Order F25-98

MINISTRY OF HEALTH

David S. Adams
Adjudicator

December 15, 2025

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Summary: An applicant requested data related to the provincial Wills Registry from the Ministry of Health (the Ministry), under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The Ministry told the applicant that no responsive records existed and that it was not required by s. 6(2) of FIPPA to create them, since they could not be created using the Ministry's normal computer hardware, software, and technical expertise. The adjudicator found that s. 6(2) did not require the Ministry to create the requested records.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, s. 6(2)(a).

INTRODUCTION

[1] An access applicant requested that the Ministry of Health (the Ministry) provide him with several types of data from the provincial Wills Registry under the *Freedom of Information and Protection of Privacy Act* (FIPPA). Generally speaking, the applicant sought information about the status of notices filed in the Wills Registry (wills notices) and changes in that status, solicitors and law firms who filed wills notices, civic addresses noted in wills notices, and testators named in wills notices.

[2] The Ministry responded that it did not have records containing the requested data in its custody or under its control and it could not create them using its normal computer hardware, software, and technical expertise. It said that creating the records would require "significant resources" which would cause delays in the Ministry's work.

[3] The applicant complained to the Office of the Information and Privacy Commissioner (OIPC) about the Ministry's decision not to create records.

Mediation by the OIPC did not resolve the issue and the matter proceeded to inquiry. Both parties provided written submissions and evidence.

Preliminary Matters

Ministry's reformulation of the request

[4] The applicant's request is lengthy and consists of approximately 20 sub-requests. Its wording takes some effort to understand. It frequently refers to access requests the applicant made in 2019 and 2023 (the Prior Requests), to which the Ministry provided responses. As part of its submission, the Ministry provided me with a slightly reworded and reformatted version of the request, which I have paraphrased as follows, following the Ministry's numbering scheme:[1]

> ***Sub-request 1:*** Identify and disclose the number of changes to the active or inactive status of a wills notice previously disclosed in the 2019 Prior Request, from 09/11/2019 to the present.
>
> ***Sub-request 2a:*** How many wills notices identified in the response to the 2019 Prior Request were registered by each named solicitor at a specified firm?
>
> ***Sub-request 2b:*** For each wills notice filed by those solicitors, is the wills notice listed as active or inactive?
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> ***Sub-request 3:*** How many of the wills notices identified in the response to the 2023 Prior Request are active or inactive?
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> ***Sub-request 4:*** How many of the wills associated with wills notices identified in the response to the 2023 Prior Request have already been probated?
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> ***Sub-request 5:*** How many of the wills notices identified in the response to the 2023 Prior Request have been revoked by a more recent wills notice?
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> ***Sub-request 6:*** How many of the wills notices identified in the response to the 2023 Prior Request are filed to indicate a change in a will's location?
>
> ***Sub-request 7:*** How many of the wills notices identified in the response to the 2023 Prior Request are filed "just to revoke"?
>
> ***Sub-request 8:*** Are the two wills notices identified in the response to the 2023 Prior Request as having been registered by a named solicitor active

[1] Ministry's initial submission at para 20.

or inactive? On what date were those wills notices entered into the Wills Registry?

Sub-request 9: How many wills notices have been registered by a named solicitor which show the associated will as being located at a particular civic address?

Sub-request 10: In the case of the "active wills" identified in the responses to the Prior Requests, where the Vital Statistics Agency (Vital Statistics) noted in its response that "there is still the possibility that a more recent Will may exist at a different location (i.e., another law firm or a private residence)", identify and disclose how many active wills notices name a testator where that same testator has another registered wills notice identifying a different location of their will.

Sub-request 11: How many testators named in an active wills notice identified in the response to the 2019 Prior Request are also registered with Vital Statistics as being deceased?

Sub-request 12: How many testators named in an inactive wills notice identified in the response to the 2019 Prior Request are also registered with Vital Statistics as being deceased?

Sub-request 13: How many testators named in an active wills notice identified in the response to the 2023 Prior Request are also registered with Vital Statistics as being deceased?

Sub-request 14: How many testators named in an inactive wills notice identified in the response to the 2023 Prior Request are also registered with Vital Statistics as being deceased?

