Chapter 3:
Exceptions to Disclosure

The general right of access to records granted by the PIA is limited by numerous exceptions (sometimes called exemptions) to the disclosure requirement. Given the PIA's policy in favor of public access and the requirement that the PIA generally "be construed in favor of permitting inspection of a record," these exceptions should be construed narrowly, unless an "unwarranted invasion" of personal privacy would result. GP § 4-103(b). *See also Glenn v. Maryland Dep't of Health & Mental Hygiene*, 446 Md. 378, 386-87 (2016) (explaining that although the exceptions "rebut the presumption in favor of disclosure," they should generally be construed narrowly); *Police Patrol Sec. Sys., Inc. v. Prince George's County*, 378 Md. 702, 717 (2003) (although there is no "general catchall" exemption for personal privacy, the language of what is now GP § 4-103(b) directs that "the [PIA] be construed more narrowly, and its exemptions more broadly, when privacy issues are at stake"); *Office of the Governor v. Washington Post Co.*, 360 Md. 520, 544-45 (2000).

The PIA exceptions fall into three basic categories. First, the exceptions in Subtitle 3, Part I generally require a custodian to deny inspection if a source of law outside the PIA prevents disclosure. GP § 4-301. Second, the mandatory exceptions in Parts II and III require the custodian to deny inspection for specific classes of records and information. Third, the exceptions in Part IV permit the custodian to exercise discretion as to whether the specified records are to be disclosed. More than one exception may apply to a public record, and the exceptions are not mutually exclusive. *Office of the Attorney General v. Gallagher*, 359 Md. 341, 353-54 (2000). Many of the exceptions are an attempt by the Legislature to balance individual privacy interests against the public right of access. *University System of Maryland v. Baltimore Sun Co.*, 381 Md. 79, 95 (2004).

In addition, Part V of the PIA contains a "last resort" provision, which allows a custodian to deny inspection temporarily and seek court approval to continue to withhold a record that otherwise would be subject to inspection. GP § 4-358. Unless an agency obtains a special court order under the statute to justify withholding a record, there is no basis for withholding a record other than an exception in the PIA. *See*, *e.g.*,

Police Patrol Sec. Sys., 378 Md. at 716-17 (there is no discrete "public interest," "personal information," or "unwarranted invasion of privacy" exemption to PIA).

Many of the PIA's exceptions parallel those in FOIA. Cases decided under similar provisions of the federal FOIA are persuasive precedents in construing the PIA. *See*, *e.g.*, *Glass*, 453 Md. 201, 208 (2017); *Equitable Tr. Co. v. State Comm'n on Human Relations*, 42 Md. App. 53, 75-76 (1979), *rev'd on other grounds*, 287 Md. 80 (1980); 58 *Opinions of the Attorney General* 53, 58-59 (1973).

A. Exceptions Based on Other Sources of Law

Under GP § 4-301(a)(1), inspection is to be denied where "by law, the public record is privileged or confidential." Furthermore, under GP § 4-301(a)(2), the custodian must deny inspection if the inspection is contrary to:

- State statute, GP § 4-301(a)(2)(i);
- federal statute or regulation, GP § 4-301(a)(2)(ii); or
- a rule adopted by the Supreme Court of Maryland or order of a court of record, GP § 4-301(a)(2)(iii), (iv).

1. State Statutes

Many State statutes bar disclosure of specified records. Some representative examples of these statutes include:

- Section 10-219 of the Criminal Procedure Article restricts dissemination of "criminal history record information." 92 *Opinions of the Attorney General* 26, 30-37 (2007);
- Section 3-8A-27 of the Courts & Judicial Proceedings Article protects certain police and court records pertaining to minors. *See* 85 *Opinions of the Attorney General* 249 (2000) (protection under statute only applies to records concerning a matter that could bring a minor within jurisdiction of the juvenile court);
- Section 3-602 of the Correctional Services Article protects inmates' case records. *See* 86 *Opinions of the Attorney General* 226 (2001) (protection does not extend to projected release date for mandatory supervision);

- Section 16-118(d) of the Transportation Article provides that records of the Medical Advisory Board are generally confidential. *See* 82 *Opinions of the Attorney General* 111 (1997) (person in interest is entitled to MVA information relating to the person's fitness to drive, subject to limited exceptions);
- Tax information is protected under § 13-202 of the Tax-General Article and § 1-301 of the Tax-Property Article. *See MacPhail v. Comptroller*, 178 Md. App. 115, 120-22 (2008); Letter of Assistant Attorney General Kathryn M. Rowe to Ms. Ann Marie Maloney (Dec. 15, 2004); and
- Disclosure of "medical records" is restricted by the Maryland Confidentiality of Medical Records Act, §§ 4-301 through 4-309 of the Health-General Article. *See* 90 *Opinions of the Attorney General* 45, 48-52 (2005).
- Section 1-201 of the Human Services Article generally, with some exceptions, precludes the disclosure of "any information concerning an applicant for or recipient of social services, child welfare services, adult protective services, cash assistance, food stamps, or medical assistance that is directly or indirectly derived from the records, investigations, or communications of the State, a county, or a municipal corporation or a unit of the State, a county, or a municipal corporation or that is acquired in the course of the performance of official duties." *See, e.g.*, *PIACB Decisions* 26-35 (Mar. 19, 2026).

Under GP § 4-301(a)(2)(i), statutes of this kind bar disclosure despite the otherwise broad right of access given by the PIA. *See*, *e.g.*, *Waterkeeper Alliance, Inc. v. Maryland Dep't of Agric.*, 439 Md. 262, 268 (2014) (with regard to nutrient management plans, citing § 8-801.1(b)(2) of the Agriculture Article as "the operative excepting statute"); 81 *Opinions of the Attorney General* 164, 165-67 (1996) (applying statutory accountant-client privilege); *PIACB Decisions* 23-27, at 4 (June 16, 2023) (provision in the Open Meetings Act precluded inspection under the PIA of minutes from closed meetings).

2. Federal Statutes

Similarly, a federal statute or regulation may prevent disclosure of a record. For example, the Family Educational Rights and Privacy Act of 1974 (FERPA) restricts access to student records. *See* 20 U.S.C. § 1232g(a) and (b); 34 C.F.R. § 99.3; 92 *Opinions of the Attorney General* 137, 143-45 (2007); Letter of Assistant Attorney General Robert N. McDonald to Delegate William A. Bronrott (March 3, 2010) (FERPA regulations permit disclosure of University determination that a student committed a crime of violence or non-forcible sex offense). Also, states must limit disclosure of information concerning food stamp applicants. 7 U.S.C. § 2020(e)(8). Certain critical infrastructure information and homeland security information that the federal government shares with the State or local governments may not be disclosed under the PIA. *See* 6 U.S.C. §§ 673(a)(1)(E) and 482(e), respectively.

These exceptions are basically statements of the federal preemption doctrine. *See* 94 *Opinions of the Attorney General* 44, 46-64 (2009); 88 *Opinions of the Attorney General* 205 (2003) (addressing confidentiality of medical records under HIPAA and State law). In some instances, a federal prohibition against disclosure that is a condition of federal funding is effective only if the State has "accepted" that condition. *See Chicago Tribune Co. v. University of Illinois Board of Trustees*, 781 F. Supp. 2d 672, 675-76 (N.D. Ill. 2011).

3. Court Rules

A rule adopted by the Supreme Court of Maryland or order of a court of record can also prevent disclosure of a record. A court rule fitting this description is Maryland Rule 4-642, which requires court records pertaining to certain criminal investigations to be sealed and protects against disclosure of matters occurring before a grand jury. *Office of the State Prosecutor v. Judicial Watch*, *Inc.*, 356 Md. 118, 131-34 (1999) (discussing Rule 4-642). Similarly, the Maryland Rules require that a search warrant be issued "with all practicable secrecy" and set restrictions on the subsequent dissemination of copies of search warrants. *See* Md. Rules 4-601 and 4-263. A public official or employee who improperly discloses search warrant information prematurely may be prosecuted for contempt. Rule 4-601; 87 *Opinions of the Attorney General* 76 (2002) (absent court order, State's Attorney's Office may not make available to a community association the address and date of execution of a search warrant relating to drug violations for community association's use in bringing a drug nuisance

abatement action if information has not otherwise been made public). Another example of a court order that would fall within this exception is an order to seal records in a divorce or custody case.

A rule that permits limited disclosure does not necessarily open a record to the general public. For example, Rule 19-707(f)(3) permits Bar Counsel to disclose to a complainant, on request, the status of an investigation and any disciplinary or remedial proceedings resulting from information from the complainant. In interpreting a predecessor to the current rule, the Supreme Court of Maryland held that, although it allows limited disclosure to the complainant, it does not make the information subject to general disclosure under the PIA. *Attorney Grievance Commission v. A.S. Abell Co.*, 294 Md. 680, 686-89 (1982).

As explained further in Chapter 10, the Supreme Court of Maryland, pursuant to its power under Article IV, § 18(a) of the Maryland Constitution to adopt rules concerning the practice and procedure in and the administration of the courts of the State, has also adopted rules governing access to various categories of judicial records. Md. Rule 16-901 through 16-934. Although these rules sometimes track the exemptions that are in the PIA (or make those PIA exemptions applicable to certain judicial records), the rules are what governs access to judicial records, *see* Md. Rules 16-901(a) and 16-902(b), and the PIA, by its terms, defers to that "other law" governing confidentiality. *See, e.g.*, GP §§ 4-301, 4-304, 4-328, 4-343.

4. Privileges

The "privileged or confidential by law" exception under GP § 4-301(a)(1) refers to traditional privileges like the attorney-client privilege and the doctrine of grand jury secrecy. While records subject to the attorney-client privilege must be protected under GP § 4-301(a)(1), the privilege may be waived by the party entitled to assert it. *Caffrey v. Department of Liquor Control for Montgomery County*, 370 Md. 272, 304 (2002) (Montgomery County Charter provision effectuated limited waiver of attorney-client privilege); *see also* 64 *Opinions of the Attorney General* 236, 239-40 (1979) (applying common law doctrine of grand jury secrecy). In addition, in *Harris v. Baltimore Sun Co.*, 330 Md. 595, 604-05 (1993), Maryland's Supreme Court concluded that the Maryland Rule of Professional Conduct that governs client confidentiality for lawyers can sometimes provide a separate legal basis for protecting material of this kind, even

if the material would not be protected by the attorney-client privilege. *See also* Md. Rule 19-301.6 (generally prohibiting an attorney from revealing information about the representation of a client without client consent). Under that decision, a custodian who is an attorney may not disclose a public record consisting of confidential client information if disclosure would put the attorney in violation of what is now Rule 19-301.6. *See Harris*, 330 Md. at 602-05.

Another example of information protected by a recognized privilege is confidential executive communications of an advisory or deliberative nature. *See Stromberg Metal Works*, *Inc. v. University of Maryland*, 382 Md. 151, 161-63 (2004); *Office of the Governor v. Washington Post Co.*, 360 Md. 520, 557-65 (2000); *Hamilton v. Verdow*, 287 Md. 544, 553-67 (1980); *Laws v. Thompson*, 78 Md. App. 665, 690-93 (1989); 66 *Opinions of the Attorney General* 98, 100-01 (1981). The Supreme Court of Maryland has stated that the executive privilege encompassed within GP § 4-301(a)(1) shields records made in connection with the deliberative decision-making process used by high executive officials such as the Governor and the Governor's immediate advisors—although the actual custodian of the records may be someone other than the official holding the privilege. *Stromberg Metal Works*, *Inc.*, 382 Md. at 161-63. The executive privilege encompassed within GP § 4-301(a)(1) is not limited to the executive branch of government; it extends to the Chief Judge of the Supreme Court of Maryland and presiding officers of the General Assembly as well. *Hamilton*, 287 Md. at 553-54 n.3. Records that reveal the deliberative process of other government officials may be protected under a broader common law deliberative process privilege that is encompassed by the discretionary inter- and intra-agency exemption in GP § 4-344. *Stromberg Metal Works*, *Inc.*, 382 Md. at 163-67; *see* Part D.1 of this Chapter below; *see also Matter of Ferndale Volunteer Fire Co., Inc.*, 269 Md. App. 164, 201-204 (2026) (discussing the difference between the executive privilege and the deliberative process privilege).

To be clear, not every executive communication is itself advisory or deliberative. In *Office of the Governor*, Maryland's Supreme Court rejected a blanket claim of executive privilege for telephone and scheduling records sought by the newspaper. Because these documents were not of an advisory or deliberative nature, the Governor was not entitled to a presumptive privilege. However, the Court instructed the trial court on remand to consider whether individual records were privileged because the disclosure of particular phone numbers or scheduling records in "identified special

circumstances" would interfere with the deliberative process of the Governor's office. The Court also recognized that the passage of time might mitigate any harmful effect disclosure could have on the current deliberations of the executive. 360 Md. at 561-65.

The Speech and Debate Privilege—or "legislative privilege"—provided to State legislators by the Maryland Constitution also prohibits disclosure of certain records of legislators and legislative agencies. *See* Maryland Constitution, Art. III, § 18 (providing immunity from civil and criminal liability for "words spoken in debate"); Declaration of Rights, Art. 10 (prohibiting the judiciary from "impeach[ing]" the "freedom of speech and debate"); Letter from Assistant Attorney General Richard E. Israel to William Ratchford (June 29, 1993); *see also Blondes v. State*, 16 Md. App. 165, 176-77 (1972). These constitutional provisions not only protect legislators from the consequences of litigation but also from the attendant burdens and, therefore, function as a recognized evidentiary and testimonial privilege. *See, e.g.*, *Montgomery County v. Schooley*, 97 Md. App. 107, 118 (1993). The protections of the legislative privilege can also extend to legislative staff when the activities, if performed by legislators, would be privileged. *Marylanders for Fair Representation v. Schaefer*, 144 F.R.D. 292, 298 (D. Md. 1992).

The scope of the legislative privilege is broad; it applies generally "to acts which occur in the regular course of the legislative process and into the motivation for those acts." *Blondes*, 16 Md. App. at 177; *see also id.* at 178 (explaining that the privilege extends to acts that are "an integral part of the deliberative and communicative process by which Members participate in committee and House proceedings" (quoting *Gravel v. United States*, 408 U.S. 606, 625 (1972)). *See also PIACB Decisions* 26-12 (Nov. 24, 2025). It is not, however, unlimited. For example, the privilege was found not to apply to shield a legislator from prosecution for bribery, as it does not "prohibit inquiry into activities which are causally or incidentally related to legislative affairs but not a part of the legislative process itself." *Id.* at 177-79. The privilege also likely does not apply, at least as a general matter, to documents involving routine constituent service, which is not "ordinarily an integral part of the legislative process." Letter from Deputy Attorney General Ralph S. Tyler to Hon. Leo Green (July 22, 1991).

