

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4728

Appeals PA23-00406 and PA23-00407

Ministry of Children, Community and Social Services

September 18, 2025

Summary: A journalist made two requests to the ministry under the *Freedom of Information and Protection of Privacy Act* for written records of searches at youth detention facilities operated by the ministry and third parties. She asked for personal information in the records to be removed, but asked that a unique identifier be assigned to each individual in the records. The ministry identified responsive records but claimed that access to the records is governed by the *Youth Criminal Justice Act*.

In this order, the adjudicator finds that even if personal information in the records is removed, the addition of a unique identifier would make the records re-identifiable when combined with publicly available information. He finds that disclosure of the information is governed by the *YCJA*, and that it is therefore not accessible under *FIPPA*. He dismisses the appeals.

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, PO-4567, and PO-4607.

Cases Considered: *S.L. v. N.B.*, [2005] OJ No. 1411 (C.A.); *Sherman Estate v. Donovan*, 2021 SCC 25; *Canadian Broadcasting Corporation v. Ontario*, 2023 ONCJ 32.

OVERVIEW:

[1] A journalist made two requests to the Ministry of Children, Community and Social Services (the ministry) under the *Freedom of Information and Protection of Privacy Act*

(*FIPPA*).

PA23-00406

[2] The journalist sought access to the following information:

...a copy of the written records of searches of youth at each direct-operated ministry custody/detention facility as required by the ministry between 2022 and 2023 inclusive. I am requesting all personal information to be removed, but request a unique identifier be assigned to each youth. I would like to receive a copy electronically, if possible.

[3] After clarifying the request with the journalist, the ministry issued a decision denying access in full, based on the mandatory personal privacy exemption in section 21(1) of *FIPPA*. The ministry wrote that it could not de-identify the information in the manner requested. The ministry also wrote that, because the records relate to “young persons” as defined in the *Youth Criminal Justice Act* (*YCJA*), disclosure may contravene the prohibition in section 110(1) of the *YCJA*.¹

[4] The journalist (now the appellant) appealed the ministry’s decision to the Information and Privacy Commissioner of Ontario (IPC). The IPC attempted to mediate the appeal. During mediation, the appellant confirmed that she was not seeking names or identifiable information of the detainees and that the records could be given unique identifiers to distinguish between different individuals without impacting their privacy. The appellant also claimed that there is a public interest in disclosure of the information related to the treatment of youth detainees in ministry-operated detention centres, raising the application of the section 23 public interest override.

[5] No further mediation was possible, and the appeal was transferred to the adjudication stage of the appeals process.

PA23-00407

[6] The same journalist made a request under *FIPPA* to the ministry for access to the following:

...a copy of the written records of searches of youth at each transfer payment custody/detention facility as required by the ministry between 2022 and 2023 inclusive. I am requesting all personal information be removed, but request a unique identifier be assigned to each youth. I would like to receive a copy electronically, if possible.

¹ Section 110(1) of the *YCJA* states: “Subject to this section, no person shall publish the name of a young person, or any information related to a young person, if it would identify the young person as a young person dealt with under this Act.”

[7] The ministry issued a decision stating that the records as requested did not exist in its custody or under its control. Specifically, the ministry wrote that:

...access cannot be provided as no such records exist within the ministry's custody and control. Transfer payment agencies are not subject to [*FIPPA*], and the records you have requested are not routinely collected by the ministry.

[8] The journalist (now the appellant) appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC). The IPC attempted to mediate the appeal. During mediation, the ministry maintained its position that it does not have custody or control of the transfer payment agency search records that were requested. The ministry stated that, in the alternative, if it does have custody and control of responsive records, those records would be exempt under the mandatory personal privacy exemption in section 21(1) of *FIPPA*.

[9] The ministry also raised the application of section 110 of the *YCJA*. Specifically, according to the ministry, "the records contain young offender information, which is protected under the *YCJA*, but the records themselves are not *YCJA* records as defined by that legislation."

[10] The appellant maintained that she does not seek access to names or identifiable information in the records, but she does seek access to the remaining responsive information. The appellant challenged the ministry's custody and control claim, and its alternative claims of section 21(1) of *FIPPA* and section 110 of the *YCJA*. The appellant also raised the application of the public interest override in section 23 of *FIPPA* in response to the ministry's section 21(1) claim.

The separate inquiries

[11] The adjudicator initially assigned to the two appeals conducted two separate inquiries and received separate representations from the ministry and the appellant for each inquiry. The appeals were then assigned to me to complete the inquiries. I reviewed the representations of the parties and determined that I did not need to seek additional representations.

