

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND )  
ETHICS IN WASHINGTON, )

Plaintiff, )

v. )

Civil No.17-0432 (JEB)

U.S. DEPARTMENT OF JUSTICE, )

Defendant. )

\_\_\_\_\_ )

**PLAINTIFF’S REPLY IN SUPPORT OF ITS  
MOTION FOR LEAVE TO FILE A SUR-REPLY**

The question for this Court in ruling on plaintiff’s pending motion for leave to file a sur-reply is whether the Court should exercise its discretion considering, among other factors, “whether the non-movant’s proposed surreply would be helpful to the resolution of the pending motion[.]”<sup>1</sup> The answer to that question here is an unmistakable yes.

This case presents an important issue of first impression: does the Department of Justice (“DOJ”) have an affirmative obligation to publish the legal opinions of the Office of Legal Counsel (“OLC”) pursuant to the “reading room provision” of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(a). Until its reply brief, the government focused almost exclusively on certain jurisdictional claims and its sweeping characterization of virtually every OLC opinion as exempt based on an overreading of *Elec. Frontier Found. v. DOJ*, 739 F.3d 1 (D.C. Cir. 2014). With its reply brief, however, DOJ for the first time pointed to the “more than 1,300 published

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<sup>1</sup> *Banner Health v. Sebelius*, 905 F. Supp. 2d 174, 187 (D.D.C. 2012).

OLC opinions” and faulted CREW for not identifying features of those opinions that support its claims here.<sup>2</sup>

CREW’s proposed sur-reply does just that, relying on OLC opinions that are in the public domain and properly treated as matters of public record. Moreover, by filing a response to CREW’s motion for leave to file a sur-reply, DOJ had the opportunity to explain why CREW’s motion did not advance its case. At this juncture, given the significance of the issues raised, the aid CREW’s proposed sur-reply would provide the Court in resolving those issues, and the lack of any harm to DOJ, there simply is no reason for the Court not to accept all submissions and consider them with the rest of the record in deciding the pending motion to dismiss.

**CONCLUSION**

For the foregoing reasons and those set forth in CREW’s motion for leave to file a sur-reply, that motion should be granted.

Respectfully submitted,

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<sup>2</sup> Reply Memorandum in Support of Defendant’s Motion to Dismiss (Dkt. 14), at 8.

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