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February 5, 2019

Via E-mail

Department of Justice
Attn: FOIA/PA Mail Referral Unit
Room 115, LOC Building
Washington, DC 20530-0001
Phone: (202) 616-3837
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Laurie Day and Douglas Hibbard
Chiefs, Initial Request Staff
Office of Information Policy
Department of Justice
Suite 11050
1425 New York Ave, N.W.
Washington, DC 20530-0001

Re: Freedom of Information Act Request, Request for Expedited Processing

Dear FOIA Officer:

The Office of the New Jersey Attorney General submits this Freedom of Information Act (FOIA) request to obtain critical information about the Office of Legal Counsel's November 2, 2018 opinion, *Reconsidering Whether the Wire Act Applies to Non-Sports Gambling*, which reverses the Department of Justice's 7-year-old position that had allowed online gaming to proceed. The opinion instead asserts that federal criminal law applies to the online gambling that has taken place for years across the country. This FOIA request seeks, in particular, information relating to outside groups' lobbying efforts urging the Department of Justice to reconsider this position.

Background

On January 14, 2019, the Department of Justice published *Reconsidering Whether the Wire Act Applies to Non-Sports Gambling*, a Memorandum Opinion for the Acting Assistant Attorney General, Criminal Division, dated November 2, 2018 ("2018 Opinion").¹ The 2018 Opinion departs from the Department's previous interpretation of the Wire Act, which found that the Act's limits on interstate transmission of certain online gambling information only applied to interstate transmission of information relating to sports wagering and did not apply to other forms of online gaming. See *Whether Proposals by Illinois and New York to Use the Internet and Out-of-State Transaction Processors to Sell Lottery Tickets to In-State Adults Violate the Wire Act*, 35 Op. O.L.C. __ (2011) ("2011 Opinion").² In its new opinion, however, DOJ finds that "the prohibitions of the Wire Act are not uniformly limited to sports gambling," and that all but one of the Act's prohibitions apply to non-sports-related betting or wagering.

¹ O.L.C. Op. available at <https://www.justice.gov/olc/file/1121531/download>.

² O.L.C. Op. available at <https://www.justice.gov/sites/default/files/olc/opinions/2011/09/31/state-lotteries-opinion.pdf>.



The Department of Justice's new interpretation upends the settled expectations of numerous states and of the gaming industry, which developed robust online gaming in reliance on the Department's 2011 Opinion. The opinion casts doubt not only on traditional online gaming, but also on multi-state lottery drawings (such as Power Ball and Mega Millions) and online sales of in-state lottery tickets. Worst of all, DOJ has no good reason for its sudden reversal; it recognizes that states have been relying on its prior advice, yet it cannot point to any intervening facts or information to justify such an about-face.

Instead, and most troublingly, press reports have indicated that pressure to reconsider the 2011 Opinion derived not from intervening facts or law, but from lobbying efforts. According to the public reporting, "for years, lawyers and lobbyists for Las Vegas Sands circulated position papers in Washington arguing for a change in the 2011 Justice Department interpretation." *See e.g.*, Tom Hamburger, Matt Zapotosky, and Josh Dawsey, *Justice Department issues new opinion that could further restrict online gambling*, Wash. Post (Jan. 14, 2019).³ The Sands' Chief Executive, Sheldon Adelson, established the Coalition to Stop Internet Gambling to lobby against the opinion, and the Sands paid lobbyists affiliated with the Coalition \$210,000 since 2017. *Id.* But the Coalition was unable to persuade Congress to amend the Wire Act, so certain lawmakers "pressed the department on its interpretation of the act, and former attorney general Jeff Sessions agreed at his 2017 confirmation hearing to look into it." *Id.* According to reports, a legal analysis provided by lobbyists for Mr. Adelson to the DOJ "argued that the plain meaning of the words in the Wire Act appeared to ban all transmissions related to all forms of gambling, not just sports betting." Byron Tau and Alexandra Berzon, *Justice Department's Reversal on Online Gambling Tracked Memo From Adelson Lobbyists*, WSJ (Jan. 18, 2019).⁴ The memo reportedly was passed on to "a top ranking official in the Justice Department in April 2017" by an outside law firm headed by a former Department of Justice official. *Id.* The lobbying effort proved successful: a month later, the acting head of the Justice Department's criminal division asked the acting head of the Office of Legal Counsel to reconsider its 2011 opinion. *Id.* The ensuing DOJ memo "hewed closely to arguments made by lobbyists for . . . [Mr.] Adelson." *Id.* The Coalition issued a statement immediately after the Department of Justice issued its radical departure from past practice, praising the Department's decision.