Sub-request 15: If the date of death of any testator named in a registered wills notice identified in the response to the Prior Requests was 20 or more years ago, provide the testator's surname, given name, gender, date of death, event place, and registration number. Provide the name of the person or entity who registered the wills notice on behalf of the deceased testator.

Sub-request 16: If the date of death of any testator named in a registered wills notice identified in the responses to the Prior Requests was less than 20 years ago, provide the testator's gender and date of death, and indicate whether the wills notice was active or inactive on the date of the testator's death.

> ***Sub-request 17:*** If a filed wills notice identified in the responses to the Prior Requests changed the registered location of a will, provide the newly registered civic address, the number of these wills that were active or inactive, and the name of the person or entity who filed the wills notice to change the registered location.
>
> ***Sub-request 18:*** For all registered wills notices identified in the responses to the Prior Requests classified as inactive because the associated will has been probated, provide the full name of the testator, the probate file number, the name of the wills notice registrant, and the date of the wills notice's registration.
>
> ***Sub-request 19:*** How many active and inactive wills notices are currently registered indicating the location of the will as a specified civic address?

[5] The applicant says the Ministry's rewording "introduces several material alterations to the original wording" of the request. He says this raises concerns about the integrity of the Ministry's interpretation of the request and whether the Ministry has accurately understood its scope and substance.[2]

[6] The Ministry denies that it has omitted anything from the request.[3] The Ministry's director of information technology services at Vital Statistics (the IT Director) also deposes that he reviewed the original wording of the applicant's request when preparing his evidence.[4]

[7] I find that the Ministry's rewording has not altered the scope or substance of the applicant's request or misrepresented it in any way. It is a fair summary of the request. In any event, I have the full text of the request before me, and I have considered its wording in my analysis of s. 6(2) below.

Applicant's offer to modify the scope of the request

[8] In his response submission, the applicant offers to modify his request by deleting certain sub-requests and changing the timeline of certain other sub-requests to include data up to the date of this inquiry. He says he would do this in order to "mitigate the scope of the request and to lessen any perceived interference" with the Ministry's operations.[5] He also requests that where the Ministry is unable to create records because of the manual processing that would be required, it create a record or extract containing raw data.[6]

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[2] Applicant's response submission at 36-37.
[3] Ministry's reply submission at paras 35-37.
[4] Affidavit #2 of IT Director at para 5.
[5] Applicant's response submission at 37-39.
[6] *Ibid* at 20. The applicant relies on Order F10-30, 2010 BCIPC 43 (CanLII), where the adjudicator ordered the public body to create a record containing raw data. However, in that case, the

[9] In reply, the Ministry says I should disregard the applicant's attempts to modify the scope of the request, since the content of the Ministry's duty to create a record under s. 6(2) depends on the wording of the access request as it existed when the Ministry received it.[7]

[10] This is an inquiry into whether the Ministry must create records responsive to the request under s. 6(2). The question addressed in mediation, and that has reached the inquiry stage for me to decide, is whether the Ministry must create records in response to the request as it existed when the applicant made it. I am not persuaded that I should consider the applicant's proposed modifications to the request in assessing whether the Ministry is required to create records under s. 6(2).

Applicant's challenge to affidavit evidence

[11] The applicant says that the IT Director's first affidavit includes "false [and/or] otherwise inaccurate [and/or] contradictory evidence", that it contains hearsay where it relates to the Prior Requests, and that it "contains internal inconsistencies [and/or] vagueness".[8] The applicant requests that I "weigh accordingly or disregard" any inaccurate or false statements in the affidavit, along with any portion of the Ministry's submission that relies on such statements. He also says that if I find a false statement to have been knowingly sworn, I should report that finding to "the proper investigative and enforcement authorities".[9] The Ministry says that the applicant has given no evidence to establish any of these claims and that the affidavit does not contain hearsay because the IT Director is describing his own experiences, knowledge, and beliefs.[10]

[12] Having reviewed the IT Director's first affidavit in light of what the applicant says about it, I find that the applicant has not substantiated the claims he makes about the IT Director's truthfulness, accuracy, or consistency. I also find that the IT Director does not rely on hearsay because his first affidavit describes his own experiences and beliefs. Where the IT Director refers to the Prior Requests, he says, and I accept, that he reviewed the service tickets created by the people who devised the workflow and programming scripts necessary to respond to the Prior Requests, and that this information, combined with his professional knowledge and the information in the Wills Registry, allowed him to understand what was required to respond to the Prior Requests.[11] In any event, even if some

request for raw data was made before the applicant made his complaint to the OIPC and was therefore at issue in the inquiry at para 2.

