

**Section 82 Notice – Financial Management Act 2006**  
**Legislative Assembly Question on Notice 4490**

Pursuant to section 82 of the *Financial Management Act 2006*, I give notice to both houses that an answer to part (c) of Legislative Assembly Question on Notice 4490 was not provided.

Notice is also being provided to the Auditor General, as required under section 82 of the *Financial Management Act 2006*.

A copy of the question with my answers is attached for your information (**Attachment 1**). The specific part that I am unable to answer is highlighted below.

Assembly 4490 – Hon Dr Mike Nahan to the Minister for Tourism:

I refer to the media release titled "Perth turns up the heat in summer tourism campaign" dated 7 November 2018 and I ask:

(c) Will the Minister table a breakdown of the funding for this campaign.

Although I provided the total cost of the Summer is the Greatest Show in Perth campaign in my response to part (a) of the question, I am not prepared to provide a breakdown of the Government's funding for the campaign as this information has been assessed by Tourism Western Australia (Tourism WA) as being confidential and commercially sensitive.

A copy of Tourism WA's *Policy and Guidelines for the Release of Event Sponsorship and/or other Commercial Information*, which has been used to determine this recommendation, is attached (**Attachment 2**).

In making this decision I have considered the public interest, and while the public has a general right of access to information held by government agencies, this right has to be balanced against the need to protect the financial and commercial affairs of the State.

The information requested has not been provided for the following reasons:

The release of the specific amount of cooperative marketing funding invested by the State with a campaign partner would significantly impact Tourism WA's business, professional, commercial and financial affairs, as well as those of its campaign partner in relation to their negotiations with other States/Territories where marketing activities are undertaken in multiple jurisdictions.

All Australian States and Territories are competing with each other for visitors. A key component of any marketing strategy is cooperative marketing where a State Tourism Organisation (STO) will jointly fund a campaign with a travel partner such as an airline or travel agent.

There are a limited number of travel partners that STOs can work with as they need to be active in the source markets and have the ability to reach the target audience. These travel partners work with a range of STOs and National Tourism Organisations, and they select which STOs they want to partner with based on an anticipated return on investment.

Releasing the amount that Tourism WA invests in specific campaigns would enable other States or Territories to offer more favourable investments to persuade travel partners to work with them instead. This could result in Tourism WA having to invest a larger amount to retain the cooperative marketing partnership or miss out altogether.

Tourism WA conducts cooperative campaigns with competing travel partners such as airlines, wholesalers and online travel agents. Releasing the amount that Tourism WA invests in specific campaigns could jeopardise future negotiations with those partners if they know what Tourism WA invests with their competitors.

The travel industry is highly competitive and organisations view information about their financial arrangements with partners as commercially sensitive. Every cooperative campaign will have contributions from partners, either cash or in-kind. Releasing the amount that Tourism WA invested in the Summer is the Greatest Show in Perth campaign would provide information that would be of competitive advantage to its competitors in negotiations. Knowing that this information can be released would make travel partners reluctant to enter into cooperative campaigns with Tourism WA.

Note: By mutual agreement Tourism WA may release large scale funding amounts that cover a range of activities over an extended time period, but not specific campaign amounts.

In summary, information pertaining to the specific amount invested by Tourism WA with a travel partner in individual campaigns has a commercial value and its disclosure could cause commercial harm to the State and the travel partner. Disclosing the amount of Tourism WA's investment could provide a competitive advantage to other States and potential campaign partners.

The Government takes its responsibility to grow visitor numbers by implementing a range of marketing initiatives, including cooperative marketing campaigns, very seriously. A key strategy is to safeguard information that may jeopardise the State's business relationships, reputation and ability to negotiate successfully with campaign partners.

Should you have any queries relating to this matter, please contact Tourism WA Executive Director Corporate and Business Services, Mr David Lowe, by email to [david.lowe@westernaustralia.com](mailto:david.lowe@westernaustralia.com) or by telephone on 9262 1852.

Yours sincerely

A handwritten signature in black ink, consisting of a large, sweeping initial 'P' followed by a long horizontal line that ends in a small upward tick.

