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STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 26-50
March 26, 2026
Harford County Board of Education, Custodian
Neil Thompson, Complainant

In July 2025, complainant Neil Thompson sent a Public Information Act (“PIA”) request to the Harford County Board of Education (“HCBOE”) seeking records related to the HCBOE’s decision to ban the book *Flamer* from all Harford County Public Schools libraries. In response, the HCBOE provided a copy of its policy for selecting school library materials, but denied inspection of any remaining responsive records, citing § 4-301¹ (attorney-client privilege) and § 4-344 (deliberative process privilege) of the PIA. This complaint focuses narrowly on the HCBOE’s continued denial of the voting record regarding the decision to remove the book from school libraries, which the complainant alleges is improper under the PIA. In response, the HCBOE, through counsel, denies that the HCBOE has violated the PIA. After consideration of the parties’ submissions, we find that the HCBOE improperly denied inspection of the requested voting record. We explain in more detail below.

Background

In November 2024, Harford County Public Schools (“HCPS”) received a request from a parent that it remove the book *Flamer* from HCPS libraries. *See Together We Will et al. v. Harford County Bd. of Educ.*, MSBE Op. No. 25-45, at 2 (2025).² Following its process for consideration of such requests, a “Reconsideration Sub-committee” recommended that the book be retained in high school libraries and combined middle and high school libraries. *Id.* The local Superintendent of School reviewed the sub-committee’s report and ultimately decided to retain the book in secondary school libraries. *Id.* That decision was appealed to the HCBOE, which “convene[d] a panel of local board members to deliberate the appeal.” *Id.* at 3. In July 2025, the HCBOE advised the appellant and Superintendent that it had “convened on June 26, 2025, to consider the submissions filed by the parties” and decided to order that *Flamer* be removed from all HCPS libraries.

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

² The Maryland State Board of Education’s opinion can be found here: https://marylandpublicschools.org/stateboard/documents/legalopinions/2025/11/togetherwewill_et.al.op.no.25-45-a.pdf (last visited Mar. 23, 2026).

Id. That decision was made at a meeting closed to the public. *Id.* at 6. Ultimately, the HCBOE’s decision was appealed to the Maryland State Board of Education (“MSBE”), which overturned the HCBOE and reinstated the Superintendent’s decision to keep *Flamer* in HCPS secondary school libraries.³ *Id.* at 9.

On July 18, 2025, presumably after learning of the HCBOE’s decision to reverse the local Superintendent, the complainant sent a PIA request to the HCBOE asking for “all documents relating to HCPS BOE deliberations, discussion, and voting record for the June 26, 2025 appeal hearing regarding the library book *Flamer* by Mike Curato.” After counsel for the HCBOE acknowledged receipt, on July 21, 2025, the complainant asked that “emails be part of the MPIA documents.” On September 2, 2025, the complainant sent another email to counsel for the HCBOE, noting that forty-six days had passed since he sent his PIA request and asking that the HCBOE respond. That same day, counsel for the HCBOE sent the complainant a letter stating that he was providing “a copy of the Board Policy – “Evaluation and Selection of School Library Materials.” Counsel noted that the complainant had received other “documents in connection with the Book” in a response sent by counsel for HCPS, including the “decision letter dated July 1, 2025.”

In his response letter, counsel for the HCBOE denied inspection of his “discussions, notes and documents” as subject to the attorney-client privilege and thus exempt from disclosure under § 4-301 of the PIA. Counsel advised that the same records were also subject to the deliberative process privilege and exempt under § 4-344. Describing the records as “internal materials prepared by counsel to inform the Board Panel concerning the appeal and the status of the facts and law in connection with the appeal being considered by the Board Panel,” counsel for the HCBOE took the position that disclosure would be contrary to the public interest because it would “discourage the Board’s receipt of full and frank advice in connection with appeals.” In addition, counsel claimed that “the appeal process is a quasi-judicial process and the disclosures of the identities of the members of the Board Panel would impact the attorney-client privileges and the deliberation process.”