[7] Ministry's reply submission at paras 41-48.

[8] Applicant's August 25, 2025 email to OIPC at 5-6. He says the IT Director was not a Ministry employee in 2019, so his evidence relating to the 2019 Prior Request is hearsay.

[9] *Ibid* at 6.

[10] Ministry's reply submission at paras 17-19.

[11] Affidavit #2 of IT Director at para 17.

or all of the IT Director's evidence were hearsay, that is not a bar to its admissibility in administrative proceedings like this one if it is relevant and can fairly be regarded as reliable.[12] I will therefore consider this affidavit evidence, and will refer to it where necessary in this order and weigh it accordingly.

Applicant's interpretation of OIPC Orders

[13] I must say a word here about the applicant's reliance on the OIPC's orders.

[14] The Ministry provided me with a table setting out 11 examples of what it calls the applicant's incorrect claims about OIPC orders. Having reviewed what both parties say about the orders, and the orders themselves, I agree with the Ministry that the applicant has made incorrect claims about what those orders say. In several instances, direct quotes used by the applicant do not appear anywhere in the OIPC's orders. To take only a few examples, the applicant says:

> In FIPPA, Sc. 6 "openly" refers to the obligation of the Ministry to be transparent, honest, and forthcoming when responding to this information request. See Order F15-03 (Vancouver Police Department), 2015 BCIPC 3. In this order, the adjudicator found the VPD did not meet its Sc,6 duty because it failed to explain why records were missing – violating the "open" aspect of the duty to Assist. Order F21-15, 2021 BCIPC 20 The OIPC found that the public body did not respond "openly" when it failed to explain discrepancies in its search efforts and mischaracterized the records at issue. And at Order F18-15, 2018 BCIPC 18 The OIPC stressed that the duty to assist includes meaningfully responding to questions about the handling of a request.[13]

[15] None of these orders support the propositions advanced by the applicant. Order F15-03 did not involve the Vancouver Police Department, is not about a public body's s. 6 obligations, and does not contain the propositions the applicant says it does.[14] Order F21-15 has nothing to do with s. 6 or with a public body's mischaracterization of records. It is possible the applicant meant to refer to Order P21-04, which has the citation 2021 BCIPC 20, but that order likewise has nothing to do with any party's mischaracterization of records.[15] Order F18-15 likewise contains nothing about a public body's duty to assist or answer questions about the handling of a request.[16]

[16] There are many other similar examples throughout the applicant's response submission. I do not know whether this was intentional on the applicant's part. In any event, it is important for parties to ensure they do not

[12] See, e.g., Order F25-64, 2025 BCIPC 74 (CanLII) at paras 15-18.
[13] Applicant's response submission at 2; formatting and emphasis in original.
[14] Order F15-03, 2015 BCIPC 3 (CanLII).
[15] Order F21-15, 2021 BCIPC 19 (CanLII); Order P21-04, 2021 BCIPC 20 (CanLII).
[16] Order F18-15, 2018 BCIPC 18 (CanLII).

misrepresent what the OIPC's orders say. It is a time-consuming distraction for other parties and for the adjudicator to have to wade through authorities that do not say what a party represents them as saying.

Mediation material

[17] During the submission phase of this inquiry, the Ministry wrote to the OIPC's registrar to raise its concern that the applicant's response submission contained mediation material.[17] The OIPC's registrar wrote to the applicant to request that he amend his response submission to remove any mediation material.[18] The applicant provided an amended response submission, which is the only one I have reviewed for the purposes of this inquiry.

