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**STATE OF MARYLAND**  
**PUBLIC INFORMATION ACT COMPLIANCE BOARD**

**PIACB 23-11**

**April 4, 2023**

**Maryland Institute for Emergency Medical Services Systems**  
**Lynn Weisberg & Jamie Davidson Baumann, Complainants**

The complainants, Lynn Weisberg and Jamie Davidson Baumann, requested from the Maryland Institute for Emergency Medical Services Systems (“MIEMSS”) any records of investigation and/or reports related to the Baltimore City Fire Department’s (“BCFD”) response to an incident that occurred in October of 2020. MIEMSS denied the complainants’ request in its entirety. After an unsuccessful attempt to resolve their dispute through the Office of the Public Access Ombudsman, the complainants now challenge MIEMSS’s denial of access to these records. Based on the submissions and information before us, we conclude that MIEMSS did not violate the PIA when it denied inspection of the records responsive to the complainants’ PIA request. We explain further below.

**Background**

In late October of 2020, a man named Jeremy Davidson suffered a medical emergency in his apartment building in Baltimore City. Baltimore City Police (“BPD”) officers, along with BCFD firefighters and emergency medical technicians (“EMT”) responded to the scene. Tragically, Mr. Davidson died that same night. Seeking information about the circumstances surrounding his death, Mr. Davidson’s family contacted the various first responder agencies that responded to the emergency. Then, in November of 2022, the complainants sent a Public Information Act (“PIA”) request to MIEMSS, the “State administrative agency responsible for the coordination of all emergency medical services.” Md. Code Ann., Educ. § 13-504(a). In that request, the complainants explained that a MIEMSS employee had earlier advised that the EMTs who responded to the incident had not submitted a report and that, therefore, MIEMSS intended to open its own investigation. The PIA request sought records related to that investigation and/or any reports stemming from it.

MIEMSS denied the complainants’ PIA request. In its denial letter, MIEMSS explained that in “review[ing] and ensur[ing] appropriate [emergency medical services, (“EMS”)] care and conduct by licensed clinicians” in Maryland, MIEMSS operates as a “medical review committee.” MIEMSS explained further that the records of a medical review committee are confidential under Maryland law. The letter noted that “[c]ertain investigative information may be available only if an investigation results in formal

disciplinary action against an EMS clinician.” Ultimately, MIEMSS cited both § 4-301(a)(1)<sup>1</sup> (denials for records that are “by law . . . privileged or confidential) and § 4-329(b) (denials of “medical or psychological information about an individual” contained in a public record) as reasons why it denied the complainants’ PIA request.

Disagreeing with MIEMSS’s denial of their PIA request, the complainants contacted the Public Access Ombudsman. On December 21, 2022, the Ombudsman issued a final determination stating that the dispute was not resolved. *See* § 4-1B-04(b) and (c). In their complaint to this Board, the complainants specify that they are seeking records and/or reports of MIEMSS’s investigations into: (1) the BCFD’s response to the scene in October 2020; (2) the “inaction, mistreatment, and irresponsibility toward Jeremy Davidson and/or his death that evening”; and (3) the “discrepancy between the first responder activity recorded on the police body cam[era] footage and what was subsequently documented on the Medic report.” In its response—which we will discuss in more detail below—MIEMSS defends its denial of the complainants’ PIA request on the same grounds explained in its denial letter, i.e., that the records are records and files of a medical review committee and therefore confidential, and that they contain medical or psychological information not subject to inspection. In addition, MIEMSS argues that another law, specifically the Maryland Medical Practice Act, codified in Title 14 of the Health Occupations Article (“HO”), shields certain records obtained by MIEMSS that identify an individual.

