

Western Australian Auditor General's Report



Opinions on Ministerial Notifications



Report 11: December 2018-19

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WESTERN AUSTRALIAN AUDITOR GENERAL'S REPORT

Opinions on Ministerial Notifications



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

OPINIONS ON MINISTERIAL NOTIFICATIONS

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

This report deals with 2 decisions by 2 Ministers not to provide information to Parliament.

- One decision by the Minister for Finance, the Hon Ben Wyatt MLA, not to provide information to Parliament about payers of payroll tax and the amount paid by each.
- One decision by the Minister for Water, the Hon Dave Kelly MLA, not to provide Parliament with information relating to the Annual Reports from Liveringa Station.

A handwritten signature in black ink, appearing to read "Caroline Spencer".

CAROLINE SPENCER
AUDITOR GENERAL
20 December 2018

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Ministerial decisions not to provide information to Parliament

Introduction

This report deals with 2 decisions by 2 Ministers not to provide information to Parliament.

- One decision by the Minister for Finance, the Hon Ben Wyatt MLA, not to provide information to Parliament about payers of payroll tax and the amount paid by each.
- One decision by the Minister for Water, the Hon Dave Kelly MLA, not to provide Parliament with information relating to the Annual Reports from Liveringa 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* (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.

Ministerial decision not to provide information about payers of payroll tax and the amount paid by each

Opinion

The decision by the Minister for Finance, the Hon Ben Wyatt MLA, not to provide Parliament with information about payers of payroll tax and the amount paid by each was reasonable and therefore appropriate.

Background

In Parliament on 16 October 2018, the Hon Robin Scott MLC asked the Minister for Finance for the following information in Legislative Council Question on Notice 1644:

Hon Robin Scott to the minister representing the Treasurer; Minister for Finance; Energy; Aboriginal Affairs:

(1) For the most recent period of twelve months for which figures are available to the Minister, will the Minister table a geographic breakdown of the sources of payroll tax, whether by region or by electorate or by tax zone or on any other geographical basis?

(2) For the most recent period of twelve months for which figures are available to the Minister, will the Minister table a list of the 100 largest payers of payroll tax, showing the amount paid by each?

(3) For the most recent period of twelve months for which figures are available to the Minister, will the Minister table a list of the 1,000 largest payers of payroll tax, showing the amount paid by each?

(4) For the most recent period of twelve months for which figures are available to the Minister, will the Minister table a list of all payers of payroll tax, showing the amount paid by each?

(5) For the most recent period of twelve months for which figures are available to the Minister, will the Minister advise the total of payroll tax paid by businesses employing 100 or fewer employees?

(6) For the most recent period of twelve months for which figures are available to the Minister, will the Minister provide a geographic breakdown of the sources of payroll tax paid by businesses employing 100 or fewer employees, whether by region or by electorate or by tax zone or on any other geographical basis?

On 16 October 2018, the Minister declined to give information for parts (2) to (4) of the question, replying:

(2)-(4) Section 114(2) of the Taxation Administration Act 2003 prevents the Commissioner of State Revenue from disclosing taxpayer information that could reasonably be expected to lead to the identification of any person to whom it relates.

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

On 1 November 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 FM Act.

Key findings

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

The Minister properly sought advice from the Commissioner of State Revenue (the Commissioner) before responding to the request. The Commissioner did not provide the information to the Minister, claiming it was taxpayer information and could not be disclosed.

The Commissioner based the advice on an assessment by the Office of State Revenue (OSR) that the information could not be disclosed because:

- the requested information was taxpayer information which is considered confidential
- such information was subject to the requirements of section 114(2) of the *Taxation Administration Act 2003* (the Act). That section says certain people, including the Commissioner, must not disclose or make use of information or material obtained under a taxation act. It goes on to list some exceptions
- none of the exceptions applied to the facts of this matter.

We agree with the OSR assessment that no exceptions under the Act applied, and that the information was confidential and could not be provided.

In reaching this opinion, we followed the approaches laid out in previous *Opinions on Ministerial Notifications* dealing with taxpayer information.^{1,2} To protect taxpayer interests and government information and allow for efficient administration of taxation legislation, it is common for taxation legislation to include specific confidentiality obligations.

¹ Office of the Auditor General. 2015 Report 21: *Opinion on Ministerial Notification*, p. 8

² Office of the Auditor General. 2016 Report 5: *Opinion on Ministerial Notification*, p. 40

Ministerial decision not to provide unredacted copies of Annual Reports from Liveringa Station

Opinion

The decision by the Minister for Water, the Hon Dave Kelly MLA, not to provide Parliament with unredacted copies of Annual Reports from Liveringa Station (Liveringa) was reasonable and therefore appropriate.

