

Comments from Consultative Group Member Peter Strauss

December 2, 2022

Alan Morrison's comments are typically compelling, and I join all save as indicated here.

As to the definition of agency legal materials, I agree that briefs expressing an agency's legal position qualify; they are public documents and in this electronic age there should be no difficulty mounting them on agency websites as well as court dockets. Their searchability should promote consistency. The same may be said of advice letters, not mentioned here. HOWEVER, the first two sentences of 1(C), Existing Legal Limitations on Disclosure somewhat underplay the countervailing considerations the rest of that section usefully discusses. "Full disclosure of *agency legal materials* is a fundamental and essential principle. We recognize, however the numerous countervailing considerations that cut against disclosure of certain types of *government information*" doesn't quite honor the competing considerations. "While we counsel maximum disclosure of agency legal information, we recognize the numerous countervailing considerations that cut against disclosure of certain types of material that fall within the definition of agency legal information that we urge." Then add "attorney-client privilege" to the list that follows.

In this respect II(A)(4), which like Alan I applaud, should be clarified by changing "other members of the government" to something like "governmental bodies or personnel external to their own agency." The Commissioners of the NRC are "other members of the government" in relation to its general counsel, and the proposition that all her legal advice to them must be made public is, in my judgment, insupportable.