



A

2 April 2019

Frazer Black

Via email: fyi-request-9633-72f9b176@requests.fyi.org.nz

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Dear Frazer

Official Information Act 1982 (OIA) request dated 20 February 2019 (ref OIA18190504)

Thank you for your OIA request to the Department of Internal Affairs (the “Department”) relating to loot boxes. You asked for the following information:

“Is the Department, or has the Department in the past, considered action to ensure gambling elements in video games are compliant with New Zealand law?”

In addition, please may I also request:

- (1) Any documentation related to gambling elements in video games (sometimes referred to as ‘Loot Boxes’), including emails, meeting notes, formal and informal reports or recommendations.
- (2) Any documentation related to the recent law change in Belgium that restricted gambling elements in video games.”

Loot boxes

For the purposes of your OIA request, the Department refers to “loot boxes” as micro-transactions or in-app purchases within computer games where a player pay for a virtual container, the contents of which are unknown to the player.

Based on current information, computer games featuring loot boxes do not strictly meet the legal definition of gambling and cannot currently be regulated under the Gambling Act 2003. Under the Gambling Act, “gambling” requires a mental element of “seeking to win money” on the part of the player.

The Department considers that players do not purchase loot boxes seeking to win money or something that can be converted into money. Players buy loot boxes so they can use their contents within the game and thereby have a better gaming experience.

With this context in mind, the Department confirms that it has not taken any enforcement action under the Gambling Act with respect to loot boxes.

Documentation relating to loot boxes

Number of documents within scope

The Department has identified **66** documents in scope of your request, which are summarised at Appendix 1. Please note that in order to provide you with the most relevant information in a timely manner the Department has excluded administrative emails (such as, those setting up meetings) and sign-out sheets approving the release of letters to requestors.

In addition, with respect to the queries on loot boxes that were responded to directly by the Minister of Internal Affairs the Department has excluded some administrative emails relating to the finalisation of these Ministerial responses. Also, where the same Ministerial letter was released to more than one party, the Department has only included a single copy of the letter rather than the responses made to all individual parties.

Matters considered under the OIA

The Department's starting point for considering your request for official information has been the principle of availability. That is, information must be made available on request unless there is good reason for withholding it.

The Department has considered the other reasons for withholding information that are subject to the public interest test, which are listed in section 9 of the OIA. I consider that the following grounds for withholding information as outlined in section 9(2) of the OIA apply to some of the requested information (as identified by the Department in the documents described in Appendix 1 to this letter):

- Section 9(2)(a), which relates to the protection of the privacy of natural persons, including that of deceased natural persons;
- Section 9(2)(g)(i), which relates to the maintenance of the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any department or organisation in the course of their duty; and
- Section 9(2)(h), which relates to the maintenance of legal professional privilege.

Specific points to note about the withholding grounds under section 9(2) of the OIA

There are a number of documents (as described in Appendix 1 to this letter) which include the names and other related personal information of persons requesting information from the Department about loot boxes. This personal information is subject to section 9(2)(a) of the OIA.

There are a number of documents (as described in Appendix 1 to this letter) which include draft departmental responses to queries from third parties. These draft responses qualify as free and frank advice and are subject to section 9(2)(g)(i). The release of these responses (and some related discussions on the responses) would inhibit the future exchange of free and frank opinions on draft responses, which would prejudice the effective conduct of public affairs. In some cases, entire documents are withheld as draft departmental responses under section 9(2)(g)(i) of the OIA.

There are two documents within the document set (namely an Online Gambling Risk Assessment and a Draft Departmental Environmental Scan for Gambling) which refer to loot boxes in parts. This material is withheld under 9(2)(g)(i) of the OIA. Releasing this material would have a chilling effect on the willingness of officials to express themselves openly, honestly and completely in future about important policy matters relating to the future regulation of gambling in New Zealand.

In addition, I note that the Environmental Scan qualifies as a draft document and there is a significant amount of work required to complete it. In particular, releasing the draft loot boxes discussion in the Environmental Scan would inhibit the future exchange of free and frank opinions that are necessary for the effective conduct of public affairs.

The material in the Risk Assessment and the Draft Environmental Scan that discuss other matters (unrelated to loot boxes) is outside the scope of your OIA request and is withheld from disclosure. In the alternative, the Department relies on section 9(2)(g)(i) to withhold these documents in full in the event it is considered that these entire documents fall within scope of your request. Both documents are exploratory in nature and they will inform the strategic thinking about the future of gambling. They will also enable the Department to take steps, where appropriate, to respond to gambling issues affecting the Department and New Zealanders. Releasing these documents now would inhibit the future exchange of free and frank opinions that are necessary for the effective conduct of public affairs.

Also, some material in the documents listed in Appendix 1 to this letter is withheld as being legally privileged under section 9(2)(h) of the OIA. In other cases, entire documents have been withheld on the basis that they contain legal opinions and qualify as legally privileged.

Section 9(1) – balancing exercise

Section 9(1) of the OIA provides that where this section applies good reason for withholding official information exists, for the purpose of section 5, unless in the circumstances, the withholding of that information is outweighed by other considerations which render it desirable, in the public interest, to make that information available.