Background

In Parliament on 12 June 2018, the Hon Robin Chapple MLC asked the Minister for Regional Development, representing the Minister for Water, for details of proposed water use by Liveringa, as follows:

Legislative Council Question on Notice 1391

I refer to the irrigation centre pivots at Liveringa Station owned by Gina Rinehart, and I ask:

- (a) when were the centre pivots installed;*
- (b) how many are there;*
- (c) what size in hectares are they;*
- (d) are they built on a floodplain;*
- (e) how much water has been allocated to their operation;*
- (f) how much of the allocation has been used in each year of operation;*
- (g) what months of each year was water being pumped;*
- (h) if the allocation is not fully used each year, does the department have a policy of reducing the allocation;*
- (i) if yes to (h), why has this not been done at Liveringa;*
- (j) does the water licence state that the licensee must install an approved meter to each draw-point through which water is taken under this licence by 31 December 2017;*
- (k) if yes to (j), has a meter been installed;*
- (l) if no to (k), why not and what action will the department take to enforce the condition;*
- (m) will the Minister table the Annual Reports for the past three years; and*
- (n) if no to (m), why not?*

On 21 August 2018, the Minister provided an answer to all parts of the question but in answering part (m), provided redacted information. The Minister replied:

(m) Yes. Commercially sensitive information has been redacted.

On 23 August 2018, the Auditor General received the Minister's notification of the decision to provide redacted information in response to part (m), in accordance with section 82 of the FM Act.

Key findings

The decision by the Minister to provide redacted information in response to part (m) was reasonable and therefore appropriate.

The Minister properly sought advice from the Department of Water and Environmental Regulation (Department) before responding to the request. The Department recommended the Minister provide the Annual Reports with confidential information redacted. The Minister followed the Department's advice and provided 3 redacted Annual Reports, a list of which is included at Appendix 2.

We assessed the redacted information using our criteria for information that is confidential to a third party. Specifically:

Criterion 1 – the information should be sufficiently secret

This criterion was met. We found the majority of the information redacted from the Annual Reports was not generally known or ascertainable using publicly available sources at the time the Minister declined to provide it. This included details of Liveringa's business and operational activities, such as crop choices, application rates of irrigation water, fertilisers and pesticides.

Criterion 2 – the confidential information must be specifically identified

This criterion was met. Three Annual Reports have been provided to the Department by the owners of Liveringa during the past 3 years. Before advising the Minister, the Department consulted with the owners to identify confidential information within the reports. This information related to Liveringa's commercial and technical activities. The Department assessed and documented the confidential nature of the information before advising the Minister on which parts to redact.

Criterion 3 – disclosure would cause unreasonable detriment to the owner of the information or another party. Disclosure would not be in the public interest

This criterion was met. In assessing this, we weighed the public interest in releasing the information against the possible harm to the interests of government or another party.

We agreed with the Department's view that releasing the redacted information could adversely affect the commercial interests of Liveringa. This included information about Liveringa's commercial techniques and approaches that may be of interest to competitors.

Criterion 4 – the information was provided on the understanding that it would remain confidential

This criterion was met. The Annual Reports were provided to the Department to meet the conditions of Liveringa's water licence. The information was provided by Liveringa with an expectation of confidentiality. While the licence agreement does not contain an express understanding of confidentiality, the Department's practice is to treat information received as part of licence agreements as confidential.

The Department consulted with Liveringa who reiterated their expectation that the information be treated confidentially and objected to its release on the grounds that it contained commercially sensitive information.

The Department has advised us that the guidance for water licence applications has been updated to clarify when information may be released.

Appendix 1: Full response to Legislative Council Question on Notice 1644

On 16 October 2018, the Minister for Finance, the Hon Ben Wyatt MLA, replied:

(1) The Office of State Revenue is unable to provide a breakdown of payroll tax received based on employment by geographical location with any level of accuracy, as data is not collected to that level of detail.

Furthermore, it is not possible to derive an accurate geographical breakdown of sources of payroll tax by location of employment based on the location of the taxpayers' business addresses, as there are employers who operate across multiple regions within Western Australia.

(2)-(4) Section 114(2) of the Taxation Administration Act 2003 prevents the Commissioner of State Revenue from disclosing taxpayer information that could reasonably be expected to lead to the identification of any person to whom it relates.

(5)-(6) Employers are not required to provide the Commissioner of State Revenue with the number of employees who are employed by their business.

Appendix 2: Documents tabled with Minister’s response to Question on Notice 1391

No.	Document Tabled
1	Liveringa Station Beef Irrigation, Crop Production and Water Management Annual Report of 2015 – Redacted
2	Liveringa Station Beef Irrigation, Crop Production and Water Management Annual Report of 2016 – Redacted
3	Liveringa Station Beef Irrigation, Crop Production and Water Management Annual Report of 2017 – Redacted

Auditor General's Reports

Report number	2018-19 reports	Date tabled
10	Opinions on Ministerial Notifications	18 December 2018
9	Treatment Services for People with Methamphetamine Dependence	18 December 2018
8	Opinions on Ministerial Notifications	10 December 2018
7	Audit Results Report – Annual 2017-18 Financial Audits of State Government Entities	8 November 2018
6	Opinion on Ministerial Notification	31 October 2018
5	Local Government Procurement	11 October 2018
4	Opinions on Ministerial Notifications	30 August 2018
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

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