



Minister for Housing; Racing and Gaming

Our Ref: 54-03357/5

Hon Ken Travers MLC
Chairman
Standing Committee on Estimates and Financial Operations
Parliament House
GPO Box A11
PERTH WA 6837

Dear Mr Travers.

INQUIRY INTO THE PROVISION OF INFORMATION TO PARLIAMENT

I refer to the correspondence received from Mr Warner, Committee Clerk, dated 22 March 2016 after my appearance before the hearing of the Standing Committee on Estimates and Financial Operations.

Enclosed is my response to the questions taken on notice.

Yours sincerely



HON COLIN HOLT MLC
MINISTER FOR HOUSING

Enc.

- 7 APR 2016

ESTIMATES AND FINANCIAL OPERATIONS COMMITTEE
QUESTIONS ON NOTICE SUPPLEMENTARY INFORMATION

Monday 21 March 2016

Supplementary Information No A1: Hon Ken Travers MLC asked –

In terms of contracts, are the issues around confidentiality decided on a case-by-case basis, or is there a generic position that the agency adopts? What relevant and irrelevant considerations they take into account when doing that?

Answer:

The agency ensures that all its contractual arrangements comply with s81 of the *Financial Management Act 1981*.

The Housing Authority works on the presumption that all information will be provided to Parliament when requested. It is only in certain circumstances when confidentiality may be necessary (e.g. for the benefit of the contractual negotiation, commerciality or to protect third parties from commercial risk) that the possibility of withholding information on grounds of confidentiality is considered.

Assessment of whether information is commercially confidential is conducted on a case by case basis, and the Housing Authority has in the past applied criteria such as:

- (a) the information is commercially valuable and sensitive
- (b) disclosure of the information will result in detriment to the other contracting party because it would lose its commercial value if publicly disclosed
- (c) the information gives rise to an obligation of confidentiality
- (d) the information is specifically identifiable as confidential
- (e) the potential harm to the public interest from not disclosing the information outweighs the benefit of disclosure.

Information may not permanently be commercial in confidence and therefore advice from the Housing Authority may change over time. For example, commercial confidentiality applied during the tender process and the formal negotiations with Fleetwood Corporation regarding the Osprey Key Worker Village, including the mid-2015 negotiations of the final management agreement. However, once the final agreement was signed I was able to provide information in response to parliamentary questions regarding management and development fees.

Supplementary Information No A2: Hon Ken Travers MLC asked –

Whatever you are able to provide about examples you are able to give us where it was recommended to keep it confidential but you took the decision to release the information.

Answer:

The Housing Authority has reviewed its records and is not aware of a situation where this has occurred.

Supplementary Information No A3: Hon Ken Travers MLC asked –

Does the state, or your agency in this case, ever insist on confidentiality in contracts? Are the confidentiality clauses put in at the request of the state, or at the request of the contracting party? If so, what would be the circumstances where it would be at the agency's request that the confidentiality clauses be included, and some examples?

Answer:

As stated previously, contractual and other arrangements entered into by the Housing Authority comply with section 81 of the *Financial Management Act 1981*.

The Housing Authority ordinarily uses government procurement templates, which contain provisions enabling the provision of information to Parliament. In more complicated arrangements, such as the One on Aberdeen development, it enters into bespoke contracts in which confidentiality clauses are negotiated to comply with section 81 of the Act, by requiring disclosure if required at law.