The complainant disagreed with the HCBOE’s response to his PIA request so, on September 8, 2025, he contacted the Public Access Ombudsman to request dispute resolution assistance.⁴ On December 12, 2025, the Ombudsman issued a final determination stating that the dispute was partially resolved, with the complainant

³ The HCBOE has filed an appeal of MSBE’s decision, which is pending in the Circuit Court for Harford County. *See In the Matter of Harford County Bd. of Educ.*, Case No. C-12-CV-25-001061 (Cir. Ct. Harford County).

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

continuing to dispute the HCBOE's denial of the review panel's voting record. The complainant then filed this complaint with our Board, which, as noted above, focuses solely on the voting record. According to the complaint, the HCBOE is of the position that the complainant already has the voting record, as it was provided as part of MSBE's decision to reverse the book ban. But, the complainant argues, the records "only showed that [the vote] was a 5-3-1 vote, not how each member voted." The complainant contends that it "remains the [HCBOE's] responsibility to produce the full voting records."

In response to the complaint, counsel for the HCBOE first advises that the HCBOE review panel's June 26, 2025, closed meeting was the subject of a complaint to the State Open Meetings Act Compliance Board ("OMCB"). See 19 *OMCB Opinions* 266 (2025).⁵ The OMCB found that, because the HCBOE review panel was performing a quasi-judicial function, the requirements of Maryland's Open Meetings Act ("OMA") did not apply.⁶ *Id.* at 270. Counsel for the HCBOE maintains that "[r]ecords related to the deliberations of the [HCBOE review panel] and discussion are privileged and, accordingly, are not required to be produced." Counsel states that the "record would establish that the eight (8) members of the [review panel] met with [counsel] . . . to review a complaint involving [*Flamer*] on June 26, 2025, and to deliberate and render a decision."

Thus, counsel for the HCBOE contends that the attorney-client privilege and § 4-301(a)(1) of the PIA apply to the records the complainant requested. Counsel states that he "responded to questions for the Panel Members with regard to the facts and law applicable to the appeal," and that "the presence of counsel . . . was integral to the hearing." Turning to the complainant's request for "the identify of the members of the Board Panel," counsel argues that the complainant already possesses "the information concerning the Board's voting on the decision in the matter, as it was set out in the decision letter dated July 1, 2025." Counsel argues that the complainant's request "goes beyond the mere review of the decision, it seeks personal information concerning the Board Panel." Counsel further argues that disclosure of this information "would have a chilling effect on the Panelists" and "may either reduce the participation of Board Members in appeal cases or represent an obstacle to the decision making because of a disclosure as to the votes of individual members." Counsel for the HCBOE suggests that we "analyze this as akin to jury trial," to the extent that "[j]urors shouldn't discuss the specific details of what occurred during deliberation by the jury." In addition, counsel states that "[s]ome materials also fell under the deliberative process privilege" and are therefore exempt under § 4-344.

⁵ Opinions of the Open Meetings Act Compliance Board can be found here: <https://oag.maryland.gov/resources-info/Pages/OMCB-Opinions-Archive.aspx> (last visited Mar. 23, 2026).

⁶ The OMCB declined to opine as to whether the HCBOE may have violated § 4-107(d) of the Education Article, which provides that "[a]ll final actions of a county board [of education] shall be taken at a public meeting." 19 *OMCB Opinions* 266, 270 (2025).

In reply, the complainant states that, in seeking the voting record, he is “requesting that the local board follow its own policies and procedures.” Alleging that the HCBOE “did not follow its own procedure to take the final action publicly,” the complainant takes issue with whether a “decision about a book” should be subject to confidentiality and privilege. The complainant notes that he does not seek “the parent’s name who challenged the book,” but rather advocates for transparency as to the actions of the HCBOE.

