

Western Australian Auditor General's Report



Opinion on Ministerial Notification



Report 11: 2019-20
30 October 2019

**Office of the Auditor General
Western Australia**

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The Office of the Auditor General acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community. We pay our respects to all members of the Aboriginal communities and their cultures, and to Elders both past and present.

WESTERN AUSTRALIAN AUDITOR GENERAL'S REPORT

Opinion on Ministerial Notification



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

OPINION ON MINISTERIAL NOTIFICATION

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

It deals with a decision by the Minister for Police, the Hon Michelle Roberts MLA, not to provide Parliament with information about operating hours and costs, and maintenance costs for rotary wing aircraft in use by the Western Australia Police Force.

It also deals with a section 82 notice from the Minister for Health, the Hon Roger Cook MLA where an opinion was not required in relation to information the Minister's office supplied about the visit of Dr James Downar to Western Australia.

A handwritten signature in black ink, appearing to read 'C Spencer'.

CAROLINE SPENCER
AUDITOR GENERAL
30 October 2019

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Ministerial decision not to provide information to Parliament

Introduction

This report deals with a decision by the Minister for Police, the Hon Michelle Roberts MLA, not to provide Parliament with information about operating hours and costs, and maintenance costs for rotary wing aircraft in use by the Western Australia Police Force (WA Police Force).

It also deals with a section 82 notice from the Minister for Health, the Hon Roger Cook MLA where an opinion was not required in relation to information the Minister's office supplied about the visit of Dr James Downar to Western Australia.

Section 82 of the *Financial Management Act 2006* 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 we did

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

- a review of entity documents
- a review of any advice provided to the relevant Minister by entities, the State Solicitor's Office or other legal advisers
- interviews with key entity 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.

Opinion

The decision by the Minister for Police, the Hon Michelle Roberts MLA, not to provide Parliament with information about operating hours and costs, and maintenance costs for rotary wing aircraft in use by the WA Police Force was not reasonable and therefore not appropriate. The information requested was factual, operational information, and was not prepared expressly for, nor would reveal, the deliberations and decisions of Cabinet. Any discrete information in relation to operational costs that may compromise the commercial affairs of the State could have been redacted.

Background

In Parliament on 8 May 2018, the Hon Martin Aldridge MLC asked the Minister for Police for the following information in Legislative Council Question on Notice 1191:

I refer to rotary wing aircraft in use by the Western Australian Police (WAPOL), and I ask:

- (a) will the Minister please identify each aircraft in permanent use by WAPOL, including aircraft type, age and call sign;*
- (b) for each aircraft type identified in (a) will the Minister please provide the hourly operating cost for each and the number of hours flown in each of the last three years;*
- (c) for each aircraft type identified in (a), will the Minister please provide the number of hours that the aircraft was not available due to maintenance or service related issues;*
- (d) for each aircraft type identified in (a), will the Minister please provide the annual maintenance costs for each of the last three years;*
- (e) for each aircraft type identified in (a), will the Minister please provide the number of missions flown in each of the last three years and relevant categorisation for executed mission type; and*
- (f) for each mission identified in (e), will the Minister please provide the policing district to which primary response is targeted for example, metropolitan or regional, and If regional please provide the specific police district within regional Western Australia?*

On 28 June 2018, the Minister provided an answer for all parts of the question except parts (b), (c) and (d). The Minister declined to answer these parts, replying:

(b)-(d) This level of financial information is contained within the business case which is Cabinet-in-Confidence. Further, as the WA Police Force has commenced the procurement process, it is considered that the public release of this pre-market information could compromise WA Police Force's sourcing strategy and further contract negotiations.

The Minister's full response is included in Appendix 1.

On 7 December 2018, the Auditor General received the Minister's notification of the decision not to provide the requested information, in accordance with section 82 of the *Financial Management Act 2006*.

Key findings

The decision by the Minister not to provide the requested information in parts (b), (c) and (d) was not reasonable and therefore not appropriate. Approximately one-third of the information was already publicly available and while the information requested on hourly operating costs may be commercially sensitive, other information requested was factual, operational information and would appear suitable to provide to Parliament.

The Minister properly sought advice from the WA Police Force, before responding to the request. The WA Police Force consulted with Treasury and the Department of Finance before advising the Minister that the information requested is contained within a business case that is Cabinet-in-confidence and release of it could compromise procurement sourcing strategy and future contract negotiations. The Minister followed the WA Police Force's advice.

