Office of the
INFORMATION & PRIVACY
COMMISSIONER
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Order F15-02

BC CORONERS SERVICE

Elizabeth Barker
Adjudicator

January 8, 2015

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Summary: A journalist requested full details of all deaths investigated by the Coroner over a 16 year period. He requested the information in one electronic record, or alternatively as several electronic records that could be linked with a unique identifier. The requested records do not exist in either format, and the Coroner submitted that it was not obliged to create the records under s. 6(2) of FIPPA. The adjudicator determined that that the Coroner was not obliged to create a *single* electronic record because doing so would unreasonably interfere with the Coroner's operations (s. 6(2)(b)). The adjudicator determined that creating *several* electronic records (one for each table in the database) would not unreasonably interfere with the Coroner's operations. However, the adjudicator concluded those records could not reasonably be severed (s. 4(2) of FIPPA), so the Coroner was not obliged to create them.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 4(2), 6(2)(b), 44(5), 56(1).

Authorities Considered: B.C.: Order No. 01-16, *Simon Fraser University, Re*, 2001 CanLII 21570 (BC IPC); Order 03-16, 2003 CanLII 49186 (BC IPC); Order 03-19, 2003 CanLII 49194 (BC IPC); Order F07-23, 2007 CanLII 52748 (BC IPC).

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INTRODUCTION

[1]   A journalist ("applicant") requested full details of all deaths investigated by the B.C. Coroners Service ("Coroner") since 1996. He requested that the information be provided in a single electronic file ("Choice 1"), or alternatively in a series of electronic files that could be linked with a unique identifier such as a case number ("Choice 2"). In his request, he explained that the file or files should be in Microsoft Excel, Microsoft Access or Comma Separated Values ("CSV")[1] format.

[2]   The response to the applicant's request was that no records were located in response to his request, that the public body did not have staff with the technical expertise to create a new record, and that creating a record would unreasonably interfere with operations.

[3]   The applicant filed a complaint with the Office of the Information and Privacy Commissioner ("OIPC") regarding the response he received. He alleged that the public body had not met its duties under s. 6 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). Mediation did not resolve the complaint and the applicant requested that it proceed to inquiry under Part 5 of FIPPA.

[4]   After the *Investigator's Fact Report* and the *Notice of Hearing* were issued, the applicant and the public body's lawyer discussed the matters in dispute. As a result an *Amended Notice of Hearing* was issued adding the following issue: If the Commissioner finds that the Coroner has a duty to create the requested record, can information excepted from disclosure under Division 2 of FIPPA be reasonably severed from the record in accordance with s. 4(2) of FIPPA?

ISSUES

1. If the record or records the applicant requests do not exist, is the public body required to create them, under s. 6(2) of FIPPA?

2. If it is determined that the public body has a duty to create the requested record or records, can information excepted from disclosure under Division 2 of FIPPA be reasonably severed from those records under s. 4(2) of FIPPA?

[5]   Section 57 of FIPPA is silent respecting the burden of proof for these issues. However, previous orders have held that, as a practical matter, it is in the interests of each party to provide argument and evidence to justify its position.

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[1]   In CSV format, data elements (i.e., name, means of death, etc.) in the string of text are separated by a comma or other character.

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DISCUSSION

[6]   **Background**—The Coroner is responsible for investigating all unnatural, sudden and unexpected deaths in British Columbia. The Coroner also ensures that the relevant facts are made a matter of public record, identifies and advances recommendations aimed at prevention of death in similar circumstances, reports on issues affecting public health and safety and reviews all children's deaths.[2] The Coroner enters information related to deaths under its investigation into an Oracle database, which it calls Tosca.[3] The information that the applicant seeks is contained in the Tosca database.

[7]   While the Coroner is judicially independent with respect to its statutory functions, the Coroner is a program area within the Ministry of Justice ("Ministry").[4] The Coroner reports to the Assistant Deputy Minister of Emergency Management BC, who in turn reports to the Deputy Solicitor General.[5] The Coroner and the Ministry are each their own distinct "public body" under FIPPA.[6]

Preliminary Issues

> *Who is the public body in this case?*

[8]   The applicant's initial submission reveals that there is some confusion about who is the public body in this case. The issue of whether the Coroner or the Ministry has custody or control of the database and is the responsible public body appears not to have been addressed or resolved during investigation of the applicant's complaint. The public body was identified in the *Investigator's Fact Report,* the *Notice of Hearing,* and an *Amended Notice of Hearing* as "BC Coroners Service, Ministry of Justice".