**HON PAUL PAPALIA CSC MLA  
MINISTER FOR TOURISM**

Attachment 1  
Attachment 2

Extract from *Hansard* of LA QoN 4490  
*Tourism WA's Policy and Guidelines for the Release of Event Sponsorship and/or other Commercial Information*

TOURISM — “SUMMER IS THE GREATEST SHOW IN PERTH” CAMPAIGN

4490. Dr M.D. Nahan to the Minister for Tourism:

I refer to the media release titled “Perth turns up the heat in summer tourism campaign” dated 7 November 2018 and I ask:

- (a) What is the total cost of this campaign;
- (b) Is Expedia, or any hotel receiving money from the State Government to subsidise the cost of hotel rooms? If yes, how much;
- (c) Will the Minister table a breakdown of the funding for this campaign;
- (d) Was any market testing done before this campaign;
- (e) Was a business case prepared for this campaign;
- (f) If yes to (d), will the Minister table the business case; and
- (g) Are there any key performance indicators including return on investment to measure the success of this campaign? If yes, what are the key performance indicators?

**Mr P. Papalia replied:**

- (a) \$946,000 (across media, production, research and cooperative travel partnership).
- (b) No.
- (c) Information pertaining to the amount invested by Tourism Western Australia (Tourism WA) in individual campaigns has a commercial value and its disclosure could cause commercial harm to the State and the agency’s campaign partner. Disclosing the amount of Tourism WA’s investment could provide a competitive advantage to other States/Territories and potential campaign partners. Accordingly, I will notify the Auditor General’s office and both houses of Parliament that part (c) of this question will not be answered as per section 82 of the *Financial Management Act 2006*.
- (d) Yes.
- (e) No.
- (f) Not applicable.
- (g) In addition to return on investment, the key performance indicators were:
  - Increase in the number of consumers who booked a holiday to Perth.
  - Increase in room nights booked.
  - Increase in awareness of Perth as an affordable holiday destination.

# Policy and Guidelines

## Release of Event Sponsorship and/or other Commercial Information



### 1. Purpose

This policy and guidelines document has been developed primarily to assist in providing advice to the Minister for Tourism in responding to parliamentary questions or other parliamentary proceedings<sup>1</sup> that may involve the potential release of event sponsorship information and/or other commercial information (i.e. financial, contractual and/or other information acquired as part of either an event sponsorship process or other business activity).

This document may also be useful in guiding the preparation of advice to the Minister for Tourism in any situation (including the above) where it may be considered “reasonable and appropriate” not to provide information to Parliament.

### 2. Background

Tourism Western Australia (Tourism WA), as a Western Australian Public Sector entity, operates within a governance and accountability framework established under both legislation and policy. The agency’s accountability depends on the availability of information about how the activities of the agency have been conducted.

Section 82 of the *Financial Management Act 2006* (FM Act) provides that, if a Minister decides that it is reasonable and appropriate not to provide certain information to Parliament concerning the conduct or operation of an agency, then within 14 days of the decision the Minister is to cause written notice of the decision to be given to both Houses of Parliament and the Auditor General.

Section 24 of the *Auditor General Act 2006* (AG Act) requires the Auditor General to report to Parliament an opinion “as to whether a decision by a Minister to not provide the information to Parliament concerning any conduct or operation of an agency is reasonable and appropriate”.

Note: Whilst the *Freedom of Information Act 1992* may provide a valuable reference point in considering whether information should be withheld in answer to a request in Parliament, it is a separate process to that of responding to a request in Parliament.

#### ***When are section 82 notices not required?***

*A notice under section 82 of the FM Act is unlikely to be required in the following circumstances:*

- *the Minister has advised that information will be provided at a later date and there is reasonable justification for the delay*
- *an answer has been provided in a previous question*
- *the information is already publicly available*
- *the requested information does not concern the conduct or operation of an agency as required by the FM Act*

<sup>1</sup> Note: Section 82 of the *Financial Management Act 2006* is not restricted to parliamentary questions on notice but to any parliamentary proceeding.

