



26 January 2018

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Dear Jarrod

Official Information Act 1982 (OIA) request dated 14 December 2017 (ref. 2017180205)

Thank you for your OIA request to the Department of Internal Affairs (the Department) dated 14 December 2017, in which you asked for the following information:

“Can you please also forward to me the internal reports/discussion documents on the issue of whether loot boxes meet the legal definition of gambling, and the decision document.”

We have interpreted your request to be for substantive discussion documents that directly led to the Department’s decision on whether loot boxes meet the legal definition of gambling. We have not included emails between staff discussing media coverage, preparing responses to correspondence regarding loot boxes, or including discussion that did not directly lead to our decision. Based on this interpretation we have identified three documents in-scope of your request:

1. an email from Operational Policy to Legal Services dated 20 November 2017, requesting a legal opinion on the status of loot boxes;
2. an email from Legal Services to Operational Policy dated 28 November 2017, containing a draft legal opinion on the status of loot boxes; and
3. an email from Legal Services to Operational Policy dated 8 December 2017, providing the final legal opinion on the status of loot boxes.

The above documents have been withheld in full under section 9(2)(h) of the OIA to maintain legal professional privilege. I consider that the withholding of information detailed above is not outweighed by other considerations which render it desirable, in the public interest, to make that information available.

We do however recognise there is public interest in transparency of this process. We have therefore provided you with a summary of the considerations that led to the Department’s decision regarding loot boxes (see Appendix One).

I trust this information is useful.

If you would like to discuss the Department's decision regarding loot boxes further I suggest you raise it at the quarterly meeting that you attend with Regulatory Services officials.

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

A handwritten signature in black ink, appearing to read 'Louise Cavanagh', written in a cursive style.

Louise Cavanagh
Director Operations Support
Regulatory Services

Appendix One: Summary of process and considerations that led to the Department's decision regarding loot boxes

The issue of loot boxes and their similarity to gambling was first raised with the Department in early October 2017 by the Office of Film and Literature Classification and a member of the public. Our response to those enquiries contained the following:

"Gambling means paying or staking consideration, directly or indirectly, on the outcome of something seeking to win money when the outcome depends wholly or partly on chance.

As 'loot boxes' are a major source of revenue, they are also a marketing tactic that uses psychology to engage people and encourage them to spend more – just like lots of other marketing strategies. Therefore this does not appear to meet the definition of gambling. While the content of a box may be unknown, the payment of the charge does purchase a box – so really there are no losers.

Even if this was gambling, New Zealand law does not prevent people from gambling on overseas websites, which presumably these are."

This initial view resulted from a consideration of the response to loot boxes in other jurisdictions and our understanding of how the feature is implemented in a number of games. The Department concentrated on a type of loot box known as "pay-to-loot"; where the exact content of the box is unknown at the time of purchase and is determined by the game programme partly based on chance.

On 13 November 2017 an article on loot boxes appeared in *The Wireless* (<http://thewireless.co.nz/articles/are-video-games-turning-young-people-into-gamblers>), as well as a story on Radio NZ's *Nine to Noon* show. It is worth noting that the article in *The Wireless* raises this issue in the context of treating addictive behaviours and suggests that the psychological techniques employed by computer games can be similar to those employed by gaming machines.

Subsequently, the Minister of Internal Affairs and the Department received a number of emails from concerned members of the public suggesting that loot boxes are a form of gambling and requesting that action be taken, either under the Gambling Act 2003 (the Gambling Act) or the Films, Videos, and Publications Classification Act 1993 (the Classification Act), to restrict access to games containing loot boxes.

In considering whether loot boxes constitute gambling, officials looked at a number of issues:

- Is the content of a loot box "money", as defined in the Gambling Act?
- Is the purchaser of a loot box "seeking to win money"?
- If the purchaser of a loot box always gets contents of the value paid for, does this make a difference?
- Does the content of a loot box have subjective value? (i.e. will the same content be valued differently by different players?).

- Does our view change if there is a secondary market where the contents of a loot box can be traded?
- The underlying game may be sold or available free from overseas websites and played on overseas servers.
- If the game is sold in New Zealand stores or played on local servers, would this constitute “remote interactive gambling”?

There are many games which enable the user to purchase additional items to enhance the gaming experience. Loot boxes are a variation on this theme. The Department’s view is that players do not purchase loot boxes seeking to win money or something that can be converted into money. They buy loot boxes so they can use their contents within the game and thereby have a better gaming experience. The Department therefore considers that computer games containing loot boxes that have been brought to its attention do not meet the legal definition of gambling. We will continue to follow the international debate over loot boxes and developments in gaming technology.

Some correspondents also asked whether computer games that include loot boxes could be given an age restricted classification to prevent children from purchasing them and to alert parents to the presence of gambling. Computer games come within the definition of a “film” in terms of the labelling requirements of the Classification Act.

Section 3(1) of the Classification Act provides that a publication is objectionable if it describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good. Section 3 is the threshold provision for any restriction on access, and is set understandably high to be consistent with the rights affirmed in the Bill of Rights Act 1990. As gambling is neither listed in this provision nor falls within any of the issues listed, it doesn’t appear possible that the presence of gambling could be a reason for a restricted classification. This view has also been expressed by the Office of Film and Literature Classification on its website: <https://www.classificationoffice.govt.nz/blog/monte-casino/>.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982