



**Australian Government**  
**Department of Defence**

Reference: [R33122901]

**FOI 250/17/18 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT**

1. I refer to the application by Ms Verity Pane under the *Freedom of Information Act 1982* (FOI Act), for access to:

*“... Under FOI I apply for copy of the inquiry documents held by Defence that relate to the “Joint Inquiry into the facts surrounding the management of Mr Jesse Bird’s case” that Defence undertook at the direction of the former Minister of Veterans’ Affairs, Dan Tehan.*

*Where the documents in scope contain the personal information about a private individual (note personal information, not official information - official information includes details of any public servant carrying out their official duties and does not fall into the scope of personal information - and personal information about an individual is a narrower scope than information that may relate to an individual), that information may be redacted.*

*I note that this Joint Inquiry had a Ministerial press release [http://minister.dva.gov.au/media\\_releases/2017/oct/va144.htm](http://minister.dva.gov.au/media_releases/2017/oct/va144.htm) - where former Veterans’ Affairs Minister Tehan stated:*

*“One such veteran was Jesse Bird. With the approval of his family, today I will show how Jesse’s case highlights the need for us to continue to improve the current system... Departmental processes failed or simply did not exist to offer services to help Jesse... I asked the Departments of Veterans’ Affairs and Defence and the Veterans and Veterans Families Counselling Service to thoroughly examine his case. They have conducted a review which looked at his experience with Defence and Veterans’ Affairs. This occurred in consultation with his family.*

*I delivered a report on this investigation to Jesse’s family on 15 September. Amongst other findings, the report into the management of Jesse Bird’s case shows that while some aspects of process and management were within expectations, others were contrary to the Department of Veterans’ Affairs policy and practice. The Department of Veterans’ Affairs either did not or could not provide the support or proactive engagement Jesse needed.”*

*I note that this report also received wide reporting in the media, and it appears an ABC journalist in particular was given access to parts of the Joint Inquiry report beyond just the recommendations(it was also reported parts of a draft report were leaked to the media, before the Bird family had seen it)  
<http://www.abc.net.au/news/2017-10-14/jesse-bird-veteran-affairs-inquiry-finds-failings/9050594> <http://www.abc.net.au/news/2017-08-18/jesse-bird-warned-he-was-suicidal-days-before-his-death/8816978> <http://www.abc.net.au/news/2017-07-20/dva-accused-of-contributing-to-afghan-vets-suicide/8722974>*

<http://www.theaustralian.com.au/news/inquirer/truth-must-be-told-about-diggers-who-served-and-suffered/news-story/a27efaf376cc10b6ba4bd23ed806ff9f>  
<http://www.heraldsun.com.au/news/opinion/andrew-rule/jesse-birds-family-dont-want-more-returned-soldiers-dying-after-suffering-posttraumatic-stress/news-story/210d8671206a5156fc1a85d57f2cd2ca> <http://www.smh.com.au/federal-politics/political-news/australia-let-soldier-jesse-bird-down-government-concedes-20171024-gz75mj.html>

*The fact that the former Veterans' Affairs Minister saw it appropriate to brief the media and disclose details of the Joint Inquiry report (both formally and informally), to table the recommendations in Parliament, and for a number of media outlets to make multiple new articles about the Joint Inquiry highlights that at both the Department and Ministerial level, disclosure was seen as promoting better informed decision making, and increasing scrutiny, discussion, comment and review of the Government's activities in relation to matters under review by the Joint Inquiry, and that they were of general public interest or in the interest of a substantial section of the public.*

*I also note the Minister's statement regarding that the disclosures made were with the consent of the Bird family..."*

#### **FOI decision maker**

2. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

#### **Documents identified**

3. I identified one document as matching the description of the request. Some of the material in the document has already been released by the Department of Veterans' Affairs (DVA) under the FOI Act. As this material is in the public domain, I have not considered it as part of this FOI request.

#### **Decision**

4. I have decided to deny access to the document under section 47F [public interest conditional exemptions-personal privacy] and/or 47E(d) [public interest conditional exemptions-operations of an agency] of the FOI Act.

#### **Material taken into account**

5. In making my decision, I had regard to:
- a. the terms of the request;
  - b. the content of the identified document in issue;
  - c. relevant provisions in the FOI Act;
  - d. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines);
  - e. material already released by DVA; and
  - f. advice from the Australian Defence Force Headquarters.

