

## Section 82 Notice – *Financial Management Act 2006*

### Legislative Assembly Question on Notice 585

Pursuant to section 82 of the *Financial Management Act 2006*, I give notice to both houses that I am unable to provide an answer to Part (a) and the second part of Part (b) of Legislative Assembly Question on Notice 585.

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 answer is attached for your information (**Attachment 1**). The specific question that I am unable to answer is below:

585. Mr R.S. Love to the Minister for Tourism

I refer to the Amazing Race Australia, Season 6, which saw teams come to Perth, Fremantle and Broome for legs 19-21 of the race and ask:

- (a) How much did the State Government pay to Channel 10 or Paramount directly in order for Western Australia to feature in the program;
- (b) Did adverts for the “Walking on a Dream” Tourism WA campaign air on interstate markets during the Amazing Race Australia? If yes, what was the specific cost of the ad buy.

With respect to Tourism Western Australia’s (Tourism WA) promotion of the State during legs 19 to 21 of the Amazing Race Australia reality program, I am not prepared to provide details of the funding amount spent by the agency to have the final three episodes, including the final, filmed in Western Australia, and the specific cost to air ‘Walking On A Dream’ commercials during those episodes. This information should not be made public in order to maintain the Government’s ability to negotiate the best outcome for the State on program sponsorship opportunities.

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:

Tourism WA’s marketing activities include a significant amount of media advertising. Tourism WA strives to ensure it negotiates the best possible deal with media companies so the buying power of taxpayer’s funds is maximised. Releasing funding information publicly impacts Tourism WA’s ability to secure the best deal for the State. If media companies became aware of how much the State Government is prepared to pay for media and media sponsorship, the overall cost of buying media for State campaigns could increase or opportunities could be lost.

The release of specific information about the value of media deals negotiated would also significantly affect Tourism WA’s business, professional, commercial and financial affairs, as well as those of associated third parties, such as media companies, in relation to the specific deals they are prepared to do to win business.

In summary, all Australian States and Territories are competing with one another, in many cases targeting the same audiences, as the tourism industry and jurisdictions across the country work to restore visitor numbers and visitor spend to levels enjoyed prior to the COVID-19 pandemic. Tourism WA has invested significant amounts of money on behalf of the State to gain a competitive advantage in its marketing activities and the release of amounts spent on media sponsorship and advertising in the domestic market would jeopardise Tourism WA's ability to negotiate specific deals with media outlets.

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

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 at **Attachment 2**.

Should you have any queries relating to this matter, please contact Department of Jobs, Tourism, Science and Innovation Director Risk and Governance, Margaret Strong Smith, by email to [Margaret.STRONGESMITH@jtsi.wa.gov.au](mailto:Margaret.STRONGESMITH@jtsi.wa.gov.au) or by telephone on 6277 2939.

A handwritten signature in black ink, appearing to read 'Roger Cook', with a stylized flourish extending to the right.

Hon Roger Cook MLA  
**DEPUTY PREMIER;**  
**MINISTER FOR TOURISM**

Attachment 1     Extract from Hansard of LA QoN 585 22 November 2022  
Attachment 2     Tourism WA's Policy and Guidelines for the Release of Event Sponsorship and/or other  
                         Commercial Information

**23 DEC 2022**

**LEGISLATIVE ASSEMBLY**  
**Question On Notice**

**Wednesday, 19 October 2022**

**585. Mr R.S. Love to the Minister for Tourism**

I refer to the Amazing Race Australia, Season 6, which saw teams come to Perth, Fremantle and Broome for legs 19-21 of the race and ask:

(a) How much did the State Government pay to Channel 10 or Paramount directly in order for Western Australia to feature in the program;

(b) Did adverts for the “Walking on a Dream” Tourism WA campaign air on interstate markets during the Amazing Race Australia? If yes, what was the specific cost of the ad buy;

(c) Did the State Government directly provide funding assistance to the following in order to help prepare their businesses / sites for filming:

- (i) Perth Airport;
- (ii) Royal Aero Club Jandakot;
- (iii) Ready Team One;
- (iv) Optus Stadium;
- (v) Geronimo Skydive;
- (vi) Rottnest Island Ferry;
- (vii) Gage Roads;
- (viii) Swan Bell Tower Trust;
- (ix) City of Fremantle;
- (x) Rottnest Island Authority;
- (xi) Segway Tours WA operating as Rottnest Island Tours;
- (xii) Willie Creek Pearl Farm;
- (xiii) Broome International Airport;
- (xiv) Sun Pictures Broome; and
- (xv) Mantra Frangipani Broome; and

(d) For (c), did the Minister have any conflicts of interest and if yes, when were those conflicts of interest declared?