In considering the Minister's decision, we followed the approach set out in previous opinions on ministerial notifications dealing with Cabinet confidentiality¹. We assessed the requested information against the following Cabinet confidentiality considerations:

Is part or all of the information publicly available?

The Minister identified 2 rotary wing aircraft in use by the WA Police Force in response to part (a) of the Question on Notice. We found that approximately one-third of the information requested on the 2 aircraft in parts (b), (c) and (d) had previously been provided to Parliament before the Minister responded to the question. This included:

- total hours flown and maintenance costs for both aircraft in 2016-17 was made public in November 2017 following the 2018-19 Budget Estimates Hearings
- the number of hours 1 aircraft was unavailable due to maintenance covering 1 of 3 years was made public on 15 June 2018 following a meeting of the Standing Committee on Estimates and Financial Operations
- the hourly operating costs for each aircraft was not publicly available 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 the information contain material that would reveal the deliberations and decisions of Cabinet?

The information requested was not created solely for informing Cabinet. In particular, information on the number of hours flown and maintenance records are collected under Civil Aviation Safety Regulations 1998 and would inform routine reporting within the WA Police Force. The information requested included operational data providing background and context to the business case and did not 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?

There was no assessment on whether the release of the information requested in parts (b), (c) and (d) would reveal the decisions and deliberations of Cabinet. As our Office has previously reported, there should not be an assumption that all information requested is necessarily confidential, simply because it is contained within a business case for Cabinet consideration¹. The WA Police Force could have sought advice from relevant experts such

¹ Office of the Auditor General. [Opinions on Ministerial Notifications](#), Report No 18 (2016) p.19

as the Department of the Premier and Cabinet or the State Solicitor's Office on whether some of the information could be provided to Parliament.

As the information requested did not meet our considerations for Cabinet-in-confidence, we also assessed its commercial sensitivity as the Minister stated release of the information could compromise the WA Police Force's sourcing strategy and further contract negotiations. We assessed the potential benefits and detriments of disclosure and concluded that:

- there was no assessment of whether the information requested in parts (b), (c) and (d) was commercially sensitive. Most of this information was historical operational data and its release would not negatively affect future sourcing strategy and contract negotiations
- approximately one-third of all the information requested had been provided to Parliament or was publicly available. We saw no reason why the Minister could not provide information on the hours flown and maintenance costs for the 2015-16 and 2017-18 years, not previously provided to Parliament
- the remaining information on hourly operating costs for each aircraft could have been redacted if the WA Police Force thought it may compromise the commercial affairs of the State.

Response from the Minister for Police

Thank you for your invitation to provide a response to your draft summary of findings in relation to Question On Notice 1191 asked in the Legislative Council on 8 May 2018 by Hon Martin Aldridge MLC.

The answer provided was based on the advice of the relevant agency, Western Australia Police Force.

I have asked the agency to seek advice from the Department of the Premier and Cabinet and the State Solicitor's Office as to whether it is appropriate for the information to now be provided to Parliament.

Ministerial notice not required

On 23 August 2019, we received notice from the Minister for Health, the Hon Roger Cook MLA, under section 82 of the *Financial Management Act 2006* in relation to information the Minister's office supplied about the visit of Dr James Downar to Western Australia.

Dr Downar is a Canadian physician specialising in palliative care and was invited to meet with the Ministerial Expert Panel on Voluntary Assisted Dying, and brief Members of Parliament.

In Parliament on 9 May 2019, the Hon Nick Goiran MLC, asked the Parliamentary Secretary, the Hon Alanna Clohesy MLC, representing the Minister for Health, Question on Notice 2128:

I refer to the answer to my question without notice on 8 May 2019 in which the Minister requested that I place on notice that part of the question that the Minister says requires substantial data collection and resources, and I ask will the Minister now table all documents received or created by the Minister or his staff about Dr Downar's visit to Western Australia?

In Parliament on 6 August 2019, the Hon Nick Goiran MLC, again asked the question above to the Parliamentary Secretary representing the Minister for Health.

On 6 August 2019, the Hon Alanna Clohesy MLC, replied:

Yes. [See tabled paper no 2898.]

The Minister tabled correspondence from his office in response to the parliamentary question, redacting information from an email chain that was deemed unrelated to Dr Downar's visit, and redacting parts that comprised personal information (i.e. email addresses and phone numbers).

