

Information and Privacy Commissioner,  
Ontario, Canada



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

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## CYFSA DECISION 3

Complaint FA21-00014

A Children's Aid Society

February 25, 2022

**Summary:** The complainant, a teacher who was interviewed by a children's aid society (CAS) as part of an investigation, requested the correction of the CAS record detailing his interview. The CAS, which had provided the complainant with a severed copy of the record of his interview, refused the correction request and advised the complainant that he could make a complaint about the refusal to the Information and Privacy Commissioner of Ontario under the *Child, Youth and Family Services Act, 2017*.

The adjudicator determines that there are no reasonable grounds to conduct a review of the subject-matter of the complaint and that a review is not warranted. She bases her determination on her finding that the complainant has no right to request that the children's aid society correct the record under section 315(2) of the *Act* because he has no right of access to the record under section 312(1) of the *Act*; an individual's right to request a correction under section 315(2) is limited to records to which the individual has a right of access under section 312(1). As a result, the adjudicator declines to conduct a review and she dismisses the complaint.

**Statutes Considered:** *Child, Youth and Family Services Act, 2017*, sections 312(1), 315(2), 315(3), 317(3) and 317(4).

**Decisions Considered:** CYFSA Decision 1.

### BACKGROUND:

[1] This decision addresses the right to request that a service provider correct a record under section 315(2) of the *Child, Youth and Family Services (the Act)* and determines

that that right does not extend to a teacher who was interviewed during an investigation by a children's aid society (the CAS) because the teacher has no right of access to the record under section 312(1) of the *Act*; an individual's right to request the correction of a record under section 315(2) is limited to records to which the individual has a right of access under section 312(1) of the *Act*.

[2] As a result, there are no reasonable grounds to review the subject-matter of this complaint under section 317(3) and a review is not warranted under section 317(4) of the Act. The facts underlying this complaint follow.

### **The CAS's investigation and the interview record it provided to the complainant**

[3] In late 2019, the CAS received reports of concerns about the complainant's physical interventions with a child (a student) while the complainant was in a caregiving role as a teacher. In response, the CAS conducted an investigation in which the complainant was the alleged wrongdoer. As part of its investigation, the CAS interviewed the complainant.

[4] Following its investigation, the CAS sent the complainant two letters advising him of the outcome of the investigation and the resulting steps it took, and confirming that it had closed its investigation file. The CAS also provided information regarding the investigation to the complainant, specifically, a severed copy of its interview with the complainant (the interview record).

[5] After receiving the interview record and the two letters from the CAS, the complainant advised the CAS that he disagreed with the results of the investigation. The complainant also submitted that the interview record contained incorrect information and he identified three specific statements that he claimed were inaccurate.

### **The CAS denies the complainant's request to correct the interview record**

[6] The CAS then sent a letter to the complainant advising him that his submission, that there is incorrect information in the record of investigation, is considered a request for a correction of the record under Part X of the *Act* and would be addressed using that process. The CAS then sent the complainant a letter denying his correction request, without citing any provision of the *Act* in respect of its decision.

[7] In its denial letter, the CAS told the complainant that it disagreed with his submission that the information in the interview record was inaccurate and required correction. The CAS also advised the complainant that if he disagreed with its decision, he had the right under Part X of the *Act*, to file a complaint with the IPC. The CAS also advised the complainant that he had a further right to prepare a concise statement of disagreement with the information in question, and a right to require the CAS to: attach the statement to the record and disclose it whenever the related information is disclosed, and make reasonable efforts to provide the statement to any person to whom the

information was previously disclosed, unless the statement cannot be expected to affect the ongoing provision of services.

### **The IPC complaint**

[8] The complainant was dissatisfied with the CAS's decision and filed a complaint about it with the IPC. In his complaint letter, the complainant asserted that three statements in the interview record were incorrect and he sought correction of those statements. The IPC attempted to mediate the complaint but a mediated resolution of the complaint was not possible.<sup>1</sup> The complaint was moved to the adjudication stage of the complaint process.

