiable information,” which includes information that “is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.”³

Counsel for MCPS also defends MCPS’s application of §§ 4-301 and 4-344. Counsel argues, “the fact that MCPS officials were consulting over email about how to

³ Counsel for MCPS contends that § 4-304 exempts records protected by FERPA from disclosure under the PIA. This contention is incorrect. Section 4-304, which applies to all exemptions in Subtitle 3, Part II of the PIA, provides, “[u]nless otherwise provided by law, a custodian shall deny inspection of a public record, as provided in this part.” Thus, what § 4-304 means is that, unless another law says a record described a provision of Subtitle 3, Part II is *disclosable*, it is exempt under the PIA. For example, § 4-304 requires a custodian to deny inspection of individuals’ personnel records under § 4-311. But, if another law required disclosure of a certain personnel record, then that law would control. For purposes of the PIA, records protected by FERPA are exempt under § 4-301(a)(2)(ii), which requires a custodian to “deny inspection of a public record or any part of a public record if . . . the inspection would be contrary to . . . a federal statute or a regulation that is issued under the statute and has the force of law.”

address various aspects of this complex parental dynamic is reasonable and in the public's interest." Counsel suggests that, "[i]f a principal consults her supervisor or the general counsel's office about how to respond or which actions to take, those communications ought to be protected."

Returning to the redactions applied under FERPA and § 4-313, counsel for MCPS argues that "[t]he disclosure of emails by named parents, regarding issues related to events within a school community, breaches the trust of the community and dissuades parents from engaging with school administrators openly and truthfully." Counsel stresses that it is "not in the public's interest that school districts produce emails from parents when the identity of the parent is known and the body of the email can be easily linked back to a specific student-based situation." Counsel also states that, here, there is "an established history within the [school] community of publicly calling out the actions of [the other student]." Thus, counsel argues, "it is a reasonable concern that releasing an email attributable to a known author—particularly one expressing personal feelings about a sensitive situation—could lead to further public dissemination and contribute to the ostracization of a community member."⁴

Analysis

The PIA directs us to review and resolve complaints that allege certain violations of its provisions, e.g., that a custodian improperly denied inspection of public records, including through redaction. § 4-1A-04(a)(1)(i). If 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 determine that a custodian has improperly denied inspection of a public record or information redacted in a record that is otherwise disclosed, we must "order the custodian to . . . produce the public record for inspection." § 4-1A-04(a)(3)(i).

The PIA is meant to provide "access to information about the affairs of government and the official acts of public officials and employees." § 4-103(a). Under § 4-201(a), a custodian must allow inspection of a public record, unless the record is exempt from disclosure by law. The PIA contains both mandatory and discretionary disclosure exemptions. If a mandatory exemption applies, a custodian generally may not allow inspection of the relevant records or information. *See, e.g.*, § 4-313 (student records); § 4-329 (medical or psychological information). When the relevant exemption is discretionary, a custodian may deny inspection only if inspection would be "contrary to the public

⁴ We note that both the complaint and MCPS's response to the complaint contain information about confidential mediation communications that we may not consider. *See* Md. Code Ann., Cts. & Jud. Proc. § 3-1803(b)(1) (forbidding a party to a mediation from disclosing or being compelled to disclose "mediation communications in any judicial, administrative, or other proceeding"). We thus have not reviewed that information.

interest.” § 4-343; *see, e.g.*, § 4-351 (certain law enforcement records). A custodian has the burden of justifying a denial of inspection. *See Lamson v. Montgomery County*, 460 Md. 349, 367 (2018).

Section 4-301(a)(1) of the PIA generally 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 attorney-client privilege. *See Abell Found. v. Baltimore Dev. Corp.*, 262 Md. App. 657, 711-12 (2024). The attorney-client privilege “bars compelled disclosure, without the client’s consent, of attorney-client communications made in confidence between the attorney and client.” *Id.* at 712 (citation omitted). To qualify as privileged, the communication must “relate to professional advice and to the subject-matter about which such advice is sought.” *Harrison v. State*, 276 Md. 122, 132 (1975). In addition, to maintain the privilege, the attorney-client communication “cannot be intended for disclosure to third parties.” *Newman v. State*, 384 Md. 285, 303 (2004).

