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RECENT DEVELOPMENT

IMMANUEL V. COMPTROLLER OF MARYLAND: THE MARYLAND PUBLIC INFORMATION ACT'S FINANCIAL INFORMATION EXEMPTION AND THE UNIFORM DISPOSITION OF ABANDONED PROPERTY ACT'S PUBLICATION PROVISION DO NOT ALLOW FOR DISCLOSURE OF INFORMATION BEYOND WHAT IS EXPLICITLY PERMITTED.

By: Jason C. Parkins

The Court of Appeals of Maryland held that information beyond the scope required under the Uniform Disposition of the Abandoned Property Act's publication provision cannot be disclosed in response to a request for information made under the Maryland Public Information Act. *Immanuel v. Comptroller of Maryland*, 449 Md. 76, 97-98, 141 A.3d 181, 194 (2016). The court also held that the information required to be published under the Abandoned Property Act may not be ordered by value, because such ordering would reveal personal financial information. *Id.* at 97, 141 A.3d at 194. Lastly, the court held that the intermediate appellate court properly required petitioner to modify his request to be consistent with the Maryland Public Information Act's financial information exemption. *Id.*

On November 3, 2011, Henry Immanuel ("Immanuel") submitted a request for information held by the Comptroller of Maryland ("Comptroller"). The request sought the names and addresses of individuals who held the 5,000 largest unclaimed abandoned property accounts, ordered by value. The Comptroller denied Immanuel's request, and determined that the information fell under the Maryland Public Information Act's ("MPIA") financial information exemption.

Immanuel sought judicial review in the Circuit Court for Wicomico County. The circuit court ordered the Comptroller to disclose the materials as requested by Immanuel. In turn, the Comptroller appealed the circuit court's judgment to the Court of Special Appeals of Maryland, which affirmed in part and reversed in part. It held that Immanuel was entitled to receive the information requested, but he was not entitled to have the information ordered by value. The court of special appeals remanded the case back to the circuit court, requesting the court to determine what information the Comptroller must disclose to Immanuel. Further, the appellate court indicated that the circuit court should establish a list of the claims that tracks the information the Comptroller must disclose under the Uniform Disposition of Abandoned Property Act ("APA"), without sorting the claims by value.

On remand, the circuit court required Immanuel to modify and resubmit his MPIA request, limiting it to only the accounts received by the

Comptroller within a year, above \$100, and not sorted by value. Immanuel subsequently appealed the circuit court's judgment to the court of special appeals, which affirmed. The court indicated that Immanuel's request, being limited to the 5,000 most valuable accounts and ordered with respect to value, would constitute a disclosure of financial information exempt under the MPIA. Subsequently, on January 27, 2016, the Court of Appeals of Maryland granted Immanuel's petition for *writ of certiorari*.

The Court of Appeals of Maryland began its analysis by examining the MPIA generally. *Immanuel*, 449 Md. at 81, 141 A.3d at 184. The court indicated that the purpose of the MPIA is to enhance individual access to information regarding government affairs and acts of public officials or government employees. *Id.* (citing MD. CODE ANN., GEN. PROVISIONS § 4-103). The court noted that the MPIA is construed in favor of disclosure and liberally construed to achieve the act's purpose. *Immanuel*, 449 Md. at 81, 141 A.3d at 184 (citing *A.S. Abell Pub. Co. v. Mezzanote*, 297 Md. 26, 32, 464 A.2d 1068, 1071 (1983)).

Under the MPIA, an individual may submit a request for information held by the government. *Immanuel*, 449 Md. at 81-82, 141 A.3d at 184-85. The request is then reviewed by a custodian of records, and, if the information requested falls within a statutorily provided exemption, the custodian must deny the request. *Id.* The MPIA's exemption of financial information was at issue in the present case. *Id.* at 82, 141 A.3d at 185. This exemption states that a custodian must not disclose requested materials that contain information relating to the finances of individuals. *Id.*

The court then examined the APA's publication provision. *Immanuel*, 449 Md. at 82, 141 A.3d at 185. Under the APA, the Abandoned Property Unit of the Comptroller's Office is required to maintain a database of abandoned properties. *Id.* at 82-83, 141 A.3d at 185. This database includes information regarding the properties and the individuals entitled to reclaim them. *Id.* at 83, 141 A.3d at 185. Further, the APA requires the Comptroller to notify the public of the accounts held within this database. *Id.* The statute states that this notification must list, in alphabetical order, the names of individuals entitled to reclaim the properties and each individuals' last known address. *Id.* (citing MD. CODE ANN., COM. LAW § 17-311).

The issue in the instant case is the interplay between the MPIA's financial exemption and the APA's publication provision. *Immanuel*, 449 Md. at 87, 141 A.3d at 188. In an attempt to rectify the seemingly contradictory interpretations of the two statutes, the court analyzed the legislative intent of the MPIA. *Id.* at 87, 141 A.3d at 188. Aside from the statutorily defined purpose (i.e., increasing government transparency), the court indicated there is a second purpose of the MPIA, which is "[to protect] the personal individual information that the State retains, the kinds contemplated in the statutory exemptions." *Id.* at 88, 141 A.3d at 188.

The court concluded that disclosure under the MPIA should only reveal information regarding state activity and not information on private activity, even if this information is held by the government. *Immanuel*, 449 Md. at

93, 141 A.3d at 192. The court also considered an opinion from the Attorney General on which the Comptroller based his non-disclosure policy. *Id.* at 94, 141 A.3d at 192. The Attorney General indicated that financial information of individuals should ordinarily not be disclosed; however, APA's publication provision mandates the publication of certain information, making said information not confidential and not exempt under the MPIA. *Id.* The Attorney General's opinion was found to be persuasive and was in line with the holding of the court of special appeals. *Id.*

The court indicated that, if the publication provision of the APA did not exist, then the entirety of the abandoned property accounts would likely fall under the MPIA's financial information exemption. *Immanuel*, 449 Md. at 95, 141 A.3d at 193. In short, since the APA's publication provision destroys the confidential nature of the information requiring disclosure, no MPIA exemptions are applicable. *Id.* at 96, 141 A.3d at 193. Although *Immanuel* requested that the Comptroller release the information in order of value, the court indicated that the APA requires the names to be ordered alphabetically. *Id.* at 96-97, 141 A.3d at 193-94 (citing CL § 17-311(b)(1)). As such, the Comptroller has no discretion to order the information in any other manner. *Id.* at 97, 141 A.3d at 193-94.

The court concluded that ordering the accounts based on value would indicate the relative value of an account, which constitutes personal financial information. *Immanuel*, 449 Md. at 97, 141 A.3d at 194. Further, the court explained that the purpose of ordering the information alphabetically is to limit the published information of the accounts to names and addresses. *Id.* To this end, the court indicated that disclosing the relative values of accounts would stand in direct opposition to the plain language of the MPIA's financial exemption. *Id.*

In *Immanuel*, the court held that *Immanuel* was not entitled to information on the accounts beyond that which the Comptroller must publicize pursuant to the APA's publication provision. *Immanuel*, 449 Md. at 97, 141 A.3d at 194. Although the holding is limited to situations in which a statute conflicts with the MPIA, there are greater implications of this case. Primarily, the court recognized a secondary purpose of the MPIA - protecting private information held by the government on behalf of citizens. Recognition of this implied legislative purpose will have substantial impact in future actions involving private information submitted to the government. It will strengthen the positions of intervening parties attempting to argue that a custodian correctly declined to disclose information falling under an exemption to the MPIA.