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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 26-79
July 17, 2026
Harford County, Custodian
David Gordon, Complainant

This complaint concerns complainant David Gordon's Public Information Act ("PIA") request to Harford County ("County") seeking records of email communication sent or received by certain named individuals that mentioned the complainant's name or the phrase "remediation plan." The County provided responsive records. Some records were redacted under § 4-311¹ of the PIA, which exempts individuals' personnel records from disclosure. In addition, the County withheld some records in their entireties, citing § 4-311 and § 4-344 (deliberative process privilege) of the PIA. The complainant challenges these redactions and withholdings as improper. In response to the complaint, counsel for the County maintains that the County's application of §§ 4-311 and 4-344 was appropriate and lawful. After review of the submissions, we find no violation of the PIA. We explain below.

Background

The following facts are taken from the parties' submissions. On December 11, 2025, the complainant sent a PIA request to the County asking for "copies of all incoming and outgoing email communications to for from" seven specified individuals "that specifically mention David Gordon or the terminology 'remediation plan' from August 9, 2025 to Sept 8, 2025." The complainant asked that the County "please include all messages, attachments, drafts, replies and forwarded communications."

The County responded on December 18, 2025, providing a link to the responsive records. The County stated that "a portion of the responsive records has been redacted pursuant to GP § 4-311, as there are personnel records relative to David Gordon that are commingled with other personnel records to which neither of the joint requesters^[2] are the person in interest." In addition, the County advised that six responsive records were

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

² We understand that the PIA request was submitted jointly by the complainant and an individual named Joy Clark.

withheld in their entirety. Two records were “investigation logs relative to internal investigations conducted by the risk management department.” The County took the position that those records were personnel records under § 4-311, “to which neither requesters are the person in interest and also are protected as the investigation log of incidents and potential claims constitutes investigatory records compiled for the purpose of evaluating liability and in anticipation of litigation.” The County asserted that disclosure of those records would “interfere with those investigations and would be contrary to public interest.” The County also stated that other parts of the records were “protected by the attorney-client privilege and work product doctrine.”

As to the other four responsive records withheld, the County stated that those records were “protected by the deliberative process privilege (GP § 4-344) which consist of pre-decisional, deliberative materials that reflect internal county decision making.” The County described the records as “internal communications, recommendations, opinions, and analysis exchanged among County personnel for the purpose of assisting decisionmakers in evaluating policy options and reaching a final determination.” The County expressed its view that disclosure of those records would be contrary to the public interest because it “would likely have a chilling effect on the County’s internal decision-making processes,” and cause “future discussions on similar matters” to “become more guarded or incomplete, impairing the County’s ability to conduct thorough internal analysis.”

The complainant disagreed with the County’s response to his PIA request, so he contacted the Public Access Ombudsman to request dispute resolution assistance.³ On March 20, 2026, the Ombudsman issued a final determination stating that the dispute was not resolved. After receipt of the Ombudsman’s final determination, the complainant submitted this complaint to our Board, in which he continues to challenge the County’s redaction and withholding of responsive records.

In response to the complaint, counsel for the County states that “there were a total of 12 records responsive to [the complainant’s] request,” and that five of those records “were provided entirely without redactions.” Counsel addresses the remaining records in turn, beginning with a record of an email chain that started on September 3, 2025. Counsel asserts that the email and attachments “contain personnel records relative to an employee . . . who is not one of the joint applicants, as well as information relative to [the complainant].” Counsel states that the County was required to redact the information about this other employee under § 4-311, noting that the redacted records “relate to reported

³ The PIA requires 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 stating that the dispute was not resolved. § 4-1A-05(a).

misconduct against EMS Clinicians and contain information about who the allegation of misconduct is against, the nature of the misconduct, a summary of the specific allegations, and the outcome of the allegations.” Counsel for the County reiterates that, because the record relates to both the complainant and this other employee, information about that other employee was “required to be redacted, and [the complainant] was provided with the remaining portions of the record.”