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,” if inspection would be “contrary to the public interest.” § 4-343. The deliberative process privilege, which ordinarily covers only pre-decisional, deliberative material, falls within § 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,” (cleaned up)).

The deliberative process privilege typically applies to 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 (quotation and citation omitted). Its application is intended 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).

Section 4-313 applies to “a school district record about the home address, telephone number, personal e-mail address, biography, family, physiology, religion, academic achievement, or physical or mental ability of a student.” Under § 4-313(a), a custodian generally must deny inspection of such student records. This type of information also may be protected by FERPA and, as stated *supra*, note 3, exempt under § 4-301(a)(2)(ii) of the PIA. FERPA denies funding to “any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein . . .) of students without the written consent of their parents.”

20 U.S.C.A. § 1232g(b)(1). Regulations adopted under FERPA define “education records” to mean records that are “[d]irectly related to a student” and “[m]aintained by an educational agency or institution or by a party acting for the agency or institution.” 34 C.F.R. § 99.3. “Personally identifiable information” means, among other things, a student’s name, the name of a student’s parent or other family members, and “information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty” or “[i]nformation requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.” *Id.*

We could not resolve this complaint based on the submissions alone, so we asked MCPS to provide additional information. First, we asked MCPS to provide unredacted versions of the email records redacted under §§ 4-301 and 4-344, as subject to the attorney-client and deliberative process privileges. Second, we asked MCPS to provide a detailed descriptive index of the information redacted under § 4-313 and FERPA. *See* § 4-1A-06(b)(2)(ii) (allowing our Board to request a “copy of the public record” or a “descriptive index of the public record”). As required by law, we will maintain the confidentiality of the records and information we received from MCPS. *See* § 4-1A-06(b)(5); COMAR 14.02.06 (regulations governing confidential records). Any references to the information in the records will be general in nature, so as not to reveal any information that MCPS maintains is not subject to disclosure under the PIA. COMAR 14.02.06.05.

We begin with § 4-301(a)(1) and the redactions applied on attorney-client privilege grounds. After review of those email records, we find no error in MCPS’s application of that exemption.⁵ Though the complainant suggests that MCPS’s attorney was copied on emails “to retroactively invoke attorney-client privilege,” the emails’ content does not support this contention. Rather, the records reveal that MCPS staff sought legal advice from an MCPS attorney and that the attorney, in turn, provided such advice. In other words, the redacted communications “relate to professional advice and to the subject-matter about which such advice is sought.” *Harrison*, 276 Md. at 132. In addition, we see no instances in which an individual outside of MCPS was copied on or otherwise included in the communications, thus maintaining their confidential nature.

Moving to § 4-344, we first note that there are relatively few email records that appear to have been redacted under this exemption alone.⁶ In fact, we see only four unique

⁵ For identification purposes, these records are found at the following pages of the 50-page PDF production of redacted records: 4, 5, 9, 10, 11, 12, 15, 18, 21, 22, 29, 30, 34, 35, 36, 39, 45, 46, and 47.

⁶ For identification purposes, these records are found at the following pages of the 50-page PDF production of redacted records: 3, 16, 17, 48, 49, and 50.

email messages, all sent on February 3, 2025.⁷ The content of those email messages is pre-decisional and deliberative, and falls within the realm of “advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *Stromberg*, 382 Md. at 165. Thus, if MCPS can demonstrate that disclosure of the redacted information would be “contrary to the public interest,” § 4-343, the redactions may be proper under § 4-344.