[9]   It is evident from the inquiry materials that the applicant spoke with the Coroner's staff about the information that he wanted before sending his formal written request, which he addressed to the Ministry. Based on what he wrote in his initial submission, it is apparent that the applicant did not know for certain which public body maintained and managed the Coroner's database.[7] The response the applicant received did not clarify which public body was asserting custody or control over the Tosca database and who had responsibility

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[2] *Coroners Act*, [SBC 2007] chapter 15, and Ministry of Justice 2014/15-2016/17 Service Plan.
[3] Physical paper files are also maintained, per Sidhu affidavit, para. 18.
[4] Ministry's initial submissions, para. 4.27.
[5] Accountabilities of the Chief Coroner (http://www.pssg.gov.bc.ca/coroners/shareddocs/chief-coroner-accountabilities.pdf).
[6] See the definition (a) of "public body" in Schedule 1 of FIPPA as well as list of public bodies in Schedule 2 of FIPPA.
[7] Applicant's initial submissions, paras. 8-11.

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for responding to his request. The Ministry responded to his access request by writing the following:

> Although a thorough search was conducted, no records were located in response to your request. The Ministry is unable to satisfy your request as they currently do not have staff with the technical expertise required who are able to create a new record, and to try to do so would unreasonably interfere with operations. Your file is now closed.[8]

[10]   It is not until the Coroner's initial inquiry submissions[9] that the Coroner explains that the decision regarding the applicant's request was made by the Chief Coroner, and that the Ministry sent the response on behalf of the Coroner.[10]   Further, in its initial submission, the Coroner says that the Tosca database is in its custody or control, and that the Coroner acknowledges that it is the public body for the purposes of s. 6(2) of FIPPA. [11]

[11]   In conclusion, I am satisfied that the Coroner is the public body for the purposes of this request and inquiry.

Independent expert

[12]   The applicant submits that the Coroner's claims about the difficulty of providing the requested electronic records should not be taken at face value. He submits that the OIPC needs to seek outside technical expertise in this inquiry to assist in understanding how Oracle databases, and the Tosca database in particular, are structured. He points to Order 03-16[12] as an example of when the Commissioner relied on independent expert advice regarding the technical aspects of a case.

[13]   In Order 03-16, former Commissioner Loukidelis retained an independent computer scientist to advise him whether it was possible to export information from the Ministry of Forests' enforcement and compliance database into a commercially or universally available electronic format such as a Microsoft Excel. In the present case, however, there is no question that the requested record can be created by exporting data into a commercially available format like Microsoft Excel or CSV. The Coroner acknowledges that this is possible. Instead, the issue relates to the impact creating the requested record would have on the Coroner's operations. Therefore, the facts in Order 03-16 that led the Commissioner to seek independent expert advice are materially different from those before me.

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[8] Ministry's November 20, 2012 response.
[9] The Ministry did not provide a submission in this inquiry.
[10] Ministry's initial submission, paras. 4.15, 4.21 and 4.25.
[11] Coroner's initial submission, paras. 4.24 and 4.27.
[12] Order 03-16, 2003 CanLII 49186 (BC IPC).

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[14]   Having reviewed the materials in this inquiry, in my view, it is not necessary to seek the assistance of an independent computer scientist as suggested by the applicant. The information in this case is not so complex that I cannot comprehend and make a determination without independent advice. I will make the decision regarding the issues in this case based on the evidence and submissions provided by the parties.

Inadvertently disclosed record

[15]   Soon after the parties exchanged their initial submissions, the Coroner approached the Commissioner regarding a record which the Coroner says it inadvertently disclosed to the applicant during the exchange of initial submissions. That record is Exhibit D to an affidavit and is a hard copy print-out of the tables in Tosca and the data elements contained in each table.[13]

[16]   Upon realizing its mistake, on April 25, the Coroner asked the applicant to destroy Exhibit D, not keep any copies or share it or any information in it with any third parties. The applicant refused the Coroner's request and indicated that he intended to use it for the purposes of his reply submission.

[17]   On April 30, the Coroner's legal counsel wrote to the Commissioner to request the following:

> The Ministry wishes to apply to the Commissioner for an order that the Applicant immediately destroy the record sent to him in error, or, in the alternative, that the Applicant destroy the record immediately upon the closing of the inquiry. The Service also requests that the Commissioner find that the Applicant is under an implied undertaking to use Exhibit "D" only for the purposes of this inquiry.[14]

[18]   The applicant responded that the OIPC has no legal authority to order him to destroy Exhibit D; that the Coroner had failed to apply for permission to request approval to submit materials *in camera*; he had relied heavily on Exhibit D in his reply submissions, which had already been submitted; and he would need Exhibit D to make sense of the data he receives if he is successful with his access request.

[19]   On May 21, I informed the parties that a decision on the Coroner's application would be deferred until after the decision on the merits of the applicant's complaint regarding ss. 4 and 6.[15] The parties were invited to provide submissions and both provided an initial and a reply submission regarding the inadvertent disclosure of Exhibit D.

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[13] Exhibit D to the Sidhu affidavit, sworn April 10, 2014. I note that Exhibit D does not contain personal information.
[14] Coroner's April 30, 2014 request for order.
[15] The chronology of what occurred is set out in that letter.