Analysis

We are authorized to review and resolve complaints that allege certain violations of the PIA’s provisions, including that a custodian improperly denied inspection of public records. § 4-1A-04(a)(1)(i). When we receive a complaint, we must forward it to the relevant custodian and ask for a written response. § 4-1A-06(a). If, after review of the submissions, we find that the alleged violation occurred, we must issue a written decision and order a remedy as provided in the PIA. § 4-1A-04(a)(2) and (3). When we find that a custodian has wrongfully denied inspection of a public record, we must “order the custodian to . . . produce the record for inspection.” § 4-1A-04(a)(3)(i).

Maryland’s General Assembly intended that the PIA provide “access to information about the affairs of government and the official acts of public officials and employees.” § 4-103(a). As our courts have repeatedly explained, the PIA favors disclosure of public records. *See, e.g., Kirwan v. The Diamondback*, 352 Md. 74, 80 (1998); *see also* § 4-103(b) (providing that the PIA be “construed in favor of allowing inspection of a public record”). Thus, custodians must allow inspection and copying of public records, unless an exemption from disclosure applies. §§ 4-201(a), 4-205(b). The PIA contains both mandatory and discretionary disclosure exemptions. If an exemption is mandatory, a custodian generally may not allow inspection of the relevant records or information. *See, e.g.,* § 4-311 (individuals’ personnel records); § 4-336 (individuals’ financial information). When the applicable exemption is discretionary, a custodian may deny inspection only if inspection would be “contrary to the public interest.” § 4-343; *see, e.g.,* § 4-351 (certain law enforcement records). A custodian has the burden of showing that an exemption was appropriately applied. *See Lamson v. Montgomery County*, 460 Md. 349, 367 (2018). In close cases, “the party requesting information under the [PIA] is favored.” *Immanuel v. Comptroller*, 449 Md. 76, 88 (2016).

Section 4-301(a)(1) of the PIA directs a custodian to “deny inspection of a public record or any part of a public record if . . . by law, the public record is privileged or confidential.” This mandatory exemption encompasses the attorney-client privilege. *See Abell Found. v. Baltimore Dev. Corp.*, 262 Md. App. 657, 711-12 (2024). The second exemption at issue here, § 4-344, is discretionary. Under § 4-344, a custodian may deny inspection of “any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the unit,” if inspection would be “contrary to the public interest.” § 4-343. The deliberative process privilege, which

ordinarily covers only pre-decisional, deliberative material, falls within § 4-344. *See Stromberg Metal Works, Inc. v. Univ. of Maryland*, 382 Md. 151, 165 (2004); *see also Admin. Office of the Courts v. Abell Found.*, 480 Md. 63, 92 (2022) (observing that § 4-344 is a “conditional exemption” that may be invoked only if the custodian believes that “the requested inspection would be contrary to the public interest”).

Turning to the disputed voting record at issue here, we first note that the HCBOE has not claimed that there is no record showing how the individual HCBOE review panel members voted. Instead, the HCBOE takes the position that that record is subject to both the attorney-client and deliberative process privileges, under §§ 4-301(a)(1) and 4-344 of the PIA, respectively. We begin with the attorney-client privilege, which “bars compelled disclosure, without the client’s consent, of attorney-client communications made in confidence between the attorney and client.” *Abell Found.*, 262 Md. App. at 712 (citation omitted). To qualify as privileged, the communication must “relate to professional advice and to the subject-matter about which such advice is sought.” *Harrison v. State*, 276 Md. 122, 132 (1975); *see also, Maxima Corp. v. 6933 Arlington Dev. Ltd. P’ship*, 100 Md. App. 441, 457 (1994) (identity of client, fees, and “general purpose of the work performed” are generally not subject to the attorney-client privilege).