### Analysis

Our statute authorizes us to review and resolve complaints that allege certain violations of the PIA, including allegations that a custodian “denied inspection of a public record in violation of [the PIA].” *See* § 4-1A-04(a)(1)(i). Before a complainant may file a complaint with this Board, he or she must attempt to resolve the dispute through the Public Access Ombudsman, § 4-1A-05(a)(1), and if the dispute is not resolved, the complainant may file a complaint within 30 days of receiving the Ombudsman’s final determination stating such, assuming the dispute is within our jurisdiction, § 4-1A-05(b)(5); *see also* § 4-1A-04(a)(1) (outlining allegations within the Board’s jurisdiction). If, after we review the complaint and response, we conclude that a violation of the PIA has occurred, we must issue a written decision and order an appropriate remedy, as provided by the statute. § 4-1A-04(a)(2), (3). In cases where we determine that a custodian wrongfully denied inspection of public records, we must “order the custodian to . . . produce the public record for inspection.” § 4-1A-04(a)(3)(i).

The PIA must be broadly construed in favor of disclosure of public records. Recognizing that “[a]ll persons are entitled to have access to information about the affairs

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<sup>1</sup> Statutory citations are to the General Provisions Article of Maryland’s Annotated Code, unless otherwise specified.

of government and the official acts of public officials and employees,” the PIA instructs that “unless an unwarranted invasion of the privacy of a person in interest would result, [the PIA] shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.” § 4-103; *see also Glenn v. Maryland Dep’t of Health & Mental Hygiene*, 446 Md. 378, 385-86 (2016) (“[T]he PIA was established with the over-arching purpose of allowing oversight of the government, resulting in a strong practice of disclosure.”). There are, of course, exceptions to disclosure explicitly set out in the PIA—i.e., instances in which a custodian either must or may deny inspection of certain records, or of certain information contained in public records. *See* §§ 4-301 through 4-358. When an exemption is invoked to deny access to public records, a custodian has the burden of justifying its application. § 4-362(b)(2)(i); *see also Lamson v. Montgomery County*, 460 Md. 349, 367 (2018) (explaining that a reviewing court must “determine whether the agency’s rationale for denying the request is sufficient”).

Section 4-301(a)(1) of the PIA requires a custodian to deny inspection of a public record if “by law, the public record is privileged or confidential.” In this case, MIEMSS cites HO § 1-401(d)(1) as establishing a privilege that prevents MIEMSS from disclosing the records that the complainants seek. That statute provides, with limited exceptions,<sup>2</sup> that “the proceedings, records, and files of a medical review committee are not discoverable and are not admissible in evidence in any civil action.” HO § 1-401(d)(1). Known as the “medical review committee privilege,” Maryland courts have construed this provision broadly. *See, e.g., McCoy v. Hatmaker*, 135 Md. App. 693, 724-25 (2000) (precluding, pursuant to the medical review committee privilege, the deposition of a fire department official who investigated actions of an EMT as well as the discovery or use of related records and reports, and suggesting that “any *ad hoc* quality control study or investigation performed by a public provider of emergency medical services like the Baltimore City Fire Department would fall under the aegis of MIEMSS and within the scope of [the definition of a medical review committee]”). The privilege applies to all records in the possession of a medical review committee; it is not limited to records actually generated by the committee itself. *See St. Joseph Med. Ctr. v. Cardiac Surgery Assoc.*, 392 Md. 75, 95 (2006).

Courts have explained that “[t]he [medical review committee] provision ‘was intended to provide broad statutory protection and is based on legislative appreciation that a high level of confidentiality is necessary for effective medical peer review.’” *McCoy*, 135 Md. App. at 726 (quoting *Brem v. DeCarlo, Lyon, Hearn & Pazourek*, 162 F.R.D. 94,

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<sup>2</sup> HO § 1-401(d)(1) does not apply to “[a] civil action brought by a party to the proceedings of the medical review committee who claims to be aggrieved by the decision of the medical review committee” or to “[a]ny record or document that is considered by the medical review committee and that otherwise would be subject to discovery and introduction into evidence in a civil trial.” HO § 1-401(e).