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[20]   In their submissions, both parties refer to Orders No. 01-16[16] and F07-23.[17] Order No. 01-16 dealt with a case where the applicant had previously settled her access request with Simon Fraser University during OIPC mediation. However, several months later she made the same access request again. The university refused to reopen the original access request or open a new request, and the matter proceeded to inquiry. Former Commissioner Loukidelis determined that, in addition to any express statutory authority under FIPPA to provide relief for an abuse of access rights (i.e., s. 43), the Commissioner also has an implied authority to deal with abuses of the processes under Part 5 of FIPPA. He found that the applicant's second request was, in the circumstances, an abuse of process and that fairness did not require the public body to process her second request.

[21]   During the inquiry that led to Order F07-23, the initial submissions of the Ministry of Public Safety and Solicitor General ("PSSG") mistakenly included records that contained Cabinet confidences and were also outside the scope of the access request. The PSSG delivered a revised initial submission to the applicant and asked him to return the original submission containing the records that had been provided in error. The applicant refused to comply with the PSSG's request. Based on the facts before him, former Commissioner Loukidelis determined that the applicant was attempting to expand the inquiry and amend the access request to include the mistakenly disclosed records. He said that the Commissioner's authority to conduct inquiries and the responsibility for the fairness of the inquiry process is found in s. 56(1) of FIPPA, and he concluded that it would not be fair to permit a party to take advantage of the inadvertent disclosure to expand the inquiry to include the mistakenly disclosed records. He ordered the applicant to return the PSSG's incorrect initial submission and to sign a statutory declaration acknowledging he would keep no part of the PSSG's incorrect initial submission. The inquiry was adjourned pending the applicant's compliance with those directions.

Coroner's submissions

[22]   The Coroner submits that it should have applied to submit Exhibit D *in camera*, because it contains a list of data elements that the Coroner had previously denied to the applicant out of concern for system security concerns. The Coroner's legal counsel writes:

> In this case, as soon as I discovered my mistake in providing the Applicant with a copy of the Record, I advised the Applicant and the Registrar of that mistake and asked the Applicant to destroy the record. The Ministry submits that the Applicant's refusal to do so is patently unfair. The Record was provided to the Commissioner in order to

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[16] Order No. 01-16, *Simon Fraser University, Re*, 2001 CanLII 21570 (BC IPC).
[17] Order F07-23, 2007 CanLII 52748 (BC IPC).

enable her to understand the complexity of the database at issue. If it was not for the Ministry being required to defend its decision in relation to the Applicant's request, the Service would never have shared that record given the sensitivity of the information contained. [18]

[23]   The Coroner submits that in the present circumstances, fairness requires that the applicant not be permitted to retain possession of Exhibit D. The Coroner says:

> If the Applicant wishes to obtain access to the Record in a fair and lawful manner (i.e. one that does not constitute an abuse of the Commissioner's process), he has the option of seeking access to that record under the Act. Then, if the head of the Service elects to withhold information from that record under s. 15(1)(l), the Applicant will have the right to request a review of that decision. [19]

[24]   The Coroner submits that Order F07-23 is determinative in this case and is authority for the proposition that s. 56(1) provides the Commissioner with authority to issue the order the Coroner seeks. The Coroner also refers to Order No. 01-16 as support for its assertion that the Commissioner has the implied power to control and counteract an abuse of process in the context of reviews and inquiries under Part 5 of FIPPA.

[25]   The Coroner also submits that there have been many cases supporting the rights of administrative tribunals to control their own process. [20] As such, the Coroner submits that the Commissioner has the power to control the inquiry process in this case, and that those powers include the power to order the return or destruction of a document disclosed in error by any party in an inquiry.

[26]   In addition, the Coroner submits that s. 44(5) of FIPPA plays a role in this case. Section 44(5) states, "After completing a review or investigating a complaint, the commissioner must return any record or any copy of any record produced by the public body concerned." The Coroner submits that this reflects a legislative intention that confidential documents will be returned to a public body at the close of proceedings, and it would be "absurd" to require the Commissioner to return Exhibit D but permit the applicant to retain the very same record. [21]

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[18] Coroner's July 9, 2014 submission, p. 3.
[19] Coroner's initial submission, p. 5.
[20] The Coroner references: *Chromex Nickel Mines Ltd. v. British Columbia (Securities Commission),* 1992 CanLII 2163 (BC SC); College of Physicians & Surgeons (Ontario) v. Casullo, 1976 CanLII 25 (SCC); and *Biscotti v. Ontario Securities Commission,* 1991 CanLII 7216 (ON CA).
[21] Coroner's initial submission, p. 3.

[27]   In response to the applicant's concerns that he might need Exhibit D if there is a judicial review, the Coroner explains that if access to Exhibit D were necessary for that purpose, the Coroner "would be willing to entertain a request from the Applicant's legal counsel for him or her to be granted access to the Record, for the purpose of a judicial review, upon appropriate confidentiality undertakings being provided by counsel." [22]

Applicant's submissions

[28]   The applicant does not dispute that Order F07-23 "appears to establish the OIPC's general authority to order the destruction of a record that has been inadvertently disclosed during the inquiry process."[23]   However, he submits that in the circumstances of this case, that authority should not be exercised.

