

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4607

Appeal PA21-00520

Ministry of Children, Community and Social Services

February 19, 2025

**Summary:** A teacher who worked at a youth detention facility made a request to the ministry under the *Freedom of Information and Protection of Privacy Act (FIPPA)* for records related to an investigation into her property. The ministry released some records but withheld others, and the appellant continued to seek access to the withheld portions of a specific record. In this order, the adjudicator finds that the *Youth Criminal Justice Act* governs access to the record at issue and that it is therefore not accessible under *FIPPA*. He dismisses the appeal.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31; *Youth Criminal Justice Act*, S.C. 2002, c. 1, section 110(1).

**Orders Considered:** Orders MO-4421 and PO-4567.

**Cases Considered:** *S.L. v. N.B.*, [2005] OJ No. 1411 (C.A.).

### OVERVIEW:

[1] The appellant is a teacher who worked at a youth detention facility. She made a request to the Ministry of Children, Community and Social Services (the ministry) under the Freedom of Information and Protection of Privacy Act (FIPPA) for all information related to an incident she was involved in at the facility.

[2] The appellant explained in her request that it is her understanding that a report about the incident was sent to the detention centre administration, and a named

administrator reported the incident to the local police. The appellant further explained that it is her understanding that the named administrator did not request that the police act on the report, claiming that the organization “would be conducting their own internal investigation.”

[3] The ministry issued a decision granting partial access to the responsive records, denying access to portions of them pursuant to the exemptions at section 19 (solicitor-client privilege) and section 49(b) (personal privacy) of FIPPA. The requester (now the appellant) appealed the ministry’s decision to the Information and Privacy Commissioner of Ontario (IPC).

[4] During mediation, the appellant stated that she wished to pursue full access to the “Consolidated Overview.”

[5] The ministry revised its position, stating that it was no longer claiming that section 49(b) applied to the Consolidated Overview. However, it maintained that the withheld portions cannot be disclosed because of the Youth Criminal Justice Act (YCJA).<sup>1</sup> The ministry’s revised decision stated, in part:

In addition to the [previously claimed] exemptions, we want to advise you that access to certain information in the records that you have requested is governed by the [YCJA]. The information that has been withheld in response to your request includes information that would identify a young person involved with or dealt with under the YCJA.

Part 6 of the YCJA governs the management, publication and disclosure of records kept under the YCJA and information that would identify those involved in the youth justice system.

Disclosure of the information you have requested and that the ministry has withheld would violate subsections 110(1) and 118(1) of the YCJA and would constitute an offence under section 138 of that Act.

Part 6 of the YCJA is an exclusive and comprehensive regime governing the disclosure of information about young persons involved in the youth justice system (see Ontario Court of Appeal decision, *S.L. v. N.B.*, [2005] O.J. No. 1411 (S.L. v. N.B)). The *Freedom of Information and Protection of Privacy Act* provides no right of access to the information or records protected by the YCJA and these records and, therefore, the ministry is denying your request for access to these records.

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[6] No further mediation was possible, and the file was transferred to the adjudication

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<sup>1</sup> S.C. 2002, c. 1.

stage of the appeals process. The adjudicator originally assigned to the appeal reviewed the file and the record remaining at issue. She wrote to the appellant stating that it was her preliminary view that section 110(1) of the YCJA applies to prevent disclosure of the information at issue as it would identify a young person as a young person dealt with under the YCJA. The appellant provided representations in response to the preliminary view.

[7] The appeal was then assigned to me to complete the inquiry. I reviewed the representations of the appellant and determined that I did not need to seek further representations from the parties. For the reasons that follow, I uphold the ministry's decision and dismiss the appeal.

## **RECORDS:**

[8] The withheld portions of an eight page "Consolidated Overview" remain at issue in the appeal.

## **DISCUSSION:**

[9] The issue in this appeal is whether disclosure of the information at issue under FIPPA constitutes publication under section 110(1) of the YCJA. If it does, the YCJA prevails and the IPC does not have the jurisdiction to determine if the appellant can access this information under FIPPA. The appellant is of the view that the IPC has the jurisdiction to determine access to this information. The ministry disagrees.