## Reasons for decision

### Conditional exemption – Section 47E(d) – Operations of an agency

6. In making my decision, I found material to be exempt under subsection 47E(d) of the FOI Act. Subsection 47E(d) of the FOI Act provides as follows:

*“A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:...*

*(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.”*

7. Paragraph 6.123 of the Guidelines states that, where the document relates to certain operations of agencies, the decision maker must address whether the predicted effect must bear on the agency’s ‘proper and efficient’ operations; that is, the agency is undertaking its expected activities in the expected manner.

8. Releasing the information potentially identifying individuals involved in the inquiry, information detailing how the inquiry was conducted and who conducted the inquiry could reasonably be expected to have a substantial adverse effect on the Department’s management of inquiries. Maintaining the integrity of the inquiry process is vital. Releasing details about the investigating team could affect future joint investigations as it would create a perception that Defence lacked integrity with respect to protecting the confidentiality of investigation records; thus affecting the proper and efficient conduct of the operations of Defence.

9. Noting the above, I have decided that the material is conditionally exempt under section 47E(d) of the FOI Act.

10. Subsection 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest. My public interest arguments are detailed below.

### Conditional Exemption - Section 47F(1) - Personal Privacy

11. Upon examination of the document, I identified information, specifically personal information relating to a deceased member of the Australian Defence Force and a number of third parties.

12. When assessing whether the disclosure of this personal information is unreasonable, I considered the following factors:

- a. the extent to which the information is well known;
- b. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- c. the availability of the information from publicly accessible sources; and
- d. the effect the release of the personal information could reasonably have on third parties.

13. Against the above criteria I found:
- a. that the specific personal information listed is not well known;
  - b. the individuals whose personal information is contained in the document is known to be associated with the matters dealt with in the documents; and
  - c. the information is not readily available from publicly accessible sources.

14. In his FOI request, the applicant has made reference to media coverage of the Joint Inquiry. However, I note that although the recommendations of the inquiry have been reported, the actual report itself has not been published. As such I consider it unreasonable to disclose this information. As I am not of the view to release the information, I do not consider consultation is neither required nor appropriate.

15. Taking into account the above factors, I consider that the release of the material would be an unreasonable disclosure of personal information and conditionally exempt under section 47F(1) of the FOI Act.

**Public interest considerations – Sections 47E and 47F(1)**

16. I have found that the document is conditionally exempt under sections 47E(d) and/or 47F(1) of the FOI Act. Section 11A(5) provides that if a document is conditionally exempt, it must be disclosed unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

17. I considered the factors favouring disclosure set out in section 11B(3) of the FOI Act. The relevant factor is that disclosure may promote some of the objects of the FOI Act as information held by the Government is a national resource.

18. However, the disclosure of this information would not increase public participation in the Defence process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of Defence activities (section 3(2)(b) of the FOI Act).

19. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request are that release of this information could reasonably be expected to prejudice or harm:

- a. the protection of an individual's right to privacy;
- b. the interests of an individual or group of individuals;
- c. an agency's ability to obtain confidential information;
- d. an agency's ability to obtain similar information in the future.

20. While I accept there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a strong public interest in maintaining the confidentiality of material contained in the investigation. In my view, it would be contrary to the public interest to disclose sensitive personal information of a deceased member and cause unnecessary distress to the family and third parties.

Furthermore, there is an expectation that Defence manages investigations and personal information in a sensitive way.

21. I am satisfied that the public interest has already been served with the material released by DVA. The material released by DVA provides sufficient information to inform debate on the matter and allow inquiry into possible deficiencies into the conduct or administration of an agency. The material released by DVA also provides the conclusion of the Inquiry which included recommendations.

22. None of the factors listed in section 11B(4) of the FOI Act were taken into account when making my decision.

23. Accordingly, I consider that, on balance, the public interest factors against disclosure outweigh the factors for disclosure. I therefore decided that it would be contrary to the public interest to release the information considered exempt under subsection 47E(d) and section 47F(1) of the FOI Act.

**Section 22 (where documents are being denied in full)**

24. Subsection 22(1) of the FOI Act requires that where a decision maker denies access to a document they must consider releasing the document with exempt matter deleted, where possible. I have considered disclosing the document to the applicant with deletions, but have decided against this course of action, as the document would be meaningless and of little or no value once the exempt material is removed.

Melissa Davidson  
Accredited Decision Maker  
Associate Secretary Group