98 (D. Md. 1995)) (internal quotations omitted); *see also St. Joseph Med. Ctr.*, 392 Md. at 93 (“By protecting [medical review committee] records from public access in those situations covered by [the statute], the legislature recognized that a system of effective medical peer review outweighs the need for complete public disclosure,” (quoting *Baltimore Sun v. Univ. of Maryland Med. Sys.*, 321 Md. 659, 667 (1991))). The privilege recognizes both the need to encourage otherwise-reluctant medical professionals to participate in the peer review process and the need to foster a setting in which those participating in peer review may “engage in a candid and conscientious evaluation of clinical practices.” *Baltimore Sun v. Univ. of Maryland Med. Sys.*, 321 Md. 659, 666 (1991) (citation and quotation omitted). Ultimately, “[s]tatutory protection of peer review activities is supported by the notion that they result in increased peer review activity and that such activity improves medical care.” *Id.* at 666-67.

Resolution of this complaint, then, turns on whether the records at issue—i.e., records and/or reports of MIEMSS’s investigation into the BCFD’s response to the scene of Mr. Davidson’s medical emergency, his death, and the “inconsistency between the police body cam[era] footage and the Medic report”—qualify as records of a medical review committee. “Medical review committee” is a term specifically defined in Maryland law. Among other things, it means “[a] committee appointed by or established in the Maryland Institute for Emergency Medical Services Systems” that performs certain specific functions, including evaluating and seeking to “improve the quality of health care provided by providers of health care” and evaluating and acting on “matters that relate to the discipline of any provider of health care.” HO § 1-401(a)(3), (b)(4), and (c). There are thus two relevant questions: (1) whether the records at issue are records of “a committee appointed by or established in” MIEMSS, and (2) whether those records were either created or received by MIEMSS in the course of performing one of the medical review committee functions outlined in HO § 1-401(c). If the answer to both of these questions is yes, then the records are privileged and MIEMSS properly denied inspection under § 4-301(a)(1).

While the records are clearly records in MIEMSS’s possession, it is less clear to us, based on the submissions alone, that they are records of “a committee appointed by or established in” MIEMSS. HO § 1-401(b)(4). And, while the PIA request itself—a request for records related to MIEMSS’s investigation into the BCFD’s response to an incident in which a person ultimately died—certainly suggests that responsive records would relate to efforts to “improve the quality of health care provided by providers of health care” or “the discipline of any provider of health care,” HO § 1-401(c), more information about the nature of the records is needed in order to determine whether or not the medical review committee privilege applies here. We thus asked MIEMSS to provide a descriptive index of the responsive records. *See* § 4-1A-06(b)(2)(ii)(1) (empowering the Board, in matters alleging improper denial of access to records, to request “a copy of the public record, descriptive index of the public record, or written reason why the record cannot be disclosed”). As required by law, we will maintain the confidentiality of the descriptive index that MIEMSS has provided. § 4-1A-06(b)(5); COMAR 14.02.02.

After reviewing the descriptive index, we conclude that MIEMSS did not violate the PIA by denying inspection of the records responsive to the complainants' PIA request. First, the various employees and officials identified in the index make it clear that the records were created or received by a "committee . . . established in" MIEMSS. HO § 1-401(b)(4). Given our intermediate appellate court's clarification that "any *ad hoc* quality control study or investigation performed by a public provider of emergency medical services . . . would fall under the aegis of MIEMSS and within the scope of [HO § 1-401(b)(4)]," *McCoy*, 135 Md. App. at 725-26, that component of the statutory definition of "medical review committee" is clearly established here. We also note the factual parallels between this case—where Mr. Davidson's family members urged MIEMSS to investigate the emergency response—and *McCoy*, where "the investigation came forth from concerns voiced by McCoy's son." *Id.* at 725. As in *McCoy*, the "*origin* of the complaint that led to the review" does not change the nature of the reviewing body such that it no longer qualifies as a medical review committee for purposes of HO § 1-401(b)(4) and (d). *Id.* at 726 (emphasis original).