[18] However, the Ministry says in reply that the amended response submission still contains mediation material in which the applicant quotes the Ministry as making statements that do not appear in its initial submission or affidavit evidence. The example the Ministry gives is that the applicant "repeatedly claims the Ministry states it can only search the [Wills] Registry by 'personal name'". The Ministry says the presence of mediation material in the applicant's response submission contravenes the OIPC's *Instructions for Written Inquiries* and asks that I disregard it.[19]

[19] The OIPC's *Instructions for Written Inquiries* say the following about mediation material:

> "Mediation material" refers generally to communications that relate to offers or attempts to resolve the matter during mediation. The Commissioner will not consider mediation materials in reaching a decision and issuing an order. To preserve the integrity of the "without prejudice" nature of the mediation process, a party may not, without the written consent of the other parties, refer to or include in its submissions any mediation materials, including any opinions or recommendations an investigator expressed during mediation.[20]

[20] It is not always obvious to me how the material to which the Ministry refers in the applicant's submission is mediation material. Nevertheless, I agree with the Ministry that there are instances where the applicant quotes the ministry as saying something it did not say in its initial submission and evidence. I agree that it is appropriate for me to disregard this material, and I have done so.[21]

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[17] Ministry's August 22, 2025 email to the OIPC.
[18] OIPC's August 22, 2025 email to the applicant.
[19] Ministry's reply submission at paras 11-14, citing the applicant's response submission at 8-10, 15, 20, 22, 27, and 36.
[20] At 6-7. Available at https://www.oipc.bc.ca/documents/guidance-documents/1658
[21] See, e.g., Order F24-62, 2024 BCIPC 72 (CanLII) at para 14.

ISSUE AND BURDEN OF PROOF

[21] The sole issue in this inquiry is whether the Ministry is required to create a record in response to the applicant's access request, pursuant to s. 6(2) of FIPPA.

[22] FIPPA does not say who has the burden of establishing that a public body is not required to create records under s. 6(2). However, previous orders have established that public bodies must show they have performed their duties under s. 6.[22]

DISCUSSION

Background[23]

[23] At the time of the applicant's request, the Ministry was responsible for the Vital Statistics Agency (Vital Statistics),[24] the agency responsible for BC's Wills Registry (the Wills Registry). The Wills Registry is established under Part 4, Division 7 of the *Wills, Estates and Succession Act* (WESA).[25]

[24] A wills notice is a document contained in the Wills Registry that identifies that a will has been registered and identifies the will's testator, location, and date. If a testator changes their will or its location, they may (but are not required to) file a new wills notice with Vital Statistics to register the change. When an estate is in the process of probate, the courts require that a search of the Wills Registry be conducted before probate is granted.

[25] In order to search the Wills Registry for a wills notice, a person must apply to Vital Statistics by providing an application form and a copy of the testator's death certificate. If the testator is still alive, only the testator or a lawyer can request a search for a wills notice.

[26] The Wills Registry is searchable only for a wills notice number or for the testator's first and last name. The search results will provide the date the testator signed the will, the location of the will, and the date Vital Statistics received the wills notice. The Wills Registry does not certify that a will is current or valid; it serves to record information submitted in the wills notice form by a testator or their agent. The Wills Registry does not contain information about whether a wills

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[22] See, e.g., Order F23-55, 2023 BCIPC 64 (CanLII) at para 6; Order F24-27, 2024 BCIPC 34 (CanLII) at para 6.
[23] The information in this section is drawn from the parties' submissions and evidence.
[24] At some point during the submissions phase of this inquiry, the Vital Statistics Agency was transferred from the Ministry to the Ministry of Citizens' Services: Affidavit #2 of IT Director at para 2.
[25] SBC 2009 c 13.

notice is "active" or "inactive", whether a wills notice was revoked, whether a will has changed location, whether a testator is alive, or the date and location of death and gender of a deceased testator. The Wills Registry is constantly changing as new or amended data is added.

Requested records and information

[27] As I noted above, the applicant requested a wide variety of information related to wills notices contained in the Wills Registry. In particular, the applicant seeks data about active and inactive wills notices, testators, wills notice registrants (such as law firms or individual solicitors), probate, revocation, and change of will location.