Next, counsel for the County addresses several records withheld in their entirety, which he describes as “emails with an attached Investigation Log.” According to counsel, the emails are dated August 15 and August 22, 2025, and were sent from Harford County’s Risk Management Specialist/Investigator to several other individuals, including the County’s Director of Human Resources and the County’s Human Resources Attorney. Counsel states that both emails attached an investigation log that “pertains to HR-related investigations and includes employees who are the subject of the investigation, the nature of the investigation, the status of the investigation, the identity of the complainant for such investigation, and the outcome of the investigation, among other information.” Counsel for the County takes the position that these emails and their attachments are exempt from production under the PIA for at least four reasons.

First, counsel asserts that the records are subject to the attorney-client privilege and thus exempt under § 4-301(a)(1) of the PIA, as the emails and attachments were sent to the County’s Human Resources Attorney to “update her and others about pending investigations the County was conducting.” Counsel explains that this attorney and other Human Resources staff “regularly communicate about ongoing personnel matters for the purpose of identifying where county policy is not being followed, protecting employees from problematic coworkers, and doing the County’s due diligence in investigating reports of misconduct or complaints about the workplace in general. Counsel notes that the Human Resources Attorney “routinely represents the County at the Personnel Advisory Board level in a context analogous to litigation.”

Counsel for the County also contends that the emails and attached investigation logs are personnel records exempt under § 4-311 of the PIA. Counsel argues that a “record showing what employees had allegations of misconduct against them, whether or not such allegations were substantiated, qualify as personnel records as they relate to discipline and the employees’ status in general.” Thus, counsel states, the County was required to deny inspection of these records. In addition, counsel contends that the County may exercise its discretion to deny inspection of these records under § 4-351 of the PIA, which applies to certain investigatory records. Noting that the “division of Risk Management operates within the Law Department and reports directly to the County Attorney,” counsel argues that the investigation logs are records of investigations of the County Attorney for purposes of § 4-351(a). Disclosure of those investigation logs and the emails attaching them would be contrary to the public interest, counsel contends, because it would “interfere with the investigations referenced in the spreadsheets,” as “effective risk management relies on the

total candor of complainants and witnesses.” Counsel suggests that, if “a spreadsheet including names of complainants is subject to inspection, it would have a chilling effect on individual employees reporting misconduct for fear of retaliation or public exposure.”

Finally, counsel for the County maintains that the emails and attached investigation logs are exempt under § 4-344 of the PIA, which permits a custodian to deny inspection of records subject to the deliberative process privilege and records constituting attorney work product, if inspection would be contrary to the public interest. Counsel contends that the records are “clearly predecisional,” as “[i]nvestigations are by nature predecisional, as the entire point of conducting the investigation is to determine the best course of action for the County.” The records are, in counsel’s view, also deliberative as they were “made prior to and for the purpose of HR deciding what to do in response to each complaint listed in the Investigator Case Log.” Counsel also asserts that the attorney work product doctrine applies because they were “created in anticipation of litigation.” Counsel takes the position that, if any privilege applies to the records, “there is essentially a presumptive conclusion that inspection would be contrary to public interest because there is an inherent public interest underlying all legally recognized privileges.”

Counsel for the County next addresses four email communications that were withheld as subject to deliberative process privilege. One email record, counsel contends, is also subject to § 4-311 because it contains “a letter of resignation received by the County from an employee who is neither of the joint applicants in this matter, and because the ensuing email chains “pertained to this employee’s resignation, and things that needed to be done upon her resignation.” While counsel acknowledges that the complainant’s name “was mentioned as a comparison in how to handle this employee’s situation,” the record “did not actually pertain to [the complainant] in any way.” Thus, counsel argues, the complainant is “not a person in interest as the entire email chain related to another employee’s resignation, and the entire record is protected under GP § 4-311 as a personnel record of the unidentified employee.”

