

Information and Privacy Commissioner,
Ontario, Canada



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

CYFSA DECISION 2

Complaint FA20-00011

Children's Aid Society of Ottawa

December 17, 2021

Summary: An adopted person made a request to the Children's Aid Society of Ottawa (CASO) under the *Child, Youth and Family Services Act, 2017* (the *CYFSA* or the *Act*), for access to all information about himself, including information about his birth parents. The CASO granted partial access to the requested records, having severed all identifying information about the requester's birth parents. The requester filed a complaint with the Information and Privacy Commissioner/Ontario (the IPC) because he seeks access to his birth parents' identifying information.

The adjudicator finds that the identifying information about the requester's birth parents is excluded from the scope of Part X of the *CYFSA* under the exception at section 285(4)(a) as information that relates to an adoption. As a result of the application of the exception, Part X does not apply to the requested information and the requester does not have a right of access to his birth parents' identifying information under that part. The complaint is dismissed.

Statutes Considered: *Child, Youth and Family Services Act, 2017*, S.O. 2017, C. 14, Sch. 1, sections 2(1) (definitions of "licence," "service," "service provider" and "society"), 34(1), 35(1), 40(1), 224, 225 (2), 226, 227(1), (3) and (4), 281 (definition of "service"), 285(1) and (4), 312, 316 and 346(1)17; *Adoption Information Disclosure*, O. Reg. 158/18, sections 2(1), 8 and 9; *Vital Statistics Act*, R.S.O. 1990, c. V.4, sections 48.1(1), 48.6 and 65(8).

BACKGROUND:

[1] This review arises from a request made by an adopted person, a former child in care, under the *Child, Youth and Family Services Act, 2017* (the *Act* or the *CYFSA*) to

the Children's Aid Society of Ottawa (the CASO), for all information in his file.

[2] The requester was born in the 1950s, in Canada, to an individual who was in the country temporarily. Following his birth, he became a ward of the state and subsequently, as an infant, he was placed for adoption by the CASO. By his request to the CASO, the requester sought access to all information about himself and his birth parents, including his parents' names, birth dates and any other information about them or their families that might facilitate his quest to trace his family history.

[3] The CASO issued a decision granting partial access to the information contained in the requester's file, redacting all information that might identify his birth parents. The CASO stated in its letter: "This material was prepared in accordance with the provisions of Part X of the *Child, Youth and Family Services Act*."¹ The CASO did not specify what provisions of the *CYFSA* it had relied upon when preparing the records or explain under what provisions it redacted the identifying information of the requester's birth parents.

[4] The requester (now the complainant), filed a complaint with the Information and Privacy Commissioner/Ontario (the IPC) about the CASO's decision to withhold information that might identify his birth parents. A mediator was assigned to the complaint to attempt to facilitate a mediated resolution between the parties.

[5] During mediation, the CASO clarified that the redactions it made to the responsive records were in accordance with Ontario Regulation 158/18 under the *Act*, titled *Adoption Information Disclosure*,² and it maintained its decision to withhold the information that would identify the complainant's birth parents.

[6] The complainant confirmed that he continues to seek access to the information that the CASO redacted from the record. Specifically, he seeks all facts and information related to his birth mother and her family that might assist him in obtaining more information about his ancestry. He also seeks any available information about his birth father.

[7] As the parties did not reach a mediated resolution, the complaint moved to the adjudication stage of the process. As the adjudicator assigned to the complaint, I decided to conduct a review. I sought and received representations from both the CASO and the complainant on the issues to be decided in this review.

[8] In this decision, I find that the withheld information, which is information that might identify the complainant's birth parents, is excluded from Part X of the *CYFSA* under the exception for information that relates to an adoption at section 285(4)(a). As a result, the complaint is dismissed.

¹ Despite this statement, as will be explained below, disclosure by the CASO was made under Part VIII of the *CYFSA* not Part X.

² Hereinafter, O. Reg. 158/18.

RECORDS:

[9] The records responsive to the complainant's request are notes and documents from the complainant's CASO file. They include:

- file notes prepared by CASO case workers,
- notes detailing the social history of the complainant's birth parents,
- CASO memos and correspondence,
- completed Child Health History forms, and
- a number of completed forms under the *Vital Statistics Act, 1954* including:
 - Statement of Birth,
 - Report to the Director of Child Welfare,
 - Joint Application for Adoption Order and supporting affidavit, and
 - Consent by a Children's Aid Society to an Adoption Order in Respect of an Unmarried Infant under 21 Years.

[10] The CASO redacted the records to remove all identifying information about the complainant's birth parents and provided the complainant with copies of the redacted records. The complainant seeks access to the redacted information.

DISCUSSION:

Is the information excluded from Part X of the *CYFSA* under section 285(4)?

[11] The central question in this appeal is whether the relevant provisions at Part X of the *CYFSA*, and in particular, the individual's right of access to his or her own personal information at section 312(1), applies to the information sought by the complainant in the circumstances of this case. Section 312(1) reads as follows:

Individual's right of access

312 (1) 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.]

[12] Part X of the *CYFSA*, which consists of sections 281 through 332, establishes rules that service providers must follow with respect to the collection, use or disclosure of personal information. Section 285 defines the scope of application of the majority of Part X subject to certain exceptions, including the exceptions for “adoption matters” at section 285(4).

[13] This case turns on whether section 285(4) of Part X, relating to the use or disclosure of adoption related information, excludes the information sought by the complainant from the right of access at section 312(1) and, consequently, from the IPC’s authority to order that access be granted.³

[14] For the purpose of my analysis, the pertinent provisions of section 285 are subsections (1), (4) and (6):

Application of Part

285 (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.

...

Exceptions — adoption matters

(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

(b) the collection, use or disclosure of information given to a designated custodian under section 224 or to another person under section 225.

...

Service provider’s records

(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.

[15] To determine whether Part X and its rules regarding the collection, use and disclosure of personal information apply to the CASO, it must first be determined whether the CASO is a service provider within the meaning of section 285 of the *CYFSA*. This determination requires an examination of the specific terms used at section 285, as

³ The IPC’s jurisdiction is limited to reviewing complaints properly brought under Part X of the *CYFSA*.

well as the specific provisions to which section 285 refers.

[16] Section 2(1) of the *CYFSA* defines "service provider" to mean "a person or entity, including a society, that provides a service funded under this Act". A "society" is defined at section 2(1) to mean "an agency designated as a children's aid society under subsection 34 (1). The definition of "service" in section 2(1) of the *Act* includes adoption- related services for a child, the child's family, or others, and the definition of "licence" in section 2(1) includes "a licence issued under Part VIII (Adoption and Adoption Licensing)." In addition, section 281 further defines "service" to mean "a service or program that is provided or funded under this Act or provided under the authority of a licence."

[17] Sections 34 to 43 of the *CYFSA* relate to children's aid societies. Section 34(1) reads:

Children's aid societies

Designation

34 (1) The Minister may designate an agency as a children's aid society for a specified territorial jurisdiction and for any or all of the functions of a society set out in subsection 35(1).

[18] Section 35(1) lists a wide range of functions performed by a children's aid society. Section 40 provides that the regulations determine the amount of funding that a society is to receive to perform its functions.⁴

Is the CASO a service provider within the meaning of section 285(1)?

[19] For the reasons that follow, I find that the CASO is a service provider within the meaning of section 285(1) of the *CYFSA*.

[20] The CASO submits that it is an agency designated as a children's aid society pursuant to subsection 34(1) of the *CYFSA*. It also explains that one of its legislated functions as a children's aid society is to place children for adoption.⁵

[21] The complainant does not specifically comment on whether the CASO is a "service provider" or an organization providing adoption-related services within the meaning of the *CYFSA*. However, his representations suggest that he disputes the characterization of the CASO as a "service provider" in the specific context of this

⁴ Section 40 (1) reads:

The Minister shall pay to every society, out of money appropriate for the purpose by the Legislature, an amount determined in accordance with the regulations.

The funding of children's aid societies pursuant to section 40 is determined in accordance with O. Reg. 156/18, sections 12 to 14.

⁵ Section 35(1)(f), *CYFSA*

complaint because he views his adoption as a "historical matter" and believes that the CASO does not currently have any active role in providing services to either him or his birth parents. More specifically, he submits that the "CASO is no longer performing any of the functions or duties related to [his] adoption outlined in section 35(1) of the *CYFSA*" and has not done so "for more than six decades."

[22] I accept that CASO is a designated "society" under section 34(1) of the *CYFSA* and that, pursuant to section 40(1), the services it provides are funded under that act.⁶ As a result, it is clear that CASO is a "service provider" as that term is defined at section 2(1) and within the meaning of section 285(1).

[23] Despite the complainant's position that CASO is not currently providing services to him or anyone in his birth family, he does not dispute that generally speaking, CASO is an organization providing services funded under the *CYFSA*. In my view, the fact that the CASO is not currently providing services to the complainant does not alter its characterization as a service provider for the purposes of the *CYFSA*.

Does the exception at section 285(4) of the CYFSA exclude the disclosure of the requested information from the scope of Part X?

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

[25] Sections 285(2) to (5) and (7) of the *CYFSA* set out a number of exceptions to the application of section 286 to 332 of Part X, including section 312 which affords individuals with the right to access records of their own personal information. If one of those exceptions applies, the provisions at sections 286 to 332 do not apply to collection, use or disclosure of personal information by a service provider.

[26] As noted above, the exception at section 285(4) specifically addresses certain information that relates to an adoption. Again, that section reads:

285 (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 I note the definition of "service" at section 2(1) includes "a service related to adoption for a child, the child's family or others" and, as a designated children's aid society, the CASO's functions, listed in section 35(1), include the placement of children for adoption under Part VIII of the *CYFSA* (paragraph (f)).

(b) the collection, use or disclosure of information given to a designated custodian under section 224 or to another person under section 225.

[27] As the complainant is an adopted person and he is seeking access to identifying information about his birth parents from the CASO, the exclusion for information that relates to an adoption at section 285(4)(a) may apply.

Section 285(4)(a)

[28] 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. An examination of section 227 and some related provisions is therefore required.

[29] Section 227 governs the use or disclosure of information that relates to an adoption after an adoption order is made. It reads:

Confidentiality of adoption information

227 (1) 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,⁷ 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.

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

[31] I note that 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 *CYFSA* or the regulations. Section 225(2) of the *CYFSA*, on the other hand, is the provision that provides positive *authorization* for the disclosure of adoption related information by a "*society*" where prescribed by regulation:

⁷ The ministry referenced in this provision is the Ministry of Community and Social Services. It is also referenced throughout the *CYFSA* 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 custodian refers to the MCSS custodian in its representations set out below.

Disclosure to others

225 (1) ...

By a society

(2) 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.

...

Scope of application

226 Sections 224 and 225 apply with respect to information that relates to an adoption regardless of when the adoption order was made.

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

[32] 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 *CYFSA* as follows:

Regulations: Part VIII (Adoption and Adoption Licensing)

346 (1) 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;

Accordingly, section 225(2) provides the statutory authority for the disclosure of adoption related information by a society, as prescribed by regulation, which would then bring any prescribed disclosure within the terms of the exception to the prohibition at section 227(1)(b).

[33] In determining whether 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.

[34] 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.”⁸

[35] Section 9 of O. Reg. 158/18 permits the disclosure of “non-identifying information related to an adoption”⁹ by the MCSS custodian¹⁰ or a society.¹¹

[36] 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.

[37] 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.”

Representations

The CASO’s representations

[38] The CASO submits that the information in the responsive records relates to an “adoption matter” and such information is excluded from Part X of the CYFSA pursuant to section 285(4).¹² It submits that disclosure of information related to adoption matters is governed entirely by O. Reg. 158/18.¹³

[39] The CASO submits that, in keeping with sections 9(1) and 9(2) of O. Reg. 158/18, it determined that it could release the records containing information relating to

⁸ *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.

⁹ Section 9 of O. Reg. 158/18 is reproduced in the appendix to this decision. 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, it is clear that the information sought by the complainant is not related to an out-of-province adoption.

¹⁰ As mentioned in note 7, the MCSS custodian maintains the Adoption Disclosure Register. This will be discussed below.

¹¹ Section 8 of O. Reg. 158/18 addresses the disclosure of identifying information by the MCSS Custodian under the Adoption Disclosure Register. That section is reproduced in the appendix to this order.

¹² In its representations, the CASO uses the term “adoption matter,” which is a term that appears as a heading to section 285(4) of the *CYFSA*. The term used in the provision itself, as well as in O. Reg. 158/18, is “information that relates to an adoption.” In responding to the CASO’s representations, the complainant also uses the term “adoption matter.”

¹³ As will be discussed below, O. Reg. 158/18 also permits disclosure authorized by the VSA.

the complainant's adoption to him, so long as any identifying information was redacted prior to disclosure. It submits that those provisions state that an adopted person is only entitled to receive disclosure of non-identifying information from CASO.

[40] The CASO submits that although the complainant objects to the fact that it did not release the names of his birth parents, it is legally prohibited from doing so by section 9(6)3 of O. Reg. 158/18 which stipulates that CASO shall redact identifying information prior to disclosing it.

[41] The CASO submits that in the Province of Ontario, the only way for an adoptee to obtain the name of their birth parents is through the Adoption Disclosure Register maintained by the Director of the Service Delivery and Supports Branch in the Ministry of Community and Social Services, sometimes referred to as the MCSS custodian.¹⁴ It submits that as outlined in O. Reg. 158/18, "[n]ames of birth parents and adoptees are only disclosed by the MCSS custodian when all persons concerned have registered with the adoption registry and provided consent to their name being disclosed." The CASO also submits that although it referred the complainant to the adoption registry maintained by the MCSS custodian, he continues to seek access to identifying information about his birth parents from the CASO.¹⁵

[42] The CASO concludes its submissions by stating that its ability to release adoption information is entirely governed by O. Reg. 158/18 which it has followed with respect to the information provided to the complainant in this case. Further, it submits that as information related to adoption matters, the information that is responsive to the complainant's request is excluded from Part X of the *CYFSA* and its disclosure is not subject to oversight by the IPC.

The complainant's representations

[43] The complainant disagrees with CASO that the identifying information about his birth parents is excluded from Part X of the *CYFSA* under section 285(4).

[44] The complainant submits that while the context of the issue is based on an adoption, "the matter is not, in the truest sense of the term, an 'adoption matter'."¹⁶ Rather, as mentioned above, he submits that it is a "historical matter." The complainant

¹⁴ This submission is inaccurate. As explained above in note 8, an applicant (if over 18) can obtain an uncertified copy of his/her original registration of birth and adoption order identifying his/her birth parent(s) from the Registrar General under the *Vital Statistics Act* provided no disclosure veto has been filed or, if a no contact notice has been filed, provided the applicant agrees in writing not to contact the birth parent(s). See sections 48.1, 48.3 and 48.5 of the *Vital Statistics Act* set out in the appendix to this decision.

¹⁵ From the information before me, it is not apparent whether the CASO also referred the complainant to apply to the Registrar General under section 48.1 (1) of the *Vital Statistics Act*. I will do so below.

¹⁶ As noted above in note 12, "adoption matter," is a term that appears as a heading to section 285(4) of the *CYFSA*. The term that is used in the provision itself, as well as in O. Reg. 158/18, is "information that relates to an adoption."

submits that the records and redacted records that he has received reveal a number of factors that demonstrate that the circumstances surrounding his adoption resulted in "rather unique and exceptional situation." His representations suggest that he believes that these circumstances support his position that he should be able to have access to his birth parents' identifying information. He submits that these factors include:

- his birth mother was not a Canadian citizen and was only in the country temporarily,
- the record indicates that his mother left Canada to return to her home country, at which time he became a ward of the state,
- although he has received his mother's name from records provided by the MCSS custodian he has no way of knowing whether her first name is a nickname or her middle name, used as a first name, so he is hampered when conducting ancestral searches for his maternal family history,
- there is no helpful information about his birth father that would facilitate any kind of ancestral search for his paternal family history because his birth parents were unmarried, the pregnancy was accidental and paternity was never acknowledged,
- the Statement of Birth that he received from the MCSS custodian completely omits his father's name,
- if his birth mother and father were alive today they would be approximately 91 years old and 100 years old respectively, so it is reasonable to presume that they are both deceased, and
- if his birth parents are not deceased, it is unlikely that they would have any knowledge of, or understanding of the current legislation and know to register with the Adoption Disclosure Register.

[45] Another reason why the complainant disputes that the records at issue relate to an "adoption matter" is that he submits they should be characterized as relating to a "historical matter." As indicated above, he prefers this description as he submits that the records relate to an adoption that is not current and for which no parties are currently receiving services. He submits:

All of the laws pertaining to an adoption, including disclosure of personal information, are written with the context of [recentness] and currency at the forefront where it is strongly implied, inferred and/or even assumed that the following elements exist:

- (a) There is a child or children and/or a parent or parents requiring a service.

(b) ***All parties to the adoption are alive, reside in Canada and/or their whereabouts is known and they are accessible in some way.*** [emphasis in original]

(c) That the service providers involved in the particular adoption are providing services and performing functions to the parties.

(d) There is a need and/or requirements to provide some protection to the parties. [emphasis in original]

[46] The complainant submits: "None of these things now exist in this case."

[47] The complainant makes more detailed submissions on item (d) of his list, reproduced above. He submits that it is "very clear that the primary purpose and intent of the legislation" that addresses the management and control of personal information in relation to adoptions is "based on the premise that there is an ongoing need to provide protection to all the parties involved." He submits that this assumes that the parties are vulnerable such that disclosure of their personal information might result in some form of harm or detriment to the individual to whom that information relates. He submits that "[t]his is reiterated at various points throughout the legislation."

[48] The complainant submits that given the circumstances he has set out in his representations, "there is no evidence establishing reasonable grounds to conclude that any real, apparent or perceived harm or detriment could ever befall either of [his] birth parents (or anyone else for that matter) as a result of their personal identifying information being disclosed to [him]."

Analysis and finding on the application of the exception at section 285(4)(a)

[49] As previously explained, if the exception at section 285(4)(a) applies to the withheld information, it is excluded from the scope of Part X of the *CYFSA*, including the right of access at section 312. In other words, Part X¹⁷ would not apply to the identifying information of the complainant's birth parents and the IPC has no authority under Part X to order that access be granted to that information.

[50] For the reasons set out below, I find that the withheld information in the records – i.e., the identifying information about the complainant's birth parents - is information that relates to an adoption that falls squarely within the exception at section 285(4)(a). As a result, I find that Part X of the *CYFSA* does not apply and the complainant does not have a right of access to it under that part.

[51] The exception in section 285(4)(a) applies to the release of information by a

¹⁷ Specifically, the use and disclosure provisions in sections 286 to 332.

society that relates to an adoption under section 227.¹⁸ Specifically, section 227(1)(b) requires that after an adoption order is made, no person shall disclose information that relates to an adoption kept by a society or permit it to be disclosed, unless that disclosure is authorized by the *CYFSA* or its regulations.¹⁹ Section 225(2) is the companion section that provides the society with the statutory authority to disclose "such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed." Accordingly, only the disclosure by the society of adoption related information that is prescribed by regulation falls within the terms of the exception to the prohibition at section 227(1)(b).

[52] The CASO submits, and I agree, that the records at issue contain information that relates to the complainant's adoption. From my review, the records contain some of the types of information defined in section 9(2) of O. Reg. 158/18 as being "information that relates to an adoption," specifically:

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

As the adoption order related to the complainant's adoption has been made (the adoption occurred in the 1950s), section 227(1)(b) requires that the CASO shall not disclose information that it keeps that relates to his adoption unless it is authorized to do so by the *CYFSA* or its regulations.

[53] In this case, the CASO 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. As the information that remains at issue is governed by the prohibition at section 227(1), I find that the exception at section 285(4)(a) applies and the use and disclosure provisions in sections 286 to 332 of Part X of the *CYFSA* do not apply to that information.

[54] I recognize that the complainant filed this complaint with the IPC because he seeks access to his birth parents' identifying information which has been redacted from the records. However, it would appear that the CASO has disclosed to the complainant the information that it was authorized to disclose: non-identifying information. Pursuant

¹⁸ In addition to referring to a society, section 227 also refers to MCSS, a licensee or a designated custodian. The only organization that is relevant in the circumstances of this complaint is a society.

¹⁹ In addition to referring to disclosure, section 227 also refers to inspection, removal and alteration of information that relates to an adoption. It is only disclosure that is relevant in the circumstances of this complainant.

to section 9 of O. Reg. 158/18, an adopted person is only entitled to receive disclosure of non-identifying information related to an adoption from a society such as the CASO. Specifically, pursuant to paragraph 3 of section 9(6) of O. Reg. 158/18, the CASO is required to redact any information that may identify a person other than the complainant, which would include the identifying information of the complainant's birth parents. Considering these provisions, it is apparent that the CASO has followed the adoption disclosure requirements set out in O. Reg. 158/18 by redacting identifying information about the complainant's birth parents from the responsive records and by disclosing only non-identifying information about them.

[55] I acknowledge the complainant's adoption occurred over six decades ago and I empathize with his apparent frustration at not being able to access identifying information about his birth parents who, as he submits, may be deceased or, in the case of his mother, is unlikely to have ever been a resident of Canada. However, as I noted above, section 227(3) specifies that section 227(1) applies regardless of when the adoption order was made. Additionally, I note that neither O. Reg. 158/18 nor the *CYFSA* makes mention of the age or residence of the parties involved. Therefore, these factors are not relevant to and have no impact on whether the exception at section 285(4) applies to exclude information that relates to an adoption from the use and disclosure provisions in Part X of the *CYFSA*.

[56] I also acknowledge the complainant's submission that there is no evidence that disclosure of identifying information about his birth parents could reasonably be expected to result in any harm, real or perceived, to any of the parties. In that respect, I note that for the exception at section 285(4) to apply, there is no evidence to suggest that the legislature intended to require that a reasonable expectation of harm resulting from disclosure be established.

[57] For the reasons set out above, I find that the exception at section 285(4) applies to the information that is responsive to the complainant's request and it is excluded from the right of access at Part X of the *CYFSA*. In other words, the provisions addressing use and disclosure of personal information at 286 to 332 of the *CYFSA* (including the right of access provided for in section 312) do not apply to the information at issue and do not govern its release. As a result, I find that the complainant does not have a right of access under Part X of the *CYFSA* to the identifying information of his birth parents which the CASO has redacted from the records.

[58] Although the CASO submits that it referred the complainant to the adoption registry maintained by the MCSS custodian, it is not clear whether it also referred the complainant to the Registrar General under the *Vital Statistics Act*. As noted above, the complainant, as an adopted person, may apply to the Registrar General under 48.1 of the *Vital Statistics Act* for an uncertified copy of the original registration of his birth and an uncertified copy of any registered adoption order respecting him. Such a request however is a matter outside of Part X of the *CYFSA* and outside of the IPC's jurisdiction.

NO ORDER:

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

Original Signed By: _____
Catherine Corban
Adjudicator

December 17, 2021 _____

APPENDIX A

STATUTORY PROVISIONS REFERRED TO IN THE DECISION

Child, Youth and Family Services Act, 2017, S.O. 2017, c. 14, Sch. 1

Definitions

2. (1) In this Act,

...

"licence" means a licence issued under Part VIII (Adoption and Adoption Licensing) ...

...

"service" includes,

...

(e) a service related to adoption for a child, the child's family or others,

...

"service provider" means,

...

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

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

...

Designation

34 (1) The Minister may designate an agency as a children's aid society for a specified territorial jurisdiction and for any or all of the functions of a society set out in subsection 35(1).

...

Functions

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

...

(f) place children for adoption under Part VIII (Adoption and Adoption Licensing);

Payments by Minister

40 (1) The Minister shall pay to every society, out of money appropriated for the purpose by the Legislature, an amount determined in accordance with the regulations.

Disclosure to designated custodian

224 (1) The Minister, the Register General under the Vital Statistics Act, a society, a licensee and such other persons as may be prescribed shall give a designated custodian under section 223 such information that relates to adoptions as may be prescribed in such circumstances as may be prescribed.

Same, adoption orders

(2) A court shall give a designated custodian a certified copy of an adoption order made under this Part together with such other documents as may be prescribed in such circumstances as may be prescribed.

Disclosure to others

225 (1) ...

By a society

(2) 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.

...

Scope of application

226 Sections 224 and 225 apply with respect to information that relates to an adoption regardless of when the adoption order was made.

Confidentiality of adoption information

227 (1) Despite any other Act, after an adoption order is made, no person shall inspect, remove, alter or disclose information that relates to the adoptions and is kept by the Ministry, 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,

- a. necessary for the maintenance or updating of the information by the Ministry, society licensee or designated custodian or their staff; or
- b. authorized by this Act or the regulations.

...

Application

(3) This section applies regardless of when the adoption order was made.

Privacy

(4) The *Freedom of Information and Protection of Privacy Act* does not apply to information that relates to an adoption.

PART X PERSONAL INFORMATION

DEFINITIONS

Definitions

281 In this Part,

"service" means a service or program that is provided or funded under this Act or provided under the authority of a licence;

Application of Part

285 (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.

...

Exceptions – adoption matters

(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
- b. the collection, use or disclosure of information given to a designated custodian under section 224 to another person under section 225.

INDIVIDUAL'S ACCESS TO PERSONAL INFORMATION

Individual's right of access

312 (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,

...

(b) another Act, an Act of Canada or a court order prohibits its disclosure to the individual;

...

COMPLAINTS, REVIEWS AND INSPECTIONS

Complaint to Commissioner

316 (1) A person who has reasonable grounds to believe that another person has contravened or is about to contravene a provision of this Part or the regulations made for the purposes of this Part may make a complaint to the Commissioner.

Regulations: Part VIII (Adoption and Adoption Licensing)

346 (1) 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;

...

20. governing the inspection, removal or alteration of information related to an adoption for the purposes of clause 227(1)(b);

...

Adoption Information Disclosure, O. Reg. 158/18

Disclosure under this Act and *Vital Statistics Act*

2 (1) This Regulation sets out circumstances in which certain information relating to adoptions may be disclosed and disclosure under this Regulation is authorized in addition to any disclosure of information relating to adoptions that may be authorized under the *Vital Statistics Act*.

(2) Any disclosure of information relating to adoptions authorized under this Regulation applies despite any notice or disclosure veto in effect under section 48.3, 48.4 or 48.5 of the *Vital Statistics Act* that may prevent or affect disclosure of information relating to adoptions under that Act.

Register examinations and disclosure of information

8 (1) The MCSS custodian shall examine the adoption disclosure register to determine whether the name of an adopted person matched to that of a birth parent, birth grandparent or birth sibling with whom the adopted person wishes to have contact.

(2) If the MCSS custodian determines that the name of an adopted person can be matched to that of a birth parent, birth grandparent or birth sibling with whom the adopted person wishes to have contact, the custodian shall disclose,

- a. the name of the adopted person and the contact information provided by the adopted person to the matched birth parent, birth grandparent or birth sibling; and
- b. the name of the birth parent, birth grandparent or birth sibling and the contact information provided by that person to the matched adopted person.

(3) Despite subsection (2), if the MCSS custodian becomes aware that the person who has been matched is deceased, the only information with respect to the deceased that shall be disclosed under subsection (2) is the name of the deceased and the fact that they are deceased.

(4) Before disclosing information under subsection (2), the MCSS custodian shall make reasonable inquiries in order to be satisfied as to the identity and relationship of the persons named in the register.

DISCLOSURE OF NON-IDENTIFYING INFORMATION

Requests for non-identifying information

9 (1) The following persons may request from the MCSS custodian or a society non-identifying information related to an adoption:

1. An adopted person who is 18 or older or who has the written consent of an adoptive parent.
2. An adoptive parent.
3. The child of an adopted person if the adopted person is deceased and the child is 18 or older.
4. A birth parent.
5. A birth grandparent.
6. A birth sibling who is 18 or older.
7. A sibling of a birth parent if the sibling is 18 or older.

(2) Information related to an adoption may include,

- a. background information relating to,
 - i. an adopted person's birth parents, birth grandparents, birth siblings and other birth family members,
 - ii. an adopted person's adoptive parents and adoptive family, or
 - iii. in the case of an adopted person who was adopted more than once, the adopted person's former adoptive parents and former adoptive family;
- b. the circumstances leading to an adoption placement;
- c. the details relating to the birth of an adopted person;
- d. the care received by the person prior to an adoption placement;
- e. the developmental progress of the adopted person;
- f. the date of an adoption placement or of an adoption order; and
- g. the name of the society or of the licensee responsible for the adoption placement.

(3) The request may be made to,

- a. the MCSS custodian; or
- b. if the adopted person was placed for adoption by a society, to the society that placed the adopted person for adoption.

(4) If the MCSS custodian receives a request that should have been made to a society under subsection (3), the custodian shall refer the person making the request to that society and inform the person of the person's right to request non-identifying information from the society under this section.

(5) If a society receives a request that should have been made to the MCSS custodian under subsection (3), the society shall refer the person making the request to the MCSS custodian and inform the person of the person's right to request non-identifying information from the MCSS custodian under this section.

(6) After receiving a request for non-identifying information, the MCSS custodian or a society shall take the following steps:

1. In the case of a request under clause (3) (a), the MCSS custodian shall request from the MCYS Director any information related to the adoption.
2. In the case of a request under clause (3) (b), the society shall,
 - i. request for the MCSS custodian any information related to the adoption that was previously contained in the society's files that has been subsequently disposed of in the normal course of business or otherwise destroyed, damaged or lost, and
 - ii. request information related to the adoption from any other society that provided a service to the adopted person or a birth parent of the adopted person.
3. The MCSS custodian or the society shall render the information received under paragraph 1 or 2, and in the case of the society any information that relates to the adoption in its possession, 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.
4. The MCSS custodian or society shall provide the information that has been rendered non-identifying under paragraph 3 to the person who made the request.

(7) The MCSS custodian or a society who receives a request for non-identifying information under subsection (3) shall respond to the request within 30 days after receiving the request or may extend that deadline for responding by not more than 90 days if,

- a. responding to the request within 30 days would unreasonably interfere with the operations of the MCSS custodian's ministry or the society because the

information consists of numerous pieces of information or locating the information would necessitate a lengthy search; or

- b. responding to the request within 30 days after receiving it is not reasonably practical because of the time required to render the information non-identifying.

(8) If the MCSS custodian receives a request for information under subparagraph 2 I of subsection (6), the MCSS custodian shall request the information from the MCYS Director and provide any information it receives from the MCYS Director to the society.

(9) If the MCYS Director receives a request for information under paragraph 1 of subsection (6) or subsection (8), the MCYS Director shall provide the MCSS custodian any information relating to the adoption in the possession of the Director's ministry.

(10) If a society receives a request for information under subparagraph 2 ii of subsection (6), the society shall provide to the society that made the request any information related to the adoption in the society's possession.

Vital Statistics Act, R.S.O. 1990, c. V.4

DISCLOSURE RE ADOPTED PERSONS

Disclosure to an adopted person

48.1 (1) An adopted person may apply to the Registrar General for an uncertified copy of the original registration, if any, of the adopted person's birth and an uncertified copy of any registered adoption order respecting the adopted person.

Age restriction

(2) The adopted person is not entitled to apply for the uncertified copies until he or she is at least 18 years old.

Disclosure

(3) Subject to subsections (5), (6), (7), (9), (10) and (11), the applicant may obtain the uncertified copies from the Registrar General upon payment of any required fee and upon production of any evidence of the applicant's identity and age that may be required by the Registrar General.

...

Effect of notice of wish not to be contacted

(5) If there is only one birth parent and a notice submitted by the birth parent under subsection 48.4 (3) is in effect, the Registrar General shall not give the uncertified

copies to the applicant unless the applicant agrees in writing not to contact or attempt to contact the birth parent, either directly or indirectly.

Same

(6) if there are two birth parents and notices submitted by both birth parents under section 48.4(3) are in effect, the Registrar General shall not give the uncertified copies to the applicant unless the applicant agrees in writing not to contact or attempt to contact the birth parents, either directly or indirectly.

Same

(7) if there are two birth parents and only one notice submitted by a birth parent under subsection 48.4 (3) is in effect, the Registrar General shall,

- a. give the applicant the uncertified copies if the applicant agrees in writing not to contact or attempt to contact that birth parent, either directly or indirectly; or
- b. if the applicant refuses to agree in writing not to contact or attempt to contact that birth parent, either directly or indirectly, delete any identifying information relating to that birth parent from the uncertified copies and give the applicant the redacted uncertified copies.

...

Effect if disclosure veto

(9) If there is only one birth parent and a disclosure veto submitted by the birth parent under subsection 48.5 (5) is in effect, the Registrar General shall not give the uncertified copies to the applicant.

Same

(10) If there are two birth parents and disclosure vetoes submitted by both birth parents under subsection 48.5 (5) are in effect, the Registrar General shall not give the uncertified copies to the applicant.

Same

(11) If there are two birth parents and only one disclosure veto submitted by a birth parent under subsection 48.5 (5) is in effect, the Registrar General shall delete any identifying information relating to that birth parent from the uncertified copies and give the applicant the redacted uncertified copies.

...

Definition, identifying information

(14) In subsection (7) and (11),

“identifying information” means information whose disclosure, alone or in combination with other information, will in the circumstances reveal the identity of the person to whom it relates.

Notice, wish not to be contacted

48.4 ...

...

Birth parent

(3) A birth parent may submit to the Registrar General a notice that he or she wishes not to be contacted by the adopted person.

Disclosure veto

Application

48.5 (1) This section applies to an adopted person and to the birth parents of an adopted person only if the registered adoption order relating to the adopted person was made before September 1, 2008.

...

Birth parent

(5) A birth parent of an adopted person may submit to the Registrar General a disclosure veto to prohibit the disclosure of information under section 48.1 to the adopted person.

Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F. 31.

Information relating to adoptions

65 (8) This Act does not apply with respect to the following:

1. Notices registered under section 48.3 of the *Vital Statistics Act* and notices and information registered under section 48.4 of that Act.
2. Disclosure vetoes registered under section 48.5 of the *Vital Statistics Act*.
3. Information and records in files that are unsealed under section 48.6 of that Act.