

BC Coroners Service Headquarters Policy

Electronic Disclosure to Family and Personal Representative

In rare circumstances, the Coroners Service may seize electronic devices belonging to the deceased in the course of investigating a death. That may allow the Coroners Service to obtain access to documents that are on that device or the cloud for the purposes of their investigation. Some of those documents may be password protected.

This policy addresses disclosure of these documents to a deceased's family or personal representative. Listing circumstances where information may be disclosed to other parties in accordance with *FOIPPA* is beyond the scope of this policy.

1. Return of Electronic Devices

After the Coroners Service no longer needs an electronic device for its investigation, the device will be returned to the personal representative (executor or administrator) or next of kin. The Coroners Service will return the device in the same state as when it was seized or with as little changes as possible. In some cases, the process of data retrieval may result in some unavoidable changes. If the device is unlocked or the password is known to the personal representative (executor) or family, this will allow access to the contents of the device once returned.

2. Access to Documents on an Electronic Device

In some cases, a personal representative or family member may wish to have access to a document stored on a device before it has been returned, or documents on a returned device may be locked by a password set by the deceased that is not known by the personal representative or family.

This may give rise to requests for documents that may or may not be password protected, either during or after an investigation.

These requests must always be forwarded to CoronerRequest@gov.bc.ca. The Chief Coroner will consider these requests in accordance with Part 2 or Part 3 of the *Freedom of Information and Protection of Privacy Act (FOIPPA)*, depending on whether a formal access request has been made, and in accordance with this policy.

3. Authority to Release Information

Section 63 of the *Coroners Act* prohibits disclosing “any information in respect of a deceased person or a person related to or otherwise connected with a deceased person” except when:

- (i) it is necessary or incidental to the carrying out of an active, not closed, investigation, inquest or review under the *Coroners Act*; or
- (ii) it is authorized by either the *Coroners Act* or another enactment such as *FOIPPA*.

Section 64 states that despite *FOIPPA*, a coroner may refuse to disclose any information collected in the course of an investigation until the investigation, inquest or review is completed.

(a) Necessary or Incidental Disclosure During An Investigation

Release of information by a coroner where necessary or incidental during an investigation is addressed by the *Release of Information Policy* in the *Investigative Policy and Procedures Manual*.

A coroner may determine that information should be disclosed to the appropriate person or family to assist with advancing an investigation, inquest or review. However, the information shared must be limited to what is necessary, which may only be part of a document and will generally be done verbally.

Unless it is necessary or incidental to provide a paper copy of a document, a request for a copy of a document after information is shared by a coroner will need to be processed in accordance with section 3(b) of this policy below. Because a “necessary or incidental” disclosure will usually not result in a copy of a document being provided to a personal representative or family member, the contents of the document will have to be reviewed to ensure that disclosure of the information is authorized by *FOIPPA*, and also complies with the rest of this policy. It will not be possible for a coroner to determine those issues at the time of a request.

Examples of where disclosure will be necessary or incidental are as follows:

- It will be necessary to disclose the information where disclosure would serve to advance the investigation. Necessary will not require that the investigation could not continue without disclosure, but it will require more than simply providing information because it would be nice for the receiver to have it.
- Disclosure may be incidental to the investigation where, in carrying out a step of the investigation, disclosure of information is a consequence of taking that step.

(b) Under FOIPPA

As documents found on a deceased’s electronic devices will contain personal information of the deceased and possibly other third parties, disclosing information or documents found on a device will need to be authorized by *FOIPPA*.

(i) *Part 2 of FOIPPA – Disclosure in Response to a Section 5 Request*

During an Ongoing Investigation

Where a formal FOI request has been made before the completion of an investigation, inquest or review, section 64 of the *Coroners Act* applies and the coroner has the discretion to refuse to disclose any information collected, even if the disclosure would be authorized under *FOIPPA*.

Decisions with respect to whether to withhold information under section 64 will be made by the Chief Coroner. There is generally a high threshold for release of documents during an investigation. This is to ensure the integrity of coroner's investigations, consistent with the intent of section 64, the *Coroners Act* and general best practice for investigations. It is important to note that if the document is otherwise releasable to the requestor, the requestor may obtain the document at the end of the investigation, where interference with the investigation will not be a concern.

