

116TH CONGRESS
1ST SESSION

H. R. 4556

To provide for the publication of OLC opinions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2019

Mr. CARTWRIGHT (for himself, Mr. QUIGLEY, Ms. LOFGREN, Mr. RASKIN, Mrs. DAVIS of California, Mr. CLAY, Mr. VARGAS, Mr. JOHNSON of Georgia, Mr. CÁRDENAS, Ms. HILL of California, Mr. CARSON of Indiana, Ms. NORTON, Ms. TLAIB, and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for the publication of OLC opinions, 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 “See UNdisclosed Legal
5 Interpretations and Get Honest Transparency Act of
6 2019” or as the “SUNLIGHT Act of 2019”.

1 **SEC. 2. SCHEDULE OF PUBLICATION FOR FINAL OLC OPIN-**
2 **IONS.**

3 Each final opinion issued by the Office of Legal
4 Counsel must be made publicly available in its entirety as
5 soon as is practicable, but—

6 (1) not later than 30 days after the opinion is
7 issued or updated if such action takes place on or
8 after the date of enactment of this Act;

9 (2) not later than 1 year after the date of en-
10 actment of this Act for an opinion issued on or after
11 January 20, 1993;

12 (3) not later than 2 years after the date of en-
13 actment of this Act for an opinion issued on or after
14 January 20, 1981 and before or on January 19,
15 1993;

16 (4) not later than 3 years after the date of en-
17 actment of this Act for an opinion issued on or after
18 January 20, 1969 and before or on January 19,
19 1981; and

20 (5) not later than 4 years after the date of en-
21 actment of this Act for all other opinions.

22 **SEC. 3. EXCEPTIONS AND LIMITATION ON PUBLIC AVAIL-**
23 **ABILITY OF FINAL OLC OPINIONS.**

24 (a) IN GENERAL.—A final OLC opinion or part
25 thereof may be withheld only to the extent—

26 (1) information contained in the opinion was—

1 (A) specifically authorized to be kept se-
2 cret, under criteria established by an Executive
3 order, in the interest of national defense or for-
4 eign policy;

5 (B) in fact properly classified, including all
6 procedural and marking requirements, pursuant
7 to such Executive order;

8 (C) the Attorney General determines that
9 the national defense or foreign policy interests
10 protected outweigh the public's interest in ac-
11 cess to the information; and

12 (D) has been put through declassification
13 review within the past two years;

14 (2) information contained in the opinion relates
15 to the appointment of a specific individual not con-
16 firmed to Federal office;

17 (3) information contained in the opinion is spe-
18 cifically exempted from disclosure by statute (other
19 than sections 552 and 552b of title 5, United States
20 Code), provided that such statute—

21 (A) requires that the material be withheld
22 in such a manner as to leave no discretion on
23 the issue; or

1 (B) establishes particular criteria for with-
2 holding or refers to particular types of material
3 to be withheld;

4 (4) information in the opinion includes trade se-
5 crets and commercial or financial information ob-
6 tained from a person and privileged or confidential
7 whose disclosure would likely cause substantial harm
8 to the competitive position of the person from whom
9 the information was obtained;

10 (5) the President, in his or her sole and non-
11 delegable determination, formally and personally
12 claims in writing that executive privilege prevents
13 the release of the information and disclosure would
14 cause specific identifiable harm to an interest pro-
15 tected by an exception or the disclosure is prohibited
16 by law; or

17 (6) information in the opinion includes per-
18 sonnel and medical files and similar files the dislo-
19 sure of which would constitute a clearly unwarranted
20 invasion of personal privacy.

21 (b) DETERMINATION TO WITHHOLD.—Any deter-
22 mination under this section to withhold information con-
23 tained in a final OLC opinion must be made by the Attor-
24 ney General or a designee of the Attorney General. The
25 determination shall be—

1 (1) in writing;

2 (2) made available to the public within the
3 same timeframe as is required of a formal OLC
4 opinion;

5 (3) sufficiently detailed as to inform the public
6 of what kind of information is being withheld and
7 the reason therefore; and

8 (4) effective only for a period of 3 years, sub-
9 ject to review and reissuance, with each reissuance
10 made available to the public.

11 (c) FINAL OPINIONS.—For final OLC opinions for
12 which the text is withheld in full or in substantial part,
13 a detailed unclassified summary of the opinion must be
14 made available to the public, in the same timeframe as
15 required of the final OLC opinion, that conveys the es-
16 sence of the opinion, including any interpretations of a
17 statute, the Constitution, or other legal authority. A nota-
18 tion must be included in any published list of OLC opin-
19 ions regarding the extent of the withholdings.

20 (d) NO LIMITATION ON RELIEF.—A decision by the
21 Attorney General to release or withhold information pur-
22 suant to this Act shall not preclude any action or relief
23 conferred by statutory or regulatory regime that empowers
24 any person to request or demand the release of informa-
25 tion.