In its August 6, 2025, response letter, MCPS did not address the public interest. Rather, MCPS stated only that the records were redacted under § 4-344, “which allows a custodian to deny inspection of internal government documents containing confidential opinions, deliberations, advice or recommendations from one government employee to another for the purpose of assisting the latter official in the decision-making function.” In response to this complaint, counsel for MCPS simply takes the position that “[i]f a principal consults her supervisor or the general counsel’s office about how to respond or which actions to take, those communications ought to be protected.” While a principal’s communications with attorneys in general counsel’s office are typically protected under § 4-301(a)(1), deliberative, pre-decisional communications with other non-attorney colleagues are subject to § 4-344 only if MCPS can articulate why disclosure of those specific communications is against the public interest. Having failed to do this, we cannot find that MCPS has met its burden to justify the application of § 4-344 to the records identified *supra*, note 6.

Finally, we address the remaining redactions, which were applied under § 4-313 and FERPA, via § 4-301(a)(2)(ii) of the PIA. For purposes of FERPA, an “education record” is a record maintained by an educational agency or institution that is “directly related to a student.” 34 C.F.R. § 99.3. MCPS is an “educational agency,” thus its email records that directly relate to specific students would appear to qualify as “education records” of those students under FERPA.⁸ MCPS may not release those records, or any personally identifying information contained within, without consent or it would run afoul of federal regulations adopted under FERPA. *See* 34 C.F.R. § 99.30 (generally forbidding disclosure of personally identifiable information from a student’s education records without consent); *see also* 34 C.F.R. § 99.12(a) (“If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student.”). Many of the records responsive to the complainant’s PIA request pertain to a specific incident involving specific students, and thus “directly relate” to those students.

⁷ MCPS did not redact the date of the email messages, or the sender/recipient information.

⁸ To the extent that the records also contain information about “the home address, telephone number, personal e-mail address, biography, family, physiology, religion, academic achievement, or physical or mental ability of a student,” then § 4-313 would also apply.

After review of the redactions and descriptive information provided by MCPS, we find that MCPS properly redacted the email records according to FERPA and § 4-301(a)(2)(ii). To the extent that the some of the records contain information about both the complainant's children and other students, it appears to us that MCPS properly redacted the identifying information of the other students and produced the remaining information to the complainant.⁹ Based on the submissions, including the redacted records produced, it is clear that the complainant "knows the identity of the student to whom the education record relates." 34 C.F.R. § 99.3 (regarding the definition of "personally identifiable information"). The complaint appears particularly focused on MCPS's communications with the parent of the student involved in the underlying incident. It is not surprising that those communications would constitute education records of that student. Under FERPA's regulations, MCPS may not disclose the personally identifiable information of that student, as defined in 34 C.F.R. § 99.3, i.e., the "[i]nformation requested" by the complainant. *Id.* We also note that it appears that the underlying incident was discussed publicly at some point, thus some details of the incident (including the student's name) may be known, rendering the identity of the student discernable from records discussing the incident even if the student's name or parents' names are redacted from the email records.

Conclusion

For the reasons discussed above, we find that MCPS properly applied § 4-301(a)(1) and § 4-301(a)(2)(ii) to redact information subject to the attorney-client privilege and the protections of FERPA, respectively, from the email records produced to the complainant. However, we also find that MCPS failed to justify its application of § 4-344 to certain email records. While those records contain pre-decisional and deliberative communications, MCPS makes no specific argument as to why disclosure of those communications would be contrary to the public interest, as required by § 4-343. We therefore direct MCPS to disclose the email records identified *supra*, note 6, to the complainant without redaction within thirty days of receipt of this decision and order.

Public Information Act Compliance Board*

Sareesh Rawat, Chair
Samuel G. Encarnacion
Debra Lynn Gardner

* Board member Nivek M. Johnson did not participate in the deliberation, preparation, or issuing of this decision.

⁹ See, for instance, pages 1, 2, and 43 of the 50-page PDF of redacted records.