Section 9(1) requires the Department to undertake a balancing exercise and decide whether the public interest in withholding information under section 9(2) of the OIA (as identified in Appendix 1 of this letter and in the documents themselves) is outweighed by other public interest considerations that support disclosure of the information.

Particular public interest considerations which support the disclosure of the redacted material (as described in this letter) is the general public interest in promoting the transparent conduct of public affairs and the public interest in disclosure of information that illuminates decision making processes.

In the circumstances of this case, the Department believes that the public interest considerations in favour of disclosure of the redacted material do *not* outweigh the need to withhold the redacted information for the good reasons set out in section 9(2) of the OIA (and as described above and in Appendix 1).

Documentation about the recent law change in Belgium

While the Department continues to follow the international debate over loot boxes and monitors developments in gaming technology, the Department does not hold any documentation related to the recent law change in Belgium restricting loot boxes. Further, I cannot think of any other agency that would hold it, or whose functions would be more closely connected to it. I am therefore refusing your request under section 18(g) of the OIA because the information is not held.

The Ombudsman

If you are dissatisfied with my decision on your request for information, you have the right, under section 28 of the OIA, to make a complaint to the Office of the Ombudsman. The Office of the Ombudsman can be contacted by phone on 0800 802 602, via post at PO Box 10152 Wellington or via email to info@ombudsman.parliament.nz.

Yours sincerely



Charlotte Stanley

Deputy Director Operations
Regulatory System Gambling

APPENDIX 1

Number	Title	Date	Comments
1	Department Online Gambling Risk Assessment	2017	Withheld in full. In particular: <ul style="list-style-type: none"> Information on loot boxes is withheld under section 9(2)(g)(i) of the OIA; and All other information is outside of the scope of the OIA request and is redacted.
2	Internal Department email	13/10/2017	Released in full.
3	Email chain between the Department, the Minister's office and an external requester	14/11/2017 to 16/11/2017	Released with information withheld under section 9(2)(a) of the OIA.
4	Ministerial requests (14 Ministerial requests collated into a single document.)	Range from 14/11/2017 to 05/12/2017	Released with information withheld under section 9(2)(a) of the OIA.
5	Email chain between the Department and an external requester	15/11/2017 to 22/11/2017	Released with information withheld under section 9(2)(a) of the OIA,
6	Internal Department email chain – one attachment below	20/11/2017 to 29/11/2017	Released with information withheld under section 9(2)(h) of the OIA.
7	<i>Department Legal memo</i>	<i>24/11/2017</i>	<i>Withheld in full under section 9(2)(h) of the OIA.</i>
8	Internal Department email chain – two attachments (one below, one is the Department Legal memo above (Doc 7))	20/11/2017 to 29/11/2017	Released with information withheld under sections 9(2)(h) and 9(2)(g)(i) of the OIA.
9	<i>Internal Department email</i>	<i>29/11/2017</i>	<i>Released in full.</i>
10	Internal Department email chain	21/11/2017 to 21/11/2017	Released in full.
11	Internal Department email chain	21/11/2017 to 21/11/2017	Released in full.

12	Email chain between the Department, the Minister's office and the Office of Film and Literature Classification	21/11/2017 to 21/11/2017	Released with information withheld under section 9(2)(a) of the OIA.
13	Internal Department email chain	23/11/2017 to 23/11/2017	Released in full.
14	Email chain between the Department and an external requester	23/11/2017 to 23/11/2017	Released with information withheld under sections 9(2)(a) and 9(2)(g)(i) of the OIA.
15	Email chain between the Department and an external requester	23/11/2017 to 14/02/2018	Released with information withheld under sections 9(2)(a) and 9(2)(g)(i) of the OIA.
16	Internal Department email	29/11/2017	Released in full.
17	Internal Department email – one attachment below	29/11/2017	Released in full.
18	<i>Draft Departmental response</i>	<i>No date</i>	Withheld in full under section 9(2)(g)(i) of the OIA.
19	Internal Department email – one attachment below	29/11/2017	Released in full.
20	<i>Draft Departmental response</i>	<i>No date</i>	<i>Withheld in full under section 9(2)(g)(i) of the OIA.</i>
21	Email chain between the Department and an external requester	29/11/2017 to 13/12/2017	Released with information withheld under sections 9(2)(a) and 9(2)(h) of the OIA.
22	Email chain between the Department and an external requester – three attachments below	29/11/2017 to 14/12/2017	Released with information withheld under sections 9(2)(a) and 9(2)(h) of the OIA.
23	<i>Attachment 1 – email chain between the Department and an external requester</i>	<i>16/11/2017 to 12/12/2017</i>	<i>Released with information withheld under section 9(2)(a) of the OIA.</i>
24	<i>Attachment 2 – email chain between the Department and an external requester</i>	<i>11/12/2017 to 12/12/2017</i>	<i>Released with information withheld under section 9(2)(a) of the OIA.</i>
25	<i>Attachment 3 – email chain between the Department and an external requester</i>	<i>23/11/2017 to 12/12/2017</i>	<i>Released with information withheld under section 9(2)(a) of the OIA.</i>