We determined that a notice was not required in this instance, as all information relating to the conduct or operations of an agency had been tabled and the other parts of the requested information, which contained the redacted information, were unrelated to the conduct or operations of an agency.

The Audit Practice Statement on our website (www.audit.wa.gov.au) outlines the circumstances when a notice is unlikely to be required. These include when a Minister has already provided relevant information to Parliament or when the information does not relate to the conduct or operations of an agency.

Appendix 1: Full response to Legislative Council Question on Notice 1191

(a)

| Aircraft | Age (years) | Call sign |
|------------------------------|-------------|-----------|
| Kawasaki Bolkow BK117 | 28 | VH-WAH |
| Eurocopter AS365 N3+ Dauphin | 7 | VH-WPX |

(b)–(d) This level of financial information is contained within the business case which is Cabinet-in-Confidence. Further, as the WA Police Force has commenced the procurement process, it is considered that the public release of this pre-market information could compromise WA Police Force's sourcing strategy and future contract negotiations.

(e)

| Aircraft | Task Category | 2015/16 [#] | 2016/17 [#] | 2017/18* [#] |
|----------|-------------------------------------|----------------------|----------------------|-----------------------|
| BK117 | Frontline and Serious Crime Support | 241 | 399 | 277 |
| | Frontline Support – Traffic | 107 | 254 | 186 |
| | Transport | 1 | 4 | 14 |
| | Search and Rescue | 12 | 13 | 13 |
| Dauphin | Frontline and Serious Crime Support | 641 | 348 | 264 |
| | Frontline Support – Traffic | 375 | 225 | 142 |
| | Transport | 0 | 4 | 2 |
| | Search and Rescue | 27 | 26 | 10 |

*For the period 1/7/2017 to 9/5/2018

[#] Missions flown

(f)

| | Frontline and Serious Crime Support [#] | | Frontline Support – Traffic [#] | | Transport [#] | | Search and Rescue [#] | |
|----------------------|--|---------|--|---------|------------------------|---------|--------------------------------|---------|
| | BK117 | Dauphin | BK117 | Dauphin | BK117 | Dauphin | BK117 | Dauphin |
| 2015–16 | | | | | | | | |
| Metropolitan | 241 | 635 | 107 | 374 | 1 | 0 | 12 | 26 |
| Wheatbelt | - | 6 | - | 1 | - | - | - | 1 |
| 2016–17 | | | | | | | | |
| Metropolitan | 391 | 343 | 253 | 225 | 4 | 4 | 9 | 18 |
| Great Southern | 1 | 3 | - | - | - | - | - | 2 |
| South West | 4 | 2 | - | - | - | - | 1 | 4 |
| Wheatbelt | 3 | - | 1 | - | - | - | 3 | 2 |
| 2017–18* | | | | | | | | |
| Metropolitan | 265 | 257 | 184 | 141 | 4 | 2 | 8 | 7 |
| Great Southern | - | 2 | - | - | 1 | - | - | - |
| Goldfields–Esperance | 4 | - | - | - | 6 | - | 2 | - |
| Mid West–Gascoyne | 3 | - | - | - | 3 | - | - | - |
| South West | 4 | 4 | 2 | - | - | - | 2 | - |
| Wheatbelt | 1 | 1 | - | 1 | - | - | 1 | 3 |

*For the period 1/7/2017 to 9/5/2018

[#] Missions flown

Auditor General's reports

| Report number | 2019-20 reports | Date tabled |
|---------------|---|-------------------|
| 10 | Working with Children Checks – Follow-up | 23 October 2019 |
| 9 | An Analysis of the Department of Health's Data Relating to State-Managed Adult Mental Health Services from 2013 to 2017 | 9 October 2019 |
| 8 | Opinions on Ministerial Notifications | 8 October 2019 |
| 7 | Opinion on Ministerial Notification | 26 September 2019 |
| 6 | Opinions on Ministerial Notifications | 18 September 2019 |
| 5 | Fraud Prevention in Local Government | 15 August 2019 |
| 4 | Access to State-Managed Adult Mental Health Services | 14 August 2019 |
| 3 | Delivering Western Australia's Ambulance Services – Follow-up Audit | 31 July 2019 |
| 2 | Opinion on Ministerial Notification | 26 July 2019 |
| 1 | Opinions on Ministerial Notifications | 19 July 2019 |

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