[9] As the adjudicator, I am authorized by sections 317(3) and 317(4) of the *Act* to decide whether or not to review the subject-matter of a complaint. I considered the facts of this complaint and all of the information in the complaint file to decide whether the circumstances of the complaint warrant a review under the *Act*. I also considered CYFSA Decision 1, which I had recently issued, and its relevance to this complaint, since it addresses circumstances similar to those that underlie this complaint.

### **Preliminary assessment that no review is warranted**

[10] My preliminary assessment was that my reasoning in CYFSA Decision 1 applies in this complaint and that no review is warranted under the *Act* because the complainant has no right to request a correction under Part X of the *Act*. In my letter to the complainant advising him of my preliminary assessment, I referred him to CYFSA Decision 1 and included a copy of it for his consideration. I also provided the summary of CYFSA Decision 1 that appears in the following three paragraphs.

#### ***CYFSA Decision 1***

[11] In CYFSA Decision 1, I interpreted the access provision in section 312(1) of the *Act*. This section states, in part:<sup>2</sup>

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[.]

[12] CYFSA Decision 1 concerned an IPC complaint by a teacher who was refused access, under Part X of the *Act*, to two reports made by a third party to the Children's Aid Society of Toronto (CAST) in which the teacher was named as the alleged wrongdoer. CAST denied the teacher access, under section 312(1) of the *Act*, on the basis that CAST

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<sup>1</sup> None of the information set out in this decision is subject to mediation privilege under section 317(2)(c) of the *Act*.

<sup>2</sup> Section 312(1) contains exceptions that are listed in paragraphs (a) through (d). These exceptions are not relevant in this complaint.

did not provide a "service" to him within the meaning of that section and, accordingly, he had no right of access under the *Act*. I agreed with and upheld CAST's decision that the teacher had no right of access to the requested records under section 312(1) of the *Act* because the records did not relate "to the provision of a service" to him as required for the application of that section.

[13] My reasons for determining that the right of access under Part X of the *Act*<sup>3</sup> did not extend to the teacher in that case were: considering the definition of "service" in the *Act* and the paramount purpose of the *Act*, children and their families are the recipients of a "service" for the purposes of section 312(1) of the *Act*; a precondition for an individual to have a right of access under section 312(1) to a record under Part X is that the record must relate to the provision of a service to the individual; as an alleged wrongdoer and a teacher of a child that may be in need of protection, the complainant was not a recipient of a "service" under the *Act*, as required to satisfy the precondition of a right of access under section 312(1), and, therefore, he had no right of access under the *Act*.

[14] Although the complainant before me, also an alleged wrongdoer and a teacher, has a copy of the interview record, it was my preliminary assessment that he does not have a right of access under Part X of the *Act* to that record and, consequently, he does not have a right to request a correction of that record under section 315(2). My preliminary assessment was based on the fact that the complainant is not a recipient of a "service" from the CAS under the *Act* and the interview record does not relate to the "provision of a service" to him, as required for the application of section 312(1) of the *Act*. Consequently, my preliminary assessment was that the complaint did not warrant a review under section 317(3) of the *Act*.

[15] In my letter, I stated that, applying my reasoning from CYFSA Decision 1 to this complaint and interpreting the words of section 315(2) of the *Act*, it was my preliminary assessment that the complainant has no right to request a correction of the interview record under Part X of the *Act* because his right to seek correction of a CAS record is limited by the language of section 315(2) of the *Act*, which states:

If a service provider has granted an individual access to a record of personal information and if the individual believes that the record is inaccurate or incomplete, the individual may request in writing that the service provider correct the record.