26	Email chain between the Department and the Minister's office	30/11/2017 to 30/11/2017	Released with information withheld under section 9(2)(g)(i) of the OIA.
27	Email chain between the Department and the Minister's office	30/11/2017 to 01/12/2017	Released with information withheld under section 9(2)(g)(i) of the OIA.
28	Internal Department email – one attachment below	01/12/2017	Released in full.
29	<i>Draft Departmental response</i>	<i>No date</i>	<i>Withheld in full under section 9(2)(g)(i) of the OIA.</i>
30	Internal Department email chain	01/12/2017 to 04/12/2017	Released in full.
31	Internal Department email	04/12/2017	Released with information redacted as being out of scope.
32	Internal Department email	04/12/2017	Released with information withheld under section 9(2)(a) of the OIA.
33	Internal Department email chain	05/12/2017 to 05/12/2017	Released in full.
34	Internal Department email chain	05/12/2017 to 05/12/2017	Released in full.
35	Internal Department email chain – one attachment below	05/12/2017 to 14/12/2017	Released with information withheld under section 9(2)(h) of the OIA.
36	<i>Department Legal advice memo</i>	<i>24/11/2017</i>	<i>Withheld in full under section 9(2)(h) of the OIA.</i>
37	Email chain between the Department and the Minister's office	07/12/2017 to 07/12/2017	Released in full.
38	Internal Department email – one attachment below	11/12/2017	Released in full.
39	<i>Draft Departmental response</i>	<i>No date</i>	<i>Withheld in full under section 9(2)(g)(i) of the OIA.</i>
40	Internal Department email chain	11/12/2017 to 11/12/2017	Released with information withheld under section 9(2)(g)(i) of the OIA.
41	Internal Department email – one attachment below	12/12/2017	Released in full.

42	<i>Draft Departmental response</i>	<i>No date</i>	<i>Withheld in full under section 9(2)(g)(i) of the OIA.</i>
43	Internal Department email chain	13/12/2017 to 14/12/2017	Released in full.
44	Internal Department email	14/12/2017	Released in full.
45	Email chain between the Department and True Legal Ltd	14/12/2017 to 14/12/2017	Released with information withheld under section 9(2)(a) of the OIA.
46	Email chain between the Department and an external requester	14/12/2017 to 15/12/2017	Released with information withheld under section 9(2)(a) of the OIA.
47	Internal Department email chain	14/12/2017 to 15/12/2017	Released in full.
48	Ministerial response letter – long version (includes Classification Act information) (This letter was sent to eight other recipients in response to Ministerial requests.)	18/12/2017	Released with information withheld under section 9(2)(a) of the OIA.
49	Ministerial response letter – short version (excludes Classification Act information) (This letter was sent to four other recipients in response to Ministerial requests.)	18/12/2017	Released with information withheld under section 9(2)(a) of the OIA.
50	Ministerial response letter – adjusted version (relates to classification labels) (This letter was only sent to a single recipient.)	18/12/2017	Released with information withheld under section 9(2)(a) of the OIA.
51	Internal Department email	18/12/2017	Released in full.
52	Internal Department email chain	19/12/2017 to 19/12/2017	Released in full.
53	Email chain between the Department, the Minister's office and an external requester	19/12/2017 to 20/12/2017	Released with information withheld under section 9(2)(a) of the OIA.
54	Internal Department email chain	20/12/2017 to 20/12/2017	Released in full.

55	Internal Department email chain	20/12/2017 to 20/12/2017	Released in full.
56	Internal Department email chain	20/12/2017 to 21/12/2017	Released in full.
57	Email chain between the Department and an external requester	20/12/2017 to 21/12/2017	Released with information withheld under sections 9(2)(a) and 9(2)(g)(i) of the OIA.
58	Email chain between the Department and an external requester	21/12/2017 to 21/12/2017	Released with information withheld under section 9(2)(a) of the OIA.
59	Email chain between the Department and an external requester	21/12/2017 to 22/12/2017	Released with information withheld under section 9(2)(a) of the OIA.
60	Internal Department email – one attachment below	24/01/2018	Released with information withheld under section 9(2)(a) of the OIA.
61	<i>Letter from the Department to and OIA requestor</i>	<i>26/01/2018</i>	<i>Released with some information withheld under section 9(2)(a) of the OIA.</i>
62	Email chain between the Department and an external requester	03/02/2018 to 15/02/2018	Released with information withheld under sections 9(2)(a) and 9(2)(g)(i) of the OIA.
63	Email chain between the Department and an external requester	03/02/2018 to 16/02/2018	Released with information withheld under section 9(2)(a) of the OIA.
64	Email chain between the Department and an external requester	03/02/2018 to 22/02/2018	Released with information withheld under section 9(2)(a) of the OIA.
65	Letter from the Department to an external requester	15/03/2018	Released with some information withheld under section 9(2)(a) of the OIA.

66	Draft Department Environmental Scan	2019	Withheld in full. In particular: <ul style="list-style-type: none">• Information on loot boxes is withheld under section 9(2)(g)(i) of the OIA; and• All other information is outside of the scope of the OIA request and is redacted.
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