[29]   The applicant submits that ordering him to destroy Exhibit D would be procedurally unfair as it would deprive him of a record that was not submitted *in camera* so has been relied on by both parties in their submissions, and Exhibit D could be subject to further argument if this case proceeds to judicial review.

[30]   He points out that the facts in the present case differ from those in Order F07-23. In the present case, the Coroner had the choice when it realized its error to immediately submit a new initial submission, which did not rely on the inadvertently disclosed record (as was done in Order F07-23), but the Coroner chose not to do so.

[31]   The applicant also disputes the Coroner's assertion that Exhibit D contains information that is exempt from disclosure under FIPPA on any grounds, including system security concerns.

[32]   Further, the applicant disagrees with the Coroner's submission that s. 44(5) is relevant in this case because, he submits, that section applies only to records that the Commissioner has compelled a public body to produce to the Commissioner under s. 44. The applicant points out that the Commissioner did not make any order under s. 44 requiring the production of Exhibit D, and the Coroner produced it for the purposes of the inquiry on a voluntary basis.

Analysis – Exhibit D

[33]   The Commissioner's powers, duties and functions derive from FIPPA, and as was recognized in Order F07-23, the Commissioner's authority and responsibilities regarding the conduct of inquiries is found in s. 56(1) of FIPPA. Section 56(1) states that if a matter is not referred to a mediator or is not settled, the Commissioner may conduct an inquiry and decide all questions of fact and

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[22] Coroner's August 27, 2014 reply, para. 4.
[23] Applicant's intial submission, para. 3.

law arising in the course of the inquiry. I agree with Orders F07-23 and No. 01-16 that the Commissioner has an implied obligation to ensure that the inquiry process is fair to all involved, and that the Commissioner may take necessary steps and issue orders to ensure that fairness prevails. That includes issuing orders regarding records that have been inadvertently disclosed during the inquiry process.

[34]   I recognize that s. 3 states that FIPPA applies to all records in the custody or under the control of a public body, and the applicant does not meet the definition of "public body" under FIPPA.[24] However, in my view that does not preclude the Commissioner from making orders regarding records that have been inadvertently disclosed by a public body during the inquiry process, if that is what is required to ensure the fairness of that process. Of course, what is unfair and what is appropriate to rectify that unfairness depends on the circumstances of each case.

[35]   Unlike in Order F07-23, in this case the Coroner did not seek to file a revised version of its initial submission that did not reference the mistakenly disclosed record. The Coroner explains that it chose not to file a revised version of its initial submissions given its determination that Exhibit D would assist the Commissioner in ascertaining the size and complexity of the record sought by the applicant.[25] Exhibit D was not adduced *in camera*, and the Coroner appears to have conceded that the applicant would also have access to Exhibit D for the purposes of preparing his reply submissions. The Coroner did not submit that the applicant's use of Exhibit D for that purpose was unfair. Instead, I understand the Coroner's unfairness argument to be that it is an abuse of FIPPA for the applicant to refuse to relinquish possession of Exhibit D now that the inquiry has concluded.

[36]   In my view, the circumstances of the present case clearly differ from those in Orders F07-23 and No 01-16, and I do not find that the applicant's actions regarding Exhibit D to be an abuse of FIPPA processes. He used Exhibit D for the purpose of responding fully to the evidence the Coroner chose to provide the Commissioner in this inquiry. Further, his stated intention of retaining Exhibit D for the purposes of a judicial review or to understanding the records that he might receive if successful in this inquiry is not an abuse of FIPPA processes.

[37]   Finally, I am not persuaded by the Coroner's submission that the Commissioner is required by s. 44(5) to return any record produced by the public body during an inquiry, and consequently, it would be absurd not to also require the applicant to do the same. In my view, s. 44(5), must be considered within the broader context of s. 44, which deals with the Commissioner's power to order

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[24] The definition is in Schedule 1 of FIPPA.
[25] Coroner's reply submission regarding Exhibit D matter, para. 3.

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production of records and compel witnesses to testify. In this case, the Commissioner did not order the production of any records.

[38]   In conclusion, the Coroner's request that I find that the applicant is under an implied undertaking to use Exhibit D only for the purposes of this inquiry and that I order the applicant to destroy Exhibit D is denied.

[39]   I will now consider the s. 6 issues in this inquiry.

[40]   **Duty to assist applicant —** Section 6 of FIPPA, which reads as follows:

> 6(1)   The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.
>
> (2)   Moreover, the head of a public body must create a record for an applicant if
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> (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
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> (b)   creating the record would not unreasonably interfere with the operations of the public body.

