

Information and Privacy Commissioner,
Ontario, Canada



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

CYFSA DECISION 25

Complaint FA22-00013

Children's Aid Society of the District of Thunder Bay

April 22, 2025

Summary: An adopted person made a request to the Children's Aid Society of the District of Thunder Bay under Part X of the *Child, Youth and Family Services Act, 2017* for access to information from her adoption file, including a copy of her birth registration. The society provided partial access to information from the requester's adoption file, disclosing all information except for identifying information of individuals other than the requester. The society did not locate a birth registration in its records, and the requester was not satisfied with its search efforts.

In this decision, the adjudicator finds that the adoption file is excluded from the scope of the *Act* because of section 285(4)(a), which excludes information that relates to an adoption. As a result, Part X of the *Act* does not apply to the withheld information, and she does not have a right of access to it under the Part X of the *Act*. The adjudicator also finds that because the adoption file is excluded from the *Act*, he cannot review the society's search efforts.

Statutes Considered: *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1, sections 2, 34(1), 281, 285(4), 313, and 314; *Adoption Information Disclosure*, O. Reg. 158/18, sections 2(1), 8 and 9.

Decisions Considered: CYFSA Decisions 2, 6, and 14.

BACKGROUND:

[1] An individual made a request to the Children's Aid Society of the District of Thunder Bay (the society), under the *Child, Youth and Family Services Act, 2017* (the *Act*) for access to information from her adoption file.

[2] The society responded that it had reviewed the individual's family file and compiled a package for her, which contained her pre-adoption history. The society also noted that it was required to redact the personal information of other parties. The individual (now the complainant) complained about the society's decision to the Information and Privacy Commissioner of Ontario (IPC), stating that she disagreed with the society redacting information in her adoption file.

[3] During mediation, the complainant stated that she was seeking in particular a copy of her birth registration, which she says she needs in order to obtain a long form birth certificate. The complainant also stated that she did not understand why redactions were made to the package that she received, as she has been in contact with her birth parents previously and forms indicating their consent had been provided to the society.

[4] The society explained that the records were redacted pursuant to section 285(4) of the *Act* and Regulation 158/18 to the *Act*, which, as discussed in greater detail below, address the disclosure of information that relates to an adoption.

[5] The society conducted an additional search, but it did not find the birth registration. In its letter, it explained that historical record keeping practices were different than they are now, and it did not know if the document was misplaced, or if it was ever in the society's possession. The society also explained that it had contacted the Thunder Bay Regional Health Science Centre to ask if it had the birth registration, but it also could not locate the document.

[6] No further mediation was possible, and the complaint was moved to the adjudication stage of the complaints process. The adjudicator initially assigned to the complaint conducted a review where she sought and received representations from the society and the complainant. The complaint was then assigned to me to complete the review. I reviewed the representations of the parties and determined that I did not need to seek additional representations.

[7] For the reasons that follow, I find that the withheld information in the adoption file is not able to be accessed under Part X of the *Act* because of the exclusion for information that relates to an adoption at section 285(4)(a).

RECORDS:

[8] The redacted portions of a 22-page pre-adoption file are at issue in this complaint.

DISCUSSION:

[9] The sole issue in this complaint is if records the complainant is seeking are excluded from Part X of the *Act* under section 285(4). Part X of the *Act*, which consists of sections 281 through 332, establishes rules that service providers must follow with

respect to personal information collected for the purpose of providing a service. An individual's right of access to their own personal information is set out in section 312(1) of the *Act*, which reads:

An individual has a right of access to 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, ...

[Certain exceptions are listed at subparagraphs (a) to (d) which are not applicable here.]

[10] Here, the complainant's right of access to the information that she seeks turns on whether section 285(4) of the *Act*, relating to the use or disclosure of adoption related information, excludes that information from the right of access at section 312(1) and, consequently, from the IPC's authority to order that access be granted.¹ Section 285 defines the scope of application for the majority of Part X. The relevant provisions of section 285 in this complaint are subsections (1), (4) and (6). These sections read:

(1) Subject to subsections (2), (3), (4), (5) and (7), sections 286 to 332 apply to the collection, use and disclosure of personal information by a service provider.