[16] I explained to the complainant that, based on the words of section 315(2), a requester's right of correction under Part X is limited to records to which he or she has a right of access, and the right of access under the *Act* is not unlimited. I also advised the complainant of my preliminary assessment that section 315(2) of the *Act*, which addresses the circumstances in which an individual may request a correction, is the only correction provision that I need to consider in this complaint. Sections 315(9) and

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<sup>3</sup> See paragraphs 27 to 34 of CYFSA Decision 1.

315(10), referenced in the Mediator's Report, are not engaged in this complaint because the complainant does not satisfy the requirements for requesting a correction under section 315(2).

[17] I concluded that, in summary, my preliminary assessment is that: the complainant has no right of access to the interview record under section 312(1) of the *Act*; a precondition for requesting a correction under section 315(2) is that the individual has a right of access to that record under Part X of the *Act*; the complainant has no right to request a correction of the interview record under section 315(2) of the *Act* because he has no right of access to the interview record under Part X of the *Act*.

[18] In my letter, I invited the complainant, if he disagreed with my preliminary assessment, to provide written representations explaining why, with reference to the relevant statutory provisions on which he relied and the relevance of CYFSA Decision 1 to this complaint. I also advised the complainant that, before making a final decision, I would consider any representations he provided to explain why his complaint should proceed to the review stage of the complaint process.

[19] In response to my letter, the complainant provided representations disagreeing with my preliminary assessment and arguing that he has a right to request the correction and that I should conduct a review of his complaint. Below, I set out the complainant's representations. I also set out my reasons for determining that there are no reasonable grounds to conduct a review and for declining to conduct a review in this complaint.

## **RECORD:**

[20] The sole record at issue is the interview record, detailing the CAS's interview with the complainant during the CAS investigation. It is a single-page document that contains one paragraph of typewritten notes.

## **DISCUSSION:**

### **Should the complaint proceed to a review under the *Act*?**

[21] The only issue in this decision is whether I should conduct a review under the *Act*. Sections 317(3) and 317(4) of the *Act* set out the IPC's authority to review or not to review a complaint. These sections state, in part:

(3) If the Commissioner does not take an action described in clause (1)(b) or (c) or if the Commissioner takes an action described in one of those clauses but no settlement is effected within the time period specified, the Commissioner may review the subject-matter of a complaint made under this Part if satisfied that there are reasonable grounds to do so.

(4) The Commissioner may decide not to review the subject-matter of the complaint for whatever reason the Commissioner considers proper, including if satisfied that[.]<sup>4</sup>

[22] Below, I set out the complainant's representations on why I should review the subject-matter of this complaint under the *Act*, followed by my analysis of CYFSA Decision 1 and the relevant provisions of the *Act*, and their application to the circumstances of this complaint. I then set out my reasons for finding that the complainant has no right to request that the CAS correct the interview record under section 315(2), and for deciding not to review the subject-matter of this complaint in accordance with my authority under sections 317(3) and 317(4) of the *Act*.

### ***The complainant's representations***

[23] In his representations, the complainant argues that he is entitled to access the portions of the interview record relating to him under Part X and that several facts in this complaint distinguish it from CYFSA Decision 1. He also asserts "the correction process through the IPC is the proper and reasonable format to ensure important records such as CAS records are correct in relation to the individuals who have access to them." I address these arguments, in turn, below.

[24] The complainant submits that, although section 312(1) of the Act "would, on its face, restrict access to the complete records to those who have a received a service . . . that analysis does not consider the whole of section 312." The complainant refers me to section 312(3) and submits that it entitles him to be granted access to the portions of the record that relate to him, including the alleged inaccuracies he identified. He further argues that section 312(3) "by extension affords him the right to seek a correction."

[25] Section 312(3) states:

Despite subsection (1), if a record is not a record dedicated primarily to the provision of a service to the individual requesting access, the individual has a right of access only to the personal information about the individual in the record that can reasonably be severed from the record.

