



U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

August 20, 2013

Anne L. Weismann
Citizens for Responsibility and Ethics in Washington
1400 Eye Street N.W., Suite 450
Washington, D.C. 20005

Dear Ms. Weismann:

This responds to your letter to the Assistant Attorney General for the Office of Legal Counsel ("OLC") dated July 3, 2013, in which you express the view that OLC is required by 5 U.S.C. § 552(a)(2) to "make available for public inspection and copying all OLC opinions that are binding on the executive branch."

We are committed to complying with our obligations under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). OLC provides confidential legal advice within the Executive Branch. As such, OLC's advice is ordinarily covered by the attorney-client and deliberative process privileges, and is therefore exempt from mandatory disclosure under the FOIA, *see id.* § 552(b)(5); *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975). In addition, as confidential and pre-decisional legal advice, our opinions generally constitute neither "final opinions...made in the adjudication of cases" nor "statements of policy and interpretations which have been adopted by the agency." 5 U.S.C. §§ 552(a)(2)(A) & (B).

Nevertheless, we make an individualized, case-by-case determination with respect to whether each opinion of our Office is appropriate for publication. *See* Memorandum for Attorneys of the Office, from David J. Barron, Acting Assistant Att'y Gen., Office of Legal Counsel, *Re: Best Practices for OLC Legal Advice and Written Opinions 5-6* (July 16, 2010) ("Best Practices Memo"), *available at* www.justice.gov/olc/pdf/olc-legal-advice-opinions.pdf. This individualized publication decision process includes consultation with interested Executive Branch agencies and consideration of a number of factors, which are set out in the Best Practices Memo. *See id.* Similarly, when we receive a FOIA request seeking OLC records and an opinion is responsive to that request, we consider whether to waive applicable privileges and release the opinion as a matter of administrative discretion. *See id.* at 6.

I hope that this information is helpful.

Sincerely,

A handwritten signature in black ink that reads "John E. Bies". The signature is written in a cursive style with a large, looping initial "J".

John E. Bies
Deputy Assistant Attorney General