Duty to create a record – s. 6(2)

[28] Section 6 of FIPPA deals with a public body's duty to assist applicants. Section 6(2) sets out the circumstances in which a public body must create a record for an applicant in response to an access request. The whole of s. 6 reads:

> **6** (1) The head of a public body must make every reasonable effort to assist applicants and respond without delay to each applicant openly, accurately and completely.
>
> (2) Moreover, the head of a public body must create for an applicant a record to which section 4 gives a right of access if
>
> > (a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, and
> >
> > (b) creating the record would not unreasonably interfere with the operations of the public body.

[29] The word "and" between ss. 6(2)(a) and (b) means that a public body has a duty to create a record only if both conditions are met.[26]

[30] Turning to the requirements of s. 6(2)(a), the term "normal" qualifies each of the terms "computer hardware", "software", and "technical expertise"; and "technical expertise" in this context means normal computer or information technology expertise.[27]

[31] Further, a public body's "normal" computer hardware and software and technical expertise, for the purposes of s. 6(2)(a), includes programs that do not

[26] Order F24-27, 2024 BCIPC 34 (CanLII) at para 10.
[27] Order F24-07, 2024 BCIPC 10 (CanLII) at paras 24-26; Order F24-27, *ibid* at paras 25-26.

yet exist, but that are reasonably within the public body's technical ability to create with its existing computer hardware and software.[28]

[32] Finally, s. 6(2)(a) does not require a public body to create a record if doing so would require it to manually adjust raw data beyond the incidental, or to use outside or specialized expertise or engage in extraordinary manual effort.[29] However, a public body is required to use human effort that is an ordinary part of using computer software and hardware and technical expertise, such as pushing buttons or entering commands.[30]

> *Can the record be created with the Ministry's normal computer hardware and software and technical expertise, under s. 6(2)(a)?*
>
> *Parties' overall positions on s. 6(2)(a)*

[33] The Ministry takes the position that the requirements of s. 6(2)(a) are not met in this case because:

> a) For some of the [applicant's sub-requests], the record cannot be created using the public body's normal computer hardware, software, and technical expertise.
>
> b) For almost all the [sub-requests], there is no machine-readable record from which a record can be created.
>
> c) The Wills Registry does not contain some of the requested information.
>
> d) Many of the [sub-requests] are not [a request for] a record at all. Instead, the Applicant is asking questions that would require Ministry staff to analyze information from the Prior Requests and the current Wills Registry and make decisions and draw inferences based on comparisons between the 3,000 Wills Notices identified in the Prior Requests and information currently in the Wills Registry. FIPPA does not require the Ministry to answer these types of questions or engage in this type of comparative analysis and inference-based decision-making.[31]

[34] For each of the applicant's sub-requests, the Ministry also provides one or more specific reasons that, it says, prevent its creation of the records the applicant seeks:

> Reason 1: Programming is required; aggregate data are not kept;
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> Reason 2: The Ministry cannot recreate the Prior Requests for comparison;

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[28] Order F21-07, 2021 BCIPC 8 (CanLII) at paras 48-52, citing *Toronto Police Services Board v. Ontario (Information and Privacy Commissioner)*, 2009 ONCA 20.
[29] Order F24-27, *supra* note 26 at para 27 and the orders cited therein.
[30] Order F21-07, *supra* note 28 at para 41.
[31] Ministry's initial submission at para 31.

> Reason 3: Assumptions are required to determine active or inactive status of a Wills Notice;
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> Reason 4: Search functionality on some requested fields does not exist;
>
> Reason 5: Individual lawyers' names are not consistently recorded;
>
> Reason 6: The Wills Registry and death registry are not linked; and
>
> Reason 7: Wills Notices are not linked to each other.[32]

[35] In support of its arguments, the Ministry provided two affidavits from the IT Director for Vital Statistics, who has a total of 36 years' experience in the information technology sector, and who has been in his position with Vital Statistics since 2020.

[36] The applicant says the Ministry can create the records that would be responsive to the request because it can:

- create the records by procuring additional technical services and expertise, which is "a feasible and appropriate step";
- recreate the data used in the Prior Requests, even if it has not retained the original data, since the underlying data remains accessible; and
- generate the records by compiling or retrieving the necessary information, which exists within Vital Statistics' systems or can reasonably be obtained.[33]

[37] Essentially, I understand the parties' dispute to be about the search functionality of the Wills Registry. While the Ministry says the Wills Registry has very limited search functionality and cannot perform the kinds of searches that would produce records responsive to the request, the applicant says the Wills Registry has greater functionality than the Ministry says it has, and that in any event its employees or contractors have, or ought to have, the skills to design and carry out the searches that would produce responsive records.