[12] For the reasons that follow, I find that section 110(1) of the *YCJA* applies to prevent disclosure of the information at issue in both appeals, as disclosure of the requested information would identify a young person as a young person dealt with under the *YCJA*. I dismiss the appeals.

RECORDS:

[13] The records at issue in PA23-00406 are search records for both non-intrusive and strip searches of youth in custody or detention at ministry facilities. For PA23-00407, the

records at issue are records of searches conducted at third-party transfer payment agencies.²

[14] The appellant seeks access to information about the searches with names and identifying information removed, but with a unique identifier assigned to each individual.

DISCUSSION:

[15] The issue in this appeal is whether disclosure of the records at issue under *FIPPA* constitutes publication under section 110(1) of the *YCJA*. If it does, and doing so would identify a young person as a young person dealt with under the *YCJA*, the *YCJA* prevails and the IPC does not have the jurisdiction to determine if the appellant can access this information under *FIPPA*.

[16] 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.

[17] Part 6 of the *YCJA* titled "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.*,³ the Court of Appeal for Ontario 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 persons 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.⁴

[18] 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.

² The ministry describes transfer payment agencies as third-party agencies that are funded by the ministry through transfer payment agreements, with the ministry providing oversight through funding requirements and licensing.

³ [2005] OJ No. 1411 (C.A.).

⁴ *Ibid* at paras 53 and 54.

Representations

Ministry representations⁵

[19] The ministry submits that the records at issue are search records of young persons in youth justice facilities (operated by the ministry in PA23-00406, and by transfer payment agencies in PA23-00407). It submits that what the appellant is seeking are not “records” as defined in section 2 of the *YCJA*, which defines “records” as follows:

any thing containing information, regardless of its physical form or characteristics, including microform, sound recording, videotape, machine-readable record, and any copy of any of those things, that is created or kept for the purposes of the *YCJA* or for the investigation of an offence that is or could be prosecuted under this Act.

[20] The ministry explains that youth justice facilities are required to maintain written records of searches conducted at youth justice facilities in accordance with section 70 of O. Reg. 155/18 under the *Child, Youth and Family Services Act, 2017 (CYFSA)*,⁶ rather than the *YCJA*. However, it submits that, even if not “records” within the meaning of the *YCJA*, the records at issue contain information that identifies specific young persons who have been dealt with under the *YCJA*.

[21] The ministry explains that the records contain identifying information about individual young persons who have been dealt with under the *YCJA*, such as their names and their Young Offender Tracking System (Youth OTIS) number, which is a unique identifier assigned to each person. It explains that the records also contain facility names, dates of searches that were conducted, and information about the individuals’ movements within the facility, including their living unit. It further explains that the records contain information about the types of searches that were conducted, such as non-intrusive or strip searches, and the reasons for the search, such as whether the search was routine, or based on suspicion.

[22] The ministry submits that the appellant’s request for identifying information from the records to be removed, with a unique identifier assigned to each young person, still results in the information possibly identifying young persons who have been dealt with under the *YCJA* due to the specificity of the information about each young person. It explains that even if a young person’s name and OTIS number have been redacted, the assigning of a unique identifier to each young person is still possible because the records would still contain information related to the facility, the young person’s movements (such as leaving and re-entering the facility following a court appearance), and the dates and reasons for searches.

⁵ The ministry provides separate representations for PA23-00406 and PA23-00407, but its representations on the application of the *YCJA* are identical for both appeals.

⁶ S.O. 2017, c. 14, Sched. 1.

[23] The ministry adds that information about youth criminal matters may be in the public domain, further heightening the risk of re-identification. It states that, for example, members of the public and the media are permitted to be in attendance during youth criminal proceedings and information about the young person and the proceedings, such as their name or initials, charges, and the place and date of appearance, is also included in youth court dockets, which may be posted in the courthouse. It submits that persons in attendance at these matters may also be able to use information about the criminal justice matter, such as the date they returned to a facility from a court appearance, to identify a young person that was subject to a search.

[24] The ministry submits that section 110(1) of the *YCJA* prohibits publishing any information that would have the effect of identifying a particular young person as having been dealt with under the *YCJA*, including being held or detained in youth justice custody and detention facilities. It references a decision of the Information and Privacy Commissioner for British Columbia (BC IPC), Order F18-38, that held that the disclosure of certain information under the BC *Freedom of Information and Protection of Privacy Act*⁷ is considered publication under the *YCJA*. It submits that even if names and other identifiers are removed, the assigning of a unique ID to each youth could render the information in the search logs identifiable because of the other information in the records. It states that this would, on a balance of probabilities, violate section 110(1) of the *YCJA*, and constitute an offence under section 138 of the *YCJA*.⁸

Appellant representations⁹

[25] The appellant submits that the access and disclosure regime under *FIPPA* does not conflict with the *YCJA* because the records at issue are not “records” within the meaning of section 2 of the *YCJA*. She states that they were not created or kept for the purposes of the *YCJA* or for the investigation of an offence that is or could be prosecuted under the *YCJA*, and are instead maintained pursuant to *CYFSA* regulations.

