

# Western Australian Auditor General's Report



## Opinions on Ministerial Notifications



Report 4: August 2018-19

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## WESTERN AUSTRALIAN AUDITOR GENERAL'S REPORT

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### **Opinions on Ministerial Notifications**



**THE PRESIDENT  
LEGISLATIVE COUNCIL**

**THE SPEAKER  
LEGISLATIVE ASSEMBLY**

### **OPINIONS ON MINISTERIAL NOTIFICATIONS**

This report has been prepared for submission to Parliament under the provisions of section 24 of the *Auditor General Act 2006*.

This report deals with 2 decisions by the Minister for Emergency Services, the Hon Francis Logan MLA not to provide information to Parliament about:

- the government review of aircraft owned and leased by the State
- locations identified as the next priority for a Volunteer Fire and Rescue Station or a Career Fire and Rescue Station.

This report also includes my determination that a ministerial notice received from the Minister for Forestry, the Hon Dave Kelly MLA, under section 82 of the *Financial Management Act 2006*, was not required.

CAROLINE SPENCER  
AUDITOR GENERAL  
30 August 2018

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# Ministerial decisions not to provide information to Parliament

## Introduction

This report deals with 2 decisions by the Minister for Emergency Services, the Hon Francis Logan MLA not to provide information to Parliament about:

- the government review of aircraft owned and leased by the State
- locations identified as the next priority for a Volunteer Fire and Rescue Station or a Career Fire and Rescue Station.

Section 82 of the *Financial Management Act 2006* (the FM Act) requires a Minister who decides that it is reasonable and appropriate not to provide certain information to Parliament, to give written notice of the decision to both Houses of Parliament and the Auditor General within 14 days of the decision.

Section 24 of the *Auditor General Act 2006* requires the Auditor General to provide an opinion to Parliament as to whether the Minister's decision was reasonable and appropriate.

## What did we do?

The Audit Practice Statement on our website ([www.audit.wa.gov.au](http://www.audit.wa.gov.au)) sets out the process we follow to arrive at our section 82 opinions, including:

- a review of agency documents
- a review of any advice provided to the relevant Ministers by agencies, the State Solicitor's Office or other legal advisers
- interviews with key agency persons including discussions about our draft findings and the Auditor General's opinion.

Our procedures are designed to provide sufficient appropriate evidence to support an independent view to Parliament on the reasonableness and appropriateness of the Minister's decision.

We have not performed an audit, however our procedures follow the key principles in the Australian Auditing and Assurance Standards.

# Ministerial decision not to provide information about a review of aircraft owned and leased by the State

## Opinion

The decision by the Minister for Emergency Services, the Hon Francis Logan MLA, not to provide Parliament with details of the government review of aircraft owned and leased by the State was reasonable and therefore appropriate.

## Background

In an additional question to the 2017-18 Estimates and Financial Operations Committee budget estimates hearings on 18 October 2017, the Hon Martin Aldridge MLC asked the Minister for Emergency Services for the following information:

*1. I refer to the South West Emergency Rescue Helicopter Service and the lack of funding beyond 2017-18 and the claim by the government that it is undertaking a whole of government review of aircraft owned and leased by the State and I ask:*

- (a) Which agency is undertaking the review;*
- (b) What are the terms of reference;*
- (c) Who is conducting the review;*
- (d) When is the review due to report; and*
- (e) Will the review be made public?*

On 4 December 2017, the Minister declined to give this information, replying:

*Answer: (a)-(e) This matter is currently before Cabinet and further information will be provided at the appropriate time.*

On 8 January 2018, the Minister notified the Auditor General of his decision not to provide the requested information in accordance with section 82 of the FM Act.

## Key findings

The decision by the Minister not to provide the requested information was reasonable and therefore appropriate.

The Minister declined to provide the information to Parliament because it forms the basis of a submission to the Expenditure Review Committee and is therefore subject to public interest immunity. The Minister did not seek advice.