[10] The YCJA is a federal law. The doctrine of the paramountcy of federal legislation provides that if there is a conflict between federal legislation (such as the YCJA) and provincial legislation (such as FIPPA), the provincial legislation must yield to the federal. In other words, the federal legislation will prevail.

[11] Part 6 of the YCJA entitled "Publication, Records and Information" contains detailed provisions regarding both the publication of the identity of those involved in the youth justice system and access to records generated by that process. In *S.L. v. N.B.*,<sup>2</sup> the Ontario Court of Appeal discussed the scope and purpose of the YCJA. The Court held that Part 6 of the YCJA is an exclusive and comprehensive regime governing the disclosure of information about young person involved in the youth justice system. The Court stated that the access provisions of the YCJA are a comprehensive scheme designed to carefully control access to young offender records, and that Parliament in clear and unambiguous terms has placed the responsibility for determining access to records on the shoulders of the youth justice court judges.<sup>3</sup>

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<sup>2</sup> [2005] OJ No. 1411 (C.A.).

<sup>3</sup> *Ibid* at paras 53 and 54.

[12] Sections 110 to 112 of the YCJA place significant restrictions on the publication of information that could identify young persons involved with matters under the YCJA. In particular, section 110(1) states:

Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.

[13] "Publication" is defined in the YCJA to mean "the communication of information by making it known or accessible to the general public through any means" including through media. IPC adjudicators have held that, with limited exceptions, disclosure under the access provisions of FIPPA is equivalent to disclosure to the world because there are generally no limits on the dissemination of records accessed under FIPPA.<sup>4</sup> Against this backdrop, two recent orders of the IPC have determined that disclosure under FIPPA is equivalent to publication under the YCJA: Orders MO-4421 (in the municipal context) and PO-4567. I agree with and adopt this reasoning in this appeal.

[14] Accordingly, if section 110(1) of the YCJA prohibits publication of the information at issue, the YCJA prevails over FIPPA and the IPC cannot override it by ordering disclosure.<sup>5</sup>

### **Representations, analysis and finding**

[15] The adjudicator originally assigned to the file gave the appellant her preliminary view that section 110(1) of the YCJA prevented disclosure of the information as it would identify a young person as a young person dealt with under the YCJA.

[16] The appellant provided information about the incident referenced in the request and her relationship to it. She submits that she is not seeking the name of any young person and made arguments about whether the young person at issue was over the age of 18.

[17] For the reasons that follow, I maintain the previous adjudicator's preliminary view that disclosure of the information at issue would contravene section 110(1) of the YCJA.

[18] Having reviewed the information and the surrounding context, I find that the information at issue would identify the individual as a young person dealt with under the YCJA. The withheld information concerns the behaviour of the individual in a youth

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<sup>4</sup> See for instance Orders P-164, P-578, P-679, P-1635, PO-2018, PO-2465, PO-4414 and also (under the equivalent provision in the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56) Order M-96, upheld on judicial review *O.S.S.T.F., District 39 v. Wellington (County) Board of Education*, Toronto Doc. 407/93 (Ont. Div. Ct.), leave to appeal refused, Doc. M15357 (C.A.).

<sup>5</sup> There are other provisions of the *YCJA* that specifically relate to access to records held by government entities about young persons having been dealt with under the *YCJA*, including section 118. It was not necessary for me to determine the potential applicability of these provisions in the circumstances of this appeal, and I therefore do not elaborate on them further in this order.

detention facility. This information is highly specific to how the incident was handled, and would, in my view, be sufficient to identify the individual.

[19] The fact that the appellant is not seeking the name of the individual, or the possibility that the individual was over 18 at the time of the incident, does not change the application of section 110(1), as the information at issue is sufficiently detailed that it would identify that the individual was dealt with under the YCJA. Therefore, I find that the YCJA prevails over FIPPA in relation to the information at issue.

[20] Accordingly, the YCJA and not FIPPA governs access to the information at issue and its disclosure cannot be ordered under FIPPA.

**ORDER:**

I dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Chris Anzenberger  
Adjudicator

February 19, 2025 \_\_\_\_\_