...

(4) Sections 286 to 332 do not apply to,

(a) the use or disclosure under section 227 by a licensee or a society of information that relates to an adoption; or

...

(6) Except if this Act or its regulations provide otherwise, this Part applies to any record in the custody or control of a service provider regardless of whether it was recorded before or after this Part comes into force.

[11] Section 285(1) dictates that sections 286 to 332 of Part X of the *Act* normally apply to the collection, use and disclosure of personal information by the society as a service provider (including access rights under section 312) unless, as mentioned above, the *Act* or its regulations specifically provide that those sections of Part X do not apply.

[12] Sections 285(2) to (5) and (7) of the *Act* set out a number of exceptions to the application of sections 286 to 332 of the *Act*. If one of those exceptions applies, the provisions at sections 286 to 332 do not apply to the collection, use or disclosure of personal information by a service provider. If section 285(4)(a) applies, a requester does

¹ The IPC's jurisdiction is limited to reviewing complaints brought under Part X of the *CYFSA*.

not have a right of access to the information under section 312 of Part X.²

[13] Section 285(4)(a), reproduced above, establishes that sections 286 to 332 at Part X do not apply to the use or disclosure under section 227, by a licensee or a society, of information that relates to an adoption. Section 227(1) governs the use or disclosure of information that relates to an adoption after an adoption order is made. It reads, in part:

Despite any other Act, after an adoption order is made, no person shall inspect, remove, alter or disclose information that relates to the adoption and is kept by the Ministry,^[3] a society, a licensee or a designated custodian under section 223 and no person shall permit it to be inspected, removed, altered or disclosed unless the inspection, removal, alteration or disclosure is,

...

(b) authorized by this Act or the regulations.

[14] Section 227(3) provides that section 227(1) applies “regardless of when the adoption order was made.”

[15] Section 227(1) is framed as a prohibition against the inspection, removal, alteration, or disclosure of adoption related information that applies to any “person,” subject to the specific exceptions listed, including at subparagraph (b) where authorized by the *Act* or the regulations. Conversely, section 225(2) of the *Act*, provides positive authorization for the disclosure of adoption related information by a “society” where prescribed by regulation:

A society shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed.

[16] Pursuant to section 226, section 225 also applies “regardless of when the adoption order was made.”

[17] The regulation-making authority for the disclosure of adoption related information by a society under s. 225(2) is found at section 346(1)17 of the *Act* as follows:

² Other provisions of the *Act*, outside of Part X, authorize the disclosure of some information that relates to an adoption, in some circumstances. However, the IPC has jurisdiction only over Part X matters, not other matters arising under the *Act*.

³ The ministry referenced in this provision is the Ministry of Community and Social Services. It is also referenced throughout the *Act* by its acronym, MCSS. Additionally, the MCSS custodian (defined in section 1 of O. Reg. 158/18 as the Director of the Service Delivery and Supports Branch in the Ministry of Community and Social Services) manages an Adoption Disclosure Register which can help birth family members share information if they are both registered.

The Lieutenant Governor in Council may make regulations for the purposes of Part VIII, ...

17. governing the disclosure of information under section 225 by the Minister, a society, a licensee or a designated custodian

[18] In determining if disclosure pursuant to sections 225(2) and 227(1)(b) is authorized by the *Act* or the regulations, O. Reg. 158/18 (Adoption Information Disclosure) contains a number of provisions that address the release of information relating to an adoption.

[19] Section 2(1) of O. Reg. 158/18 states that the regulation sets out circumstances under which certain information relating to adoptions may be disclosed. In addition to disclosure under O. Reg. 158/18 itself, section 2(1) of the regulation also permits "any disclosure of information relating to adoptions that may be authorized under the *Vital Statistics Act*."⁴

[20] Section 9 of O. Reg. 158/18 permits the disclosure of "non-identifying information related to an adoption"⁵ by the MCSS custodian or a society.⁶

[21] Section 9(2) of O. Reg. 158/18 defines "information related to an adoption" as including: background information relating to birth parents and other birth family members, the circumstances leading up to an adoption placement, details about the adopted person's birth, the care received by the adopted person prior to an adoption placement, the developmental progress of the adopted person, and information about the adoption placement or adoption order including the responsive society or licensee.