Ministry's reason 1: programming required, aggregate data not kept

[38] The Ministry says that s. 6(2)(a) does not apply to the majority of the sub-requests,[34] because they are for aggregate totals of various items of data, such

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[32] *Ibid* at paras 33-66. The Ministry also provided a chart setting out the reasons it says prevent the creation of records responsive to each sub-request: Ministry's reply submission at Tab 3.
[33] Applicant's response submission at 9.
[34] Namely, sub-requests 1, 3, 5-7, 9-14, 17, and 19. In this order, since the sub-requests that make up the Present Request are not numbered, I will adopt the Ministry's numbering scheme set out in Exhibit E of the IT Director's Affidavit #1.

as counts of wills notices, counts of probated wills, counts of active versus inactive wills notices, and counts of revoked wills notices. The Ministry says the Wills Registry does not keep cumulative counts of any of the information the applicant requests, and that its existing software does not have the ability to generate such cumulative counts. The Ministry says it would have to hire a software developer to create a program for customized searches and analysis in order to create a record that would be responsive to those sub-requests.[35]

[39] The IT Director confirms the Ministry's position. He explains that the Wills Registry does not keep cumulative counts, as would be required for the Ministry to create records responsive to most of the applicant's sub-requests. He says, for example, that while one could search the Wills Registry for a single testator's records, there are no possible searches that would show the number of wills that have been revoked for all testators. He says that a custom search would have to be developed by a software developer in order to compile this kind of data. He says that to do this, the Ministry would have to hire an IT contractor.[36]

[40] The applicant says the records he seeks can be created with the Ministry's normal hardware and software and technical expertise. He says the Ministry provided "no evidence" that its available staff do not have the technical skills or experience required to respond to the request. He says the Ministry could, if necessary, hire contractors to perform the work required, which is "not at all outside of normal operations" for the Ministry and specifically for Vital Statistics.[37] He refers to two job descriptions (one for the Ministry of Labour and one for Vital Statistics) that he says demonstrate that the Ministry has the capacity to create records responsive to the request.[38]

[41] The applicant suggests that since the Ministry was able to respond to the Prior Requests, it cannot now claim it no longer has the ability to respond to similar requests. He says that if "new search and reporting tools were coded into the existing software at that time, then – regardless of whether the programmer who developed those tools is still employed by [Vital Statistics] – those tools remain the property of the employer and so remain accessible for its use".[39] He says further that the Ministry's claim that the Wills Registry cannot be searched by civic address is untrue because the records created for the Prior Requests showed how many wills notices were registered at specific addresses. He concludes that "[in] truth, the machine readable registry is entirely searchable in all of its contents".[40]

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[35] Ministry's initial submission at paras 33-34.
[36] Affidavit #1 of IT Director at paras 16-18.
[37] Applicant's response submission at 11.
[38] *Ibid* at 11-12; Applicant's documents 003 and 004.
[39] *Ibid* at 21.
[40] *Ibid* at 22.

[42] In reply, the IT Director deposes that it is "not normal for the Ministry to dedicate hardware, software, or technical expertise to develop complex analytical programming scripts for projects that are of no operational benefit to the Ministry" and that responding to the request would require technical skills and expertise that go "far beyond what is 'normal'". He says that none of the Ministry's current staff or contractors are responsible for providing the work required to respond to the request. He adds that in his experience, it is challenging to make a business case to hire additional employees and contractors, particularly where the work would serve no business purpose for the Ministry.[41]

[43] The IT Director also says that creating a record responsive to the request would include the following steps:

> a) [creating] custom code to run queries and/or scripts to extract the data based on a filter;
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> b) conducting quality control and removing erroneously included data;
>
> c) determining the appropriate analytical operations to perform to [respond to the sub-requests];
>
> d) designing, running, and troubleshooting custom code to perform those analytical operations on that data; and
>
> e) manually evaluating and verifying results.[42]