[26] The complainant's position is that he was, in fact, granted access to the interview record when the CAS gave him a severed copy. He states that "on a practical level" he has "been granted access generally and should therefore have a right to seek correction." In the alternative, the complainant states that if it is deemed that he was not entitled to be granted access by the CAS, he requests an order from me granting him access to the interview record pursuant to section 312(3) and granting him, by extension, a right of correction.

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<sup>4</sup> Sections 317(1)(b) and (c) refer to the assignment of the complaint to a mediator, and the paragraphs under section 317(4) are not relevant to this complaint.

[27] The complainant also argues that, considering the words of section 315(2), he should be able to request a correction. He submits, "In other words, actual access having been granted factually AND/OR a statutory right of access under section 312(3) can both trigger the correction request rights in section 315(2)."

[28] Regarding CYFSA Decision 1, the complainant argues that several facts distinguish it from this complaint. These are: CYFSA Decision 1 deals with a refusal of access to a record, but in this complaint, access has already been granted; no investigation was conducted by CAST in the complaint that formed the basis of CYFSA Decision 1, but the CAS in this complaint conducted an investigation; CYFSA Decision 1 did not consider section 312(3), which, the complainant argues, gives him access in this complaint to portions of the records that are reasonably severable and contain his personal information.

[29] Finally, the complainant provides some arguments about the interview record qualifying as a "business record" under the *Evidence Act*, and expresses concern about its possible use in future proceedings or in any CAS process. He submits that if left uncorrected, the record could potentially be used pursuant to the *Evidence Act* as evidence of an untrue statement/event in a manner that prejudices him; particularly if the record were used in a proceeding in which he did not have standing, such as a family law case where the record was produced. On this basis, he argues, "The correction process through the IPC is the proper and reasonable format to ensure important records such as CAS records are correct in relation to the individuals who have access to them."

### ***Analysis and findings***

*The complainant does not have a right of access to the interview record under the Act*

[30] The complainant's suggested interpretation of section 312(3) of the *Act* is not supported by a plain reading of the words of sections 312(1) and 312(3), and is wrong. Section 312(1) dictates the three requirements for access under Part X of the *Act* and confirms that a right of access is available only if the requested record is:

- a record of the individual's **personal information**,
- related to the provision of a CYFSA **service** to that individual, and
- in the service provider's custody or control.

[31] Section 312(3) qualifies the right of access in section 312(1) by providing an additional consideration – whether the record is "**dedicated primarily** to the provision of a service to the individual requesting access." If the three requirements for access under section 312(1) are not met, the individual has no right of access to the record under the *Act* and there is no need to consider the possible application of section 312(3) to the record.

[32] If the three requirements for access are met, and the record is dedicated primarily to the provision of a service to the individual, the individual has a right of access to the entire record under section 312(1).<sup>5</sup> If, on the other hand, the three requirements for access are met and the record is not dedicated primarily to the provision of a service to the individual, the right of access applies only to the information about the individual that can reasonably be severed from the record under section 312(3).

[33] In this complaint, the complainant has no right of access under section 312(1) to begin with because the interview record does not relate to the "provision of a service" to him. He did not receive a service from the CAS in the circumstances of this complaint. As the teacher who is alleged to have harmed a child, and who was interviewed about the incident, it is clear that the complainant is not the beneficiary of the "provision of a service" by the CAS within the meaning of section 312(1) of the *Act*. As I found in CYFSA Decision 1, children and/or their families are the recipients of "a service" for the purposes of section 312(1). The complainant does not meet the requirements for access to the interview record under section 312(1) of the *Act* and, therefore, section 312(3) has no application in this complaint.

*With no right to access the interview record under the Act, the complainant also has no right to request a correction to it*

[34] Having found that the complainant has no right to access the interview record under section 312(1), I turn now to the effect of that section on the interpretation of section 315(2). The language of section 315(2) limits the right to request a correction under Part X of the *Act* to "a record of personal information" to which "a service provider has granted an individual access." Accordingly, a requester's right of correction under Part X is limited to records to which the requester has a right of access under the *Act*. This is the only reasonable interpretation of section 315(2) since it would be inconsistent with the statutory scheme to allow an individual, who has no right to access a record under the *Act*, to request a correction of that same record under the *Act*.