[22] Section 9(6) of O. Reg. 158/18 outlines the steps that a society (or the MCSS custodian) must take after receiving a request for non-identifying information. Part 3 of section 9(6) requires that the society render the information "non-identifying by making copies of the documents containing the information and redacting from the copies any information that may identify a person other than the person who requested the information."

[23] Considering the above, the information at issue is excluded from Part X because of section 285(4)(a) if:

⁴ *Vital Statistics Act*, R.S.O. 1990, c. V.4 (VSA). Under section 48.1 (1) of the *Vital Statistics Act* an adopted person (over the age of 18) may apply to the Registrar General for an uncertified copy of the original registration of the adopted person's birth and an uncertified copy of any registered adoption order respecting the adopted person.

⁵ Section 10 of O. Reg. 158/18 is a similar provision to section 9 that governs the disclosure of non-identifying information related to an out-of-province adoption. In the circumstances of this complaint, the information sought by the complainant is not related to an out-of-province adoption.

⁶ Section 8 of O. Reg. 158/18 addresses the disclosure of identifying information by the MCSS Custodian under the Adoption Disclosure Register.

1. the information is kept by a licensee or a society,
2. the information relates to an adoption, and
3. an adoption order was made.

Representations, analysis, and finding

[24] The society and the complainant provided representations. While I have considered the entirety of her representations in my decision, in order to avoid identifying the complainant, I have only reproduced those of the society in detail.

[25] Neither the society nor the complainant dispute, and I find, that parts 1 and 3 of the test have been met. The information at issue, having been provided in a redacted form to the complainant by the society, is on its face kept by the society. Additionally, it is not disputed that the complainant was the subject of an adoption order. The society also notes in its representations that it provides adoption services within the meaning of section 2(1) of the *Act*.

[26] With respect to part 2 of the test, the society submits that its only involvement with the complainant relates to her adoption, and the entirety of the records at issue relate to the adoption. Reviewing the records and their context, I agree that they relate to an adoption. All of the information is of the type described by section 9(2) of O. Reg 158/18. Specifically, the records that were provided to the complainant contain:

- background information relating to her birth parents (paragraph (a) (i)),
- the circumstances leading to her adoption placement (paragraph (b)),
- the care she received prior to her adoption placement (paragraph (d)),
- her development progress (paragraph (e)),
- the date of her adoption placement and her adoption order (paragraph (f)), and
- the name of the society responsible for the adoption placement (paragraph (g)).

[27] Based on this, I find that part 2 of the test is met. As all three parts of the test are met, the information at issue is excluded from the scope of Part X of the *Act* under section 285(4). Section 227(1)(b) therefore requires that the society shall not disclose information that it keeps related to her adoption unless it is authorized to do so by the *Act* or its regulations. In this case, the society disclosed the non-identifying information relating to the complainant's adoption pursuant to sections 225(2) and 227(1)(b), as authorized by section 9 of O. Reg. 158/18. This is consistent with the approach taken in CYFSA Decisions 2, 6, and 14.

[28] During the IPC complaint process and in her representations, the complainant

stated that she had provided the society with the appropriate consent forms for the disclosure of the redacted information. As the information at issue is excluded from the right of access in Part X, it is not open to me to consider the implication of any consent that may have been given.

The society's search efforts

[29] The complainant took issue with the society's efforts to search for her birth registration. Where a requester claims that additional records exist beyond those identified by the service provider, the issue to be decided is whether the service provider has conducted a reasonable search for records as required by sections 313 and 314 of the *Act*.

[30] However, as discussed above, sections 313 and 314 of the *Act* do not apply to the records at issue in this complaint as they are records that relate to an adoption. Accordingly, while the society provided an overview of its search efforts, which included contacting a hospital for the birth registration and referring the complainant to the Office of the Registrar General, I will not consider them in the context of this complaint. I make no finding on the society's search efforts.

NO ORDER:

For the foregoing reasons, no order is issued and the complaint is dismissed.

Original Signed by: _____

Chris Anzenberger
Adjudicator

April 22, 2025