Coroner's submissions

[41]   The Coroner submits that the electronic record that the applicant requests containing full details of all deaths investigated since 1996 does not exist, but it has in its custody or under its control a machine readable record (i.e., the Tosca database) from which the requested record can be created. The Coroner submits that the Coroner's own employees do not have the technical expertise to create the requested record. However, the Coroner explains that the Ministry has the in-house expertise, computer hardware and computer software to create the requested record in one of the formats that the applicant requests.[26]

[42]   The Coroner explains the relationship between the Ministry and the Coroner when it comes to the Coroner's computing technology needs and the Tosca database. The Ministry's Information Systems Branch ("ISB") is responsible for delivering information management and technology services to the Coroner and administers the Tosca database "on behalf of" the Coroner. The

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[26] Coroner's initial submissions, paras. 4.24, 4.28 and 4.29.

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Ministry also has a contract with Sierra Systems ("Sierra") for the maintenance of the Coroner's Tosca database.[27]

[43]   The ISB's Director of Application and Infrastructure Services ("Director") provided details about Tosca. She explains that Tosca is a relational Oracle database, which consists of data in 175 separate tables. Each table is an organized set of data "elements" or "fields" (i.e., the deceased's date of birth). The Director says that the data for each case is stored in multiple tables. Tosca is approximately 885 megabytes in size and contains information for 134,930 cases for the time period for which the applicant requests data.[28]

[44]   The Director explains that there are at least three options for providing the applicant with an electronic record of the information that he requested. The first is to create a single file containing the requested data, the second is to create one file for each of the 175 database tables and the third is to create one file in Oracle format (an Oracle Dump File, also known as a DMP file).[29]

Applicant's submissions

[45]   The applicant disputes that providing a single file of the Tosca database would be as difficult as the Coroner claims. He provides submissions about how he believes a single CSV file of the database can be simply created using free Oracle SQL Developer software. He submits that writing a query for the entire database using structured query language (SQL) is "very straightforward and simple," and would be: "SELECT * FROM Tosca". He submits that if the query was designed to pull only certain fields it would be only moderately more difficult, for example, "SELECTED CausesOfDeath,DateofDeath,DeathCategory FROM Tosca".[30]

[46]   The applicant says that he is also willing to accept one file for each table in Tosca. He says it would be relatively simple for him to use a tool like Microsoft Access, in combination with the inadvertently disclosed Exhibit D, to link individual cases across those files and make sense of the data.

[47]   The applicant says that, previously, other public bodies have given him electronic records of their table-based relational Oracle databases. For example, the Office of the Registrar of Lobbyists exported 13 tables from its Oracle

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[27] Coroner's initial submissions, para. 4.24 and Director's affidavit paras. 4 and 24-27.

[28] Director's affidavit, paras, 7, 9-11 and 20.

[29] The applicant explained that the Oracle format would only be acceptable if the Commissioner finds that creating the requested record in CSV, Microsoft Excel or Microsoft Access formats would unreasonably interfere with the Coroner's operations. Applicant's March 19, 2014 email to Coroner's solicitor.

[30] Applicant's initial submission, paras. 17-21.

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database into a series of CSV files, which were then provided to him in Microsoft Excel format along with a key to link the tables.[31]

[48]   In reply to the Coroner's submission that it could more easily provide him with a report regarding specific data (i.e., about motor vehicle deaths, suicides, deaths of homeless individuals), the applicant submits that he wants all the raw data in order to draw his own conclusions and assess the accuracy of the Coroner's statistical reports.[32]

Single file

[49]   The Coroner acknowledges that it is possible to create a single file of the database in CSV format. This format would provide the data in one line of text per case. This is the applicant's preferred format. However, the Coroner submits, creating the requested record in a single CSV file would unreasonably interfere with the Ministry's operations.

[50]   The Coroner points out that the applicant is mistaken in his belief that a single CSV file of the database can be simply created using free Oracle SQL Developer software. That software cannot be used to export an entire database composed of multiple tables into one file.[33]   Creating a single CSV file, the Coroner submits, would require writing, testing and then applying a series of customized PL/SQL programs to gather the case-related information from the various tables where it resides within the database. This task requires an understanding of the database model, what each table means, the interrelationship between the tables, and which rows in the various tables are associated with a particular case. Further, some tables that are not related to case files would have to be extracted.

[51]   The Coroner acknowledges that the *single* CSV file of the Tosca database could be created by an ISB employee. However, the Coroner submits that ISB staff is not permitted to engage in the programming work that would be necessary to generate the single CSV file, so an external service provider (i.e., Sierra) would have to be hired to do the work. The Director explains that the reason the work could not be done by ISB is because the provincial government's *Core Policy and Procedures Manual* says that "the private sector is to play a major role in supplying services for the development and support of information technology" and "development of information systems must be

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[31] The Information and Privacy Commissioner is also the Registrar of Lobbyists for British Columbia.

[32] Applicant's reply submission, paras. 34-37.