Counsel for the County also maintains that § 4-344 and the deliberative process privilege apply to this and the other three email records. Counsel argues that the records are pre-decisional and deliberative because they were created before the County made decisions about how to handle the employee’s resignation (as to the first record) and the complainant’s employment status (as to the other three email records). The records, counsel states, “consist of internal communications, recommendations, opinions, and analysis exchanged by County personnel for the purpose of assisting decisionmakers in evaluating policy options and reaching a final determination.” Counsel maintains that disclosure of these records would be contrary to the public interest because “County personnel involved in personnel matters would not feel comfortable freely sharing their full and frank thoughts and ideas among other personnel involved in the decision-making process if they believed their communications would be subject to public inspection.” Stating that disclosure would “subject the communications to potential public criticism,”

causing a “chilling effect,” counsel for the County urges that “County personnel must be able to freely exchange ideas, critique draft proposals, and provide unvarnished recommendations without concerns that such preliminary viewpoints will be publicly disseminated outside of their context.”

Analysis

Section § 4-1A-04(a) directs us to review and resolve complaints that allege certain violations of the PIA, including that a custodian improperly denied inspection of public records. § 4-1A-04(a)(1)(i). If, after review of the submissions, we determine that a custodian denied inspection of a public record in violation of the PIA, 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 meant to afford “access to information about the affairs of government and the official acts of public officials and employees.” § 4-103(a). Accordingly, custodians of public records must allow inspection and copying of those records, unless a disclosure exemption in the PIA applies. §§ 4-201(a), 4-205(b). The PIA favors disclosure of public records, § 4-103(b); *Kirwan v. The Diamondback*, 352 Md. 74, 80 (1998), but also contains both mandatory and discretionary disclosure exemptions. When a mandatory exemption applies, a custodian ordinarily has no choice but to deny inspection of the relevant records or information. Two exemptions at issue here, §§ 4-301(a)(1) and 4-311, are mandatory in nature. Section 4-301(a)(1) precludes disclosure of records or information that are privileged or confidential “by law.” This exemption encompasses the attorney-client privilege. *See Abell Found. v Baltimore Dev. Corp.*, 262 Md. App. 657, 711-12 (2024). Section 4-311 forbids a custodian from disclosing “a personnel record of an individual, including an application, a performance rating, or scholastic achievement information,” although a custodian generally must allow inspection of such records by “the person in interest.”⁴ § 4-311(a) and (b).

The other two exemptions invoked by the County, §§ 4-344 and 4-351, are discretionary, meaning that a custodian may deny inspection of the relevant records or information only if inspection would be “contrary to the public interest.” § 4-343. Section § 4-344 applies to “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” and encompasses the deliberative process privilege. *See Admin. Office of the Courts v. Abell Found.*, 480 Md. 63, 89 (2022). Section § 4-351 applies to, among others, “records of investigations conducted by the Attorney General, a State’s Attorney, a municipal or county attorney, a police department, or a sheriff.” § 4-351(a)(1). Under subsection (b), a custodian may deny inspection of such records by a person in interest only if at least one of seven specified

⁴ A “person in interest” is typically the person “that is the subject of a public record.” § 4-101(g)(1).

harms would result, e.g., disclosure would “interfere with a valid and proper law enforcement proceeding” or “disclose the identity of a confidential source.” § 4-351(b)(1) and (4). If the requester is not a person in interest, a custodian may deny inspection of records under § 4-351 “if, for any reason, disclosure would be contrary to the public interest.” *City of Frederick v. Randall Family, LLC*, 154 Md. App. 543, 561 (2004). No matter the nature of the exemption, a custodian has the burden of sustaining its application. *Lamson v. Montgomery County*, 460 Md. 349, 367 (2018).

We needed additional information from the County to resolve this complaint. *See* § 4-1A-06(b)(2). First, we asked the County to provide copies of the redacted records that were produced to the complainant. Second, we asked the County to provide copies of the August 15 and August 22, 2025, emails regarding the investigation logs, but without the attached logs themselves. Third, we asked the County to provide copies of the four email records withheld under § 4-344, with any identifying information of employees redacted. 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 the records will be general in nature so as not to reveal any information that the County maintains is privileged or otherwise not disclosable under the PIA. COMAR 14.02.06.05.