1 (e) REASONABLY SEGREGABLE PORTIONS OF OPIN-
2 IONS TO BE PUBLISHED.—Any reasonably segregable
3 portion of an opinion shall be provided after withholding
4 of the portions which are exempt under this subsection.
5 The amount of information withheld, and the exemption
6 under which the withholding is made, shall be indicated
7 on the released portion of the opinion, unless including
8 that indication would harm an interest protected by the
9 exemption in this subsection under which the withholding
10 is made. If technically feasible, the amount of the informa-
11 tion withheld, and the exemption under which the with-
12 holding is made, shall be indicated at the place in the opin-
13 ion where such withholding is made.

14 **SEC. 4. METHOD OF PUBLICATION.**

15 The Attorney General shall publish each final OLC
16 opinion to the extent the law permits, including by pub-
17 lishing the opinions on a publicly accessible website that—

18 (1) with respect to each opinion—

19 (A) contains an electronic copy of the opin-
20 ion, including any transmittal letter associated
21 with the opinion, in an open format that is plat-
22 form independent and that is available to the
23 public without restrictions;

1 (B) provides the public the ability to re-
2 trieve an opinion, to the extent practicable,
3 through searches based on—

4 (i) the title of the opinion;

5 (ii) the date of publication or revision;

6 or

7 (iii) the full text of the opinion;

8 (C) identifies the time and date when the
9 opinion was required to be published, and when
10 the opinion was transmitted for publication;
11 and

12 (D) provides a permanent means of access-
13 ing the opinion electronically;

14 (2) includes a means for bulk download of all
15 OLC opinions or a selection of opinions retrieved
16 using a text-based search;

17 (3) provides free access to the opinions, and
18 does not charge a fee, require registration, or impose
19 any other limitation in exchange for access to the
20 website; and

21 (4) is capable of being upgraded as necessary to
22 carry out the purposes of this Act.

23 **SEC. 5. INDEX OF OPINIONS.**

24 (a) IN GENERAL.—The Office of Legal Counsel shall
25 publish —

1 (1) a complete list of final OLC opinions, ar-
2 ranged chronologically, within 90 days of the enact-
3 ment of this legislation;

4 (2) the list of opinions shall be updated imme-
5 diately every time an OLC opinion becomes final;
6 and

7 (3) a revision to an opinion shall be listed as if
8 it were a new opinion.

9 (b) REQUIREMENTS AS TO LIST.—Each list under
10 subsection (a) shall comply with the following:

11 (1) PUBLICATION.—The list must be made
12 available to the public by publication on the website
13 in section 4.

14 (2) INFORMATION AND FORMAT REQUIRED.—
15 The list shall —

16 (A) include, for each opinion—

17 (i) the full name of the opinion;

18 (ii) the date it was finalized or re-
19 vised;

20 (iii) each author’s name;

21 (iv) each recipient’s name;

22 (v) a summary of the opinion;

23 (vi) a unique identifier assigned to
24 each final or revised opinion; and

1 (vii) whether an opinion has been
2 withdrawn; and

3 (B) be published in both human-readable
4 and machine-readable formats.

5 **SEC. 6. PRIVATE RIGHT OF ACTION.**

6 On complaint, the district court of the United States
7 in the district in which the complainant resides, or has
8 his principal place of business, or in the District of Colum-
9 bia, has jurisdiction to enjoin the agency from withholding
10 information contained in a final OLC opinion and to order
11 the production of information improperly withheld from
12 the complainant. In such a case the court shall determine
13 the matter de novo, and may examine the contents of such
14 OLC opinion in camera to determine whether such infor-
15 mation or any part thereof shall be withheld under any
16 of the exemptions set forth in section 3, and the burden
17 is on the agency to sustain its action.

18 **SEC. 7. SEVERABILITY.**

19 If any provision of this Act, any amendment made
20 by this Act, or the application thereof to any person or
21 circumstances is held invalid, the validity of the remainder
22 of the Act, of any such amendments, and of the applica-
23 tion of such provisions to other persons and circumstances
24 shall not be affected thereby.

1 **SEC. 8. DEFINITIONS.**

2 (a) OLC OPINION.—The term “OLC opinion” means
3 views on a matter of legal interpretation communicated
4 by the Office of Legal Counsel of the Department of Jus-
5 tice to any other office or agency, or person in an office
6 or agency, in the Executive Branch, including any office
7 in the Department of Justice, the White House, or the
8 Executive Office of the President, and rendered in accord-
9 ance with sections 511–513 of title 28, United States
10 Code. Where the communication of the legal interpretation
11 takes place verbally, a memorialization of that communica-
12 tion qualifies as an “OLC opinion”.

13 (b) FINAL OLC OPINION.—The term “final OLC
14 opinion” means an OLC opinion that—

15 (1) the Attorney General, Assistant Attorney
16 General for OLC, or a Deputy Assistant General for
17 OLC, has determined is final;

18 (2) government officials or government contrac-
19 tors are relying on;

20 (3) is relied upon to formulate legal guidance;
21 or

22 (4) is directly or indirectly cited in another Of-
23 fice of Legal Counsel opinion.

1 (c) REVISED OLC OPINION.—The term “revised
2 OLC opinion” means an OLC opinion that is withdrawn,
3 information is added to, or information is removed from.

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