Although the constitutional protections applicable to State legislators do not extend to members of county or municipal governing bodies, those officials—when acting in a legislative capacity—do possess a common law privilege that is considered co-extensive in scope. *Floyd v. Baltimore City Council*, 241 Md. App. 199, 211 (2019);

Schooley, 97 Md. App. at 114-15; *see* Letter of Assistant Attorney General Richard E. Israel to Senator David R. Craig (March 4, 1998); *see also* Part D1 of this Chapter, addressing inter- and intra-agency memoranda, below, and *Purtilo v. Dwyer*, Case No. 269262-v (Circuit Court for Montgomery County, April 24, 2006) (discussing PIA action against State legislators).

5. Local Ordinances and Agency Regulations

An ordinance enacted by a local government does not constitute other "law" for purposes of § 4-301(a)(1) and cannot by itself supply a basis for withholding a public record otherwise available under the PIA. *Lamson v. Montgomery County*, 460 Md. 349, 364 (2018); *Police Patrol Security Systems v. Prince George's County*, 378 Md. 702, 710, 713-15 (2003); *see also* 86 *Opinions of the Attorney General* 94, 106-07 (2001) (municipal ordinance, if construed as a blanket prohibition on disclosure of certain records, would thwart the purpose of the PIA). However, a confidentiality provision in a local ordinance that is derived from a State statute can be a basis for denying access to records. *See* 92 *Opinions of the Attorney General* 12, 15-16 (2007) (confidentiality provision in local ethics ordinance based on model ordinance under the Public Ethics Law).

Conversely, local law may not authorize release of a public record if disclosure is expressly prohibited by the PIA. *Police Patrol Sec. Sys.*, 378 Md. at 712; *see also Caffrey v. Dep't of Liquor Control for Montgomery County*, 370 Md. 272, 303 (2002). An exception would be where a local law required disclosure in a manner authorized by a State statute other than the PIA. *See*, *e.g.*, 71 *Opinions of the Attorney General* 282 (1986) (financial disclosures pursuant to county ethics ordinance). However, local law might affect access to public records that are subject to discretionary exemptions under Part IV. Thus, "home rule counties may direct or guide the exercise of this discretion, or even eliminate it entirely, by local enactment." *Police Patrol Sec. Sys.*, 378 Md. at 712; *see also Caffrey*, 370 Md. at 305 (permissible denials of PIA subject to waiver by county). The same rule would apply to enactments of municipal corporations. 86 *Opinions of the Attorney General* 94, 107 (2001) (suggesting that a municipal ordinance could direct a custodian's exercise of discretion permitted by the PIA).

Nor may an agency regulation provide an independent basis for withholding a public record (except for the special case of "sociological data," discussed in Part C.1 of

this Chapter below, or if another statute provides that authority). A contrary interpretation would allow State agencies at their election to undermine the Act. *Cf. Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1287 (D.C. Cir. 1983) (for this reason, the court gave little weight to an FDA regulation broadly interpreting the "trade secret" exemption). Additionally, had the General Assembly intended to give this effect to a State regulation, it would have been included in the list in GP § 4-301, which does mention federal regulations.

B. Required Denials — Specific Records

Under Subtitle 3, Part II the custodian must deny the inspection of certain specified records. The exemptions codified in this Part and the next (covering required denials for specific *information*) are mandatory exemptions, as distinguished from the discretionary exemptions outlined in Part IV and discussed later. That means a custodian generally *must* withhold these records from inspection in response to a PIA request. Moreover, even if a PIA request has not been submitted, "the PIA's mandatory exemptions generally prohibit custodians from disclosing protected records (or information from those records) regardless of whether disclosure is requested under the PIA." 110 *Opinions of the Attorney General* 60, 66 (2025). In other words, a custodian cannot simply volunteer records and information protected by a mandatory exemption, as that "would render the PIA's mandatory exemptions meaningless." *Id.*

However, any of these records may be available for inspection if "otherwise provided by law." GP § 4-304. Thus, if another source of law allows access, then an exception in Part II does not control. *See Immanuel v. Comptroller of Maryland*, 449 Md. 76, 95 (2016) (financial information that would otherwise be exempt from disclosure under the PIA must be provided when the Abandoned Property Act independently requires disclosure); 79 *Opinions of the Attorney General* 366 (1994) (although personnel records and other information regarding employees in Baltimore City School System would otherwise be nondisclosable, disclosure was authorized by virtue of a federal district court order). Subpoenas might also serve as "other law" capable of overriding a specific exemption under the Act, although the Court has never addressed the issue or explored the extent to which different types of subpoenas might have different compulsive effect. *See Fields v. State*, 432 Md. 650, 677-79 (2013) (McDonald, J. concurring); *see also* pp. 3-53 to 3-55 below (discussing interplay between civil discovery and the PIA).

The converse is also true: Part II may allow access to records, but "other law" may deny access. For example, names, addresses, and phone numbers of students may be disclosed to an organization such as a PTA under GP § 4-313(c)(1)(i). However, the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (also known as the "Buckley Amendment," or by its acronym FERPA), is "other law" that supersedes the PIA. Under this federal statute, a student or parent may refuse to allow the student's name and address to be released by refusing to allow it to be classified as directory information. If they do not refuse, the name and address are considered directory information and may be released. As to the types of records protected under FERPA, *see Kirwan v. Diamondback*, 352 Md. 74, 89-94 (1998) (federal statute governing "education records" does not cover records of parking tickets or correspondence between the NCAA and the University of Maryland, College Park Campus); *cf. Zaal v. State*, 326 Md. 54, 72-76 (1992) (FERPA and Maryland regulations concerning the disclosure of student records do not exclude a student's education records from discovery in litigation).

The following categories of records are listed in Subtitle 3, Part II:

1. Adoption and Welfare Records

Under GP §§ 4-305 and 4-307, adoption records and welfare records, respectively, about an individual person are protected. *See* 71 *Opinions of the Attorney General* 368 (1986) (discussing limited conditions under which information about the handling of a child abuse case by a local department of social services may be disclosed); *see also* 89 *Opinions of the Attorney General* 31, 43 & n.7 (2004); Md. Code Ann., Family Law § 5-357(a) (permitting access to information in the adoption record—other than certain identifying information—to an adoptee or the adoptive or former parent of an adoptee).

2. Library Circulation Records

Under GP § 4-308, public library circulation records that identify the transaction of a borrower are protected. *See* Letter from Assistant Attorney General Richard E. Israel to Delegate John J. Bishop (Feb. 28, 1990) (FBI agents may not inspect library records unless acting pursuant to a lawfully issued search warrant or subpoena). However, another statute may provide authority for a search absent a warrant or subpoena. *See* 50 U.S.C. § 1862 (authority of FBI to obtain order under USA Patriot

Act for production of records in connection with certain foreign intelligence and internal terrorism investigations).

3. Letters of Reference

Under GP § 4-310, letters of reference are protected. This exemption applies to all letters, solicited or unsolicited, that concern a person's fitness for public office or employment. 68 *Opinions of the Attorney General* 335 (1983). The exemption may also extend to letters of reference submitted to the government in connection with applications for professional licenses, although the Maryland courts have not yet addressed that question. *See* Letter from Assistant Attorney General Patrick B. Hughes to Insurance Commissioner Al Redmer (June 19, 2019). The Supreme Court of Maryland has also left open the question whether a record, memorandum, or notes reflecting a telephone conversation or meeting to obtain information about a prospective appointee might come under the exception. However, a record simply indicating that a telephone conversation or meeting occurred about a prospective appointee is "certainly not a 'letter of reference.'" *Office of the Governor v. Washington Post Co.*, 360 Md. 520, 547 (2000).

4. Personnel Records

Under GP § 4-311, "personnel records" of an individual are protected; however, such records are available to the person who is the subject of the record and to the officials who supervise that person. Additionally, the parts of a personnel record that contain the individual's home address, home telephone number, and cell phone number are available to certain employee organizations. GP § 4-311(b)(3). An agency may not generally share personnel records with other agencies; however, it is implicit in the personnel records exemption that another agency charged with responsibilities related to personnel administration may have access to those records to the extent necessary to carry out its duties. 86 *Opinions of the Attorney General* 94, 108-09 (2001).

The PIA does not define "personnel records," but it does indicate the type of documents that are covered: applications, performance ratings, and scholastic achievement information. "Although this list was probably not intended to be exhaustive, it does reflect a legislative intent that 'personnel records' means those

documents that directly pertain to employment and an employee's ability to perform a job." *Kirwan v. Diamondback*, 352 Md. 74, 82-84 (1998) (rejecting argument that information concerning parking tickets constitutes personnel record). Accordingly, the category includes records "relating to hiring, discipline, promotion, dismissal, or any other matter involving an employee's status." *Montgomery County v. Shropshire*, 420 Md. 362, 378 (2011), *superseded by statute on other grounds*, 2021 Md. Laws, ch. 62.

As to some examples of the specific type of records that are protected, *see* GP § 4-311(c)(2) (records related to a "technical infraction," as defined by GP § 4-101(l), committed by a police officer are personnel records); 79 *Opinions of the Attorney General* 362 (1994) (information related to performance evaluation of judges is not disclosable); 78 *Opinions of the Attorney General* 291 (1993) (personnel records exemption to the PIA prohibits release of certain employee-related information generated as a result of allegations contained in a complaint that was filed against the employee); *see also* Memorandum from Assistant Attorney General Jack Schwartz to Principal Counsel (Jan. 31, 1995) (information about leave balances is itself considered part of an official's personnel records and therefore is not disclosable); *cf. Dobronski v. FCC*, 17 F.3d 275, 278-80 (9th Cir. 1994) (sick leave records of an assistant bureau chief for FCC were "personnel files" under FOIA Exemption 6 but were disclosable because of that exemption's balancing test, not found in Maryland's personnel exception). "The obvious purpose of [GP § 4-311] is to preserve the privacy of personal information about a public employee that is accumulated during his or her employment." 65 *Opinions of the Attorney General* 365, 367 (1980); *see also* 82 *Opinions of the Attorney General* 65, 68 (1997); 68 *Opinions of the Attorney General* 335, 338 (1983).

Prior to 2021, records related to investigations of alleged misconduct by police officers were generally considered personnel records. *See, e.g.*, *Baltimore City Police Dep't v. State*, 158 Md. App. 274, 282-83 (2004). However, in 2021, the General Assembly passed a law explicitly removing records "relating to an administrative or criminal investigation of misconduct by a police officer, including an internal affairs investigatory record, a hearing record, and records relating to a disciplinary decision" from the ambit of GP § 4-311. *See* 2021 Md. Laws, ch. 62, codified at GP § 4-311(c). These records are now treated as investigatory records subject to the discretionary exemption codified at GP § 4-351, discussed in Part D.8 of this Chapter below, with the exception of records related to "technical infraction[s]," which remain personnel

records. A technical infraction is defined as "a minor rule violation by an individual solely related to the enforcement of administrative rules that: (1) does not involve an interaction between a member of the public and the individual; (2) does not relate to the individual's investigative, enforcement, training, supervision, or reporting responsibilities; and (3) is not otherwise a matter of public concern." GP § 4-101(l).

To be clear, records related to an employer's investigation of alleged misconduct by government employees *other than police officers* also remain subject to GP § 4-311's mandatory exemption. *See, e.g.*, *PIACB Decisions* 23-17, at 3-4 (May 25, 2023) (report related to a fire department's investigation of alleged misconduct by EMTs was exempt from disclosure under GP § 4-311). Under a 2024 change, the definition of "personnel record" also excludes "positive community feedback that was not solicited by the police officer who is the subject of the feedback." GP § 4-311(c)(1)(iii). Like most police misconduct records, these are now treated as investigatory records under GP § 4-351, which will be discussed more below.

A record is not a "personnel record" simply because it mentions an employee or has some incidental connection with an employment relationship. For example, a record simply indicating with whom an official met or a phone number called in connection with a possible future employment decision is not a personnel record under the PIA. *Office of the Governor v. Washington Post Co.*, 360 Md. 520, 547-48 (2000). Nor is directory-type information concerning agency employees a "personnel record" under GP § 4-311. *Prince George's County v. Washington Post Co.*, 149 Md. App. 289, 324 (2003) (roster listing names, ranks, badge numbers, dates of hire, and job assignments of county police officers not exempt from disclosure as "personnel records"). Furthermore, an employment contract, setting out the terms and conditions governing a public employee's entitlement to a salary, is not a "personnel record." *University System of Maryland v. Baltimore Sun Co.*, 381 Md. 79, 101-02 (2004); Letter of Assistant Attorney General Robert A. Zarnoch to Delegate Joanne Parrott (Feb. 9, 2004). Nor is a description of a job or position considered to be a "personnel record." Attorney General Opinion 77-006 (Jan. 13, 1977) (unpublished). Similarly, the PIA Compliance Board recently concluded that an employee photograph is not necessarily a personnel record. *PIACB Decisions* 26-62 (June 18, 2026).

Generally, a record generated by an agency that lacks supervisory authority over an employee would not qualify as a "personnel record." *Washington Post Co.*, 149 Md.

App. at 331 (records of county human relations commission that provided recommendations to supervisory agency following public hearings on alleged police misconduct).

In some contexts—particularly where an agency has a special duty to inform the public—different distinctions may need to be made as to the nature of information. For example, in assessing what a public school may or should disclose to parents about an inappropriate relationship between a teacher and student, a 1982 opinion observed that first-hand observation or information contained in an oral report to the school was not a "personnel record" because it was not a "record." Also, student-related information in documentary material about the teacher may be disclosed without destroying the confidentiality of employee-related information. *See* 82 *Opinions of the Attorney General* 65, 67-70 (1997). On the other hand, documents generated by a complaint about court clerks' conduct did fall within the exception. 78 *Opinions of the Attorney General* 291, 294 (1993).

Records that, if unredacted, qualify as "personnel record[s] of an individual" for purposes of GP § 4-311 may lose that status once "all identifying information" is redacted. *Maryland State Police v. NAACP*, 430 Md. 179, 195 (2013) (State Police must disclose records reflecting the agency's investigation of all complaints of racial profiling). What constitutes "identifying information," however, will depend on the specifics of each request. For example, the agency may disclose records in response to a general, programmatic request of the sort at issue in *Maryland State Police v. NAACP* simply by redacting the names, titles, or other identifying information of the personnel involved. *See Fether v. Frederick County*, Civil No. CCB-12-1674 (D. Md., March 19, 2014) ("statistical information" available under *NAACP*); *Shriner v. Annapolis City Police Department*, Civil No. ELH-11-2633 (D. Md., March 19, 2012) ("aggregated data").