In considering the Minister's decision, we followed the approaches laid out in previous *Opinions on Ministerial Notifications* dealing with Cabinet confidentiality, the core principle of which is to protect information that would reveal deliberations and decisions of Cabinet. We assessed the requested information against the following Cabinet confidentiality considerations:

### *Is part or all of the information publicly available?*

We could not find the information requested about the whole-of-government aircraft review in publicly available sources at the time the Minister declined to provide it.

*Was the information created for the purpose of informing Cabinet or being discussed in Cabinet? Does it include policy options or recommendations prepared for submission to Cabinet?*

We reviewed Cabinet documents and found they included options and recommendations for a whole-of-government review of aircraft owned and leased by the State. The documents were prepared for submission to Cabinet and included information relevant to all parts of the question asked.

*Does the information contain material that would reveal the deliberations and decisions of Cabinet?*

The Minister's section 82 FM Act notification to Parliament expanded on his decision not to provide the information stating that the information forms a submission to the Expenditure Review Committee and would be used by Cabinet to make decisions. We assessed the information and found it could reveal deliberations or decisions of Cabinet about a review of aircraft owned or leased by the State.

*Did the Minister consider providing any sections of the information that would not reveal deliberations and decisions of Cabinet?*

The Minister stated in his notification to Parliament that he had considered providing the information with the Cabinet-in-confidence sections redacted. However, he found this was not possible because the material subject to Cabinet confidentiality was so extensive that the information would be devoid of meaning and context.

We agree that the information could not meaningfully be provided with Cabinet-in-confidence information redacted.



# Ministerial decision not to provide locations identified as the next priority for a Volunteer or a Career Fire and Rescue Station

## Opinion

The decision by the Minister for Emergency Services, the Hon Francis Logan MLA, not to provide Parliament with information about locations identified as the next priority for a Volunteer Fire and Rescue Station or a Career Fire and Rescue Station was not reasonable and therefore not appropriate as the information was already publicly available.

## Background

On 18 October 2017, as part of 2017-18 Estimates and Financial Operations Committee Budget Estimates Hearings, the Hon Martin Aldridge MLC, asked the Minister for Emergency Services for the following information (additional question 2a):

*2. I refer to any plans that the department has for assessing risk and other measures for the future location of fire stations and other emergency services and I ask:*

*(a) Which locations are identified as the next priority for a Volunteer Fire and Rescue Service Station or a Career Fire and Rescue Service Station.*

On 8 November 2017, the Minister declined to give this information, replying:

*The details requested are considered Cabinet in confidence. These decisions will be announced in due course.*

*As per the 2017/18 budget estimates, the Cockburn Central Career Fire and Rescue Service Station commencing 2017-18 is the next priority (this is a replacement for Success CFRS Station).*

On 8 January 2018, the Auditor General received the Minister's notification of his decision not to provide the requested information in accordance with section 82 of the FM Act.

## Key findings

The decision by the Minister not to provide the requested information was not reasonable and therefore not appropriate.

The Minister properly sought advice from the Department of Fire and Emergency Services (Department) before responding to the request. The Department recommended that the Minister decline to provide the information as it formed part of the Department's Strategic Asset Plan (SAP) which it considers Cabinet-in-confidence. The Department's advice to the Minister did not consider the option of releasing information that was already publicly available, not commercially sensitive or would not reveal the deliberations or decisions of Cabinet.

In advising the Minister, the Department relied on June 2016 advice received from the Department of Treasury that a SAP, developed as part of the annual Budget process to inform Cabinet decision-making, is classified as Cabinet-in-confidence.

In considering the Minister's decision, we followed the approaches laid out in our previous *Opinions on Ministerial Notifications* dealing with Cabinet confidentiality, the core principle of which is to protect information that would reveal deliberations and decisions of Cabinet.