[33] It could, however, be used to create one CSV file for *each* of the tables in Tosca.

conducted by the private sector unless an exemption is granted by the Government CIO [Chief Information Officer]."[34]

[52]   The Director explains that Sierra has not been asked to provide an estimate of how many hours this work would take. However, it is expected that Sierra would require between 350-490 hours. The estimate is based on the belief that the lone ISB employee familiar with Tosca would need approximately 245 hours to do the required work, but Sierra would need more time to become equally familiar with the database model, the meaning of (and relationship between) the tables, and which rows in a table are associated with a particular case or cases. The time estimate is also based on experience with a previous request where a contractor needed two months to generate a single CSV file of a far simpler set of Tosca data elements than the applicant requests.

[53]   The Director provides detail about Sierra's hourly contract rate and calculates that the work to create the single CSV file for the applicant will cost the Ministry $42,000-$58,000. By way of context, she says that the total annual Tosca database maintenance budget with Sierra is $15,000 per fiscal year.

[54]   Although the Coroner submits that the government's *Core Policy and Procedures Manual* prohibits government employees from doing the programming work that is necessary to create the requested single CSV file, the Coroner explains the impact on the Ministry of having an ISB employee create the requested record. There is only one Ministry employee with the knowledge and ability to create the requested record in one CSV file: the ISB's Senior Custom Application Specialist ("SCAS").[35]   The Director says that the SCAS's primary task is to provide operational support to seven Oracle Forms applications. If the SCAS is tasked with creating the requested record, the SCAS's duties would have to be reassigned. This would cause significant delays in the delivery of operational support to other program areas and consequent delays in their provision of services to their clients.[36]

> *175 files (one for each database table)*

[55]   The Coroner acknowledges that it could also create the requested record by exporting each of the 175 database tables into a discrete Microsoft Excel or CSV file. This is the applicant's second preferred format. The Director says that an ISB employee could do this work in approximately two days using a tool called

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[34] *Core Policy and Procedures Manual* 12.2.1 Principles and 12.3.5 Information Technology Management Policy, respectively.
[35] Director's affidavit, para. 32.
[36] The Director does not specify which seven applications. However, she explains that the program areas that ISB serves include Justice Services, Court Services, Policing and Security Programs, Community Safety and Crime Prevention, Emergency Management, Corrections, Office of the Superintendent of Motor Vehicles, BC Human Rights Tribunal and the BC Review Board.

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SQL Developer to export the tables one by one. The Director says that this would not significantly impact ISB's operations. The Coroner points out that this is the same process that the applicant said the Office of the Registrar of Lobbyists used to provide him with data from its Oracle database.

Section 6(2)(a) analysis

[56]   For the first part of the s. 6(2) analysis, I must determine if the requested 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".

[57]   The Coroner's computer hardware, software and technical expertise were described in the Coroner's submissions and supporting affidavit evidence. The Coroner draws upon in-house information management and technology services provided by the Ministry's ISB. It also uses contract services provided by Sierra. Based on that, I conclude that the Coroner's "normal computer hardware and software and technical expertise" is provided by ISB and Sierra.

[58]   The Coroner acknowledges that the requested single CSV file could be created from a machine readable record that is under the Coroner's control. The Coroner also acknowledges that it could export each of the 175 database tables to either a Microsoft Excel or a CSV file. A Ministry ISB employee or the contractor Sierra could do the work necessary to create the records, and there was no suggestion that new software or hardware would be needed.

[59]   I find that the requested record, in either a single file or a multiple file format, can be created from a machine readable record in the custody or under the control of the Coroner using its normal computer hardware and software and technical expertise.

Section 6(2)(b) analysis

[60]   Next I will examine whether creating the requested record would unreasonably interfere with the Coroner's operations. In Order 03-19,[37] former Commissioner Loukidelis explained that s. 6(2) envisions that the creation of records will require some effort and institutional resources, and that what constitutes an unreasonable interference in the operation of a public body rests on an objective assessment of the facts in each case. The size and complexity of the task and the resulting burden that creating the record would place on a public body's information systems resources, measured in relation to its total resources of that nature, are relevant matters to consider.

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[37] Order 03-19, 2003 CanLII 49194 (BC IPC), at para 21.

[61]   The Coroner acknowledges that it could create the record in either of the electronic formats that the applicant indicated would be acceptable: either a single CSV format file or a discrete Microsoft Excel or CSV file for each of the tables in the database.

[62]   The Coroner submits that exporting the Tosca database into a single CSV file would unreasonably interfere with operations because it would take the one ISB employee who can do the work approximately 245 hours and necessitate reassigning her work to others and impacting other program areas that rely on her expertise.   Alternatively, it would necessitate paying Sierra approximately $42,000-$58,000 to do the work. I note that this contract sum is roughly three to four times as much as the $15,000 annual database maintenance contract with Sierra.