By contrast, no amount of redaction will enable an agency to comply with a request for the personnel records of a specific government employee because, even if "identifying information" is redacted, the documents provided would still constitute the personnel records of the individual who is the subject of the request. *See Glass v. Anne Arundel County,* 453 Md. 201, 245-46 (2017) (where PIA request was for the internal affairs file of a specific, identifiable police officer at a time when such internal affairs files were classified as personnel records, agency was required to withhold file in its entirety)

Requests that lie between these extremes will require the custodian to determine what amount of redaction, if any, is necessary to ensure that the record released cannot be identified as the "personnel record of an individual." *See, e.g., Judicial Watch, Inc. v. U.S. Dep't of Justice*, 41 F. Supp. 3d 39, 46 (D.D.C. 2014) (upholding non-disclosure of emails under FOIA exemption 6 when, due to the small number of people involved, releasing even redacted versions "could easily lead" to the revelation of exempt material); *see also* 90 *Opinions of the Attorney General* 45, 54-55 (2005) (even with the name redacted, the medical information in an ambulance event report might still be "about an individual" if the unredacted information "sharply narrows" the class of individuals to whom the information might apply or "likely" could be used to identify the individual with "reasonable certainty").

The personnel record exception is not limited to paid officials and employees; biographical information submitted by individuals seeking to serve on agency advisory committees is also protected. *See* Letters from Assistant Attorney General Kathryn M. Rowe to Senator Brian E. Frosh and Delegate Jennie M. Forehand (Oct. 6, 2000). Similarly, the names of those seeking appointment to an office may not be disclosed if the information is derived from their applications. Letter from Assistant Attorney General Kathryn M. Rowe to Senator Leo E. Green (May 13, 2002) (names of applicants for Prince George's Board of Education not to be disclosed).

Records regarding the salaries, bonuses, and the amount of a monetary performance award of public employees may not be withheld as personnel records. 83 *Opinions of the Attorney General* 192 (1998). On the other hand, information concerning the specific benefits choices made by specific employees must be withheld because those benefit elections are exempt from disclosure under the PIA as personnel records (GP § 4-311) and records of an individual's finances (GP § 4-336(b)). Benefits choices made by an individual employee can reveal information about the employee's family circumstances and medical needs, as well as disclose personal financial decisions. The federal personnel regulations similarly allow for disclosure of salary, but not benefits selection information, in response to a request under FOIA. *See* 5 C.F.R. § 293.311.

On occasion, the question has arisen whether the death or termination of an employee affects access to personnel records concerning the employee. Although there is no case law on this question, the exception does not expressly distinguish between

personnel records of live or current employees and those of employees who have died or moved on to other endeavors. This suggests, then, that the personnel records of former employees do not receive less protection than those of current employees. And the fact that the PIA defines "person in interest" to include a parent or legal representative of an individual with a legal disability, GP § 4-101(g), suggests that cessation of employment does not affect the applicability of the exception. With regard to personal information in other types of documents, such as investigative files, the federal courts have noted that an individual's death might diminish, but does not eliminate, the individual's privacy interest. *See Clemente v. FBI*, 741 F. Supp. 2d 64, 85 (D.D.C. 2010).

5. Retirement Records

Under GP § 4-312, retirement files or records are protected. This section, however, includes several exceptions. Under subsection (d)(1), a custodian must state whether an individual receives a pension or retirement allowance. The law also requires the disclosure of specified information concerning the retirement benefits of current and retired appointed and elected officials. *See* GP § 4-312(d)(2). Specific provisions are applicable to Anne Arundel County officials. *See* GP § 4-312(e). Note that subparagraph (b)(1)(v) requires a custodian to permit an auditing agency to inspect retirement files or records if a county requires, by law, that agency to conduct audits of such records. The employees of the auditing agency must keep all information confidential and must not disclose information that would identify the individuals whose files have been inspected. Retirement records may also be inspected by public employee organizations under conditions outlined in §§ 21-504 or 21-505 of the State Personnel and Pensions Article. *See* GP § 4-312(c). The law also allows the sharing of certain information for purposes of administering the State's optional defined contribution system in accordance with § 21-505 of the State Personnel and Pensions Article. *See* GP § 4-312(c). A law enforcement agency seeking the home address of a retired employee is entitled to inspect retirement records in order to contact that person on official business. GP § 4-312(b)(iv). Other exceptions authorize access by a person in interest, an employee's appointing authority, and certain persons involved in administering a deceased individual's estate. *Id.*

6. Student Records

Under GP § 4-313, school district records containing the "home address, telephone number, personal e-mail address, biography, family, physiology, religion, academic achievement, or physical or mental ability of a student" are protected; however, these records are available to the student and to officials who supervise the student. The custodian may allow inspection of students' home addresses, phone numbers, and personal e-mail addresses by organizations such as parent, student, or teacher organizations, by a military organization or force, by an agent of a school or board of education seeking to confirm an address or phone number, and by a representative of a community college in the State. *See* Letter from Assistant Attorney General Christine Steiner to Senator Victor Cushwa (Aug. 14, 1984) (names and addresses of parents of Senatorial Scholarship recipients may not be released; the PIA protects school district records about the family of a student). Even if some identifying information is stripped from the student records, the exemption would still apply if a person could readily match students with the disclosed files. Letter from Assistant Attorney General Kathryn M. Rowe to Delegate Dereck Davis (Aug. 20, 2004). This exception may be trumped by other federal or State law that permits access to student records. 92 *Opinions of the Attorney General* 137, 146 (2007) (county auditor could have access to student records to the extent allowed by State statute authorizing audit).

A separate exception for student records at institutions of higher education is contained in GP § 4-355. *See* p. 3-50 below.

7. Police Reports Sought for Marketing Legal Services

Under GP § 4-315, police reports of traffic accidents, criminal charging documents, and traffic citations are not available for inspection by an attorney or an employee of an attorney who requests inspection for the purpose of soliciting or marketing legal services. *See also* Business Occupations & Professions Article, § 10-604. The federal district court in Maryland has ruled that this provision is of doubtful constitutionality under the First Amendment. *Ficker v. Utz*, Civil No. WN-92-1466 (D. Md. Sept. 20, 1992) (order denying motion to dismiss).

Subsequently, some courts have upheld state efforts to restrict access to similar public information when sought for commercial purposes while other courts have

struck down such restrictions. *See* Letter from Assistant Attorney General Kathryn M. Rowe to Delegate John A. Giannetti, Jr. (Feb. 28, 2000); *see also Los Angeles Police Department v. United Reporting Publishing Corporation*, 528 U.S. 32, 37, 40-41 (1999) (rejecting facial challenge to a California statute that restricts access to the addresses of individuals arrested for purposes of selling a product or service).

In 2008, the General Assembly amended the Maryland Lawyers Act to forbid non-lawyers from accessing an accident report for the purpose of soliciting a person to sue another. Business Occupations & Professions Article § 10-604(b)(2). The Attorney General's Office found that such a provision is constitutional. *See* Letter from Assistant Attorney General Kathryn M. Rowe to Senator Brian E. Frosh (April 1, 2008).

8. Arrest Warrant

Subject to enumerated exceptions, under GP § 4-316, a record pertaining to an arrest warrant is not open to inspection until the warrant has been served or 90 days have elapsed since the warrant was issued. An arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation is not open to inspection until warrants for any co-conspirators have been served.

9. Motor Vehicle Administration Records

Under GP § 4-320, absent written consent from the person in interest, a custodian of a "public record of the Motor Vehicle Administration containing personal information" may not disclose that record or personal information from that record in response to a request for the individual record or for inclusion in a list sought for purposes of marketing, solicitations, or surveys. "Personal information" is defined as "information that identifies an individual" including an individual's address, e-mail address, driver's license number or any other identification number, medical or disability information, name, photograph or computer generated image, Social Security number, or telephone number. GP § 4-101(h). However, this definition does not include an individual's "driver's status," "driving offenses," "5-digit zip code," or "information on vehicular accidents." GP § 4-101(h)(3); *see also* Md. Code Ann., Pub. Safety §§ 2-306, 2-308, and COMAR 29.02.02.01 (governing the public dissemination of motor vehicle accident reports and requiring certain information to be on those reports, including the driver's name). The statute includes an extensive list of exceptions whereby personal information must be disclosed. The exceptions are

modeled in large part after provisions of the federal Driver's Privacy Protection Act, 18 U.S.C. §§ 2721 through 2725. A custodian of a Motor Vehicle Administration record may not disclose personal information from the record under any circumstances for purposes of "telephone solicitation," a term defined in the PIA. GP § 4-320(a) and (e)(4). In addition, a person receiving personal information under this section may not disclose that information to a person or government agency "for the purpose of immigration enforcement" absent a valid warrant. See 2026 Md. Laws, ch. 874.

10. Personal Information for Purposes of Immigration Enforcement

In 2021, the General Assembly enacted the Maryland Driver Privacy Act. *See* 2021 Md. Laws, ch. 18. Though the law's title refers to drivers in particular, it applies more broadly and (as further amended in later years) precludes a custodian from allowing inspection of "the part of a public record that contains personal information or inspection of a photograph of an individual by any person seeking access for the purpose of enforcing federal immigration law, unless the custodian is provided with a valid warrant issued by a federal court or a court of th[e] State." GP § 4-320.1(c)(1). The provision also precludes warrantless "inspection using a facial recognition search of a digital photographic image or actual stored data of a digital photographic image" under the same circumstances. *Id.* § 4-320.1(c)(2).

To ensure that agencies follow these restrictions, the statute also requires "a custodian to take reasonable steps to determine whether a person seeking access to a public record is doing so for the purpose of enforcing immigration law." *Id.* § 4-320.1(b). As the plain language of the provision suggests, custodians likely have wide discretion to decide how best to implement that requirement. That means, although an agency might opt to comply with the requirement by asking each requester to disclaim any intent to seek access for purposes of immigration enforcement, an agency doesn't necessarily need to ask every requester about their purpose.[1] For example, another option could be for the agency to review each incoming request to determine whether it poses any real risk of the disclosure of personal information for the purposes of immigration enforcement. If the responsive documents would not include any

[1] As noted in Chapter 2, to be clear, an agency could not ask each and every requester to explain their full purpose, as that would conflict with GP § 4-204, which generally prohibits custodians from imposing that condition. Rather, the option referenced here is that the agency could potentially ask every requester to confirm that their purpose is *not* immigration enforcement.

personal information at all, there would be no need to inquire into the requester's purpose, given that the intent behind the provision is to ensure that custodians don't disclose "personal information" for immigration enforcement.

Similarly, if the records include personal information but there is no risk that the information could be used for purposes of immigration enforcement, there would again likely be no need to inquire into the requester's purpose. Even when personal information is involved that could theoretically be used for immigration enforcement, the context of the request and the identity of the requester may make the requester's purpose clear or, at least, make clear that the requester is not seeking the records for purposes of immigration enforcement. In other words, if the personnel processing the request can make the determination from the face of the request that it doesn't involve personal information or won't be used for immigration enforcement, inquiring into the purpose likely would not be necessary. Instead, the agency would only need to inquire about the purpose if there was reason to think the purpose might be for immigration enforcement. The key is for an agency to have protocols in place for determining if or when inquiring about purpose is necessary to prevent custodians from disclosing personal information to persons for purposes of immigration enforcement in conflict with § 4-320.1. Note that all agencies are required to have regulations that "prevent unauthorized disclosure or inspection of a public record, including in accordance with § 4-320.1 of this title." GP § 4-201(b). (See Appendix F for model regulations.) Three agencies—the Motor Vehicle Administration, Maryland State Police, and Department of Public Safety & Correctional Services—are required to have regulations that implement § 4-320.1 specifically.

11. RBC Records Filed with Insurance Commissioner

Under GP § 4-323, records that relate to Risk Based Capital reports or plans are protected. All Risk Based Capital reports and Risk Based Capital plans filed with the Insurance Commissioner are to be kept confidential by the Commissioner, because they constitute confidential commercial information that might be damaging to an insurer if made available to competitors. These records may not be made public or subject to subpoena, other than by the Commissioner, and then only for the purpose of enforcement actions under the Insurance Code. *See* Md. Code Ann., Ins. § 4-310.

12. Divorce Records

As of October 1, 2026, the PIA includes a protection for records "pertaining to divorce proceeding," including an "application for divorce," "a financial record submitted as part of a divorce proceeding," "a record of a divorce settlement," and "a custody order." GP § 4-305.1. This limitation on disclosure does not apply to "a person in interest," their lawyer, a final decree in a divorce proceeding, or when a court order allows inspection. *Id.* However, the practical effect of this provision is unclear. As the Attorney General explained in the bill review letter for this enactment, although this provision would apply to divorce records held by a non-judicial agency, it likely does not apply to judicial records because the PIA defers to the rules adopted by the Maryland Supreme Court, and most divorce records are not confidential under those court rules. *See* Letter from Anthony G. Brown, Attorney General, to Governor Wes Moore (May 7, 2026).

13. Miscellaneous Records

Other public records protected under Part II include:

- Hospital records relating to medical administration, medical staff, medical care, or other medical information and containing information about one or more individuals, GP § 4-306;
- Library, archives, and museum material contributed by a private person to the extent that any limitation of disclosure is a condition of the contribution, GP § 4-309;
- Account holders and beneficiaries under the State's College Savings Plans program, GP § 4-314;
- Certain school safety evaluations, emergency plans, and emergency response policies and guidelines, GP § 4-314.1;
- Department of Natural Resources' records containing personal information about the owner of a registered vessel, GP § 4-317;

- Certain records created or obtained by or submitted to the Maryland Transit Administration in connection with electronic fare media, GP § 4-318;
- Certain records created or obtained by or submitted to the Maryland Transportation Authority in connection with an electronic toll collection system or an associated transaction system, GP § 4-319;
- Recorded images produced by systems used to monitor compliance with traffic control signals, speed limits, railroad grade crossing enforcement systems, school bus monitoring cameras, stop sign monitoring systems, bus lane monitoring systems, noise abatement monitoring systems, certain vehicle height restrictions, or (as of October 1, 2026) safety corridor speed monitoring systems, GP § 4-321;
- Applications for certification and claims for credits filed under the Renewable Fuels Promotion Act of 2005, GP § 4-324;
- Records relating to persons authorized to sell, purchase, rent, or transfer regulated firearms, or to carry, wear, or transport a handgun, GP § 4-325;
- License plate numbers and other data collected by or derived from certain automatic license plate reader systems, GP § 4-326; and
- Criminal and police records relating to certain criminal convictions that are shielded from public access under Title 10, Subtitle 3 of the Criminal Procedure Article, GP § 4-327.

