

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

CYFSA DECISION 20

Complaint FA23-00023

Children's Aid Society of Toronto

November 29, 2024

Summary: A requester asked the society for records about her and her family's interactions with the society during the 1970s. The society gave her access to some records, with portions redacted because they were not dedicated primarily to the provision of a service to the requester (section 312(3) of the *Act*). The requester asked the IPC to review the society's response.

In this decision, the adjudicator agrees that the redacted portions of the records are about the society's investigation of a group of people and are therefore not dedicated primarily to the provision of a service to the requester. He upholds the society's decision to redact the information.

Statutes Considered: *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1, sections 2 (definition of personal information) and 312, *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, section 2 and *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A, section 52(3).

Decisions Considered: CYFSA Decisions 11, 12, and 17.

BACKGROUND:

[1] A requester submitted a request under the *Child, Youth and Family Services Act* (the *Act*) to the Children's Aid Society of Toronto (the society) for records about her and her family's interactions with the society during the 1970s. The society located responsive records and granted partial access to them.

[2] The society claimed that the portions of the records that are not dedicated

primarily to the provision of a service to the requester were withheld under section 312(3) of the *Act*. The society also claimed that section 312(1)(d)(ii) (information could lead to the identification of an individual required by law to provide the information) applied to the withheld portions of the records. The society informed the requester that she may be entitled to additional disclosure with the written consent of other service recipients in the records.

[3] The requester (now the complainant) complained about the society's decision to the Information and Privacy Commissioner of Ontario (IPC). During mediation, the society explained that the records contain information about the complainant's family and care providers and that this information was redacted. The complainant stated that she believed that the records were dedicated primarily to the provision of services to her, and that she should be entitled to access the entirety of the records. The society maintained its original decision.

[4] No further mediation was possible, and the complaint was transferred to the adjudication stage of the complaints process, where an adjudicator may conduct a review. I conducted a review in which I sought and received representations from the parties.

[5] For the reasons that follow, I find that the withheld portions are not dedicated primarily to the provision of a service to the complainant and the complainant is therefore not entitled to access them under section 312(3). I uphold the decision of the society and dismiss the complaint.

RECORDS:

[6] The records at issue are documents related to the complainant's interactions with the society during the specified time. There are 31 pages in total, 20 of which were withheld in full. Except for page 15, which has no redactions, the remaining pages have redactions applied to them.

PRELIMINARY ISSUES:

The society is a "service provider" within the meaning of Part X of the *Act*

[7] Part X of the *Act* sets out rules to enable individuals to seek access to records of their "personal information" that are in the custody or control of "service providers," and that relate to the provision of a "service."

[8] "Service provider" is defined in section 2 of the *Act* to include a person or entity, including a "society," that provides a service funded under the *Act*. "Society" is defined to mean an agency designated as a children's aid society under section 34(1) of the *Act*.

[9] Part X of the *Act* defines "service" as a service or program that is provided or

funded under the *Act* or provided under the authority of a licence (section 281). "Service" is further defined at section 2 to include services for children and their families related to child protection.

[10] The parties do not dispute, and I find, that the society is a "service provider" within the meaning of the *Act*, and thus subject to the requirements in Part X of the *Act*.

The complainant has a right of access to her personal information in the records

[11] The parties do not dispute that the complainant has a right of access under section 312(1), subject to the application of exemptions from that right of access, to records of her personal information that relate to the provision of a service to her. Section 312(1) reads:

An individual has a right of access to a record of personal information about the individual that is in a service provider's custody or control and that relates to the provision of a service to the individual unless ...

[12] Section 312(1) sets out three requirements for an individual to have a right of access to a record under Part X of the *Act*.

1. The record must be a record of personal information about the individual,
2. The record must be in the service provider's custody or control, and
3. The record must relate to the provision of a service to that individual.

[13] The right of access in section 312 belongs only to the individual to whom the personal information relates. Part X does not grant a general right of access to records of another individual's personal information.

[14] The extent of an individual's right of access to a record under section 312(1) of the *Act* also depends on whether each record is "*dedicated primarily* to the provision of a service to the individual requesting access" within the meaning of section 312(3). This section reads:

Despite subsection (1), if a record is not a record dedicated primarily to the provision of a service of the individual requesting access, the individual has a right of access only to the personal information about the individual in the record that can reasonably be severed from the record.

[15] Before I consider the question of whether the records are dedicated primarily to the provision of a service to the complainant, I will address whether the records contain the complainant's personal information.

The records contain the personal information of the complainant that relate to the provision of a service to her

[16] Section 312(1) of the *Act* grants an individual a right of access to a record of their own personal information that is in the custody or under the control of a service provider and relates to the provision of a service to the individual, subject to limited exemptions and exclusions, such as the exemption in section 312(1)(d)(ii) claimed by the society. If a record contains the individual's personal information, it is a record of their personal information. The right of access is determined on a "record by record" basis.¹

[17] Section 2 of the *Act* defines "personal information" to have the same meaning as in the *Freedom of Information and Protection of Privacy Act*.