While it might be that some records responsive to the complainant’s PIA request fall within the attorney-client privilege, we do not see how a voting record does. At this point, the complainant disputes only the denial of that voting record, and does not seek any other records concerning the HCBOE review panel’s book ban decision. Counsel for the HCBOE has not explained why the review panel members’ final votes constitute confidential attorney-client communications relating to professional advice, other than to suggest broadly that counsel’s presence at the June 26, 2025, meeting offers some sort of protection. We do not think the privilege reaches that far. Rather, the final votes represent the actions taken by individual panel members—some of whom were presumably elected by voters⁷—on a matter of public concern. While the actions may have been informed by advice from counsel, they do not reveal or represent the substance of counsel’s communications. We thus find that the HCBOE improperly applied § 4-301(a)(1) to deny inspection of the HCBOE review panel voting record.

Moving next to § 4-344, we find that the HCBOE improperly applied that exemption as well. The deliberative process privilege may apply to records that reflect “advisory opinions, recommendations and deliberations comprising parts of a process by which governmental decisions and policies are formulated.” *Stromberg*, 382 Md. at 165 (quoting *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1973)). The privilege is intended to encourage government officials and employees to “give completely candid advice by

⁷ The Harford County Board of Education comprises ten members, some of whom are appointed and some of whom are elected. *See* Harford County Public Schools, Meet Our Board Members, <https://www.hcps.org/boe/boardmembers.aspx> (last visited Mar. 23, 2026).

reducing the risk that they will be subject to public disclosure, criticism and reprisals, and to enable decisionmakers to think out loud uninhibited by the danger that tentative but rejected thoughts will become the subject of public discussion.” *Abell Found.*, 480 Md. at 92 (cleaned up). We fail to see how § 4-344 and the deliberative process privilege applies to the HBCOE review panel members’ final votes. Those votes are not pre-decisional—rather, they represent the final decision itself.⁸ Nor are those votes deliberative. The final votes do not constitute “candid advice” or “advisory opinions.” Though the votes might have been influenced or informed by the HCBOE’s deliberations, the votes by themselves do not reveal the substance of those deliberations. *Cf. Stromberg*, 382 Md. at 167 (finding that the deliberative process privilege did not apply to “one aggregate number that allegedly incorporates but does not identify or segregate . . . consultive views”).

Having found that the HCBOE has failed to justify the application of §§ 4-301(a)(1) and 4-344 to deny inspection of the requested voting record, we direct the HCBOE to produce the voting record to the complainant. § 4-1A-04(a)(3)(i).

Conclusion

After considering the submissions and arguments of the parties, we find that the HCBOE has not demonstrated that the requested voting record is subject to the attorney-client or deliberative process privileges. The HCBOE thus improperly applied §§ 4-301(a)(1) and 4-344 to deny inspection of that record. We therefore direct the HCBOE to produce the record of the individual HCBOE panel review members’ votes to the complainant within thirty days of this decision and order.

Public Information Act Compliance Board

Sareesh Rawat, Chair

⁸ We note, as the complainant does, that the HCBOE *Rules of Procedure in Appeals and Hearings* require that the “[f]inal action of the Board shall be taken publicly at a Board meeting following the hearing.” Harford County Public Schools, *Rules of Procedure in Appeals and Hearings*, at 14 (Oct. 21, 2024), <https://www.hcps.org/webfiles/WebFilesHandler.ashx?id=6869>. These rules apply to “formal appeals before the Harford County Board of Education when exercising its quasi-judicial authority” in matters that arise under certain sections of the Education Article, including § 4-205(c)(3), *id.* at 1, which permits appeals of local Superintendents’ decisions. Counsel for HCBOE argues that disclosing how each HCBOE review panel member voted may expose those members to “social media and its potential for unjustified criticism and personal attack.” But, as noted above, more than half of the HCBOE are elected officials. It seems a foundational principle of democracy that citizens are entitled to know how their elected officials vote on important issues. At the very least, the rules in place to govern superintendent appeals appear to recognize this. The rules are also consistent with § 4-107(d) of the Education Article, referenced *supra*, note 6, which requires that final actions of a county board of education “be taken at a public meeting.”

Samuel G. Encarnacion
Debra Lynn Gardner
Nivek M. Johnson