We start with the two email records and attachments withheld under § 4-301(a)(1) as subject to the attorney-client privilege. That privilege “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. To come within the attorney-client 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); *see also Upjohn v. United States*, 449 U.S. 383, 390 (1981) (attorney-client privilege also protects “the giving of information to the lawyer to enable him [or her] to give sound and informed advice”). Although records attached to email communications exchanged between an attorney and client may be subject to the privilege too, “a document that is not itself privileged does not gain privileged status merely because it passes through the attorney’s hands or is attached to an attorney’s communication to the client.” 82 Md. Op. Att’y Gen. 15, 20 (1997); *see also P. & B. Marina, Ltd. v. Logrande*, 136 F.R.D. 50, 56 (E.D.N.Y. 1991) (explaining that “[m]erely attaching” documents to “attorney-client communications does not constitute a basis for assigning the privilege” to those documents).

Having reviewed the August 15 and August 22, 2025, email records, we are satisfied that the emails, including the attached investigation logs, are subject to the attorney-client privilege. They were sent by a Risk Management Specialist/Investigator who, as counsel for the County notes in the County’s response, is part of the County’s Law Department. One recipient of the emails is the County’s Human Resources Attorney. Based on the emails’ content, it is clear that one purpose of the emails was to inform the recipients, including the attorney, of the status of certain matters—i.e., to give “information to the

lawyer to enable [her] to give sound and informed advice.” *Upjohn*, 449 U.S. at 390. Although the attached investigation logs are not privileged simply by virtue of having been attached to email communications sent to the attorney, here we find that the information they contain (details about investigations concerning specific County personnel) is closely bound to “the subject-matter about which [the attorney’s] advice is sought,” *Harrison*, 276 Md. at 132, and thus the logs also covered by the attorney-client privilege. Having determined that these records are exempt under the attorney-client privilege and § 4-301(a)(1) the PIA, we do not determine whether other exemptions also apply.⁵

Next we turn to the record redacted under § 4-311. That record consists of, as counsel describes it, an “email chain beginning with a 9/3/25 email” which, along with its attachments, contains “personnel records relative to an employee . . . who is not one of the joint applicants”—that is, not the complainant. Counsel for the County states that the County redacted only the information about the other employee, and that information concerning the complainant was disclosed to the complainant. Counsel describes the redacted information as relating to “reported misconduct against EMS Clinicians.” As noted above, § 4-311 generally requires that a custodian deny inspection of “a personnel record of an individual, including an application, a performance rating, or scholastic achievement information.” § 4-311(a). Records concerning alleged misconduct of employees who are not police officers typically fall within this exemption. *See* PIACB 23-17 (May 25, 2023) (finding that a fire department properly denied inspection of records concerning an investigation into EMTs’ alleged misconduct under § 4-311). Our review of the redacted records produced to the complainant confirms counsel for the County’s representations. The County properly redacted the records under § 4-311(a), and produced the portions concerning the complainant to the complainant under § 4-311(b)(1).

Finally, we address the remaining four email records that the County withheld under § 4-344, including one that was also withheld under § 4-311 at the personnel record of another individual. Counsel for the County describes that one record as an email chain “initiated by an August 7, 2025 email containing a letter of resignation received by the county from an employee who is neither of the joint applicants.” After review of that specific email record, we agree with the County that it is a personnel record for purposes of § 4-311. As counsel states, the emails concern a County employee’s resignation and therefore relate to “dismissal” and that “employee’s status.” *Montgomery County v. Shropshire*, 420 Md. 362, 378 (2011). Thus, the record is a personnel record of an individual and it is subject to § 4-311. The County properly denied inspection by the complainant, as he is not the person in interest.