Second, it is plainly apparent from the descriptive index that MIEMSS was performing at least one of the functions outlined in HO § 1-401(c), thus satisfying the functional component of the statute's definition of "medical review committee." Specifically, the committee was "act[ing] on matters that relate to the discipline of any provider of health care." *Id.* § 1-401(c)(4). The descriptive index also suggests that the committee was "evaluat[ing] the . . . competence[] and performance of providers of health care." *Id.* § 1-401(c)(3). In undertaking such efforts, MIEMSS's "fundamental purpose" was "the improvement of health care services." *McCoy*, 135 Md. App. at 726 (emphasis omitted). Thus, application of the medical review committee privilege here is also consistent with the broader rationale motivating the Legislature's recognition of the privilege in the first place. *See St. Joseph Med. Ctr.*, 392 Md. at 93 ("A . . . fundamental reason for preserving confidentiality in [medical review] proceedings is to ensure a high quality of peer review activity leading to the primary goal of this legislation—to provide better health care," (quoting *Unnamed Physician v. Comm'n on Med. Discipline*, 285 Md. 1, 13 (1979))). Based on all of the information before us, we find that the responsive records constitute the "proceedings, records, and files of a medical review committee," HO § 1-401(d)(1), and are therefore privileged and confidential.

MIEMSS has not addressed the exceptions to the privilege found in HO § 1-401(e). *See supra*, note 2. However, we note that those exceptions do not appear to apply here. The Supreme Court of Maryland (then called the Court of Appeals) has explained that the exception found in subsection (e)(1) is "premised on the due process rights of a physician aggrieved by the decision of the medical review committee." *Baltimore Sun*, 321 Md. at 668. It goes without saying that this PIA matter does not involve a "civil action" brought by a physician claiming to be "aggrieved by the decision of a medical review committee." *Id.* § 1-401(e)(1).

As for the exception found in subsection (e)(2), Maryland’s highest court has observed that a “broad literal reading of the exception would do away with the privilege.” *St. Joseph Med. Ctr.*, 392 Md. at 100. Looking to cases in other states with similar provisions, the court explained that the language “has been interpreted to mean that, although a party to a lawsuit cannot get the documents from the hospital of which the review committee is a part, nevertheless if such documents are otherwise properly available from other sources and otherwise admissible, the party may obtain them from such other sources.” *Id.* at 101. So, for example, if the BPD had provided body worn camera footage to the MIEMSS medical review committee, the BPD would not be precluded from disclosing the body worn camera footage to the complainants on grounds that the footage had been provided to MIEMSS and is contained in the medical review committee’s file.<sup>3</sup> *See id.* (“The fact that [records] are also in a medical review committee’s file does not preclude obtaining them *from other sources*,” (emphasis added)). Viewed narrowly in this way, HO § 1-401(e)(2) does not apply to vitiate the privilege of the MIEMSS records at issue here.

Our conclusion that the medical review committee privilege found in HO § 1-401(d)(1), and applied via § 4-301(a)(1), requires that MIEMSS deny inspection of the records responsive to the complainants’ PIA request is dispositive. We therefore do not address MIEMSS’s additional contentions that some of the records are protected—either in part or in their entirety—by § 4-329(b)(1) or by the Medical Practice Act, specifically HO § 14-506.

### Conclusion

MIEMSS did not violate the PIA when it denied inspection of the records responsive to the complainants’ PIA request. The records are records of a medical review committee as defined by HO § 1-401(a)(3), (b)(4), and (c), and “not discoverable [or] admissible in evidence in any civil action,” *id.* § 1-401(d)(1). Therefore, the records are also “privileged or confidential” for purposes of the mandatory exemption to the PIA found in § 4-301(a)(1).

#### **Public Information Act Compliance Board\***

*John H. West, III, Esq., Chair*

*Christopher Eddings*

*Darren S. Wigfield*

\* Board members Michele L. Cohen, Esq. and Deborah Moore-Carter did not participate in the preparation or issuing of this decision.

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<sup>3</sup> We note that the complainants’ PIA request references the “inconsistency between the police body worn cam[era] footage and the Medic report,” suggesting that the complainants have already obtained both the body camera footage and the medic report.