C. Required Denials — Specific Information

Under Subtitle 3, Part III, unless otherwise provided by law, the custodian must deny inspection of the part of a public record that contains the following specific information:

1. Medical, Psychological, and Sociological Data

GP § 4-329(b) prevents disclosure of medical or psychological information about an individual person, as well as personal information about a person with a disability. The exception also explicitly makes confidential certain reports that local health

departments receive from physicians who diagnose cases of HIV or AIDS. GP § 4-329(b)(3).

Thus, medical information such as the symptoms of an ill or injured individual recorded during a call to 911 to assist in dispatch of emergency personnel is not to be released. 90 *Opinions of the Attorney General* 45, 53 (2005). A record containing medical information need not identify an individual with absolute precision to fall within this exception, if other unredacted information permits identification of the individual with reasonable certainty. *Id.* at 54-55. Medical and psychological information is available for inspection by the person in interest to the extent permitted by Title 4, Subtitle 3 of the Health-General Article. *See* 71 *Opinions of the Attorney General* 297, 302 (1986) (tape recording of involuntary admission hearing may be disclosed only to a patient or authorized representative). GP § 4-329 does not protect from disclosure autopsy reports of a medical examiner, but does protect photographs and other documents developed in connection with an autopsy. *See* Letter from Assistant Attorney General Kathryn M. Rowe to Senator Leo E. Green (May 30, 2003).

The exemption for personal information about an individual with a disability, which was added to the PIA in 2006, is apparently intended to restrict disclosure of addresses of community residences and group homes that serve individuals with disabilities. *See* Bill Review Letter of Attorney General J. Joseph Curran, Jr. to Governor Robert L. Ehrlich concerning House Bill 1625 and Senate Bill 1040 (May 1, 2006). An exception in the exemption related to nursing homes and assisted living facilities has raised interpretive questions. *Id.*

Section 4-330 forbids disclosure of "sociological information." However, this basis for denial may be used only if an official custodian has adopted rules or regulations that define, for the records within that official's responsibility, the meaning and scope of "sociological data." The Division of Parole and Probation of the Department of Public Safety and Correctional Services, for example, has adopted regulations (COMAR 12.11.02.02B(13)) that define "sociological data." While the Act itself does not define "sociological data," *see* Letter from Assistant Attorney General Kathryn M. Rowe to Senator Nancy J. King (Feb. 9, 2011), it seems unlikely that the Legislature intended to authorize agencies to withhold aggregate statistical compilations under this provision.

2. Home Addresses and Phone Numbers of Public Employees

GP § 4-331 prevents disclosure of the home address, personal telephone number, and personal e-mail address of a public employee (including a public officer) unless the employee consents or the employing unit determines that inspection is needed to protect the public interest. Thus, for example, the home telephone number of a State employee would be redacted from records otherwise available to a requester. *See Office of the Governor v. Washington Post Co.*, 360 Md. 520, 550 (2000). Similarly, our Office has long been of the view that the personal cellphone numbers of covered employees are equivalent to home telephone numbers and thus are protected from disclosure under this exemption. Legislation enacted in 2023 codified that understanding and clarified that personal e-mail addresses are protected as well. *See* 2023 Md. Laws, ch. 107. Public employee organizations are permitted greater access to the information protected by this exemption under certain conditions outlined in § 3-208 and § 21-504 of the State Personnel and Pensions Article. Also, if a public employee is a licensee, members of the General Assembly may obtain the licensee's home address pursuant to GP § 4-103(c). *See* Letter from Assistant Attorney General Robert A. Zarnoch to Michael A. Noonan, Esquire (Dec. 23, 1993); Letters from Assistant Attorney General Robert A. Zarnoch to Dr. William AuMiller (Feb. 21, 2005; Nov. 29, 2000) (State legislators are entitled to names and addresses of teachers and other certified employees of county boards of education).

3. Occupational and Professional Licensing Records

GP § 4-333 contains a general privacy protection for occupational and professional licensing records on individual persons. This amendment resulted from a recommendation of the Governor's Information Practices Commission. In explaining its recommendation, the Commission stated:

> The observation was made earlier in this report that the formulation of sound public policy in the area of information practices requires the striking of a delicate balance among competing interests. The occupational and professional licensing field provides a good illustration of this dictum. The various licensing boards throughout the State need to collect a sufficient amount of personally identifiable information in order to assess the qualifications of candidates. The public has a right to examine

certain items in licensure files to be assured that specific licensees are competent and qualified. Licensees, in turn, have a right to expect that boards limit themselves to the collection of relevant and necessary information, and that strict limitations are placed on the type of personally identifiable data available for public inspection.

The Information Practices Commission has invested a considerable amount of time and energy in attempting to determine which data elements pertinent to licensees should be available for the public, and which items should be confidential. The Commission believes that its recommendations constitute a careful balancing of the access rights of the public and the privacy rights of licensees. The Commission asserts that the public has a right to have access to basic directory information about a licensee, should it need to contact the licensee. The Commission believes, however, that under usual circumstances, the business address and business telephone number should be disclosed rather than residential data. If, however, the board cannot furnish the business address, it should make the licensee's home address available to the public. The Commission furthermore asserts that the public has a right to examine a licensee's educational and occupational background and professional qualifications. Before hiring a plumber, for example, an individual should have the right to assess the plumber's credentials as presented to the Department of Licensing and Regulation. . . . If a board has determined that a licensee was guilty or culpable of some unfair or illegal practice and subsequently took disciplinary action against that licensee, the public has a right to know that as well. Finally, if a licensee is required by statute to provide evidence of financial responsibility, that evidence should also be available for public inspection. This latter issue is of particular importance in the home improvement field.

> The Commission does not believe that the release of other personally identifiable information pertinent to licensees would serve the public interest . . . . The Commission recognizes that there may be extenuating circumstances in which a compelling public purpose would be served by the release of data in addition to that recommended by the Commission. The Commission believes that discretionary authority should be given to records' custodians to release additional data; however, custodians should be required to issue rules and regulations explaining the need and the basis for disclosure.

Governor's Information Practices Commission, Final Report 535-38 (1982).

Consistent with the purposes outlined in that report, this provision generally protects the professional and occupation licensing records "of an individual" from disclosure but requires certain specified information—such as (among other things) the name, business address, and educational qualifications of the licensee—to be disclosed. *See* GP § 4-333(a), (b). The provision also permits custodians to promulgate regulations allowing for disclosure of information that would otherwise be protected if there is a "compelling public interest" in disclosure. GP § 4-333(c). The Department of Labor has, for example, concluded that "a compelling public interest" is served by disclosure of, among other information, the number, nature, and status of complaints against a licensee, if the requester is contemplating a contract with the licensee. COMAR 09.01.04.11. As noted above, this exemption applies only to licensees who are individuals and not to business entities. 71 *Opinions of the Attorney General* 305, 311 (1986). A 2006 amendment of the exemption limits disclosure of the home address of a licensee if the location is identified as the home address of an individual with a disability. Under a 2023 amendment, custodians must now disclose the "business e-mail of the licensee, if the e-mail address is identified by the licensee as a business e-mail address." 2023 Md. Laws, ch. 107. A separate 2023 amendment also protects the "name or other identifying information of an individual related to . . . an ambulatory surgical facility" or "a surgical abortion facility." 2023 Md. Laws, ch. 249.

4. Trade Secrets; Confidential Business and Financial Information

GP § 4-335 prevents disclosure of trade secrets, confidential commercial or financial information, and confidential geological or geophysical information, if that

information is furnished by or obtained from any person or governmental unit. The comparable FOIA exemptions are similar. *See* 5 U.S.C. § 552(b)(4) (protecting "[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential"); § 552(b)(9) (protecting "geological and geophysical information and data, including maps concerning wells"). Note, however, that the federal exemption for geological and geophysical information, unlike the analogous Maryland exemption, is not expressly limited to "confidential" information, meaning that the Maryland exemption may be narrower. *See* Letter from Assistant Attorney General Jeremy McCoy to Delegate Vaughn Stewart, at 4 (Sept. 23, 2021). The geological or geophysical data provision is also obviously limited in scope and in practice applies only to a few Maryland agencies.

Given the similarity between Maryland's exemption and the analogous federal exemptions, federal cases and FOIA legislative history are highly persuasive in interpreting what is now GP § 4-335. *See Amster v. Baker*, 453 Md. 68, 79 (2017); 63 *Opinions of the Attorney General* 355, 360-62 (1978). The U.S. Department of Justice publishes a guide on the scope and extent of the analogous FOIA exemptions. U.S. Department of Justice, *Guide to the Freedom of Information Act*, Exemption 4 (available on-line at https://www.justice.gov/oip/doj-guide-freedom-information-act-0).

Under FOIA, a "trade secret" is considered a "secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." *Prince George's County v. Washington Post Co.*, 149 Md. App. 289, 312, n.17 (2003) (citing *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983)); *see also* 63 *Opinions of the Attorney General* at 359 (defining a "trade secret" as "an unpatented secret formula or process known only to certain individuals using it in compounding some article of trade having commercial value. Secrecy is an essential element. Thus, [a] trade secret is something known to only one or a few, kept from the general public, and not susceptible of general knowledge. If the principles incorporated in a device are known to the industry, there is no trade secret . . . ." (footnotes, internal quotations, and citations omitted)).

Often the more difficult inquiry is what constitutes confidential commercial or financial information. To fit within that exemption, the information must, of course,

be of a commercial or financial nature, and it must be obtained from a person outside the agency or from another governmental unit. Information generated by the agency itself is not covered by GP § 4-335, but it may be protected from disclosure by a different exception. *See Stromberg Metal Works*, *Inc. v. University of Maryland*, 382 Md. 151, 167-70 (2004); *Federal Open Market Committee v. Merrill*, 443 U.S. 340, 360 (1979).

In addition, a record is not confidential commercial or financial information simply because it was generated in the course of a transaction or has some other indirect connection to commercial activity. In *Office of the Governor*, for example, the Supreme Court of Maryland held that a record of a telephone call about an economic development project does not itself constitute confidential commercial information, although notes detailing the substance of the discussion might. 360 Md. at 549.

Under Maryland law, the proper test to determine if commercial information is "confidential" has long been clear as applied to information *voluntarily* supplied to the government. As for that type of information, the Supreme Court of Maryland has held, relying on the then-existing federal standard, that such information is "'confidential'—and therefore exempt from disclosure under the [PIA]—if it 'would customarily not be released to the public by the person from whom it was obtained.'" *Amster*, 453 Md. at 81 (quoting *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871, 879 (D.C. Cir. 1992)). The Court applied this test to a commercial lease that had been voluntarily supplied to a local government by a landowner and held that the local government and the landowner had not met their burden of proving that all of the information in the lease was confidential, because they had "not demonstrated that [the landowner] would not 'customarily' disclose" the contents of the records. *Id.* at 86; *see also, e.g.*, *Environmental Technology*, *Inc. v. EPA*, 822 F. Supp. 1226, 1228-29 (E.D. Va. 1993) (unit price information voluntarily provided by government contractor to procuring agency was "confidential" and not subject to disclosure under FOIA, where information was of a kind that contractor would not customarily share with competitors); *Allnet Comm. Services*, *Inc. v. FCC*, 800 F. Supp. 984, 990 (D.D.C. 1992) (proprietary cost and engineering data voluntarily provided by switch vendors to telecommunications companies under nondisclosure agreements were confidential under FOIA).

At that time, the federal test was different for determining the confidentiality of financial or commercial information that was *required* to be given to the government.

National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974). Under the *National Parks* test, financial or commercial information that persons are required to give the government was considered confidential if disclosure of the information would likely: (1) impair the government's ability to obtain the necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *Id.* (footnote omitted); *see also* 69 *Opinions of the Attorney General* 231, 234 (1984) (applying the *National Parks* standard in concluding that construction drawings, submitted to a county as a prerequisite to issuance of a building permit, could not be protected from disclosure on the grounds that they would impair the government's ability to obtain the information in the future but that the release of such drawings should be examined on a case-by-case basis to determine whether disclosure would give competitors a concrete advantage in obtaining future work on that or a similar project).

In 2019, however, the U.S. Supreme Court abrogated the *National Parks* two-part test and, instead, held that commercial or financial information is confidential under FOIA's Exemption 4 regardless of whether it was voluntarily provided or required to be provided if, at a minimum, it is "both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy." *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019). The Court did not, however, reach the question of whether that information could *lose* its confidential character if it is provided to the government without assurances of privacy. *Id.* at 2363. In other words, although the Court found that it would be necessary for the information to be treated as private by the owner, the Court did not decide whether express or implied assurances of confidentiality from the government would always be required for the exemption to apply. *See also Renewable Fuels Ass'n v. United States EPA*, 519 F.Supp.3d 1, 12 (D.D.C. 2021) (noting that no district court has resolved whether the second prong of the *Argus Leader* test must be met, but suggesting that "[t]he better approach would be that privately held information is generally confidential absent an express statement by the agency that it would *not* keep information private, or a clear implication to that effect (for example, a history of releasing the information at issue)").

Ultimately, in *Argus Leader*, the Court found that data held by the U.S. Department of Agriculture about retail stores' participation in the national food stamp

program constituted confidential information because the stores did not publicly release such data and because the government "has long promised them that it will keep their information private." 139 S. Ct. at 2363*; see also Am. Small Bus. League v. United States Dep't of Def.*, 411 F. Supp. 3d 824, 830-31 (N.D. Cal. 2019) (finding government contractors' information about their subcontractors to be confidential because contractors "customarily and actually kept all of the aforementioned commercial information . . . confidential in the ordinary course of business"); U.S. Dep't of Justice, *Exemption 4 after the Supreme Court's Ruling in Food Marketing Institute v. Argus Leader Media*, https://www.justice.gov/oip/exemption-4-after-supreme-courts-ruling-food-marketing-institute-v-argus-leader-media.

Although the change in the federal standard initially created some confusion in Maryland, in 2024, the Appellate Court of Maryland officially adopted the *Argus Leader* decision as applied to Maryland's PIA. *See Abell Foundation v. Baltimore Dev. Corp.*, 262 Md. App. 657 (2024). Thus, as under the analogous federal exemption, "at least where confidential commercial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of" Maryland's confidential commercial information exemption. *Id.* at 701 (quoting *Argus Leader*, 588 U.S. at 440).