The deliberative process privilege is incorporated into the PIA’s disclosure exemptions via § 4-344, which allows a custodian to deny inspection of “any part of an

⁵ We do observe, however, that to the extent the investigation log records name specific County employees who are subject to personnel investigations, § 4-311 is likely to apply.

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.*, 480 Md. at 92 (describing § 4-344 as a “conditional exemption” that may be invoked when a custodian believes that “the requested inspection ‘would be contrary to the public interest’”). It is true that our Appellate Court has recognized that “there 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.” *Matter of Ferndale Volunteer Fire Dep’t*, 269 Md. App. 164, 203 (2026) (quotation and citation omitted). However, that does not relieve a custodian of having to demonstrate the public interest element of § 4-344’s application. *See Cranford v. Montgomery County*, 300 Md. 759, 771-72 (1984) (explaining that there are “three elements” that must be shown to justify non-disclosure under what is now § 4-344, one of which is demonstrating that disclosure is contrary to the public interest); *cf.* PIACB 26-29, at 10-11 (Feb. 26, 2026) (rejecting the proposition that “any public record that contains pre-decisional, deliberative communications is always properly withheld under § 4-344,” and stating that “[a] custodian must show, with specificity, why the decision-making process would be jeopardized should the specific disputed records be publicly disclosed”).

In a case examining what is now § 4-344, the Supreme Court of Maryland explained that the deliberative process privilege “arose from the common law, from rules of evidence, and mostly from rules governing discovery in civil judicial proceedings.” *Stromberg*, 382 Md. at 163. The 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.” *Id.* at 165. In addition, the privilege is meant to encourage government officials and employees to “give completely candid advice” and “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 ultimate focus is better government decision-making. *Stromberg*, 382 Md. at 164-65.

In response to our request to the County, we received three separate email chain records that the County withheld under § 4-344. The records appear almost entirely duplicative, except for one or two additional emails. We count ten separate email messages, seven of which were exchanged on August 7, 2025, and three on August 18, 2025. Counsel for the County describes these email exchanges as relating to the complainant’s “status” and “how HR was to proceed in light of his status,” and also discussing “how the county proceeded with an unrelated employee and if the county should proceed similarly to that unrelated employee.” Counsel argues that the records are “clearly predecisional and deliberative, as they were created prior to the County’s decision of how to handle [the complainant’s] employment status” and contain “discussions about potential courses of action and comparisons to how the County handled other similar employment matters.” Counsel contends that disclosure of these email records would be contrary to the public interest because “County personnel involved in personnel matters would not feel

comfortable freely sharing their full and frank thoughts and ideas among other personnel involved in the decision-making process if they believed their communications would be subject to public inspection.” Counsel suggests that if the email communications are publicly disclosed, “future discussions on similar matters would likely become more guarded or incomplete, impairing the County’s ability to conduct thorough internal analyses.”

Based on our review of the email records withheld under § 4-344, we cannot find that the County abused its discretion in applying that exemption to the records. Counsel for the County has accurately described the emails’ content, particularly as it relates to the emails exchanged earlier on the day of August 7, 2025. The emails are pre-decisional and deliberative, in that they represent a back-and-forth regarding the complainant’s personnel matters. While some of the later emails may not be as detailed or opinionated, when reading the exchanges as a whole it is clear that the email records reflect a continuation of “opinions, recommendations and deliberations comprising part of a process by which governmental decisions [are made].” *Stromberg*, 382 Md. at 165. We also find that the County has sufficiently demonstrated why disclosure of these email records in particular would be contrary to the public interest—i.e., that disclosure could compromise future situations in which County employees must discuss and make sensitive personnel-related decisions. There is certainly a strong public interest in good decision-making when it comes to government personnel matters.

Conclusion

Based on the record before us, and for the reasons discussed above, we find no error in the County’s application of §§ 4-301, 4-311 and 4-344 to the disputed records here.

Public Information Act Compliance Board*

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

* Board member Kimberly A. Moses did not participate in the deliberation, preparation, or issuing of this decision.