



Office of Legal Counsel Transparency

The Problem

The Department of Justice's Office of Legal Counsel (OLC) is responsible for advising executive branch agencies and the president on the legality of proposed actions. The executive branch considers these opinions as binding interpretations of law. Many of the questions that OLC addresses will never be resolved by the courts, meaning that its advice may effectively be treated as the final word on the law. However, the office is notoriously secretive: Its opinions are not consistently released to Congress or the public.

Because OLC opinions are treated as controlling law by the executive branch agencies without judicial review, they need to be as public as possible in order to guarantee thorough scrutiny. Without transparency, Congress loses its ability to conduct robust congressional oversight, engage in public debate, and make important legislative corrections when necessary. The public loses its ability to scrutinize and question the legal analysis of these opinions in real time.

Disclosure of the opinions ensures a proper check on the executive branch's authority, forces debate on Congress's prerogatives, and promotes greater transparency and public confidence in our government.

The Solution

Congress can better position itself to check this overly powerful office by requiring basic transparency from the Department of Justice about final opinions rendered by the office. Additional transparency would remove the body of secret law created by the office and allow Congress to better realize the scope of reforms necessary to rein in OLC's power.

- **Require the Department of Justice to make Office of Legal Counsel opinions publicly available.** Congress should require the Department of Justice to publicly post all final interpretations of law issued by OLC online within 30 days of issuing an opinion. Final opinions should be published in an electronic format on a publicly accessible website, along with an index of all existing final OLC opinions, that is updated as they are issued and revised. The publication process should include reasonable exceptions for withholding classified information within those opinions and a clear process on how the office should reevaluate whether opinions should remain redacted after a set period of time. This requirement should be an explicit responsibility of the Department of Justice.

- **Require OLC to publicly report withdrawal of opinions.** OLC opinions are highly consequential, both inside and outside the government. The public needs to know when the office has revised its prior opinions. Requiring public reporting on opinion withdrawals forces additional public scrutiny and transparency into the office’s decision-making process and ensures a shared understanding of OLC’s most current interpretation of the law.

Additional Context

[H.R. 2055](#), the Transparency in Government Act of 2021, would require the publication of OLC opinions and create a publicly available index of final and revised opinions. Representative Mike Quigley (D-IL) and Delegate Eleanor Holmes Norton (D-DC) introduced the bill in March 2021. It was referred to the House Committee on the Judiciary’s Subcommittee on the Constitution, Civil Rights, and Civil Liberties in October 2021.

[H.R. 5314](#) and [S. 2921](#), the Protecting Our Democracy Act, includes language in Section 524 that would require any final opinions issued by OLC relating to budget or appropriations law to be made publicly available unless they are classified or otherwise have to be kept secret. Should an opinion fall into that latter category, a summary should be made public. Both bills were introduced in September 2021 and referred to the House Subcommittee on Economic Development, Public Buildings, and Emergency Management and to the Senate Committee on Homeland Security and Governmental Affairs, respectively.

Additional Resources

[*POGO Resource: The Baker’s Dozen: 13 Policy Areas Critical to an Effective, Ethical, and Accountable Government*](#)

[POGO Analysis: “Office of Legal Counsel Publishes New ‘Secret Law’ Opinions”](#)

[Principles to Guide the Office of Legal Counsel \(2004\)](#): A document prepared and endorsed by 19 former senior OLC officials, including current Assistant Attorney General for OLC nominee Christopher Schroeder, advocating for public disclosure of written legal opinions in a timely manner.

[Department of Justice Memo on Best Practices for OLC Legal Advice \(2010\)](#)

Contacts

- Liz Hempowicz, Director of Public Policy, liz.hempowicz@pogo.org
- David Janovsky, Analyst, david.janovsky@pogo.org