[26] She disagrees with the ministry’s position that disclosure of the records would

⁷ RSBC 1996 C. 165.

⁸ Section 138 of the *YCJA* states: “Every person who contravenes subsection 110(1) (identity of offender not to be published), 111(1) (identity of victim or witness not to be published), 118(1) (no access to records unless authorized) or 128(3) (disposal of R.C.M.P. records) or section 129 (no subsequent disclosure) of this Act, or subsection 38(1) (identity not to be published), (1.12) (no subsequent disclosure), (1.14) (no subsequent disclosure by school) or (1.15) (information to be kept separate), 45(2) (destruction of records) or 46(1) (prohibition against disclosure) of the *Young Offenders Act*, chapter Y-1 of the Revised Statutes of Canada, 1985,

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) is guilty of an offence punishable on summary conviction.”

⁹ The appellant also provides separate representations for PA23-00406 and PA23-00407. In her representations for PA23-00407, she relies on her representations in PA23-00406 for the application of the *YCJA*.

violate section 110(1) of the *YCJA*. She submits that Order F18-38 is wrongly decided, and disclosure of records to a particular member of the public, upon request, cannot constitute publication. She explains that the *YCJA* defines publication as “the communication of information by making it known or accessible to the general public through any means, including print, radio or television broadcast, telecommunication, or electronic means.”¹⁰

[27] The appellant submits that making records available to a member of the public is not the same as making them available to the general public. She argues that the BC IPC’s interpretation is inconsistent with the language of the *YCJA* and appellate court guidance that has held that publication means to “make publicly or generally known,” and that publication bans must be interpreted narrowly.¹¹ She states that this is also inconsistent with the Supreme Court of Canada’s statement in *Sherman Estate v. Donovan*¹² that accessing files is to be distinguished from disseminating their contents – the former is permitted under a publication ban, while the latter is not:

While the Toronto Star would be able to consult the files subject to a publication ban, for example, which may assist it in its investigations, it would not be able to publish and thereby broadly disseminate the contents of the files.¹³

[28] She submits that access to youth records is generally provided on the exact basis she is requesting in this appeal. She references *Canadian Broadcasting Corporation v. Ontario*¹⁴ where a youth court judge granted the media access to court records including court file numbers, the ages of the individuals charged, copies of criminal information, and past and future court dates, while redacting directly identifying information. She explains that the court also applied unique non-personal identifiers to individuals, and there was no concern that disclosure of such information was in violation of section 110.

[29] She further submits that the ministry’s assertions about a risk of re-identification if a unique identifier is assigned to each individual are speculative. She states that the ministry’s position that providing access in the manner requested “would, on a balance of probabilities” violate section 110 of the *YCJA* is speculative and unconnected to legal principles. She states that if access to records can be provided on this basis under the terms of the *YCJA*, the *YCJA* cannot provide a basis to deny access to records sought under *FIPPA*.

[30] The appellant submits that there is no reasonable expectation that individuals in the records could be identified. She states that the ministry’s assertion that she would use youth court records to corroborate or re-identify information redacted from the

¹⁰ Section 2(1) of the *YCJA*.

¹¹ The appellant references *R. v. Canadian Broadcasting Corporation*, 2018 ABCA 391 at paras. 23-29.

¹² 2021 SCC 25.

¹³ *Ibid* at para. 105.

¹⁴ 2023 ONCJ 32.

records is speculative and implausible. She submits that there is no reason to believe that she or her organization would do this, and that records created under the *YCJA* are presumptively inaccessible to the public, meaning the information in question cannot be considered "available" to the media.¹⁵

[31] She explains that media are generally not provided with the court file numbers of matters they attend in youth court, and cannot access records without bringing a formal application. She submits that the fact that it is theoretically possible for information to be reassembled is not the same as a reasonable expectation, and there can be no expectation that the reverse-engineering of identifying information would be attempted or successful.

Analysis and finding

[32] "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. The appellant draws a distinction between accessing information and disseminating its contents. Referencing *Canadian Broadcasting Corporation v. Ontario*, she submits that youth court judges have previously granted access to court records in a similarly de-identified format, with unique identifiers applied in the same manner that she is requesting for the records at issue in this appeal. While I agree that youth court judges, applying the access scheme in Part 6 of the *YCJA*, have granted access to similar records, I note that this was also done in a manner that heavily restricted those who accessed the information. For example, Order provision 4 of *Canadian Broadcasting Corporation v. Ontario* states:

The records are to be maintained in conditions of strict confidentiality and shall not be reproduced, disclosed or published in any way that contravenes the publication ban under the [*YCJA*].