[63]   Both parties' submissions, and in particular the evidence provided by the Director, satisfy me that contrary to the applicant's belief, creating a single CSV file of a database composed of multiple tables is not a simple task. The applicant disagrees that creating a single electronic record containing the data he wants would unreasonably interfere with the Coroner or the Ministry's operations because he believes a single CSV file of the database can be simply created using free Oracle SQL Developer software. However, I am not convinced that it is as simple as he suggests because his explanation does not account for the fact that he has asked for "full details" of all deaths investigated and that this information is contained in a database made up of relational tables. From my review of Exhibit D, it is clear that the information in the tables in TOSCA is more diverse than just cause, date and category of death.   To name just a few examples, TOSCA includes information about who found the deceased, the condition of the body, who the body was released to, whether the physical location of the body is significant, the recreational or professional activity the deceased was engaged in at the time of death, the deceased's ethnicity, what tests were conducted on the body, how the case was concluded, and whether the police are investigating.

[64]   Information about the deaths investigated is located in various tables. Exporting Tosca data on deaths investigated since 1996 into the requested single CSV file would require understanding the database model and the interrelationship between the data in the various tables, writing, testing and then applying customized programs that will gather the case-specific information from the relevant tables. The Coroner's explanation of the number of hours this task would take is plausible as are its cost calculations if a contractor, rather than an ISB employee, performs the work. I am simply not convinced by the applicant's explanations for why he believes this would not be as challenging or time-consuming a task as the Coroner submits.

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[65]   The Coroner's submissions demonstrate that the task of creating a single CSV file of all deaths investigated since 1996 is a complex task involving a large volume of data. I find that 245 hours of employee time or $42,000-$58,000 in contracting costs to create the requested single CSV file would be a very large burden on any public body and would unreasonably interfere with operations.

[66]   On the other hand, the Coroner explains that fulfilling the applicant's request by creating the records in his second choice of format would not unreasonably interfere with operations. It would only take an ISB employee two days to create one CSV or Excel format file for each of the 175 tables in Tosca.

[67]   In conclusion, I find that the Coroner is not required under s. 6(2) of FIPPA to create a single CSV file with full details of all deaths investigated by the Coroner since 1996. However, the Coroner does have a duty under s. 6(2) of FIPPA to create a Microsoft Excel or CSV file for each table in Tosca containing full details of all deaths investigated by the Coroner since 1996.

[68]   **Can the Coroner sever the requested records? —** I will now consider whether information that is excepted from disclosure under Division 2 of FIPPA can reasonably be severed from the records that the Coroner is required to create under s. 6(2). Section 4(2) of FIPPA states

> 4(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record an applicant has the right of access to the remainder of the record.

[69]   The meaning of s. 4(2) and the extent of the duty to sever an electronic record were considered in Order 03-16. The facts of that case are similar to those before me.   The applicant in Order 03-16 requested an electronic copy of the Ministry of Forests ("MOF") entire enforcement and compliance database. Former Commissioner Loukidelis concluded that while the MOF was required by s. 6(2) to create the requested record, doing so would be futile because the record could not reasonably be severed within the meaning of s. 4(2). In reaching his conclusion regarding the severing issue, he acknowledged that the MOF did not have software to assist with severing or suppressing specific data fields and that developing such software would cost tens of thousands of dollars. However, he concluded that even if the MOF had the benefit of using such software, the task of reviewing and severing the balance of the record would be "daunting" because of its size, complexity and the fact that MOF staff did not consistently enter data into the same fields. [38] He wrote:

> [59]... One is not required to altogether ignore the burden of severing a record   when   considering   whether   protected   information   can

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[38] Order 03-16 at para 45.

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"reasonably" be severed. There will be cases where the cost of severing is very great while the part of the record that remains after severing, reasonably viewed, is perhaps not entirely incoherent and meaningless, but nonetheless is without informational value.

Coroner's submissions

[70]   The Coroner submits that its database contains extensive and sensitive personal information and information about ongoing police investigations. The Coroner says it would need to review any record created for the applicant in order to sever information for reasons related to unreasonable invasions of personal privacy (s. 22 of FIPPA) and law enforcement (s. 15 of FIPPA). The Coroner submits that such information cannot reasonably be severed from the requested record under s. 4(2) of FIPPA.

[71]   The Coroner provided details of what would be involved in severing the records.

[72]   Prior to creating any record for the applicant, regardless of its format, the Ministry would apply data masking software (which it already has) in order to hide or supress data in selected fields.[39] The data masking software would be applied to data fields in Tosca that the Coroner determines contain information that is severable under s. 15 and s. 22 or is outside the scope of FIPPA due to the provisions of s. 64 of the *Coroner's Act*.[40]

[73]   The Coroner submits that only the ISB's Senior Custom Application Specialist ("SCAS") is familiar with both the data masking software and the Coroner's database. The Coroner submits that the process of identifying which specific data fields need to be masked would be a time consuming process for the Coroner, although it provided no time estimate for this task. After the Coroner identifies the specific data fields to be masked, it would take the SCAS five days to complete the data masking.