- *the information is already being sought under the Freedom of Information Act 1992 (however, refusal to provide information simply because it can be accessed under the FOI Act is likely to be considered unreasonable and not appropriate)*<sup>2</sup>
- *the Minister refers the request for information to another Minister, with responsibility for the agency in question.*

Extract from the Office of Auditor General *Audit Practice Statement* [www.audit.wa.gov.au](http://www.audit.wa.gov.au)

### 3. Policy Statement

Advice provided by the agency on the release (or not) of event sponsorship and/or other commercial information shall in all cases involve:

- A** An assessment of the confidentiality of the commercial information (including contractual requirements<sup>3</sup> in relation to confidentiality);
- B** An assessment against reasonable criteria for determining the commercial sensitivity of the information and possible detriment to the State and/or other parties; and
- C** Documentation of the above assessments.

Other considerations may include the:

- i. Resources required to collect the information;
- ii. Information being protected by legal professional privilege; and/or
- iii. Information being protected by public interest immunity.

### 4. Guidelines

Contact Tourism WA's Ministerial Liaison Unit prior to commencing any assessment action for additional assistance, including a copy of additional guidance documents and templates.

#### **A Assessing the confidentiality of the information** (including any contractual requirements in relation to confidentiality)

For the purposes of this policy, for commercial information to be considered as confidential, it must satisfy all of the following criteria:

- i. The information to be protected must be specifically identified.
- ii. The information must be 'commercially sensitive'. (Refer guideline 4B *Assessing Commercial Sensitivity of the information and possible detriment to the State and/or other parties.*)
- iii. Disclosure would cause unreasonable detriment to the owner of the information or another party.
- iv. The information was provided under an understanding that it would remain confidential. (This requires consideration of the circumstances in which the information was provided and whether there was a mutual, express or implied understanding that confidentiality would be maintained.)

<sup>2</sup> Refer also to the 17 September 2015 Statement in the Upper House of Parliament by the Hon Barry House MLC, President of the Legislative Council regarding the *FOI Act*. HPRM Reference: E15/16738 (file GOV/0460)

<sup>3</sup> Note: Section 81 of the *Financial Management Act 2006* requires that no contractual or other arrangement is to be entered into that would prevent or inhibit the provision of information by the Minister to Parliament concerning any conduct or operation of the agency.

**B Assessing commercial sensitivity of the information and possible detriment to the State and/or other parties**

- i. Is the information generally known or ascertainable?
- ii. Has the information already been disclosed by another party (e.g. by another government entity) and/or another process (e.g. a freedom of information request, annual reporting, media statement, response to other parliamentary questions or a parliamentary committee, etc)?
- iii. Is the information a trade secret or other business information that has commercial value and its disclosure could reasonably be expected to destroy or diminish that value?

Some potential considerations:

- (a) Would the release of financial, contractual or other information compromise Tourism WA's (the State Government's) *ability to successfully attract, develop and/or retain* an event or other business activity for Western Australia?

For example

- Could it provide another city or State with an unfair advantage?
- Could it lead to substantially increased costs should another city or State seek to attract the event or business activity?
- Is the event or business activity sufficiently 'mobile' that it could be secured or hosted in another city or State?

- (b) Would the release of financial, contractual or other information compromise Tourism WA's (the State Government's) future *ability to successfully negotiate favourable terms and conditions* for an event or other business activity?

For example:

- If future event holders or other companies knew the information is not being treated as commercially sensitive, would they be more reluctant to negotiate favourable terms and conditions with Tourism WA (the State Government) because other cities or states may demand the benefit of the same business arrangements.

**C Documentation of the Assessment(s)**

The Ministerial Liaison Unit has a template to guide the documentation of the agency's assessment and subsequent advice to the Minister for Tourism, given a thorough evaluation against relevant criteria is required (ie it is not sufficient for example to simply state the requested information is commercial in confidence).

Wherever possible, the draft assessment should be referred to either the Executive Director or the Commercial Contracts Manager within the Corporate & Business Services division for internal review, prior to finalising the assessment. This process step should also be reflected in the documented assessment, where applicable.