The Chief Coroner or delegate will review the formal request and responsive information in order to determine what information may be released under *FOIPPA*. The Chief Coroner would consider release of information in exceptional circumstances, where, for example, the release of information could prevent injury or loss of life (such as information about a hereditary heart condition), or the release of information is necessary to prevent serious imminent financial loss (such as loss of a home). In those cases, the Chief Coroner will weigh the reasons for the request against potential interference with an ongoing:

- investigation, inquest or review;
- police investigation;
- Independent Investigations Office investigation;
- WorkSafeBC investigation; or
- another related investigation.

After the Investigation is Concluded

Where a formal FOI request has been made **after** an investigation, inquest or review, the request for disclosure will be processed in accordance with Part 2 of *FOIPPA* and this policy does not apply.

(ii) *Request in the Absence of a Formal FOI Request*

Where there has been no formal request under *FOIPPA*, but the deceased's family member or personal representative has requested a document, the coroner can only voluntarily disclose information if there is legal authority to do so. There may be legal authority if the disclosure is necessary or incidental to the investigation, inquest or review (as discussed above), or if there is authorization in another enactment, and in particular, *FOIPPA*, as the documents will contain personal information.

Where a family member or personal representative requests a document or information on an electronic device that is has not been disclosed as necessary or incidental, the request should be forwarded to the Chief Coroner at headquarters (CoronerRequest@gov.bc.ca).

If the request is made during the course of an investigation, inquest or review, the Chief Coroner will consider whether there are exceptional circumstances as discussed above.

If there are exceptional circumstances for an open investigation, or if the related investigations have been completed, the Chief Coroner will next determine whether there is authority under *FOIPPA* to disclose the requested document or portions of the document, as Part 3 of *FOIPPA* only authorizes disclosure of a third party's personal information in very limited circumstances. In addition, there may be other provisions in *FOIPPA* that restrict the ability to disclose other types of information in the event of an FOI Request, which should also be considered when disclosing proactively.

With respect to disclosure of the deceased's personal information (as distinct from other third parties personal information), this determination will include the consideration of whether:

- a. the person requesting the information would qualify as an "appropriate person" who may act for the deceased person under section 5 of the *Freedom of Information and Protection of Privacy Regulation*,
- b. the appropriate person is in fact acting on behalf of the deceased, and
- c. the consent to disclosure of personal information is provided in the appropriate form as set out in section 11 of the *Freedom of Information and Protection of Privacy Regulation*.

In the event that an individual is seeking information as an appropriate person acting on behalf of deceased, the Chief Coroner will seek advice from legal counsel as to whether they have met the necessary requirements.

If there is discretionary authority to proactively disclose the requested document under *FOIPPA*, the Chief Coroner will consider the following factors when determining if a document can be disclosed:

(i) *Privacy of the deceased*

- The following factors support disclosure:
 - The information is not sensitive in nature
 - Evidence of deceased's intention that the document not be private or a reasonable inference of that intention from the circumstances
 - e.g. if the deceased regularly shared passwords with the appropriate person but inadvertently failed to do so after a recent change, it may be reasonable to infer that the deceased intended the appropriate person to have access
- The following factors support non-disclosure:
 - The information is highly personal or sensitive
 - Evidence of deceased's intention that the material be private or a reasonable inference of that intention from the circumstances
 - e.g. if the deceased was living alone and estranged from the person requesting the document, it may be reasonable to infer that the deceased did not intend the appropriate person to have access to a password protected document

(ii) *Need for the Information*

- The following factors support disclosure:
 - The information is necessary to deal with the estate of the deceased
 - The information is needed for litigation in which the deceased is a plaintiff or defendant
 - The information relates to congenital health conditions that could benefit descendants of the deceased
 - The information provides additional information about items discussed in the Coroner's Report
 - There is an urgent or other compelling need for the document

- The following factors support non-disclosure:
 - The requester has failed to identify any compelling need
- (iii) *The ability of the requestor to get the information themselves from the device:*
 - The following factors may support disclosure or non-disclosure depending on how they are answered:
 - The stage of the investigation and the anticipated return date of the electronic device, if applicable
 - Whether the document would be easily accessible once the electronic device is returned to the appropriate person
- (iv) *Whether some of the information in the document has already been disclosed to the requester as part of the investigation.*
 - This may support disclosure or non-disclosure depending on the circumstances: