

Information and Privacy Commissioner,
Ontario, Canada



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

CYFSA Decision 1

Complaint FA21-00019

Children's Aid Society of Toronto

November 30, 2021

Summary: The complainant, a teacher named in two reports made by a third party to the Children's Aid Society of Toronto about a child in need of protection, sought access to "records of service" relating to himself. CAST refused the complainant's access request on the basis that it did not provide a "service" to him within the meaning of section 312(1) of the *Child, Youth and Family Services Act* and, therefore, he has no right of access under the *Act*. The complainant sought a review of CAST's decision by the IPC.

The adjudicator upholds CAST's decision that the complainant has no right of access to the records under section 312(1) of the *Act* because the records do not relate "to the provision of a service" to him. The adjudicator dismisses the complaint.

Statutes Considered: *Child, Youth and Family Services Act, 2017*, sections 1(1), 2(1) (definitions of "service" and "service provider"), 35(1), 281, 312(1) and 317(2)(c).

BACKGROUND:

[1] This decision addresses the right of access under Part X of the *Child, Youth and Family Services Act* (the *Act*) and finds that it does not extend to a teacher who was named in two reports made by a third party to the Children's Aid Society of Toronto (CAST) regarding a child who may be in need of protection. The teacher, who is the complainant before the Information and Privacy Commissioner of Ontario (IPC), made a written request to CAST under the *Act* for access to "records of service" relating to himself. In response, CAST issued an access decision refusing the complainant's request

and denying access to the responsive records.

[2] In its access decision, CAST advised the complainant that, although he is named in a report of a child in need of protection that it received in December 2018 and in a second report that it received in January 2019, its records indicate that no investigation occurred in either case. CAST stated that, as a result, it determined that it does not have a record of service in relation to the complainant and refused access to the records on that basis. In its refusal decision, CAST advised the complainant that he would require a court order to obtain a copy of the responsive records.

[3] The complainant was dissatisfied with CAST's decision and filed a complaint about it with the IPC. He argued that he is entitled to access the records containing his personal information. He complained that CAST refused to grant him access to records that directly involve him and contain false allegations against him, and he asserted that he requires the responsive records to defend himself against his current employer, a school board.

[4] The IPC attempted to mediate the complaint.¹ During mediation, CAST confirmed its decision to refuse the complainant's request and clarified that it relied on the definition of "service" in section 281 in combination with section 312(1) of the *Act* to deny access. A mediated resolution was not possible and the complaint proceeded to the adjudication stage of the complaint process, where an adjudicator may conduct a review in accordance with section 317 of the *Act*.

[5] Pursuant to the discretion given to me under section 317(3) of the *Act*, I decided to conduct a review of the complaint. I sent a Notice of Review to CAST and the complainant. CAST provided representations, which included a copy of each of the Ontario Child Protection Standards (2016) and the Ontario Child Welfare Eligibility Spectrum. I shared CAST's complete representations with the complainant, who provided representations in response.

[6] In this decision, I uphold CAST's refusal of the complainant's access request because the records at issue do not relate to the provision of a service to him and, therefore, he has no right of access to them under section 312(1) of the *Act*.

RECORDS:

[7] CAST did not provide the IPC with the records responsive to the complainant's request. However, it described them as records "pertaining to two intake files

¹ Mediation privilege, noted in section 317(2)(c) of the *Act*, does not attach to any of the information set out in this decision.

containing one referral each and two discontinued investigation files.” CAST also provided the following details about the responsive records:

1. Intake #1: 7 pages
2. Discontinued investigation #1: 5 pages
3. Intake #2: 7 pages
4. Discontinued investigation #2: 11 pages

[8] Considering the circumstances of this complaint, I determined that the details that CAST provided about the records were adequate for me to make my decision. Since I did not think it was necessary for me to see the records, I did not ask CAST for a copy of them.

DISCUSSION:

The *Act*

[9] The *Act* is a provincial law that governs certain programs and services for children, youth and their families, including child welfare, residential care, adoption, youth justice, children’s mental health and child and family services for First Nations, Inuit and Metis children. The paramount purpose of the *Act* is to promote the best interests, protection and well-being of children.²

[10] The *Act* is divided into parts, and it is Part X that sets the rules that service providers must follow to protect privacy and enable access to records of personal information. Part X of the *Act* came into force on January 1, 2020, and the IPC is the oversight body for this part of the *Act*. Generally, Part X applies to personal information that is in the custody or control of a service provider and that relates to the provision of a service.³ Section 312(1) in Part X of the *Act* provides for a right of access to certain records in the custody or control of a service provider, as discussed more fully below.

CAST is a service provider and a society under the *Act*

[11] In this complaint, there is no dispute that CAST is a “service provider” and a “society” within the meaning of these terms in section 2(1) of the *Act*, which state:

² Section 1 of the *Act*.

³ “Part X of the *Child, Youth and Family Services Act: a Guide to Access and Privacy for Service Providers*” published May 2019 and available here: <https://www.ipc.on.ca/wp-content/uploads/2019/05/part-x-guide-e.pdf>.

"service provider" means,

(a) the Minister,

(b) a licensee,

(c) a person or entity, including a society, that provides a service funded under this Act, or

(d) a prescribed person or entity, but does not include a foster parent[.]

"society" means an agency designated as a children's aid society under subsection 34 (1).

Does the complainant have a right of access to the records at issue under section 312(1) of the Act?

[12] The sole issue in this complaint is whether the right of access, provided by section 312(1) of the *Act*, applies to the complainant, a teacher who was named in two reports made by a third party to CAST regarding a child who may be in need of protection. In the two reports, the complainant is the alleged wrongdoer.

[13] Section 312 of the *Act* sets out the circumstances in which an individual has a right of access to their personal information under the *Act*. Section 312(1) provides a right of access to a record of personal information about the individual that "relates to the provision of service to the individual" subject to the exemptions from that right of access set out in sections 312(1)(a) to (d), none of which is relevant in this appeal.

Section 312(1)

[14] Section 312(1) reads:

(1) 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...[.]

[15] 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.

[16] All three of the requirements above must be satisfied for section 312(1) to confer a right of access on an individual.

[17] Regarding the first two requirements, the parties appear to agree that the responsive records contain the complainant's personal information as that term is defined in section 2(1) of the *Act*⁴ and that the responsive records are in CAST's custody or control. I accept CAST's confirmation that the second requirement is met and I find that the responsive records are in CAST's custody or control. Without having seen the records, I am prepared to assume, for the purpose of the analysis that follows, that the responsive records are records of personal information about the complainant under the first requirement. Accordingly, in determining whether the complainant has a right of access to the responsive records under section 312(1), I will only examine whether the third requirement is satisfied.

The requirement that the record "relates to the provision of a service to the individual"

[18] For the complainant to have a right of access to the records at issue, the records must relate to the provision of a service to him, in accordance with the third requirement of section 312(1) of the *Act*. CAST submits that the complainant has no right of access to the records under section 312(1) of the *Act* because the records do not relate to the provision of service to him within the meaning of that section. Thus, CAST argues that the third requirement is not satisfied.

[19] The term "service," for the purposes of Part X of the *Act*, is defined in section 281 as "a service or program that is provided or funded under this Act or provided under the authority of a licence." CAST submits that the definition in section 281 of the *Act* is extremely broad and not particularly helpful in determining whether the complainant was a recipient of a service within the meaning of the *Act*. CAST states that it is necessary and helpful to look at the more detailed definition of service in section 2(1) of the *Act*, which reads:

"service" includes,

- (a) a service for a child with a developmental or physical disability or the child's family,
- (b) a mental health service for a child or the child's family,
- (c) a service related to residential care for a child,
- (d) a service for a child who is or may be in need of protection or the child's family,

⁴ Section 2(1) states, "personal Information" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*.

- (e) a service related to adoption for a child, the child's family or others,
- (f) counselling for a child or the child's family,
- (g) a service for a child or the child's family that is in the nature of support or prevention and that is provided in the community,
- (h) a service or program for or on behalf of a young person for the purposes of the *Youth Criminal Justice Act* (Canada) or the *Provincial Offences Act*, or
- (i) a prescribed service[.]

[20] CAST argues that an examination of the listed services included in the definition of "service" in section 2(1) reveals that, in every example, it is the child and/or the child's family who is the service recipient.

[21] CAST relies on three other sections of the *Act* to support its position that children and/or their families are the recipients of a "service" under the *Act*. It relies on subsection 35(1) of the *Act*, which sets out the functions of a children's aid society, as follows:

35(1) The functions of a children's aid society are to,

- a) investigate allegations or evidence that children may be in need of protection;
- b) protect children where necessary;
- c) provide guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;
- d) provide care for children assigned or committed to its care under this Act;
- e) supervise children assigned to its supervision under this Act;
- f) place children for adoption under Part VIII (Adoption and Adoption Licensing); and
- g) perform any other duties given to it by the regulations by this Act or the regulations or any other Act.

[22] CAST also relies on the mandatory reporting and assessment provisions at sections 125 and 126 of the *Act*. It notes that section 125(1) imposes a duty on a person, who has reasonable grounds to suspect that a child is in need of protection, to

immediately report their suspicion and the information on which it is based, to a children's aid society. It further notes that section 126(1) requires a children's aid society that receives a report under section 125(1) to carry out an assessment in accordance with the regulations and verify the reported information, or ensure that another society does so, as soon as possible. CAST submits that these requirements of the *Act*, the details of which are found in the Regulations and the Ontario Child Protection Standards, are directed to the protection of children rather than to the assistance of alleged wrongdoers.

[23] CAST states the requirement that the child and/or the child's family be the recipient of services provided by a children's aid society is consistent with the paramount purpose of the *Act* in section 1(1), which is to promote the best interests, protection and well-being of children, and the other, additional purposes of the *Act* in section 1(2). CAST also refers to the qualifying words in section 1(2) recognizing the other, additional purposes of the *Act* listed there "so long as they are consistent with the best interests, protection and well-being of children." It submits that the interpretation of the *Act*, including the interpretation of specific provisions in Part X concerning personal information, must be guided and informed by its paramount purpose.

[24] It is CAST's position that an individual who is named as an alleged wrongdoer in a report about a child in need of protection is not a service recipient, regardless of whether an investigation is completed or discontinued. CAST submits that, accordingly, the complainant, as the alleged wrongdoer named in a report about a child who may be in need of protection, does not have a right of access, under section 312(1) of the *Act*, to the records of personal information held by CAST about him because these records do not and will not relate to the provision of a service to him. CAST provides details of the various steps it took following its receipt of the two reports. Because these details are not relevant to my determination, I do not repeat them in this decision.

[25] For clarity, CAST acknowledges that in some of its investigations into reports of a child in need of protection, child protection concerns emerge relating to children in an individual's (alleged wrongdoer's) own family, for example, in their role as a parent. CAST states that in such cases, those concerns would result in an additional investigation being completed and documented in a CPIN⁵ case separate from the original report regarding a child in need of protection. In this event, depending on the situation, CAST notes that there may be a service provided to an alleged wrongdoer and their own children, and the provision of service in that situation may result in an alleged wrongdoer having a right of access to records under section 312(1) of the *Act*. This complaint does not call on me to rule on the scope of any right of access to a

⁵ CPIN is the acronym for the Child Protection Information Network.

record in a separate investigation and CPIN file where CAST has also provided a service to a family member. However, as I find below, I accept the thrust of CAST's submission that a teacher named in a report about a child in need of protection does not fall within that category or qualify as a recipient of services under the *Act*.

[26] The complainant does not address section 312(1) directly. His representations are mostly composed of questions about the two reports CAST received that name him. The complainant claims that he has been falsely accused and he needs his personal information in the records, excluding the personal information of the alleged victim, to defend himself against these false allegations.

The records at issue do not relate to the provision of a service to the complainant within the meaning of section 312(1)

[27] For the reasons that follow, I agree with CAST and I find that the records do not relate to the "provision of a service" by CAST to the complainant within the meaning of section 312(1) of the *Act*.

[28] As I note in paragraph 10 above and as stated in the IPC's Part X Guide, Part X of the *Act* applies to personal information, which is in the custody or control of a service provider, and which relates to the provision of a service. Part X fits within the larger legislative framework of the *Act*, whose paramount purpose is to promote the best interests, protection and well-being of children.

[29] I agree with CAST that the interpretation of the *Act*, including the interpretation of section 312(1) in Part X of the *Act*, must be guided and informed by its paramount purpose. Recognizing the paramount purpose of the *Act*, it is clear that granting the complainant access to CAST's records of the two reports it received—which named him as the teacher who is alleged to have had inappropriate or harmful interactions with a child who may be in need of protection—is not consistent with promoting the best interests, protection and well-being of children.

[30] Using the paramount purpose of the *Act* as an interpretive aid, I find that the complainant is not entitled to access the records under Part X because they do not relate to the provision of a service to him. For section 312(1) to confer a right of access under Part X, the personal information about an individual must relate to "the provision of a service to the individual."

[31] A "service" is defined in section 281 as a service or program that is provided or funded under the *Act* or provided under the authority of a licence. A "service" is defined in section 2(1) of the *Act* as including services for children and their families related to child protection, residential care, physical or mental disabilities, mental health, adoption, counselling, community support and prevention, and services or programs under the *Youth Criminal Justice Act* and the *Provincial Offences Act*. I agree with CAST that the definition of "service" in the *Act*, the prescribed functions of a children's aid

society in section 35(1), and the mandatory reporting and assessment provisions at sections 125 and 126 all support CAST's position that children and/or their families are the recipients of "service" for the purposes of section 312(1).

[32] In the matter before me, CAST received two reports from a third party about a child who may be in need of protection and both reports named the complainant as the alleged wrongdoer. Upon receiving the two reports, CAST carried out its duties under the *Act* to determine whether there was a child in need of protection. All of CAST's duties, as confirmed by the prescribed functions listed in section 35(1) of the *Act*, relate exclusively to the protection of the children CAST serves and the provision of service to these children and their families.

[33] The complainant is neither a child in need of protection nor a family member of a child in need of protection. There is no evidence before me that CAST provided any service to the complainant or that the records relate to the provision of any service by CAST to him. As the teacher of a child who may be in need of protection and as the teacher who is alleged to have harmed a child, it is clear that the complainant was not the beneficiary of the "provision of a service" by CAST within the meaning of section 312(1) of the *Act*.

[34] Based on all of the above, I find that the various steps that CAST took regarding these two reports, in accordance with its functions and duties under the *Act*, did not amount or relate to the "provision of a service" to the complainant within the meaning of section 312(1) of the *Act*. Having found that there was no "provision of a service" to the complainant within the meaning of section 312(1) of *Act*, I find that the complainant has no right of access to the records at issue under section 312(1) of the *Act* because these records do not relate to the provision of a service to him.⁶ Accordingly, I dismiss the complaint about CAST's refusal to grant the complainant's request.

NO ORDER:

1. For all of the foregoing reasons, I dismiss the complaint and issue no order.

Original Signed by: _____
Stella Ball
Adjudicator

_____ November 30, 2021

⁶ Whether the complainant has any right to the records in the context of any other proceeding, and not under section 312(1) of the *Act*, is not an issue before me.