We assessed the requested information against the following Cabinet confidentiality considerations:

- Is part or all of the information publicly available?
- Was the information created for the purpose of informing Cabinet or being discussed in Cabinet? Does it include policy options or recommendations prepared for submission to Cabinet?
- Does the information contain material that would reveal the deliberations and decisions of Cabinet?
- Did the Minister consider providing any sections of the information that would not reveal deliberations and decisions of Cabinet?

We found the information did not meet our first consideration. The Department told us that the information was contained in its SAP which it considers Cabinet-in-confidence. The part of the SAP the Department allowed us to view listed a number of locations for fire station redevelopments, refurbishments and new facilities. We found these had not been before Cabinet at the time the Minister declined to provide the information and that nearly all the locations had been disclosed to Parliament in 2015.

This Office has expressed a view in prior *Opinions on Ministerial Notifications*<sup>1</sup> that consideration by Cabinet is only one of the purposes of a SAP. We recommend agencies assess what information contained in their SAPs can be provided to Parliament such as information that is already public or that would not reveal the deliberations and decisions of Cabinet.

During our inquiry the Department also directed us to Cabinet documents that listed 6 fire station locations. These locations were all generally known or ascertainable at the time the Minister declined to provide the information as they were listed in the Department's 2017-18 budget papers, covering the period up to the 2020-21 forward estimates.

The Minister's decision not to release the information was not reasonable and therefore not appropriate because the information was already publicly available.

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<sup>1</sup> The Office of the Auditor General, Report 18: *Opinions on Ministerial Notifications*, 11 August 2016.

## **Response from the Department of Fire and Emergency Services**

The Department of Fire and Emergency Services (DFES) considers that the Minister's decision not to disclose information contained within the Strategic Asset Plan as to future priority fire station locations was reasonable given that the information requested was prepared to inform decisions by Cabinet and the Minister.

DFES followed the advice provided by the Department of Treasury that the Strategic Asset Plan developed as part of the annual budget process is to be marked as 'Cabinet-in-confidence' and as such it was not appropriate to release the information requested.

DFES will continue to review its procedures regarding Parliamentary requests for information to ensure it meets its obligations to keep Parliament appropriately informed.

## Ministerial notice not required

On 27 April 2018, we received notice from the Minister for Forestry, the Hon David Kelly MLA, under section 82 of the *Financial Management Act 2006* in relation to the Estimates and Financial Operations Committee's 2016-17 Annual Report Hearings of the Forest Products Commission (FPC) Supplementary Question 13(a).

*13. I refer to the agency's response to question 2(c) of the Annual Report Hearings Questions prior to hearings whereby some sharefarmers receive a crop share percentage of the total net revenue from harvesting operations:*

- (a) Please provide all State Agreements under which the prices FPC receive for the sale of pine are determined, including a copy of all appendixes and schedules that detail pricing.*

We determined that a notice was not required in this instance, as the Minister provided the information to the Committee in confidence on 15 March 2018.

Our Audit Practice Statement outlines the circumstances when a notice is unlikely to be required. These include when a Minister has already provided the answer.

## Auditor General's reports

Report number	2018-19 reports	Date tabled
3	Implementation of the GovNext-ICT Program	30 August 2018
2	Young People Leaving Care	22 August 2018
1	Information Systems Audit Report 2018	21 August 2018
Report number	2018 reports	Date tabled
13	Management of Crown Land Site Contamination	27 June 2018
12	Timely Payment of Suppliers	13 June 2018
11	WA Schools Public Private Partnership Project	13 June 2018
10	Opinions on Ministerial Notifications	24 May 2018
9	Management of the State Art Collection	17 May 2018
8	Management of Salinity	16 May 2018
7	Controls Over Corporate Credit Cards	8 May 2018
6	Audit Results Report – Annual 2017 Financial Audits and Management of Contract Extensions and Variations	8 May 2018
5	Confiscation of the Proceeds of Crime	3 May 2018
4	Opinions on Ministerial Notifications	11 April 2018
3	Opinion on Ministerial Notification	21 March 2018
2	Agency Gift Registers	15 March 2018
1	Opinions on Ministerial Notifications	22 February 2018



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