Requested Records

Please promptly produce all of the following records:

1. All records reflecting memoranda, communications, consultations, or meetings relating to the Wire Act, online gaming, online gambling, online wagering, Internet gaming, Internet gambling, Internet wagering, the 2011 Opinion, and/or the 2018 Opinion;
2. That are contained the following offices:
 - a. The Office of the Attorney General; or
 - b. The Office of the Deputy Attorney General; or
 - c. The Office of the Associate Attorney General; or
 - d. The Office of the Assistant Attorney General, Criminal Division; or
 - e. The Office of Legislative Affairs; or
 - f. The Office of Legal Policy; or
 - g. The Office of Public Affairs; or
 - h. The Office of the Executive Secretariat;

³ The article is available at https://www.washingtonpost.com/politics/justice-department-issues-new-opinion-that-could-further-restrict-online-gambling/2019/01/14/a501e2da-1857-11e9-8813-cb9dec761e73_story.html.

⁴ The article is available at <https://www.wsj.com/articles/justice-departments-reversal-on-online-gambling-tracked-memo-from-adelson-lobbyists-11547854137>

3. And that involve, refer to, or relate to the following entities:
 - a. Any non-governmental actors or organizations, including but not limited to the Coalition to Stop Internet Gambling, Las Vegas Sands, the Lincoln Group, Sheldon Adelson, Blanche Lincoln, Charles Cooper, and Darryl Nirenberg; or
 - b. Any organization or individuals in the Executive Office of the President, including but not limited to the Office of White House Counsel and the Office of Management and Budget.

Time Frame

The time frame for this request is January 20, 2017, to the date on which the Department of Justice commences its search for records responsive to this request.

Fee Waiver Request

The New Jersey Attorney General's Office requests a waiver of document search, review, and duplication fees because "disclosure of the [requested] information is in the public interest." 5 U.S.C. § 552(a)(4)(A)(iii). Disclosure "is likely to contribute significantly to public understanding of the operations or activities of the government" because of the substantial public interest in understanding how the Department of Justice's interpretation of the Wire Act would affect the states that have legalized online betting and wagering, and in understanding the reasons for its sudden change in position. *Id.* Disclosure also "is not primarily in the commercial interest of the requester." *Id.* This Office has no commercial interest in the requested information; it seeks these records in its capacity as an agency of a state whose residents could be affected by the government operations and activities at issue. The New Jersey Attorney General's Office may make records obtained from this request available to the public at no cost.

If our request for a waiver is denied, the New Jersey Attorney General's Office is willing to pay all reasonable fees incurred in responding to this request, up to \$50. If the costs of responding to this request should exceed that amount, please contact us before incurring any additional costs.

Request for Expedited Processing

The New Jersey Attorney General's Office requests expedited processing under 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(1)(ii), (iii). As demonstrated in the accompanying certification, the State of New Jersey, its residents, and businesses have a "compelling need" for the requested records and could suffer the "loss of substantial due process rights" should the Department of Justice's interpretation of the Wire Act go into effect. 28 C.F.R. § 16.5(e)(1)(iii). Indeed, the Department confirmed that it might start to bring criminal prosecutions pursuant to its new interpretation of the Wire Act within 90 days. Furthermore, there is an "urgency to inform the public" about this legal interpretation and the state is "primarily engaged in disseminating information" to its residents regarding legal guidance that affects them within the meaning of 5 U.S.C. 552(a)(6)(E)(v)(II). *See also* 28 C.F.R. § 16.5(e)(1)(ii). The Department must provide a response regarding its determination of the expedited processing request within 10 calendar days of the date of this request. 5 U.S.C. § 552(a)(6)(E)(ii)(I).

Contact Information

Please direct any response to this request to the following e-mail address: gov-info@njoag.gov. We appreciate your assistance and look forward to your prompt response.

Sincerely,



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