Like the federal courts, however, the Maryland courts still have not determined whether some sort of express or implied assurance of confidentiality is required for the exemption to apply. In *Abell Foundation*, the government had made express assurances of confidentiality, so the issue did not need to be resolved. *Id.* at 702. To be clear, the Maryland Supreme Court in *Amster* did not suggest that assurances of confidentiality from the government were necessary for such information to qualify as "confidential" under the PIA, which suggests that assurances of confidentiality might not be required, but that was before the U.S. Supreme Court raised the possibility in *Argus Leader*. At the very least, a Maryland court might take into account whether the government provided an express indication that, if the information were submitted, it would *not* be kept confidential. *See* U.S. Dep't of Justice Step-By-Step Guide for Determining if Commercial or Financial Information Obtained From a Person is Confidential Under Exemption 4 of the FOIA (Oct. 7, 2019), https://www.justice.gov/oip/step-step-guide-determining-if-commercial-or-financial-information-obtained-person-confidential (suggesting that otherwise-confidential information would likely lose its confidential

character if submitted to the government with the understanding that the government was going to disseminate the information). In any event, given this continuing uncertainty, custodians might wish to consider being as explicit as possible about whether the submission of what would otherwise be confidential commercial information to the government is done with or without assurances of privacy.

Another unanswered question is whether, even though there no longer needs to be an independent showing of competitive harm for commercial information to qualify as "confidential," competitive harm from releasing a piece of information might nonetheless be relevant as circumstantial evidence of whether such information is customarily treated as private. *See PIACB Decisions* 24-73 (June 4, 2024) (raising this possibility and noting that "an entity is more likely to hold information close—i.e., to actually and customarily keep it private—if disclosure of that information could have a detrimental effect on the entity's competitive position").

As a final point, custodians should generally consult with the owner of the information to obtain its views before the record(s) in question are disclosed to a requester and give the owner a chance to object to the release of any such information. *See* Section H, below, on Reverse PIA Actions. Agencies may also wish to consider asking entities that submit commercial or financial information to the agency to designate, at the time of the initial submission, the specific information that the entity believes is confidential in nature. However, the custodian still bears the burden to make the determination, based on independent judgment, as to whether the exemption applies.

5. Records of an Individual Person's Finances

GP § 4-336 protects from disclosure the part of a public record that contains information about the finances of an individual, including assets, income, liabilities, net worth, bank balances, financial history or activities, or credit worthiness. GP § 4-336(b). This exception explicitly does *not* apply to the actual compensation, including any bonus, paid to a public employee. GP § 4-336(a); 83 *Opinions of the Attorney General* 192 (1998). This exemption also does not apply to financial information about business entities, which is governed instead by GP § 4-335.

Although the PIA does not define financial information, the listing in GP § 4-336(b) illustrates the type of financial information that the Legislature intended to protect. *Kirwan v. Diamondback*, 352 Md. 74, 85 (1998) (because the sanction for a parking violation is a fine rather than a debt, records of parking tickets do not fall in the same category as information about "assets, income, liabilities, net worth, bank balances, financial history or activities, or credit worthiness"). Indeed, the "use of multiple, overlapping illustrative terms indicates the legislature's intent that" the exemption "be construed broadly." *Matter of Mayor & City Council of Baltimore City*, 265 Md. App. 318, 339 (2025).

Thus, the Appellate Court has held that the donation of money to a particular cause was financial information protected by the exemption because "it provides information about a person's financial activity . . . provides information that a person had an asset prior to the donation, and to the extent the donation was made by credit card, it gives information about a person's liabilities." *Id.*; *see also* 77 *Opinions of the Attorney General* 188, 189 (1992) (value or description of abandoned property should not be disclosed because it constitutes personal financial information); Opinion No. 85-011 (April 15, 1985) (unpublished) (names of municipal bond holders should not be disclosed because they constitute information about a particular financial interest of an individual); Memorandum from Jack Schwartz to Principal Counsel ("Schwartz Memo") (Aug. 17, 1995) (information that an individual was a lottery winner is considered a record of an individual person's finances and the Lottery Agency was prohibited from disclosing to the press the individual's identity); Letter of Assistant Attorney General Robert A. Zarnoch to Delegate Kevin Kelly (July 18, 2007) (public records related to paper gaming profits of businesses in Allegany County not covered by this exception); 71 *Opinions of the Attorney General* 282, 284 (1986) (county ethics ordinance, under authority of State ethics law, requires disclosure of information ordinarily non-disclosable under GP § 4-336(b)). Where the financial information involves a payment from the State, rather than just financial information collected by the State, more complicated issues may arise. *See* Schwartz Memo.

The exemption is not limited to the actual value of the asset. Even information that reveals the *comparative* value of different assets is exempt from disclosure. *See Immanuel v. Comptroller of the Treasury*, 449 Md. 76, 97-98 (2016) (ranking of assets by value reveals financial information even if absolute values are not disclosed).

The rationale for this exception was explained by the Governor's Information Practices Commission:

> In the performance of their duties, public agencies quite properly collect a significant amount of detailed financial information pertaining to individuals. This data is [*sic*] essential in determining eligibility for State scholarship programs, income maintenance benefits, subsidized housing programs, and many other areas.
>
> While the Commission recognizes that this data must be available to agencies, this does not mean that such information should be available to third parties . . . .
>
> The Commission . . . recommends that an amendment be added to the Public Information Act specifying that personally identifiable data which is financial in character not be disclosed, unless otherwise provided by law. It is important to emphasize the last phrase, "unless otherwise provided by law." Enactment of the above recommendation would have no impact whatsoever on those personally identifiable financial records which the Legislature has determined should be available for public inspection. For example, the salaries of public employees would continue to be available under the Public Information Act; the Commission completely supports the disclosure of this information. The Commission's recommendation, therefore, would only affect financial data in those record systems, . . . which have been inadvertently disclosed.

Governor's Information Practices Commission, Final Report 534-35 (1982).

6. Records Containing Investigatory Procurement Information

GP § 4-337 prohibits the disclosure of any part of a public record that contains procurement information generated by the federal government or another state as a result of an investigation into suspected collusive or anticompetitive activity on the

part of a transportation contractor. The reason for the exemption was explained as follows:

> The Department of Transportation advises that if it receives the result of an investigation into suspected bid rigging activity on the part of a potential contractor, which investigation was conducted by the federal government or another State, that information is subject to disclosure under the Maryland Public Information Law. As a result, these sources have been unwilling to share this information with Maryland officials.
>
> House Bill 228 would provide assurances to these sources that the information provided to Maryland investigators will remain confidential and not be subject to disclosure. Section 10-617 of the State Government Article, to which the bill is drafted, limits access to a part of a public record. This means that the results of the Maryland investigation would be public information, except for those parts which relate to the information gathered from the confidential sources. As a result, the MDOT will have access to a greater range of information when conducting its own investigation into collusive or anticompetitive activity.

Bill Analysis, House Bill 228 (1994).

7. Names and Addresses of Senior Center Enrollees

GP § 4-340(b) makes confidential the name, address, telephone number, and e-mail address of a member or enrollee of a senior citizen activities center. The statute permits access to the information by the person in interest, as well as law enforcement and emergency services personnel. Such information can also be protected under the exception for sociological information if an agency adopts a regulation defining

sociological information. *See* Letter from Assistant Attorney General Kathryn M. Rowe to Senator Nancy J. King (Feb. 9, 2011).

8. Distribution Lists

GP § 4-341 was enacted in 2018 and requires a custodian to deny inspection of "a distribution list and a request to be added to a distribution list" if:

- the distribution list "is used by a governmental entity or an elected official for the sole purpose of: (1) periodically sending news about the official activities of the governmental entity or elected official; or (2) sending informational notices or emergency alerts"; and
- the distribution list or request to be added to the distribution list "identifies a physical address, an e-mail address, or a telephone number of an individual."

For purposes of this section, "governmental entity" is defined as "a unit or an instrumentality of the State or of a political subdivision."

9. Miscellaneous Information

Other public information protected under Part III includes:

- Certain information about the application and commission of a notary public, GP § 4-332;
- Social security numbers provided in applications for marriage licenses or recreational licenses issued under the Fish and Fisheries title of the Natural Resources Article, GP § 4-334;
- Information about security of information systems, GP § 4-338, which was interpreted by the PIA Compliance Board in *PIACB Decisions* 24-60 (May 30, 2024);
- Information about the security of "operational technology" or "critical infrastructure, including any records of a community water system or

community sewerage system," which was added to GP § 4-338 by 2025 legislation; and

- Information that identifies or contains personal information about a person, including a commercial entity, that maintains an alarm or security system, GP § 4-339.

D. Discretionary Exceptions

Under Subtitle 3, Part IV, a custodian *may* deny the right of inspection to certain records or parts of records, but only if disclosure would be contrary to the "public interest." GP § 4-343. These records are:

- Interagency or intra-agency memoranda or letters that would be privileged in litigation, GP § 4-344;
- Testing records for academic, employment, or licensing examinations, GP § 4-345;
- Specific details of a research project that an institution of the State or of a political subdivision is conducting, GP § 4-346;
- Information relating to an invention owned by a State public institution of higher education, GP § 4-347;
- Information relating to a trade secret, confidential commercial information, or confidential financial information owned by the Maryland Technology Development Corporation or by a public senior higher educational institution, GP § 4-348;
- Contents of a real estate appraisal made for a public agency about a pending acquisition (except from the property owner), GP § 4-349;
- Site-specific location of certain plants, animals, or property, GP § 4-350;
- Records of investigation, intelligence information, security procedures, or investigatory files, GP § 4-351;

- Plans and procedures relating to emergency procedures and records relating to buildings, facilities, and infrastructure, the disclosure of which would jeopardize security, facilitate planning of a terrorist attack, or endanger life or physical safety, GP § 4-352;

- Records reflecting rates for certain services and facilities held by the Maryland Port Administration and research concerning the competitive position of the port, GP § 4-353;

- Records of University of Maryland Global Campus concerning the provision of competitive educational services, GP § 4-354; and

- Records of a public institution of higher education that contain personal information about a student, GP § 4-355.

- Records of 911 communications that depict a victim of domestic violence, sexual abuse, or child abuse, GP § 4-356.

A "person in interest"—generally the person who is the subject of the record, GP § 4-101(g)—has a greater right of access to the information contained in investigatory and testing records. GP §§ 4-351(b) and 4-345(b); *see also* Chapter 2, Part A, above.

These exceptions are "'discretionary' not in the sense that the agency may withhold or disclose as it pleases, but in the sense that the agency must make a judgment whether . . . disclosure 'would be contrary to the public interest.'" *Glass v. Anne Arundel County*, 453 Md. 201, 210 (2017). Thus, GP § 4-343 is not an independent PIA exemption itself but rather merely a codification of the principle that, in order to withhold information under one of the discretionary exemptions, the custodian must conclude that disclosure would be contrary to the public interest. *See PIACB Decisions* 24-02, at 6 (Nov. 8, 2023). Whether disclosure would be "contrary to the public interest" under these exceptions is in the custodian's "sound discretion," to be exercised "only after careful consideration is given to the public interest involved." 58 *Opinions of the Attorney General* 563, 566 (1973). In making this determination, the custodian must carefully balance the possible consequences of disclosure against the public interest in favor of disclosure. 64 *Opinions of the Attorney General* 236, 242 (1979). If the custodian denies access under one of the discretionary exemptions, the custodian

must provide "a brief explanation of why the denial is necessary" and "an explanation of why redacting information would not address the reasons for the denial." GP § 4-203(c)(1)(i)2.

1. Inter- and Intra-Agency Memoranda and Letters

GP § 4-344 allows 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." This exemption "to some extent reflects that part of the executive privilege doctrine encompassing letters, memoranda, or similar internal government documents containing confidential opinions, deliberations, advice or recommendations from one governmental employee or official to another for the purpose of assisting the latter official in the decision-making function." *Office of the Governor v. Washington Post Company*, 360 Md. 520, 551 (2000); *see also* 66 *Opinions of the Attorney General* 98, 100-02 (1981) (executive agency budget recommendations requested by and submitted to the Governor in confidence are subject to executive privilege). However, the privilege can apply to a broader range of officials than the constitutionally-based executive privilege, which was discussed in more detail in Section A.4 above.

This privilege, commonly referred to as the deliberative process privilege, arose from the common law, the rules of evidence, and the discovery rules for civil proceedings. *Stromberg Metal Works*, *Inc. v. University of Maryland*, 382 Md. 151, 163 (2004). Although the privilege "gives a measure of protection to the deliberative and mental process of decision-makers," it "differs from other evidentiary privileges because it is for the benefit of the public and not the government officials who claim the privilege." *Maryland Bd. of Physicians v. Geier*, 451 Md. 526, 568-69 (2017) (internal quotations, citations, and modifications omitted) (explaining that "preventing the disclosure of [a professional disciplinary board's] pre-decisional deliberations greatly benefits the public by allowing [that board] to undertake their core public protection function without the constant threat of harassment and intimidation by aggrieved parties.").

An agency that claims this privilege, when challenged, has the initial burden to provide "a relatively detailed analysis" as to why the exemption applies, including "enough detail to make understandable the issues involved in the claim of exemption without presenting so much detail as to compromise the privileged material." *Cranford*

v. Montgomery County, 300 Md. 759, 778 (1984). If the agency meets this initial burden and the court determines that the exemption applies, however, then it is generally presumed that disclosure of the material would be contrary to the public interest. *Id.* at 776. After all, "[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." *Id.* That said, there may be some circumstances where that presumption can be overcome, such as when "the document may relate to agency action taken so long ago that disclosing it no longer makes any difference." *Id.* at 772.

This exception is very close in wording to the FOIA exemption in 5 U.S.C. § 552(b)(5), and the case law developed under that exemption is persuasive in interpreting GP § 4-344. *Stromberg Metal Works*, *Inc.*, 382 Md. at 163-64; 58 *Opinions of the Attorney General* 53, 56 (1973). The FOIA exemption is "intended to preserve the process of agency decision-making from the natural muting of free and frank discussion which would occur if each voice of opinion and recommendation could be heard and questioned by the world outside the agency." 1 O'Reilly, *Federal Information Disclosure* § 15.01 (Summer 2021 ed.); *see also Stromberg Metal Works*, *Inc.*, 382 Md. at 164.

To be an "interagency" or "intra-agency" letter or memorandum, the document must have been "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*, 360 Md. at 552; *see also, e.g.*, *National Inst. of Military Justice v. United States Dep't of Defense,* 512 F.3d 677, 682 (D.C. Cir. 2008) (recognizing the so-called consultant corollary to the deliberative process privilege, under which communications with outside agency consultants can, under some circumstances, qualify for the privilege). Memoranda exchanged with federal agencies or agencies of other states as part of a deliberative process may also fall within this exception. *Gallagher v. Office of the Attorney General*, 141 Md. App. 664, 676 (2001).

