

117TH CONGRESS
2D SESSION

S. 3858

To require the publication of opinions issued by the Office of Legal Counsel of the Department of Justice, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 16, 2022

Ms. DUCKWORTH (for herself and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To require the publication of opinions issued by the Office of Legal Counsel of the Department of Justice, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Demanding Oversight
5 and Justification Over Legal Conclusions Transparency
6 Act” or the “DOJ OLC Transparency Act”.

7 **SEC. 2. PUBLICATION AND DISTRIBUTION OF OPINIONS.**

8 Section 521 of title 28, United States Code, is
9 amended—

1 (1) by inserting “(a) IN GENERAL.—” before
2 “The Attorney General”; and

3 (2) by adding at the end the following:

4 “(b) OLC OPINIONS.—

5 “(1) DEFINITIONS.—In this subsection, the fol-
6 lowing terms shall apply:

7 “(A) FINAL OLC OPINION.—The term
8 ‘final OLC opinion’ means an OLC opinion
9 that—

10 “(i) the Attorney General, Assistant
11 Attorney General for the Office of Legal
12 Counsel, or a Deputy Assistant General for
13 the Office of Legal Counsel, has deter-
14 mined is final;

15 “(ii) is relied upon by government of-
16 ficials or government contractors;

17 “(iii) is relied upon to formulate legal
18 guidance; or

19 “(iv) is directly or indirectly cited in
20 another OLC opinion.

21 “(B) OLC OPINION.—The term ‘OLC
22 opinion’—

23 “(i) means views on a matter of legal
24 interpretation communicated by the Office
25 of Legal Counsel of the Department of

1 Justice to any other office or agency, or
2 person in an office or agency, in the Exec-
3 utive Branch, including any office in the
4 Department of Justice, the White House,
5 or the Executive Office of the President,
6 and rendered in accordance with sections
7 511 through 513; and

8 “(ii) includes—

9 “(I) in the case of a verbal com-
10 munication of a legal interpretation, a
11 memorialization of that communica-
12 tion;

13 “(II) a final OLC opinion; and

14 “(III) a revised OLC opinion.

15 “(C) REVISED OLC OPINION.—The term
16 ‘revised OLC opinion’ means an OLC opinion—

17 “(i) that is withdrawn;

18 “(ii) to which information is added; or

19 “(iii) from which information is re-
20 moved.

21 “(2) REQUIREMENT.—Subject to paragraph (3)
22 and in accordance with paragraph (4), the Attorney
23 General shall publish all OLC opinions on the public
24 website of the Department to be accessed by the
25 public free of charge.

1 “(3) REDACTION OF CLASSIFIED INFORMA-
2 TION.—

3 “(A) IN GENERAL.—In the case of an OLC
4 opinion required to be published under para-
5 graph (2) that contains information classified
6 as confidential, secret, or top secret, the Attor-
7 ney General shall—

8 “(i) redact the classified information
9 from the OLC opinion before publication of
10 the OLC opinion; and

11 “(ii) establish and preserve an accu-
12 rate record documenting each redaction
13 from the OLC opinion, including informa-
14 tion describing in detail why public online
15 disclosure of the classified information
16 would have resulted in the associated harm
17 that pertains to each level of classification.

18 “(B) LIMITATION.—The Attorney General
19 may not redact information under this para-
20 graph that is sensitive but unclassified.

21 “(C) SUBMISSION TO CONGRESS.—In the
22 case of an OLC opinion described in subpara-
23 graph (A), the Attorney General shall submit
24 the full opinion, without redaction, to any Mem-

1 ber of Congress and any appropriately cleared
2 congressional staff member.

3 “(D) PERIODIC REVIEW.—To the max-
4 imum extent practicable, the Attorney General
5 shall, on a continual basis and not less fre-
6 quently than once every 90 days—

7 “(i) review every OLC opinion pub-
8 lished under this subsection that contains
9 redactions of classified information; and

10 “(ii) remove any redactions that no
11 longer protect information that is classified
12 as either sensitive, secret, or top secret.

13 “(4) DEADLINE FOR PUBLICATION.—

14 “(A) IN GENERAL.—Each OLC opinion
15 issued by the Office of Legal Counsel of the De-
16 partment after the date of enactment of the
17 DOJ OLC Transparency Act shall be published
18 in accordance with this section as soon as prac-
19 ticable, but not later than 48 hours, after the
20 date of issuance of the opinion.

21 “(B) PREVIOUSLY ISSUED OPINIONS.—In
22 the case of OLC opinions issued before the date
23 of enactment of the DOJ OLC Transparency
24 Act, the Attorney General shall, subject to sub-
25 paragraph (C)—

1 “(i) not later than 30 days after the
2 date of enactment of the DOJ OLC Trans-
3 parency Act, publish all of the OLC opin-
4 ions issued during fiscal years 2020
5 through 2023;

6 “(ii) not later than 60 days after the
7 date of enactment of the DOJ OLC Trans-
8 parency Act, publish all of the OLC opin-
9 ions issued during fiscal years 2000
10 through 2019;

11 “(iii) not later than 90 days after the
12 date of enactment of the DOJ OLC Trans-
13 parency Act, publish all of the OLC opin-
14 ions issued during fiscal years 1980
15 through 1999;

16 “(iv) not later than 120 days after the
17 date of enactment of the DOJ OLC Trans-
18 parency Act, publish all of the OLC opin-
19 ions issued during fiscal years 1960
20 through 1979; and

21 “(v) not later than 2 years after the
22 date of enactment of the DOJ OLC Trans-
23 parency Act, publish all of the OLC opin-
24 ions issued before fiscal year 1960.

1 “(C) DESCRIPTION OF CERTAIN OPIN-
2 IONS.—In the case of an OLC opinion issued by
3 the Office of Legal Counsel of the Department
4 before the date of enactment of the DOJ OLC
5 Transparency Act for which the text of the
6 OLC opinion cannot be located, the Attorney
7 General shall—

8 “(i) publish a description of the OLC
9 opinion; and

10 “(ii) submit a written certification to
11 Congress, under penalty of perjury, that—

12 “(I) a good faith effort was made
13 to find the text of the OLC opinion;
14 and

15 “(II) the text of the OLC opinion
16 is unavailable.

17 “(5) RIGHT OF ACTION.—

18 “(A) IN GENERAL.—On complaint brought
19 by a complainant who has been harmed as a re-
20 sult of being deprived access to an OLC opinion
21 that is required to be made available to the
22 public free of charge on the public website of
23 the Department under this subsection, the dis-
24 trict court of the United States in the district
25 in which the complainant resides, or has his

1 principal place of business, or in the District of
2 Columbia, has jurisdiction to enjoin the Office
3 of Legal Counsel from withholding information
4 required to be made available under this sub-
5 section and to order the production of informa-
6 tion improperly withheld from the complainant.

7 “(B) REVIEW.—In a case brought under
8 subparagraph (A)—

9 “(i) the court—

10 “(I) shall determine the matter
11 de novo; and

12 “(II) may examine the contents
13 of the opinion issued by the Office of
14 Legal Counsel in camera to determine
15 whether such information or any part
16 thereof shall be withheld under para-
17 graph (3); and

18 “(ii) the burden is on the Office of
19 Legal Counsel to sustain its action.”.

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