[35] Although the complainant submits that his receipt of the interview record from the CAS satisfies the requirement in section 315(2) that "a service provider has granted an individual access to a record," I disagree. There is no information before me to suggest that the CAS granted the complainant access to the interview record under the *Act*. This is to be expected, since, as I found above, the complainant has no right of access to the interview record under the *Act*. Having found that the complainant has no right of access to the interview record, I find that the CAS did not grant the complainant "access" within the meaning of section 315(2) of the *Act* and, as a result, the complainant is not entitled to request a correction of the interview record under section 315(2).

[36] The complainant's reliance on the fact that the CAS conducted an investigation is not persuasive. The complainant does not explain why anything should turn on the fact

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<sup>5</sup> Subject to the exceptions in paragraphs (a) to (d) of that same section.



that the CAS conducted an investigation in the circumstances underlying the complaint. There is no reference in Part X to the conduct of an investigation by a CAS being determinative in an access or correction request. I find that whether or not an investigation was conducted is not determinative of the complainant's access or correction rights, which are non-existent under Part X because the interview record does not relate to "the provision of a service" to him as required for the application of sections 312(1) and 315(2) of the *Act*.<sup>6</sup>

[37] As for the appellant's arguments about the *Evidence Act* and the possible use of the interview record, they are not persuasive nor are they relevant to the issue before me. My jurisdiction is limited to overseeing the application of Part X of the *Act*. The *Act's* paramount purpose is to promote the best interests, protection and well-being of children. Part X sets the rules that service providers must follow to protect the privacy of individuals who have received services under the CYFSA and to provide these individuals access to their personal information. Part X of the *Act* provides a right of access to records **exclusively** to individuals who are service recipients – not to their teachers, or to any other member of the general public. There is no general right of access under the *Act* to records relating to the provision of a children's aid society service.

## **Conclusion**

[38] The legislative provisions that I discuss above confirm that the complainant has no right of access to the interview record under section 312(1) of the *Act* and, consequently, no right to request a correction to the interview record under section 315(2) of the *Act*.

[39] Having considered the circumstances of this complaint, my interpretation of section 312(1) of the *Act* set out in CYFSA Decision 1 and its application to my interpretation of section 315(2) in this complaint, and my findings above, I conclude that there are no reasonable grounds to review the subject-matter of this complaint under sections 317(3) and 317(4) because the complainant has no right to request a correction of the interview record under Part X of the *Act*.

## **Final Note**

[40] In addition to setting out access rights under section 312(1), which I have discussed above, the *Act* allows a service provider to disclose personal information in certain circumstances.<sup>7</sup> The concepts of access and disclosure are distinct under the *Act*. The *Act* dictates the specific circumstances in which personal information can be disclosed. Service providers should ensure that their disclosure of the personal information protected by the *Act* is authorized by and fully complies with the requirements

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<sup>6</sup> Whether the complainant has any right to the record in the context of any other proceeding or under different legislation, and not under section 312(1) of the *Act*, is not an issue before me.

<sup>7</sup> See sections 283 to 311 of the *Act*.

of the *Act*.

[41] Whether the CAS was authorized, under the *Act*, to disclose the interview record to the complainant in the circumstances of this case was not an issue before me in this complaint, and I have made no determination about it in this decision. However, I note that there does not appear to be a disclosure provision in the *Act* that would authorize the CAS to release the interview record to the complainant, a teacher who was interviewed as part of a CAS investigation about an incident involving a child who may be in need of protection.

**NO REVIEW:**

For the foregoing reasons, no review of this matter will be conducted under Part X of the *Act*.

Original signed by: \_\_\_\_\_  
Stella Ball  
Adjudicator

February 25, 2022 \_\_\_\_\_