[33] This is also the case in the context of publication bans discussed in *Sherman Estate v. Donovan*, where the SCC considered the application of restrictions on the use of information (such as prohibiting individuals from spreading information after accessing it) to mitigate the risk posed to privacy interests.¹⁶

[34] Conversely, in the context of access to information legislation, 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*.¹⁷ Against this backdrop, and consistent

¹⁵ The appellant references para. 26 of *Ibid.*

¹⁶ *Supra* note 11 at para 105.

¹⁷ 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.).

with the approach applied by the BC IPC in Order F18-38, three 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), PO-4567, and PO-4607.

[35] I agree with and adopt this reasoning in this appeal. If the information in the records at issue would identify an individual as a young person dealt with under the *YCJA*, disclosure under *FIPPA*, generally understood to be disclosure to the world, would violate section 110(1) of the *YCJA*. 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.

The re-identification risk

[36] Having found that disclosure of the information would be prohibited under the *YCJA* if it identifies an individual as a young person dealt with under the *YCJA*, I must next determine if the records at issue actually identify individuals in this manner. The appellant requests that personal information in the records be removed, but also asks that a unique identifier be assigned to each individual in the records. The ministry submits that even if the information is de-identified in this manner, if a unique identifier is assigned, the records at issue, combined with other information in the public domain, could be used to identify young persons dealt with under the *YCJA*.

[37] The records at issue are forms and notes containing information about searches conducted at facilities. Personal information, such as the name of the person searched and their youth OTIS number are included in the forms. Other information about the searches, that is not itself identifying, includes where the searches took place, whether a strip search was conducted, the reason for the search (e.g. a routine search or due to an individual returning from court), and the results of the searches (e.g. whether contraband was found).

[38] I agree with the ministry's position that the information in the records, particularly the information about a young person's reasons for being searched and the dates of those searches – which provides information about an individual's movements from facilities to other locations – could lead to re-identification when combined with other information in the public domain. As the ministry submits, a person attending a youth criminal proceeding may combine information about the proceeding, such as the date it occurred, with information in the records, such as the date a strip search prior to a court appearance occurred, to identify a young person that was subject to a search, even if the names and youth OTIS numbers are removed from the records.

[39] I do not agree with the appellant's submission that this risk is speculative. There is a significant amount of information in the records, and when combined with information in the public domain, there remains a risk of re-identification if a unique identifier is assigned to each young person in the records. The fact that the appellant is asking for personal information to be removed does not eliminate this risk. Additionally, while the

appellant submits that neither she nor her organization would attempt to re-identify the records using other materials, disclosure under *FIPPA* is considered disclosure to the world, and in determining if the information can be re-identified, I must consider this possibility.

[40] Determining an acceptable risk of re-identification when releasing de-identified data is routinely done in other contexts, and the risk tolerance for releasing information will vary depending on several factors, such as the sensitivity of the information at issue, and the manner in which the information will be released (such as to the public, or to a limited number of individuals).¹⁸ In the present appeal, where the release of information about young persons dealt with under the *YCJA* is potentially a criminal offence, and the fact that disclosure under *FIPPA* is generally equivalent to disclosure to the world, I find that a low risk threshold is appropriate. This is in line with the cautious approach taken by the IPC when considering access to information about youth involvement with the *YCJA*.¹⁹

[41] I agree with the appellant's position that youth court records should not be considered generally accessible, but this does not mean there is not information in the public domain that could be combined with the information in these records. As the ministry submits, members of the public and the media are permitted to be in attendance during youth criminal proceedings and information about the young person and the proceedings, such as their name or initials, charges, and the place and date of appearance, is also included in youth court dockets, which may be posted in the courthouse.

[42] If personal information in the records (specifically, the names and youth OTIS numbers) is removed, but the individuals in the records are given unique identifiers, there is a significant risk that publicly available information could be combined with the rest of the information in the records to re-identify the individuals. This risk is, in my view, sufficient to engage the prohibition on publication in section 110(1) of the *YCJA*.

[43] 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 appeals.

Original Signed by:
Chris Anzenberger

September 18, 2025

¹⁸ See the IPC's "De-Identification Guidelines for Structured Data" (June 2016) for more information about de-identification.

¹⁹ See, for example, Order PO-4567 where the adjudicator noted the need for a cautious approach when interpreting sections 110(1) and 111(1) the *YCJA*.

Adjudicator