[18] Neither party disputes, and I find, that the records at issue contain the personal information of multiple parties, including the complainant. Information about multiple individuals, such as the names, birthdates, and history of involvement with the society, all of which constitute personal information within the meaning of the *Act*, is present throughout the records. I also find that the personal information, having been collected by the society in the course of its investigations into the complainant's family, relates to the provision of a "service" within the meaning of the *Act*.

DISCUSSION:

[19] Having addressed the preliminary issues above, the issues in this complaint are if the withheld portions of the records are "dedicated primarily" to the provision of a service to the complainant, and if, pursuant to section 312(2) of the *Act*, the society has provided the complainant with her personal information that can reasonably be severed from the parts of the record that she does not have access to.

[20] The complainant's right of access to a record under section 312(1) of the *Act* depends on whether each record is "dedicated primarily to the provision of a service to the individual requesting access." The right of access in the *Act* applies either to a whole record of personal information under section 312(1) or only to certain portions of the record of personal information under section 312(3).

[21] Under section 312(3) of the *Act*, if a record is not dedicated primarily to the provision of a service to the complainant, then the complainant only has a right to access her own personal information that can reasonably be severed from the record.² If the

¹ Under *PHIPA*, as well as *FIPPA* and *MFIPPA*, the IPC applies the "record-by-record" method of analysis to records subject to an access to information request. Applied to requests for access to one's own personal information, the "record-by-record" approach gives requesters a right of access to entire records that contain their own personal information, subject to any applicable exemptions. See *PHIPA Decision 17*, particularly paragraph 61 and footnotes 7 and 110, for a summary of the "record-by-record" approach.

² See *PHIPA Decision 17* at paras 85-115, which address a similar "dedicated primarily" requirement under section 52(3) of the *Personal Health Information Protection Act, 2004*, SO 2004, c 3.

record is dedicated primarily to the provision of a service to the complainant, her right of access applies to the entire record, even if it incidentally contains information about other matters or other parties.

[22] The IPC has issued decisions under the *Act* interpreting the “dedicated primarily” requirement in section 312(3) of the *Act*. In CYFSA Decisions 11, 12, and 17 the IPC adopted the same qualitative approach used under the *Personal Health Information Protection Act (PHIPA)* to determine whether records are “dedicated primarily” to the provision of a service to the complainant for the purposes of the *Act*.

[23] Under *PHIPA*, the qualitative approach for determining whether a record of personal health information is dedicated primarily to an individual asks whether the personal health information is central to the purpose for which the record exists, in other words would the record exist “but for” the personal health information of the individual in it? While the list is not exhaustive, factors considered under *PHIPA* and in the above decisions under the *Act* include the quantity of personal information of an individual in the record, the purpose the information serves in the record, the reason for the record’s creation, and the uses of the record.³

Representations

Society representations

[24] The society submits that none of the records at issue are “dedicated primarily to the provision of a service to the individual requesting access,” within the meaning of section 312(3) of the *Act*. It states that the *Act* provides examples of what is considered a “service,” and notes that these generally include services provided to a child and the child’s family. It states that child protection services are wide-ranging in nature and include investigating allegations of abuse and neglect, providing counselling and other supportive services to prevent children coming into the care of a society, and arranging adoptions. It submits that these types of services are generally about a minimum of one child and one caregiver, and the records created from these services are therefore not dedicated primarily to the provision of a service to the individual requesting access, but rather to the provision of a service to a group.

[25] The society distinguishes these types of services and records from those where a child is placed into the care of a children’s aid society. In those cases, the documents relating to the service provided to the child are kept in the “child in care file” as opposed to the “family service file.” It submits that these records, in contrast to family service records, are dedicated primarily to the provision of a service to a child.

[26] In reference to the records at issue, the society submits that they document the society’s services to two adults and five children in a family unit. The society explains that the records relate to investigations of three separate allegations from 1973 to 1977, and

³ PHIPA Decision 17 and CYFSA Decisions 11, 12, and 17.

that none of the five children were in the society's care at the time. It submits that the records, while pre-dating the implementation of the Child Protection Information Network (CPIN), most closely resemble CPIN investigation files.⁴

[27] Referencing CYFSA Decision 11, the society states that the IPC has previously referred to these types of files as "protection files." It states that child protection services are wide ranging in nature and include investigating allegations of abuse and neglect at the intake and family service level, providing counselling, supportive services to prevent children coming into care, and arranging adoptions.