[44] The Ministry says its responses to the Prior Requests required the creation of, among other things, "custom search queries and custom code to run aggregates", and that its responses went "above and beyond" what is required under FIPPA, so that those responses should not be held against it in this inquiry.[43]

[45] The IT Director deposes that the applicant misunderstands the kinds of searches that Vital Statistics is able to perform on the Wills Registry: it is not linked to any other registry (for example, the death registry), and cannot "produce aggregates or any other form of statistical or other analysis".[44] He also says that if he had been the director responsible for requests under FIPPA at the time of the Prior Requests, he would have advised the Ministry not to create records in response to them because "doing so required more than the Ministry's normal computer software and normal technical expertise".[45] He says that responding to the request "could be a multiple week exercise to complete" as it would require

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[41] Affidavit #2 of IT Director at paras 14-16.
[42] *Ibid* at para 22.
[43] Ministry's reply submission at paras 64-68.
[44] Affidavit #2 of IT Director at paras 9-12.
[45] *Ibid* at para 27.

recreating the Prior Requests as closely as possible and then analyzing the differences between those and the data out of which the request would be compiled.[46] He also says the Wills Registry can be searched only by wills notice number or by testator name.[47]

[46] As I noted above, s. 6(2)(a) does not require public bodies to adjust raw data beyond the incidental, to use outside or specialized expertise, or to engage in extraordinary manual effort to create the requested records.

[47] I have reviewed what the parties have said about the majority of the applicant's sub-requests[48] in light of the Ministry's evidence about how programming is required to create the requested records and how aggregate data are not kept. I am satisfied that records responsive to the sub-requests cannot be created using the Ministry's normal software, hardware, and technical expertise because I accept the Ministry's evidence that responding to them would require programming and/or because the Ministry does not keep cumulative counts or aggregates for any of the information it contains. I find that responding to these sub-requests would require adjustments of raw data, the use of specialized expertise, and extraordinary manual effort, which would be far beyond the kinds of manual actions which s. 6(2)(a) has been interpreted to require, such as pushing buttons or entering commands. In coming to this conclusion, I have given considerable weight to the Ministry's evidence, which is given by an affiant who has long experience in information technology, who works at Vital Statistics, and who works directly with the Wills Registry.[49] In contrast, the applicant does not work at Vital Statistics and does not say he has worked directly with the Wills Registry, so while I have considered his opinions, I give less weight to them.[50]

[48] To take one example of a sub-request the Ministry says it cannot respond to without additional programming, the applicant's sub-request 1 asks the Ministry to identify and disclose the number of changes, during a specified period, to the active or inactive status of the wills notices mentioned in the 2019 Prior Request. I accept the Ministry's evidence that responding to this sub-request would require the Ministry to expend significant manual effort on retrieving, then programming queries to determine changes to the status of, the 1,636 wills notices that appeared in the results of that Prior Request.

[49] To take another example, the applicant's sub-request 9 asks how many wills notices have been registered by a particular solicitor and whether those wills are located at a particular civic address. I accept the Ministry's evidence that the

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[46] *Ibid* at paras 23-24.
[47] Affidavit #1 of IT Director at para 27.
[48] Sub-requests 1, 3, 5-7, 9-14, 17, and 19.
[49] Affidavit #1 of IT Director at paras 2-3.
[50] See, e.g., Order F25-39, 2025 BCIPC 47 (CanLII) at para 37.

Wills Registry cannot be searched by solicitor name or location of the will, but only by testator name and wills notice number, and that responding to this sub-request would require significant manual effort.

[50] Despite all this, the Ministry *did* respond to the Prior Requests. The applicant might reasonably wonder why the Ministry has changed its position and now says s. 6(2)(a) does not require it to respond to the request. The Ministry says some of the staff who worked on the Prior Requests have departed or gone on leave,[51] but I do not consider that to be material in assessing the Ministry's normal technical expertise. However, I accept the Ministry's specific, detailed evidence on this point, including the IT Director's evidence that he knows what would have been required to respond to the Prior Requests, and his evidence that these responses required more than the Ministry's normal software and technical expertise.[52] This evidence persuades me to accept the Ministry's argument that it went beyond the requirements of FIPPA in responding to the Prior Requests.[53]

[51] I therefore find that the Ministry has established that it is not required under s. 6(2)(a) to create a record containing the aggregate data requested in the sub-requests noted at paragraph 38 above.