[74]   After the data masking software is applied and the electronic record created, the Coroner submits that there would still need to be a manual review of the resulting electronic record. This is because the remaining information, either alone or in combination with other information in the public domain, could enable identification of the deceased or another third party. For example, the details of a death, which occurred in a small town, would have to be severed differently than if it occurred in a larger community in order not to disclose sensitive personal information. The Coroner says that the manual review would require a line by line examination of over 100,000 records and a service provider with FOI expertise would need to be hired because it would be impracticable for its current

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[39] The data is masked by random characters or data.
[40] Director's affidavit, paras. 14-18.

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staff to do in addition to their regular duties.[41] The Coroner predicts the manual severing of the electronic record "would likely take a service provider months of full time work to accomplish."[42]

[75]   The Coroner submits that after the necessary review and severing, what remains will likely be snippets of sentences that will be unintelligible and misleading.[43]

[76]   The Coroner submits that the applicant will not be able to accurately interpret the data he would receive if his request is fulfilled. That is because what might be disclosed would not be the most complete or current information and some case information is in physical paper records. In addition, the applicant will not be aware of all of the policies and database rules needed to accurately interpret the electronic data.

Applicant's submissions

[77]   The applicant submits that public bodies are obliged to keep their electronic records in a format that can be easily severed and released. He submits that data masking software tools can be used to sever what he calls "explicitly private information about the deceased and their family"[44] and that the rest could be disclosed. He says:

> As long as the fields released from the Tosca database are limited to general fields involving basic facts about each death - age, gender, date of death, cause of death - it's hard to imagine a scenario where the deceased's privacy would be violated by someone who also knows those basic facts.[45]

[78]   He disputes that a manual review of the records would also be required in order to sever them.

[79]   In addition, he challenges the Coroner's claim that there are 175 files or tables responsive to his request and that it would take months to sever information before disclosure. In his opinion, there are probably only 20-30 tables that are connected to his request and the rest are administrative in nature. However, the applicant does not explain which tables he believes are connected to his request.

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[41] Sidhu affidavit, para 17. The Coroner does not explain how it arrived at the number 100,000 and its relationship to the 175 tables that would be exported into CSV or Excel format.
[42] Coroner's initial submissions, para. 4.57.
[43] Coroner's initial submissions, paras. 4.58-4.61. Sidhu affidavit, para. 22.
[44] Applicant's reply submission, para. 17.
[45] Applicant's reply submission, para. 21.

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Analysis

[80]   As the applicant points out, some of the information in Tosca includes case-related details of an administrative nature such as expenses related to the investigation, exhibits seized, workflow and case activity, which might not need to be severed under ss. 15 and 22. Despite that, the Coroner's submissions and supporting evidence (in particular Exhibit D) demonstrate that there is a large amount of information about individuals and also information pertaining to law enforcement matters.

[81]   The Coroner has satisfied me that its data masking software can only remove some of the information that may be subject to exemption under s. 15 and s. 22, and that careful manual severing on a line by line basis would also be necessary.

[82]   It is apparent from a review of Exhibit D that it would be a formidable task to sever the information in the created records - even after data masking software is employed to supress information from specific fields in the tables (e.g., names or home addresses). That is because the information remaining after data masking would be very sizeable and the linkages between the records created from the various tables would be complex. Given the relational table structure of the Tosca database, information about any of the deaths investigated will be contained in more than one table. Great care would be required to ensure that what is disclosed does not provide clues to the content of information severed elsewhere or allow one to draw accurate inferences about the identity of individuals (and potentially result in an unreasonable invasion of their personal privacy) or law enforcement matters. The person doing the severing would also need to know what information is in the public domain regarding a specific case that might allow one to piece together personal information or law enforcement matters. In my view, this would be an overwhelming task given the volume of information that would be associated with the approximately 134,930 deaths investigated in the time period for which the applicant seeks information.

[83]   Further, the fact that much of the information in the records is personal information will undoubtedly result in significant portions of the records being severed under s. 22, which is a mandatory exemption under FIPPA. When added to the severing that might occur due to s. 15, what remains regarding each case would be patchy and would not provide the applicant with the requested "full details" of all deaths investigated since 1996. In my view, there is sufficient evidence to support a finding that the effort required to sever the records is simply not reasonably proportionate to the quality of access it would provide.

[84]   In conclusion, I find that information excepted from disclosure cannot reasonably be severed under s. 4(2).

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CONCLUSION

[85]   For the reasons given above, I find that the Coroner is obliged by s. 6(2) of FIPPA to create an electronic Microsoft Excel or CSV file for each Tosca database table that contains information about deaths investigated by the Coroner since 1996. However, given that I also find that information excepted from disclosure cannot reasonably be severed from those records under s. 4(2) of FIPPA, creating the requested records would serve no purpose. Therefore, the Coroner is not required to create the requested records.

January 8, 2015

ORIGINAL SIGNED BY

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Elizabeth Barker, Adjudicator

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