[28] The society submits that in this case, as was done in CYFSA Decisions 11 and 12, taking a qualitative approach shows that none of the records at issue are dedicated primarily or solely to the provision of a service to the complainant, because the central purpose for which the records exist relates to the provision of investigative services to the complainant and her family, rather than service exclusively to the complainant. It submits that, as was the case in CYFSA Decision 11, although the complainant's information appears in the records, it appears alongside the information of other family members, in the context of the society's provision of services to them all -- in this case, the society's investigation of the allegations described above.

[29] The society further states that it has "carefully and repeatedly" reviewed the records and submits that the complainant has been provided with all information that can be reasonably severed from the personal information belonging to others from whom consent was not provided. It notes that upon further review, if the request was received more recently, the society may have disclosed a more limited amount of information to the complainant, based on its current understanding of the *Act*.

Complainant representations

[30] In response to the society's representations, the complainant provided an overview of why she is seeking the records, generally stating that she is seeking them to help her process events that happened in the past.⁵ She explained that she is unable to obtain the consent of the other parties in the records, and states that there should be exceptions to privacy laws that consider the importance of the information to the parties seeking access. She also states that there should be additional portions of the records that can be disclosed to her without violating the privacy of other parties. She explains that she is willing to affirm that she would be the only person viewing the disclosed records, and would also be willing to go to the society's office to read the records without taking notes.

[31] Considering that the definition of "personal information" in the *Act* excludes that of individuals who have been deceased for more than 30 years, I also asked the

⁴ The society provided a brief overview of the Child Protection Information Network (CPIN), which is currently used by children's aid societies to document the services provided to families.

⁵ The complainant provided more detailed contextual information about her childhood and reasons for requesting access for the records, which I have not reproduced here at the request of the complainant.

complainant if this applied to any of her family whose information may be in the records. She confirmed that it did not.

Analysis and finding

[32] Based on my review of the records and the parties' representations, I find that the withheld portions of the records are not dedicated primarily to the provision of a service to the complainant. In CYFSA Decisions 11, 12, and 17, a qualitative approach was used to determine if records are dedicated primarily to the provision of a service to an individual. Applying the approach here, although a limited amount of the complainant's personal information is present in some of the withheld portions, the records, which relate to investigations into allegations of abuse by someone other than the complainant, cannot be said to exist "but for" the personal information of the complainant. I agree with the society's characterization of the records as being related to the provision of service to multiple individuals in the context of abuse and neglect investigations. As such, I find that the central purpose for which these records were created was not to provide services to the complainant alone, and the records are therefore not dedicated primarily to the provision of a service to the complainant.

[33] I am also satisfied that there are no additional portions of the records that contain the complainant's personal information that can be reasonably severed from the portions that she does not have access to. As has been described in the IPC's approach to severances in the provincial, municipal, and healthcare contexts, an institution or health information custodian is not required to sever information from a record if the end result is simply a series of disconnected words or phrases with no coherent meaning or value.⁶ I adopt and apply this reasoning to the present complaint in the context of the *Act*.

[34] Having reviewed the records, there are no additional portions containing the complainant's personal information that would provide more than disconnected words if disclosed. While the complainant's name does appear in some of the withheld portions, it is so intertwined with personal information of other individuals that any meaningful disclosure (that is, more than a disconnected word or name) would also contain their personal information. Whether, as the society suggests in its representations, too much information was disclosed to the complainant is not the subject of the complaint, but it is clear that there is no additional information that can be reasonably severed from the portions the complainant does not have access to.⁷

⁶ The concept of the reasonable severability of records has been judicially considered and applied by the IPC to find that information that would, if released, comprise only disconnected or meaningless snippets is not reasonably severable, and is not required to be released. The IPC has applied this approach in interpreting the severance provision in the healthcare context in PHIPA Decisions 17, 27, and 208, among others. It has also been considered in the provincial context in, for example, Order 24.

⁷ I note that information related to the other individuals being defined as "personal information" (and therefore unable to be reasonably severed from the complainant's personal information) is dependent on those individuals not being deceased for more than 30 years (as defined in section 2(2) of *FIPPA*).

[35] I acknowledge that the complainant's representations contain compelling personal arguments supporting her position that she should receive further access to the records. However, as discussed in other decisions under the *Act*, there is no provision in the *Act* that grants access or permits disclosure on compassionate grounds.⁸ Additionally, the complainant's willingness to not otherwise disclose the records at issue or only view them in the society's office does not change her access rights under the *Act*. As such, I am unable to consider these arguments in determining if she has access to additional portions under the *Act*.

[36] Having found that the withheld portions of the records are not dedicated primarily to the provision of a service to the complainant, I do not need to consider if they are also exempt from disclosure under section 312(1)(d)(ii). I uphold the decision of the society and dismiss the complaint.

NO ORDER:

I dismiss the complaint.

Original Signed by: _____
Chris Anzenberger
Adjudicator

_____ November 29, 2024

⁸ CYFSA Decisions 4, 13, and 17.