In instances involving a Question Without Notice, if the advice to the Minister for Tourism is not to provide information to Parliament, a conscious and deliberate consideration of the matter is still required to have occurred in preparing this advice. However, whilst written documentation of the deliberative process is required in all cases, due to the time constraints in responding to a Question Without Notice, this documentation step may need to occur after the advice has been provided to the Minister for Tourism.

### **Other considerations**

Contact Tourism WA's Executive Director Corporate & Business Services for additional assistance if one or more of the following may be relevant to providing advice to the Minister for Tourism on whether or not to provide information to Parliament:

- i. The resources required to collect the information would be manifestly unreasonable;
- ii. The information is protected by legal professional privilege; and/or
- iii. The information is protected by public interest immunity (eg Cabinet Documents).

## **5. Impact of Time**

Related to the above is the question of time: *At what point in time does the information no longer have commercial sensitivity and, as such, no longer needs to be held in confidence?* The setting of a specific timeframe has not been deemed appropriate and therefore each case needs to be assessed on its own merits or context (i.e. parallels to other current events/business activity, potential for that or a similar event/business activity to return or recur in the near future, etc).

## **6. Auditor General Reports for Referencing**

22/2016 | 13 October 2016

*Annual cost of 16 sponsorship agreements to Parliament.*

21/2015 | 8 October 2015

*Funding provided to attract a 2018 FIFA World Cup Socceroos' Qualifying Match to Perth.*

12/2015 | 12 June 2015

*Sale of public land (FESA House).*

17/2014 | 25 September 2014

*Feasibility for International Cricket (Cricket Test Matches) and Analysis of the Experience Extraordinary campaign.*

3/2014 | 18 March 2014

*Funding for some Tourism WA sponsored events.*

9/2012 | 28 June 2012

*Funding for the Perth International Arts Festival.*

2/2012 | 22 February 2012

*Funding for some Tourism WA sponsored events.*

2/2011 | 23 March 2011

*Information on the theatre production of The Graduate.*

## 7. Additional Information

- State Solicitor's Office (Nov 2016): Guideline to Ministers Deciding Whether to Provide Information Requested by Parliament.
- Identifying and Protecting Confidential Information, Australian Government Solicitor, Legal Briefing No. 64, 4 July 2002, <http://www.ag.gov.au/publications/legal-briefing/br64.pdf>
- Audit Practice Statement, Office of the Auditor General (WA), [www.audit.wa.gov.au](http://www.audit.wa.gov.au)
- Various media articles including *Victoria vows to fight for every major event "worth taking"* (June 2015) refer HPRM reference: STM/0509
- 17 September 2015 Statement in the Upper House of Parliament by the Hon Barry House MLA, President of the Legislative Council regarding the *FOI Act*. Refer HPRM reference: E15/16738 (Tourism WA file GOV/0460).
- Decision of the Office of the Information Commissioner (Decision Ref: D0062014): Freedom of Information – refusal of access – clause 4(1) – trade secrets. (Tourism WA file: STM/0509)

## 8. Legislative Base/Related Policies

- *Financial Management Act 2006*
- *Auditor General Act 2006*

## 9. Forms & Templates

Refer Tourism WA's Ministerial Liaison Unit

## 10. Version Control

Version	Date	Approved By	Comment/Amendment
1.0	Jul 2012	CEO	New policy. First version
2.0	Jul 2015	CEO	Revision to include other business activities (i.e. in addition to event sponsorship) and a clarification/expansion of the assessment criteria.
3.0	Oct 2015	ED, CBS	Insert of additional references: <ul style="list-style-type: none"> <li>• Auditor General Report (21/2015)</li> <li>• 17 Sep 2015 Statement by the President of the Legislative Council.</li> </ul>
4.0	Jan 2017	CEO	Revision to include additional information from the State Solicitor's Office Nov 2016 <i>Guideline to Ministers Deciding Whether to Provide Information Requested by Parliament</i> . Insert of additional references: <ul style="list-style-type: none"> <li>• Auditor General Report (22/2015)</li> <li>• Decision of the Office of the Information Commissioner (Trade Secrets).</li> </ul>