Western Australian Auditor General’s Report

Opinions on Ministerial Notifications

Report 1: February 2018
Opinions on Ministerial Notifications
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 decisions by the Minister for Education and Training, the Hon Sue Ellery MLC, not to provide information to Parliament about briefing material prepared ahead of the Minister’s visits to schools in the South Metropolitan Region.

This report also includes my determination in relation to the Minister for Corrective Services’ decision not to provide information to Parliament.

COLIN MURPHY
AUDITOR GENERAL
22 February 2018
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Ministerial decisions not to provide information to Parliament

Introduction

This report deals with decisions by the Minister for Education and Training, the Hon Sue Ellery MLC, not to provide information to Parliament about briefing material prepared ahead of the Minister’s visits to schools in the South Metropolitan Region.

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 (AG Act) 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) 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 Minister by agencies, the State Solicitor’s Office (SSO) 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.
Opinion

The decisions by the Minister for Education and Training not to provide Parliament with information were not reasonable and therefore not appropriate as a significant amount of the information was already publicly available.

Background

The Hon Nick Goiran MLC asked 2 questions in Parliament, on 5 September 2017, in response to emails he received from the Minister on her planned visits to schools in the South Metropolitan Region on 1 September 2017.

The Minister declined to table briefing materials, prepared ahead of her visits to schools, as she considered them confidential. Full details of the questions asked in Parliament and the responses by the Minister are in Appendix 1.

On 23 October 2017, the Minister notified the Auditor General of her decisions not to provide the requested information in accordance with section 82 of the FM Act.

Key findings

The decisions by the Minister not to provide the requested information were not reasonable and therefore not appropriate.

The Minister did not seek advice from the Department of Education (Department) before responding to the requests. The briefing materials were prepared by the Department and provided to the Minister prior to her visits. They included details of school locations, visit schedule, attendees, financial information, enrolment numbers, background/history and other relevant information to assist the Minister.

We assessed the information using key criteria for confidentiality. Specifically:

Criterion 1 – Is the information sufficiently secret? Is it significant?

This criterion was not met. We found a significant amount of the information in the briefing materials was already generally known or ascertainable at the time the Minister declined to provide the information. The information was available on the Department’s Schools Online and the My School websites.

However, the briefing materials contained a small amount of personal information about school students, staff and other private individuals that was not generally known or ascertainable.

We determined that the Minister’s decision not to provide the briefing materials on the grounds of confidentiality was not reasonable and therefore not appropriate as most of the information was publicly available.

Criterion 2 – Is it in the public interest for the information to remain confidential?

A small amount of information in the briefing materials met this criterion. The information was of a personal nature relating to staff, students, and other individuals. We considered that disclosure of this information could cause unreasonable detriment to these persons that would outweigh any public interest in its disclosure.

We found the Minister did not carry out an assessment of whether the briefing materials could have been provided with this personal information redacted before deciding not to provide information to Parliament.

We note that on 5 December 2017 the Minister tabled redacted versions of the briefing materials. The personal information was redacted. We found that some information that was publicly available had also been redacted.
No opinion as information subsequently provided

On 24 October 2017, the Minister for Corrective Services, Hon Francis Logan MLA, provided a notice of his decision not to provide information to Parliament. The notice, under section 82 of the Financial Management Act 2006, referred to part b of Question on Notice 1972.

As the Minister subsequently provided Parliament with all the requested information on 29 November 2017, the Auditor General has not formed an opinion pursuant to section 24 of the Auditor General Act 2006.

In Parliament on 17 August 2017, Mr Z.R.F. Kirkup MLA asked the Minister for information in Legislative Assembly Question on Notice 1972. The information requested was about CorpEx member oversight and decision making on Department of Justice’s 2016-17 tender panels, and detailed information about the tenders.

On 12 October 2017, the Minister provided some of the information to Parliament and later tabled the remainder.
Appendix 1

Parliamentary Question on notice 339

I refer to the email from the Minister’s office, dated 31 August 2017, and I ask:

(a) for what period of time was the Minister in the South Metropolitan Region;

(b) further to (a):
   (i) how many meetings, events, functions or similar did the Minister attend;
   (ii) who attended each of the meetings, events, functions or similar with the Minister; and
   (iii) did the Minister receive or create any documents during or in preparation for the meetings, events, functions or similar;

(c) if yes to (b)(iii), what were those documents;

(d) further to (c), will the Minister table those documents;

(e) if yes to (d), when; and

(f) if no to (d), why not?

On 10 October 2017, the Minister provided the following response:

(a) 2 hours.

(b) (i) Two.

   (ii) Hillman Primary School Principal; Board member; student leaders; Principal Policy Adviser, Office of Minister for Education.

   Fremantle College Principal; Board Chair; officer from Member for Fremantle’s office; Community Advisory Group representative; Principal Policy Adviser, Office of the Minister for Education.

   (iii) Yes.

(c) Briefing material.

(d) No.

(e) N/A.

(f) The material is confidential.

Parliamentary Question on notice 354

I refer to the email from the Minister’s office dated 28 August 2017, and I ask:

(a) for what period of time was the Minister in the South Metropolitan Region;

(b) further to (a):
   (i) how many meetings, events, functions or similar did the Minister attend;
   (ii) who attended each of the meetings, events, functions or similar with the Minister; and
   (iii) did the Minister receive or create any documents during or in preparation for the meetings, events, functions or similar;
(c) if yes to (b)(iii), what were those documents;
(d) further to (c), will the Minister table those documents;
(e) if yes to (d), when; and
(f) if no to (d), why not?

On 10 October 2017, the Minister provided the following response:

(a) 1½ hours.
(b) (i) Two.
   (ii) Representatives of Clontarf Foundation; Policy Adviser, Office of the Minister for Education.
       Representatives of Clontarf Academy; Clontarf Aboriginal College; Policy Adviser, Office of the Minister for Education.
   (iii) Yes.
(c) Briefing material.
(d) No.
(e) N/A.
(f) The material is confidential.
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