---

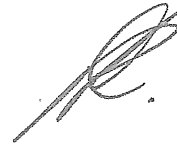
**Answer**

(a)–(b) In relation to the specific cost of the ad buy funding provided by the State Government for individual media partnerships, this has been assessed by Tourism Western Australia (Tourism WA) as being confidential and commercially sensitive.

Disclosure of this would reveal information about the commercial affairs of a State Tourism Organisation and could adversely affect Tourism WA’s ability to perform its duties and compromise the negotiation of future contracts.

It is not appropriate to table this information and I will notify the Auditor General's office and both houses of Parliament that this part of the question will not be answered as per Section 82 of the *Financial Management Act 2006*.

- (c) No
- (d) N/A

A handwritten signature in black ink, consisting of a stylized 'R' followed by a dot.

# 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) Consultation with Partners

In some instances, consultation with Tourism WA's commercial partners on the release of information may be required. In these instances, it is important that Tourism WA provide guidance to its commercial partners on identifying and justifying commercially sensitive information.

All responses from commercial partners need to be assessed by Tourism WA as to whether there is support (or not) for information proposed to be treated as confidential. Where multiple partners are involved, a consistent approach across of partners is required unless exceptional circumstances exist and this has been documented as part of the assessment.

In all cases, responses from commercial partners and Tourism WA's assessment are to be documented.

## 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 Manager Procurement & Contracts within the Corporate 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.

In all instances where the draft response recommended to the Minister for Tourism involves the **provision of a redacted document to Parliament**, the original document and the proposed redacted version are to be referred to the agency's Chief Information Officer for review to ensure transparency and consistency of the redaction process that has been employed.

### Other considerations

Contact the Executive Director Corporate 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

8/2018 | 10 December 2018

*Cost of each current brand and marketing campaign* [Question: 8 May 2018]

8/2018 | 10 December 2018

*Information about State Government costs for the Qantas Broome Discounted Fares Program* [Question: 28 June 2018]



10/2018 | 24 May 2018      HPRM Reference: FIN/1511  
*Funding of Margaret River Gourmet Escape* [Question: 31 Oct 2017]

4/2018 | 11 April 2018      HPRM Reference: FIN/1508  
*Funding of Margaret River Gourmet Escape* [Question: 16 Oct 2017]

19/2017 | 1 November 2017      HPRM Reference: FIN/1472  
*Funding of Margaret River Pro.*

22/2016 | 13 October 2016      HPRM Reference: FIN/1302  
*Annual cost of 16 sponsorship agreements to Parliament.*

21/2015 | 8 October 2015      HPRM Reference: FIN/1057  
*Funding provided to attract a 2018 FIFA World Cup Socceroos' Qualifying Match to Perth.*

12/2015 | 12 June 2015      HPRM Reference: FIN/1041  
*Sale of public land (FESA House).*

17/2014 | 25 September 2014      HPRM Reference: FIN/1008  
*Feasibility for International Cricket (Cricket Test Matches) and Analysis of the Experience Extraordinary campaign.*

3/2014 | 18 March 2014      HPRM Reference: FIN/0901  
*Funding for some Tourism WA sponsored events.*

9/2012 | 28 June 2012      HPRM Reference: FIN/0727  
*Funding for the Perth International Arts Festival.*

2/2012 | 22 February 2012      HPRM Reference: FIN/0704-2  
*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. Refer HPRM reference: STM/0509
- 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 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>
5.0	Feb 2021	A/CEO	Revision to address OAG findings from Section 82 audit of response to Question on Notice asked of the Minister for Tourism on the Hotel Perth Campaign on 12 March 2019.  Insert of additional references (Auditor General Reports 2017 & 2018)