This exception does not apply to all agency documents, however. A document such as a telephone bill or a simple listing of persons who have appointments with an official cannot be considered a "letter or memorandum" under the "ordinary meaning" of those terms. *Office of the Governor*, 360 Md. at 552. Nor does the exception apply to all memoranda or letters. For it to apply, the agency must have a reasonable basis

for concluding that disclosure would inhibit creative debate and discussion within or among agencies or would impair the integrity of the agency's decision-making process. *NLRB v. Sears*, 421 U.S. 132, 151 (1975).

Generally, the exception protects pre-decisional, as opposed to post-decisional, materials. *Stromberg Metal Works*, *Inc.*, 382 Md. at 165; *City of Virginia Beach v. Department of Commerce*, 995 F.2d 1247, 1254 (4th Cir. 1993); *Bristol-Myers Co. v. FTC*, 598 F.2d 18, 23 (D.C. Cir. 1978). For example, a State agency's annual report on waste, fraud, and abuse submitted to the Governor is protected as a pre-decisional document, because it presents the Governor with recommendations for correcting these problems that the Governor may approve or disapprove; it does not reflect agency policy or an agency's final opinion. Letter from Mary Ann Saar, Director of Operations in the Office of the Governor, to Anthony Verdecchia, Legislative Auditor (July 17, 1990); *see also United States Fish & Wildlife Serv. v. Sierra Club, Inc.*, 141 S. Ct. 777, 786 (2021). Once an agency's decision has been made, however, the post-decision records that embody the final decision or policy, and all subsequent explanations and rationales, are available for public inspection. Pre-decisional, deliberative materials remain protected, however, even after the final decision is made. *May v. Department of the Air Force*, 777 F.2d 1012, 1014-15 (5th Cir. 1985) (so long as the information in question was created prior to the particular decision that was involved, it can retain its privileged status long after the decision-making process has concluded).

The exception is also meant to cover only the deliberative parts of agency memoranda or letters. Generally, it does not apply to records that are purely objective or factual or to scientific data. *Stromberg Metal Works*, *Inc.*, 382 Md. at 166-67; *EPA v. Mink*, 410 U.S. 73, 87-88 (1973). Factual information may be withheld, however, if it can be used to discover the mental processes of the agency, *Dudman Communications Corp v. Department of the Air Force*, 815 F.2d 1565, 1568-69 (D.C. Cir. 1987); when it reflects "investigative facts underlying and intertwined with opinions and advice," *Office of the Governor*, 360 Md. at 559 (quoting *Hamilton v. Verdow*, 287 Md. 544, 565 (1980)); or when disclosure of the information might deter the agency from seeking valuable information, *Quarles v. Department of the Navy*, 893 F.2d 390, 392-93 (D.C. Cir. 1990). In addition, "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" may also be encompassed by the exemption. *Stromberg Metal Works*, *Inc.,* 382 Md. at

166 (quoting *Hamilton*); *see also Abell Foundation v. Baltimore Dev. Corp.*, 262 Md. App. 657, 707-711 (2024).

Both GP § 4-344 and the FOIA exemption have also been construed to temporarily protect some time-sensitive government-generated confidential commercial information. *Stromberg Metal Works, Inc.*, 382 Md. at 167-70; *Federal Reserve System v. Merrill*, 443 U.S. 340 (1979).

The exemption also covers materials protected under the attorney work-product doctrine. *Caffrey v. Dep't of Liquor Control for Montgomery County*, 370 Md. 272, 298 n.15 (2002). Under the Maryland Rules, attorney work product materials are discoverable only upon showing substantial need. Md. Rule 2-402(d). Because attorney work product is not routinely discoverable, for purposes of the PIA, it is not considered "available by law to a party in litigation with the agency." *Gallagher v. Office of the Attorney General*, 141 Md. App. 664, 673 (2001) (citing *Cranford v. Montgomery County*, 300 Md. 759, 772-73 (1984)); *see also Gallagher*, 141 Md. App. at 676 (adopting the so-called "common-interest" rule, under which "parties with shared interests in actual or pending litigation against a common adversary may share privileged information without waiving their right to assert the privilege"). At the same time, the Appellate Court of Maryland has recently emphasized that an agency must be able to demonstrate that the material it seeks to withhold was created in anticipation of litigation and not in the ordinary course of business. *See Baltimore Action Legal Team v. Office of the State's Attorney of Baltimore City*, 253 Md. App. 360 (2021).

The difficulty of applying the GP § 4-344 exception to the myriad of agency-generated documents is obvious. This Office has historically suggested that a presumption of disclosure should generally prevail, unless the responsible agency official can demonstrate specific reasons why agency decision-making may be compromised if the questioned records are released. In applying the deliberative process privilege, an agency should determine whether disclosure of the requested information "would actually inhibit candor in the decision-making process if made available to the public." *Army Times Publishing Co. v. Department of the Air Force*, 998 F.2d 1067, 1072 (D.C. Cir. 1993). Indeed, the PIA Compliance Board has recently been requiring more specific justifications from custodians for why they withheld documents under this exemption and why disclosure would be contrary to the public interest, sometimes overturning agency decisions to withhold records for failure to

provide adequate justifications. *See, e.g.*, *PIACB Decisions* 26-21 (Feb. 3, 2026); *PIACB Decisions* 26-29 (Oct 29. 2025). The courts have not yet determined, as far as we can tell, whether the Board's approach to these issues is consistent with the Supreme Court of Maryland's recognition in *Cranford* that, once the privilege applies, it is ordinarily presumed that disclosure of the material would be contrary to the public interest. 300 Md. at 776.

Maryland Attorney General opinions on this exception are 58 *Opinions of the Attorney General* 53 (1975) and No. 75-202 (Dec. 1, 1975) (unpublished). Sources on the scope and extent of the FOIA exemption are: 1 Pierce, *Administrative Law Treatise* (5th ed. § 5.11); 1 O'Reilly, *Federal Information Disclosure*, Ch. 15 (Summer 2021 ed.); 168 A.L.R. Fed. 143; and United States Department of Justice, Guide to the Freedom of Information Act (https://www.justice.gov/d9/pages/attachments/2023/03/13/exemption_5_final.pdf).

2. Testing Data

GP § 4-345 allows a custodian to deny access to testing data for licensing, employment or academic examinations. For promotional examinations, however, a person who took the exam is given a right to inspect, but not copy, the examination and its results. *See, e.g.*, *PIACB Decisions* 23-16 (May 3, 2023).

3. Research Projects

The specific details of an ongoing research project conducted by an institution of the State or a political subdivision (*e.g.*, medical research project) need not be disclosed by the custodian. GP § 4-346. Only the name, title, expenditures, and the time when the final project summary will be available must be disclosed. *See* 58 *Opinions of the Attorney General* 53, 59 (1973) for an application of this exception to a consultant's report. *See also* Letter from Assistant Attorney General Catherine M. Shultz to Leon Johnson, Chairman, Governor's Commission on Migratory and Seasonal Labor (Aug. 8, 1985) (census information revealing individual migrants' names may be protected under this provision).

4. Inventions Owned by Higher Education Institutions

Under GP § 4-347, information disclosing or relating to an invention owned in whole or in part by a State public institution of higher education need not be disclosed

for a limited period. The purpose of this exception is to allow the institution an opportunity to evaluate whether to patent or market the invention and pursue economic development and licensing opportunities. However, this exception does not apply if the information has been published or disseminated by the inventors in the course of their academic activities or if it has been disclosed in a published patent. The exception also does not apply if the invention has been licensed by the institution for at least four years, or if four years have elapsed from the date of the written disclosure of the invention to the institution.

5. Certain Proprietary Information Owned by the Maryland Technology Development Corporation or Senior Higher Education Institutions

GP § 4-348 allows protection of trade secret, confidential commercial information, and confidential financial information owned, in whole or in part, by the Maryland Technology Development Corporation or by a public senior higher education institution (Morgan State University, St. Mary's College, and constituent institutions of the University of Maryland) in connection with economic development efforts and certain arrangements with the private sector.

6. Real Estate Appraisals

GP § 4-349 concerns appraisals of real estate contemplated for acquisition by a State or local entity. An appraisal need not be disclosed until title has passed to that entity. However, the contents of the appraisal are available to the owner of the property at any time, unless some other statute would prohibit access.

7. Location of Plants, Animals, or Property

GP § 4-350 allows a custodian to deny inspection of a record that contains the location of an endangered or threatened species of plant or animal, plants and animals in need of conservation, a cave, or an historic property. However, this provision does not authorize the denial of information requested by the property owner or by any entity authorized to take the property through condemnation.

8. Investigatory Records

GP § 4-351 permits the withholding of certain investigatory records and records that contain intelligence information and security procedures. The determinations required of the custodian vary depending on the particular records at issue.

For certain named agencies, the custodian may deny the right of inspection of records of investigations conducted by the agency, intelligence information, or security procedures. The listed agencies are: any sheriff or police department, any county or city attorney, State's Attorney, or the Attorney General's office. GP § 4-351(a)(1). This exception also applies to intelligence information and security procedures of these agencies, as well as of State and local correctional facilities. GP § 4-351(a)(3). Although not listed in GP § 4-351(a)(1), the State Prosecutor is considered in the same category as a State's Attorney. *Office of the State Prosecutor v. Judicial Watch*, *Inc.*, 356 Md. 118, 141 (1999). Many records received or created by law enforcement agencies may fall within this category. *See*, *e.g.*, 92 *Opinions of the Attorney General* 26, 44 (2007) (mug shot considered an investigatory record). Not every record in the possession of the law enforcement agency constitutes a record of an investigation, however. *See*, *e.g.*, 63 *Opinions of the Attorney General* 543, 547 (1978) (arrest logs not investigatory records).

When the records in question are investigatory, and when they come from one of these enumerated agencies, the exception applies without any need for an actual showing that the records were compiled specifically for law enforcement or prosecution purposes. The Supreme Court of Maryland has instead held that the investigatory records of one of the seven enumerated agencies are presumed to be for law enforcement purposes. *Superintendent v. Henschen*, 279 Md. 468, 475 (1977); *see also Blythe v. State*, 161 Md. App. 492, 525 n.6 (2005). Thus, an enumerated agency need not make a particularized showing of a law enforcement purpose to justify the withholding of a record relating to a criminal investigation. *See Office of the State Prosecutor*, 356 Md. at 140. As discussed further below (at page 3-43), however, once an investigation is closed, disclosure is less likely to be "contrary to the public interest," and courts will require a more particularized factual basis for the separate requirement that the denial be in the "public interest." *City of Frederick v. Randall Family*, *LLC*, 154 Md. App. 543, 562-67 (2004); *Prince George's County v. Washington Post Co.*, 149 Md. App. 289, 333 (2003).

On the other hand, the investigatory files of other agencies are exempt from disclosure only if there is a demonstration that the agency compiled them for a law enforcement, judicial, correctional, or prosecution purpose. GP § 4-351(a)(2). What constitutes a "law enforcement" purpose within the meaning of this exemption is broad; the exemption "'covers investigatory files related to enforcement of [a]ll kinds of laws, labor and securities laws as well as criminal laws. This would include files prepared in connection with related Government litigation and adjudicative proceedings.'" *Equitable Tr. Co. v. State, Comm'n on Human Relations*, 42 Md. App. 53, 76 (1979), *rev'd on other grounds*, 287 Md. 80 (1980) (quoting *Wellman Indus., Inc. v. NLRB*, 490 F.2d 427, 430 (4th Cir. 1974)); *see also ACLU v. Leopold*, 223 Md. App. 97, 128 (2015); Letter of Assistant Attorney General Robert A. Zarnoch to Senator Nathaniel J. McFadden and Delegate Stephen J. DeBoy, Sr. (Nov. 8, 2007) (investigations by State Ethics Commission), *but cf.* 71 *Opinions of the Attorney General* 305, 313-14 (1986) (agency's citizen response plan log ordinarily not an investigatory file). An agency, however, has the burden of demonstrating that it meets this criterion. *Fioretti v. State Board of Dental Examiners*, 351 Md. 66, 82 (1998) ("The agency must, in each particular PIA action, demonstrate that it legitimately was in the process of or initiating a specific relevant investigative proceeding in order to come under the aegis of the exemption."). Even if the agency makes such a showing, when the agency asserts that disclosure would "prejudice an investigation," the agency may be required to make a particularized showing of prejudice. *Id.* at 86-91; *but see id.* at 91-95 (Raker, J., concurring) (characterizing latter holding as "dicta"); *see also Bowen v. Davison*, 135 Md. App. 152, 160 (2000). For further discussion of satisfying the agency's burden when withholding investigatory records, *see* Chapter 5.A.3, below.

Records that relate to an administrative or criminal investigation of misconduct by a police officer are now subject to the discretionary exemption for investigatory records. GP § 4-351(a)(4). Until October 1, 2021, when the General Assembly enacted Anton's Law, *see* 2021 Md. Laws, ch. 62, such investigatory records were withheld under the mandatory exemption for personnel records. *See* Part B.4 of this Chapter, above. These records include internal affairs files, hearing records, records related to disciplinary decisions, and records of positive community feedback about officers, but do not include records of "technical infractions," which are considered personnel records that must be withheld under GP § 4-311. *See* Part B.4 of this Chapter, above. In a recent decision, the Appellate Court of Maryland concluded that, under Anton's

Law, "use of force reports" compiled by the Ocean City Police Department had to be analyzed under the investigatory records exemption and are not personnel records. *Mayor of Ocean City v. The Washington Post*, 269 Md. App. 285 (2026).

A custodian must allow inspection of a record related to misconduct by a police officer by certain individuals, namely the United States Attorney, the Attorney General, the State Prosecutor, or the State's Attorney for the jurisdiction relevant to the record. GP § 4-351(c). When a custodian determines that inspection is warranted by anyone other than these individuals, the custodian has the responsibility to redact certain information. The custodian must redact the record to the extent that it reflects medical information of the person in interest, personal contact information of the person in interest or a witness, or information relating to the family of the person in interest. GP § 4-351(d)(1). A custodian may, in his or her discretion, redact witness information other than personal contact information, even if he or she determines that inspection of additional portions of the file would not be contrary to the public interest and are therefore disclosable. GP § 4-351(d)(2). It appears that a custodian also continues to have discretion to redact other information not explicitly described in subsection (d) of the statute if the custodian determines that disclosure would not be in the public interest. *See* GP § 4-351(a); *see also* GP § 4-343. Finally, a custodian is required to notify the person in interest when the record is inspected but may not disclose the identity of the requester. GP § 4-351(e).