Ministry's reason 2: the Ministry cannot recreate the data sets from the Prior Requests for comparison

[52] The majority of the applicant's sub-requests are for data about differences between the data currently in the Wills Registry (and other data sources) and the data sets he received in response to the Prior Requests.

[53] The Ministry says it cannot create the data requested in these sub-requests[54] because the Ministry did not keep a copy of the data sets generated for the Prior Requests. The Ministry explains: "The Wills Registry is constantly changing as new or amended data is added. There is no historical snapshot of a previous point-in-time that can be searched for comparison purposes. Any data extract would only reflect the current state of the database, not the past state."[55] Given this, the Ministry says, it is not possible to compare a previous version of the Wills Registry against the current Wills Registry or to recreate the datasets for the Prior Request, which the Ministry did not retain. In other words, the Ministry says, there is no machine readable record from which records

[51] Affidavit #1 of IT Director at para 11.
[52] Affidavit #1 of IT Director at paras 11-12; Affidavit #2 of IT Director at paras 26-27.
[53] Ministry's reply submission at paras 63-68.
[54] Sub-requests 1-8 and 10-18.
[55] Ministry's initial submission at para 38.

responsive to most of the sub-requests can be created.[56] The IT Director's affidavit evidence confirms what the Ministry submits.[57]

[54] The applicant says the Ministry can recreate the data sets used for the Prior Requests since he believes the underlying data remains accessible.[58] The applicant also says it is inaccurate for the Ministry to suggest that the addition of new information to the Wills Registry removes or erases previously registered data.[59]

[55] The IT Director replies that contrary to what the applicant asserts, the Ministry did not retain the data extracts that resulted from the queries used to respond to the Prior Requests, so it cannot recreate the underlying data that made up its responses to those requests. As a result, he says, the Ministry cannot respond to any of the elements of the request that require comparison with the data sets from the Prior Requests.[60]

[56] Having reviewed these sub-requests,[61] I find that each of them would require the Ministry to compare current data in the Wills Registry (or other data sources) to the historical data it used to generate its responses to the Prior Requests. For example, the applicant's sub-request 2a asks how many of the wills notices identified by the 2019 Prior Request were registered by each solicitor named in a list provided by the applicant. I am satisfied that creating a record responsive to this sub-request would require the Ministry to recreate a snapshot of the Wills Registry as it existed at the time of the Prior Requests, and I have accepted the Ministry's evidence that it is not possible to do this. Again, and for the reasons given above,[62] I give more weight to the evidence of the IT Director and less weight to the opinions of the applicant in coming to this conclusion.

[57] I accept the Ministry's evidence that it cannot recreate the underlying historical data that made up its responses to the Prior Requests. I also accept the Ministry's argument that this means there is no machine readable record from which the majority of the requested records can be created using the Ministry's normal hardware, software, and technical expertise. It follows that the Ministry is not required to create these records under s. 6(2)(a).

[58] Since I have found that the Ministry's reasons 1 and/or 2 apply to all of the sub-requests that make up the request, there is no need to assess whether the Ministry's reasons 3 through 7 also apply to some of those sub-requests.

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[56] Ministry's initial submission at paras 37-39.
[57] Affidavit #1 of IT Director at paras 19-21.
[58] Applicant's response submission at 9 and 29-30.
[59] *Ibid* at 32.
[60] Affidavit #2 of IT Director at paras 18-19 and 26.
[61] Sub-requests 1-8 and 10-18.
[62] At para 47.

Conclusion on s. 6(2)(a)

[59] For the reasons above, I conclude that the requested records cannot be created from a machine readable record in the custody or under the control of the Ministry using its normal computer hardware and software and technical expertise.

CONCLUSION

[60] For the reasons given above, under s. 58 of FIPPA, I confirm that the Ministry is not required by s. 6(2) to create records responsive to the applicant's access request.

December 15, 2025

ORIGINAL SIGNED BY

David S. Adams, Adjudicator

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