In carrying out its statutory function, an agency might have records obtained from investigatory files of another agency. In these circumstances, it is appropriate for the agency to withhold investigatory materials if the agency that provided the information would itself deny access under the investigatory records exemption. 89 *Opinions of the Attorney General* 31, 44 (2004) (addressing records of the Office of the Independent Juvenile Justice Monitor collected in the investigation of Department of Juvenile Services facilities).

Maryland's current investigatory records exception is similar to the investigatory records exemption in FOIA, 5 U.S.C. § 552(b)(7), and the case law developed under that exemption should be of assistance in interpreting GP § 4-351. *Faulk v. State's Attorney for Harford County*, 299 Md. 493, 506-11 (1984). FOIA cases also discuss criteria for determining whether a record was compiled for law enforcement purposes. *See*, *e.g.*, *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153-55 (1990) (information or records not initially obtained for law enforcement purposes may qualify for the

exemption if they were subsequently compiled for such purposes before the government invokes the exemption); *Rosenfeld v. Department of Justice*, 57 F.3d 803, 808 (9th Cir. 1995) (where compiling agency has clear law enforcement mandate, government has easier burden to establish that record it seeks to withhold was compiled for law enforcement purposes; under these circumstances, the government need only establish rational nexus between the enforcement of federal law and the document for which the law enforcement exemption is claimed); *see also* 55 A.L.R. Fed. 583.

A custodian of investigatory records must nonetheless disclose them to any person, unless the custodian determines that disclosure would be "contrary to the public interest" or unless other law would prevent disclosure. *See, e.g.*, 77 *Opinions of the Attorney General* 183, 185 (1992) (custodian of an investigatory record containing the name and address of a crime victim would be required under the PIA to consider the assertions of the public interest made by the requester, as well as the privacy interests of the victim); 64 *Opinions of the Attorney General* 236, 241 (1979) (police department need not disclose police investigative report to the extent that disclosure would be contrary to the public interest). In justifying the denial of a request for an investigatory record under GP § 4-351, the courts have recognized a distinction based on whether an investigation is ongoing or closed. While an investigation is ongoing or the defendant is awaiting trial, the justification for why disclosure would be contrary to the public interest is obvious. As noted above, however, once an investigation is closed, disclosure is less likely to be "contrary to the public interest," and courts will require a more particularized factual basis for a "public interest" denial. *Randall Family, LLC*, 154 Md. App. at 562-67; *Washington Post Co.*, 149 Md. App. at 333.

The rules are somewhat different when the request for an investigatory file is made by the "person in interest." For more information on who qualifies as a "person in interest" under this exemption, see Chapter 2. Under GP § 4-351(b), the "person in interest" is entitled to inspect investigatory records of which he or she is the subject unless production would:

(1) interfere with a valid and proper law enforcement proceeding;

(2) deprive another person of a right to a fair trial or an impartial adjudication;

(3) constitute an unwarranted invasion of personal privacy;

(4) disclose the identity of a confidential source;

(5) disclose an investigative technique or procedure;

(6) prejudice an investigation; or

(7) endanger the life or physical safety of an individual.

See generally Maryland Comm. Against the Gun Ban, 329 Md. at 81-83, 96-97; *Briscoe v. Mayor and City Council of Baltimore*, 100 Md. App. 124, 129-31 (1994); 82 *Opinions of the Attorney General* 111, 113-14 (1997); 81 *Opinions of the Attorney General* 154, 155-56 (1996). Because a person in interest enjoys a favored status, a custodian must point out precisely which of the seven grounds enumerated in GP § 4-351(b) justifies the withholding of an investigatory record and explain precisely why it would do so. *Blythe*, 161 Md. App. at 531.

The number and scope of these factors will often lead to a denial of disclosure by the law enforcement agency, especially where records have been recently obtained and are in active use in investigations. The seven factors listed above may also be considered as part of the more general "public interest" determination in deciding whether to deny access to a person who is not a person in interest. *See National Archives and Records Administration v. Favish*, 541 U.S. 157, 171-75 (2004) (request for death-scene photographs of White House Counsel properly denied under FOIA investigatory records exception in light of privacy interest of the decedent's family). Indeed, under limited circumstances, one of these factors might even justify an agency's refusal to confirm or deny that a record exists—something often referred to as a "Glomar response." *See Wilner v. National Sec. Agency*, 592 F.3d 60, 67-68 (2d Cir. 2009) (a "Glomar response" is a response that neither confirms nor denies the existence of documents responsive to the request, and is permissible where to answer the FOIA inquiry by confirming or denying the existence of responsive documents would "cause harm cognizable under a[] FOIA exception"); *see also Beck v. Department of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993) (personal privacy of drug agent would be needlessly invaded if agency confirmed that record of misconduct investigation existed). Other reasons not listed could also justify nondisclosure to a person who is not a person in interest. 64 *Opinions of the Attorney General* 236, 241 (1979).

The focus of the provision that protects the identity of a confidential source is not on the motivation of the requester or the potential harm to the informant. "Rather, the purpose of the exception is to assist law enforcement officials in gathering information by ensuring reluctant sources that their identities would not be disclosed." *Bowen v. Davison*, 135 Md. App. 152, 164 (2000). The Supreme Court has held that a law enforcement agency is not entitled to a presumption that all sources supplying information to that agency in the course of a criminal investigation are "confidential sources" within the FOIA exception for investigatory records. Rather, only some narrowly defined circumstances provide a basis for inferring confidentiality, as when paid informants expect their information to remain confidential. *Department of Justice v. Landano*, 508 U.S. 165, 174-78 (1993). Thus, there must be an express or implied assurance of confidentiality to the informant. *Bowen*, 135 Md. App. at 164.

Although a "person in interest" is entitled to inspect certain investigatory records that may be denied to third parties, that person's rights under GP § 4-351(b) do not override other exemptions under the PIA that might justify withholding the records. *Office of the Attorney General v. Gallagher*, 359 Md. 341, 347-48 (2000).

9. Records Relating to Public Security

In the aftermath of September 11, 2001, the PIA was amended to prevent use of certain public records to advance terrorist activities. To the extent inspection would jeopardize security of any building, structure, or facility, endanger the life or physical safety of an individual, or facilitate the planning of a terrorist attack, GP § 4-352 allows a custodian to deny inspection of the following public records:

> (1) response procedures or plans prepared to prevent or respond to emergency situations, if disclosure would reveal vulnerability assessments, specific tactics, or specific emergency or security procedures;
>
> (2) records prepared to prevent or respond to emergency situations that include certain information regarding medical or storage facilities or laboratories;
>
> (3) drawings, operational manuals, and other records of airports, ports, mass transit facilities, certain transportation

> infrastructure, emergency response facilities, buildings where hazardous materials are stored, arenas and stadia, water and wastewater treatment systems, and any other building, facility, or structure if disclosure would reveal specified information relating to security; and
>
> (4) records of any other building, facility, or structure if disclosure would reveal life, safety, and support systems, surveillance techniques, alarms or security systems or technologies, operational and evacuation plans or protocols, or personnel deployment.

The protection under this section does not extend to records relating to the inspection by the State or local governments, or citations issued by the State or local governments, of private-sector buildings, structures, or facilities, or records relating to such facilities that have experienced a catastrophic event.

There have not been any reported court decisions applying this exception. *See Police Patrol Security Systems, Inc. v. Prince George's County*, 378 Md. 702 (2003) (holding that what is now GP § 4-352 would apply to a PIA request pending at the time of its enactment, but declining to decide whether the exception would bar disclosure of the records at issue). The PIA Compliance Board has, however, upheld the decision to withhold certain records under this provision, including security camera footage that would reveal the field of view of the cameras, and the public safety operations plan of a football stadium. *PIACB Decisions* 26-13 (Nov. 25, 2025); *PIACB Decisions* 25-64 (May 28, 2025). Note that some infrastructure that could be protected under this exemption now might also be protected under amendments to GP § 4-338, which provides a mandatory exemption for information related to the security of some critical infrastructure, as defined in that provision.

In December 2007, the Office of the Attorney General reviewed agency practice under the exception since 2002 and found that it had rarely been invoked by State or local agencies. *See Report of the Office of the Attorney General on the Public Security Exception of the Public Information Act*, 1, 7 8 (Dec. 2008), https://oag.maryland.gov/resources-info/Documents/pdfs/PIA%20Manual/PIA_public_security_exemption_report.pdf. The Attorney General recommended that the exception be maintained in the statute without amendment. *Id.* at 13.

In preparing the report, the Attorney General's Office noted that some agencies decided not to invoke the public security exception and allowed access to records covered by the exception when the requester agreed to certain conditions. First, one agency reported that it had considered asserting the exception to deny access to such records, but had instead allowed inspection of those records when the requester agreed to forgo requesting a copy. A second agency indicated that, in some circumstances in which it would otherwise assert the exception, it did not do so when the requester agreed to undergo a background check for certain sensitive records.

It might be argued that these approaches are at odds with the PIA. The PIA generally does not allow agencies to condition access to records on disclosure of the identity, affiliation, or purpose of the requester. *See* GP § 4-204. Also, the general rule under the PIA is that the right to inspect a public record also includes the right to a copy of that record. *See* GP § 4-201(a)(2) ("Inspection or copying of a public record may be denied only to the extent provided under [the PIA]"); GP § 4-205(b) ("an applicant who is authorized to inspect a public record may have . . . a copy, printout, or photograph of the public record").

However, the practical compromises devised by these agencies might allow greater access to records than otherwise available, *i.e.*, the custodian might otherwise deny access to the records altogether under GP § 4-352 without some assurances as to the identity and background of the individual requesting the record or with the possibility of copies of the entire record circulating outside the agency.

The statutory language accommodates these approaches. Section 4-352(b) of the General Provisions Article authorizes a custodian to deny inspection of specified types of records related to public security "only to the extent" that inspection threatens public security in certain specified ways, that is, jeopardizes building or facility security, facilitates the planning of terrorist attack, or endangers life. *See, e.g.*, *PIACB Decisions* 23-04, at 7-8 (Nov. 9, 2022) (concluding that the custodian had not satisfied GP § 4-352(b) and thus denial of inspection under the exemption was improper). Among the exceptions in the PIA, this exception is unusual in that it requires the custodian to assess, in light of the particular circumstances, the "extent" to which an adverse outcome will result from inspection. (The other exceptions in the PIA that employ the phrase "only to the extent" are GP § 4-332 (records relating to notary publics) and GP § 4-351 (investigatory records)). In both of those instances a custodian may deny a

"person in interest" access to the specified records "only to the extent" that certain enumerated harms could occur—*e.g.*, disclosure of a confidential source. The custodian's judgment inevitably depends on both the nature of the record and on other information available to the custodian. Although a custodian cannot require a requester to provide any information or assurances beyond the requirements of the PIA, the custodian may reasonably take into account any information that the requester voluntarily provides that could affect that judgment.

For example, there may be records that fall within GP § 4-352 and that the custodian reasonably believes should not be generally available for public inspection in full because they could facilitate a terrorist attack. Under the PIA, a requester is not required to undergo a background check, and a custodian of records may not insist on one. However, a requester might voluntarily undergo a background check to provide the custodian with information from which the custodian may reasonably conclude that the inspection of those records is not likely to be used for that purpose. In this respect, the public security exception is unlike other exceptions in the PIA, which generally do not require the custodian to assess "the extent" to which inspection will result in an adverse outcome and thus generally do not allow for different decisions on access depending on information independent of the record itself that is available to the custodian. Massachusetts has adopted a similar approach in construing a public security exception recently added to its public records law. *See* Massachusetts Supervisor of Public Records, Bulletin No. 04-03 (April 1, 2003) (although a custodian ordinarily may not inquire as to the identity and motive of a requester, a custodian who would otherwise deny access under the public security exception may solicit information from the requester and, if the requester voluntarily provides that information, grant access).

10. Competitive Position of the Port

In order to protect the competitive position of the Port of Baltimore, GP § 4-353 allows a custodian to deny any part of a public record reflecting rates or proposed rates for stevedoring or terminal services or use of facilities that are generated by, received by, or negotiated by the Maryland Port Administration or by a private operating company established by the Port Administration. Proposals aimed at increasing waterborne commerce through Maryland ports as well as research and analysis relating to maritime businesses or vessels compiled to evaluate competitiveness also may be withheld.

11. University of Maryland Global Campus – Competitive Services

GP § 4-354 authorizes the withholding of certain public records relating to University of Maryland Global Campus's competitive position with respect to educational services. It allows withholding part of a public record addressing fees, tuition, charges, and supporting information held by the Global Campus (other than fees published in catalogues and ordinarily charged students); proposals for the provision of educational services other than those generated, received, or negotiated with its students; and research, analysis, or plans relating to the Global Campus's operations or proposed operations. Not protected under this provision are procurement records, records required by law or by the Board of Regents, and certain records related to the collective bargaining process.

12. Public Institutions of Higher Education – Personal Information

GP § 4-355 authorizes a custodian at a public university to withhold a portion of any records that contain "personal information" concerning a student, former student, or applicant if the records are requested for "commercial purposes." In this context, personal information means an address, telephone number, e-mail address and "directory information." The latter phrase is defined in federal law to include the student's name, address, telephone listing, date and place of birth, major field of study, and other information. *See* 20 U.S.C. § 1232g(a)(5). In a departure from the PIA's general willingness to accommodate informal requests, *see* GP § 4-202(b), this exception permits a custodian to "require that a request to inspect a record containing personal information be made in writing and sent by first-class mail." GP § 4-355(b)(1).

13. Records of Certain 911 Communications

GP § 4-356 requires a custodian to take certain steps before disclosing "the part of a 9-1-1 communications record that depicts a victim" of domestic violence, sexual abuse, or child abuse. Specifically, the custodian must:

> (1) within 30 days after receiving the request and if the custodian has contact information for the victim or victim's representative, notify the victim or victim's representative of the request;

> (2) allow 10 days for a response from the victim or victim's representative indicating that inspection may be contrary to the public interest; and
>
> (3) consider any response received under item (2) of this subsection in determining whether to grant or deny the inspection.

GP § 4-356(c). The custodian may redact the relevant information "if a failure to do so would result in a constructive denial of the entire public record," but must allow inspection by the person in interest. GP § 4-356(d), (e). Note that the PIA allows a custodian more time to respond to a request for records that fall under this exemption. *See* GP § 4-203(a)(2) ("The custodian shall grant or deny an application that is the subject of § 4-356 of this title not more than 50 days after receiving the application.").

This exemption does not apply to a record that has been entered into evidence in a court proceeding, and cannot be construed to either "create a right of civil action for a victim or victim's representative" or "affect the discovery or evidentiary rights of a party to a civil or criminal prosecution." GP § 4-356(b).

This provision was added to the PIA in 2019. *See* 2019 Md. Laws, ch. 297. As introduced, the legislation required custodians to deny inspection of certain information, including the identity of victims of sexual assault, domestic violence, and child abuse. *See* S.B. 5, 2019 Leg., Reg. Sess. (First Reader). The bill was amended to its present form before it passed over to the House, where the bill's sponsor explained that the legislation "g[ave] some rights to victims of sexual assault, domestic violence, and child abuse, and g[ave] them a say in the matter as to what is released under the Maryland Public Information Act." *Hearing on S.B. 5 Before the House Comm. on Health & Gov't Operations*, 2019 Leg., Reg. Sess. (April 2, 2019) (statement of Sen. Cheryl Kagan). To the extent that certain victim-related information contained in 911 communications was already subject to an existing exemption in the PIA, *see* 71 *Opinions of the Attorney General* 288 (1986), the legislation as amended may simply have been intended to place certain notice obligations upon custodians who are charged with exercising discretion as to whether such information should be released, rather than to serve as a standalone exemption of its own.

E. Special Court Orders — Preventing Disclosure Where No Exception Applies

A record required to be disclosed under the PIA may be withheld temporarily if the official custodian determines that disclosure would "cause substantial injury to the public interest." GP § 4-358. Within 10 days after this denial, the official custodian must file an action in the appropriate circuit court seeking an order to permit the continued denial of access. The person seeking disclosure is entitled to notice of the action and has the right to appear and be heard before the circuit court. GP § 4-358(b). An official custodian is liable for actual damages for failure to petition the court for an order to continue a denial of access under this provision. GP § 4-362(d).

After a hearing, the court must make an independent finding that "inspection of the public record would cause substantial injury to the public interest." Although GP § 4-358 requires a custodian to show that disclosure would cause substantial injury to the public interest, it "does not demand absolute certainty that the public interest would be harmed by disclosure." *Glenn v. Maryland Dep't of Health & Mental Hygiene*, 446 Md. 378, 387 (2016). Instead, the custodian must present sufficient evidence of such harm to rebut the PIA's presumption in favor of disclosure. *Id.* at 385-387. To make that determination, the circuit court will likely balance the interest supporting continued withholding of the record against the competing public interest in disclosure. *See* 97 *Opinions of the Attorney General* 95, 102-13 (2012) (describing balancing test that courts would likely apply when evaluating whether to allow the withholding of the private email addresses of constituents who correspond with county commissioners).

For example, the Supreme Court of Maryland in *Glenn* affirmed the decision of the Circuit Court for Baltimore City to permit the continued withholding, by the State Department of Health and Mental Hygiene, of the names of the administrators, owners, and medical directors of private surgical abortion facilities when releasing copies of licensure applications from such facilities. 446 Md. at 395; *see also id.* at 387 (explaining that the threat to the public interest in releasing such information "is more than speculative. It is well-known that there is widespread hostility in certain quarters towards abortion and abortion providers." (internal quotations omitted)).

In another case before the Circuit Court for Baltimore City, the court concluded that potential competitive injury to the Port of Baltimore and BWI Airport justified

withholding an agreement between the State and the government of Kuwait regarding the use of State facilities in the post-war reconstruction of Kuwait. *Evans v. Lemmon*, No. 91162022 (Cir. Ct. Balto. City July 31, 1991). By contrast, the Appellate Court of Maryland concluded that Baltimore City had no basis under what is now GP § 4-358 to withhold documents concerning the construction of the Patapsco Waste Water Treatment Plant. The Court held that the tactical disadvantage that the City might suffer in arbitration proceedings with the construction company was insufficient to establish the substantial injury to the public interest needed to protect records under this section. *Mayor and City Council of Baltimore v. Burke*, 67 Md. App. 147, 154-55 (1986). Similarly, the Circuit Court for Carroll County concluded that the disclosure of constituent email lists maintained by the county commissioners would not "cause substantial injury to the public interest." The court acknowledged the potential ill effects of releasing the email addresses, but concluded that the media's interest in knowing who government officials are communicating with on a routine basis outweighed them. *Howard v. Alexanderson*, Nos. C-13-063914, C-13-063484 (Cir. Ct. Carroll Cty. Jan. 16, 2014).

Agencies should remember that, by seeking the GP § 4-358 remedy, they are foreclosed from an administrative determination that the records sought are subject to a statutory exception (although the agency might not be barred from simultaneously seeking a declaratory judgment that an exception applies). In *Burke*, the Baltimore City Department of Public Works lost its right to continue to assert the inter/intra-agency exemption when it sought relief from disclosure under the section. *Burke*, 67 Md. App. at 152. Agencies should also keep in mind that proceeding under GP § 4-358 might not insulate them from claims for attorneys' fees in the event that the requester files a counterclaim under GP § 4-362 challenging the non-disclosure. Therefore, this remedy should be viewed as an extraordinary one, requiring careful consultation with counsel before a decision is made to bring a § 4-358 action.

F. Inspection of "Any Part" of the Record that Is Not Exempt

The fact that some portions of a particular record may be exempt from disclosure does not mean that the entire record may be withheld. *Blythe v. State*, 161 Md. App. 492, 519. Indeed, a custodian who denies a request for inspection must, among other requirements, "allow inspection of *any part* of the record that is subject to inspection." GP § 4-203(c)(1)(ii) (emphasis added). In other words, if a record contains exempt and non-exempt material, the custodian must permit inspection of the non-exempt portion

of a record, typically by redacting the exempt material. GP § 4-203(c)(1)(ii). And a custodian who denies a request for inspection under one of the discretionary exemptions above must provide a written "explanation of why redacting information would not address the reasons for the denial." GP § 4-203(c)(1)(i)2.

In determining whether to disclose part of a record to which an exemption applies, the custodian should assess whether the contemplated disclosure "violate[s] the substance of the exemption." *Maryland State Police v. NAACP*, 430 Md. 179, 195 (2013) (a personnel record with identifying information redacted was disclosable because it no longer constituted a "record of an individual" under the exemption for personnel records in what is now GP § 4-311).

Relevant FOIA cases may be helpful in this inquiry to the extent they establish that an agency may deny inspection of an entire document if exempt portions are inextricably intertwined with nonexempt portions such that excision of the exempt information would impose significant costs on the agency and the final product would contain very little information. *See Nadler v. Department of Justice*, 955 F.2d 1479, 1490-91 (11th Cir. 1992) (factual material may be withheld when it is impossible to segregate it in a meaningful way from deliberative information), *abrogated on other grounds by U.S. Dep't of Justice v. Landano,* 508 U.S. 165 (1993); *see also Newfeld v. IRS*, 646 F.2d 661 (D.C. Cir. 1981); *Wilkinson v. FBI*, 633 F. Supp. 336, 350 (C.D. Cal. 1986) (putting the burden on the agency to make that showing). However, the persuasive value of these federal cases is unclear in light of recent amendments to GP § 4-203 that deleted the provision that required agencies to redact exempt material only if it was "reasonably severable" from the rest of the record and in light of the fact that the PIA, as amended, now requires custodians to "allow inspection of *any part* of the record that is subject to inspection." GP § 4-203(c)(1)(ii) (emphasis added).

G. Relationship of Exceptions to Discovery

Demands on custodians for documents for civil or criminal trials raise questions about the relationship of judicial discovery rules to the exceptions set forth in Subtitle 3, Parts II, III, and IV. *See* Edward A. Tomlinson, *The Use of the Freedom of Information Act for Discovery Purposes*, 43 Md. L. Rev. 119 (1984). For instance, must an agency resist discovery where the information sought is protected from disclosure

by a mandatory or discretionary exception? The limited guidance in the case law is not entirely clear, but a custodian should proceed with caution.

The federal courts have generally held that the PIA does *not* create evidentiary privileges in discovery. In *Boyd v. Gullett*, 64 F.R.D. 169 (D. Md. 1974), for example, the court held that the exceptions in the PIA do not create privileges for purposes of the federal discovery rules. In reaching this decision, the court relied on analogous cases under FOIA:

> The intention of Congress and presumably the Maryland Legislature was to increase public access to government information. Both acts provide that "any person" has the right to non-exempt materials, and the exemptions are merely reasonable limitations on this broad right of "any person" to request information. It would not be reasonable to view such acts as creating new privileges where privileges never existed. Indeed, such an interpretation would result in a restriction of public access to government information. Such a paradoxical result could not have been intended by the Maryland Legislature by its passage of [the PIA], and the Court is satisfied that the exemptions in the statute do not create privileges for the purposes of discovery.

64 F.R.D. at 177-78; *see also Mezu v. Morgan State Univ.*, 269 F.R.D. 565, 576 (D. Md. 2010) (finding that the PIA is not a privilege that bars discovery of otherwise-discoverable documents).

However, although the PIA does not create discovery privileges, Maryland courts have sometimes held that the fact that a record is exempt from disclosure under the Act is relevant to the record's discoverability. In *Fields v. State*, 432 Md. 650 (2013), for example, a defendant in a criminal case subpoenaed personnel records of a police officer. The police department moved to quash the subpoena on the ground that the records were made confidential by the PIA. The Supreme Court of Maryland treated the personnel records as "confidential material" and outlined a procedure for a trial court to determine the discoverability of such material. Under that procedure—which the Court referred to as the "*Zaal* test," after *Zaal v. State*, 326 Md. 54 (1992)—the Court balanced competing interests: those of the party holding the protection of confidentiality and those of the defendant who has the right to confront the witness

against him or her. *Fields*, 432 Md. at 667. The ultimate determination of whether to allow discovery of information that is exempt under the PIA is whether disclosing the material "would reveal or lead to admissible evidence." *Id.* at 668.

Although a custodian, with advice of counsel, should make records available pursuant to appropriate civil discovery requests, care should be taken to protect records affecting individual privacy interests from broader disclosure than necessary by seeking, or inviting those who are affected to seek, protective orders limiting further disclosure of the record to the parties in the litigation. Often a protective order can be structured in such a manner that relevant information is provided but other information is protected from discovery thereby maximizing the protection of the PIA. *See Fields*, 432 Md. at 672 (describing different options for protective orders). Note that the General Assembly has explicitly made certain records not discoverable in civil or criminal trials. *See, e.g.*, § 14-410 of the Health Occupations Article.

Just as the PIA does not narrow the scope of discovery, neither does the PIA expand it. A record that is open to public inspection under the PIA might nonetheless be undiscoverable or inadmissible at trial under the relevant judicial rules. *See*, *e.g.*, *Smith v. Delaware N. Companies*, 449 Md. 371, 396 (2016) ("That a document is public does not remove it from the purview of the rules of evidence, or a statute explicitly governing its admissibility." (internal quotations omitted)).

Similarly, in *Faulk v. State's Attorney for Harford County*, 299 Md. 493 (1984), the Supreme Court of Maryland held that the PIA does not expand the right of discovery available to a criminal defendant under what is now Maryland Rule 4-263; *see also Office of Attorney General v. Gallagher*, 359 Md. 341, 347-48 (2000). The *Faulk* Court adopted the reasoning of *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214 (1978), in which the Supreme Court stated that FOIA was not intended to function as a private discovery tool. *See* 299 Md. at 508-10. Relatedly, due diligence does not require a criminal defendant to file a PIA request to obtain information that the State is required to disclose under *Brady v. Maryland*, 373 U.S. 83 (1963), and Maryland's criminal discovery rules. *Smith v. State*, 233 Md. App. 372, 422 (2017). When a prosecutor provides a defendant with discovery in compliance with the court rules on discovery, the prosecutor is not responding to a PIA request. Accordingly, there is no basis under the PIA for charging a fee for mandatory discovery. 93 *Opinions of the Attorney General* 138 (2008). To the extent that a prosecutor provides services or

materials not required by the discovery rules in response to a defense request, there may be a justification under the PIA to charge fees. *Id.*

The PIA is sometimes used by those involved in administrative proceedings where formal discovery may or may not be available. Because the PIA establishes a statutory right to public records, a person's right to access such records may not be conditioned upon the person's voluntary participation in a deposition in connection with an administrative proceeding unless some provision of the PIA itself justifies withholding the requested record. *See*, *e.g.*, *Hammen v. Baltimore County Police Dep't*, 373 Md. 440, 453-54 (2003).

H. Reverse PIA Actions

A special feature of the exceptions in Parts II and III is that they impose an obligation on the custodian to deny inspection of the listed records or information: "Unless otherwise provided by law, a custodian *shall* deny inspection" of the record or part of the record. GP §§ 4-304, 4-328 (emphasis added). If the custodian decides to release information or records that might be covered by Parts II and III, the question arises whether the subject of a record or the person submitting a record may bring suit to prevent such a disclosure. In *Chrysler Corp. v. Brown*, 441 U.S. 281, 290-94 (1979), the Supreme Court decided that FOIA does not afford a private right of action to prohibit disclosure of information covered by 5 U.S.C. § 552(b). Rather, a reverse FOIA action is generally brought under the federal Administrative Procedures Act, with the claim that the agency's decision to release the document was "arbitrary and capricious."

The exceptions in Parts II and III differ from FOIA in this significant respect: the PIA prohibits the disclosure of the records, whereas FOIA allows disclosure even if an exemption could be asserted. Consequently, a "reverse PIA action" (one to prevent rather than allow disclosure) has been authorized in Maryland despite the *Chrysler* case. *See CSX Transp., Inc. v. Maryland Dep't of the Envir.*, No. 24-C-14-004378 (Cir. Ct. Balt. City Aug. 14, 2015) (recognizing "reverse PIA action" and upholding agency decision to release records); *Norfolk Southern Ry. Co. v. Maryland Dep't of the Envir.*, No. 24-C-14-004367 (Cir. Ct. Balt. City Aug. 14, 2015) (same). If a custodian proposes to release a document arguably covered under these exceptions, the custodian should usually contact the person potentially affected by release so that the person may advise the custodian of his or her views and potentially seek judicial intervention to protect the record from disclosure. This advice applies not just when a commercial interest

might object to the release of a record under the confidential commercial information exemption (though that is the most common situation where the issue arises) but also in matters that involve personal privacy. In the event of judicial intervention, the custodian or the agency should produce an administrative record that reveals why it proposes to release the document if that document may arguably be covered under the exceptions in Parts II and III. *Cf. Reliance Elec. v. Consumer Product Comm'n*, 924 F.2d 274, 277-78 (D.C. Cir. 1991).

It is also conceivable that a person who has provided information or records to an agency could pursue a "reverse PIA" action on a theory that disclosure of the information or records would violate a constitutional right. *Doe v. Reed*, 561 U.S. 186, 198-202 (2010) (holding that First Amendment does not bar disclosure under public records act of identities of election petition signers, but allowing plaintiffs to pursue argument that disclosure in a particular case may be unconstitutional).