

Information and Privacy Commissioner,
Ontario, Canada



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

CYFSA DECISION 5

Complaint FA21-00064

A Children's Aid Society

April 29, 2022

Summary: The complainant's information was contained in records of a children's aid society (the CAS) relating to reports that a child suffered harm while in his care as a babysitter. The complainant sought access to all of his personal information in the CAS's files. The CAS provided the complainant with a severed copy of records containing his personal information. The complainant then filed a complaint with the Information and Privacy Commissioner of Ontario (IPC), asking the IPC to review the CAS's decision to withhold information in the records from him.

Exercising her discretion under sections 317(3) and 317(4) of the *Child, Youth and Family Services Act, 2017* (the *Act*), 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 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 as required for the application of that section. 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), 317(3) and 317(4).

Decisions Considered: CYFSA Decision 1 and CYFSA Decision 3.

BACKGROUND:

[1] This no review decision determines that there are no reasonable grounds to review the subject-matter of an access complaint because the complainant has no right

of access under Part X of the *Child, Youth and Family Services Act, 2017* (the *Act*). The complainant, who received severed records containing his personal information from a service provider, has no right of access because the records do not relate to “the provision of a service” to him, as required for the application of section 312(1) of the *Act*.

The access request and the CAS’s decision to provide severed records to the complainant

[2] The complainant made a request, under the *Act*, to a children’s aid society (the CAS) for “copies of all personal information” in the CAS’s files relating to him over a five- year period. In his request, he specified that he was visited by a childcare worker from the CAS in 2016 and he wanted “all personal information about [him] on CPIN.”¹

[3] In response to the complainant’s access request, the CAS issued a decision letter enclosing approximately 85 pages of records of his involvement with the CAS for the five- year period. In its letter, the CAS wrote:

Your record has been prepared in accordance with *The Child, Youth and Family Services Act’s* Part X, Sections 312-314. You will notice that information has been redacted as this is a mixed record and the Society is unable to disclose any personal information of other participants in the record without their consent. Should you require a more comprehensive disclosure of the Society’s involvement, the Society would need to be provided with signed consents from the respective third parties or a Court Order.

The complaint

[4] The complainant was dissatisfied with the CAS’s decision and filed a complaint about it with the Information and Privacy Commissioner of Ontario (the IPC). In his complaint letter, the complainant requested a review of all the severances the CAS had made to the records it provided to him.

[5] The IPC attempted to mediate the complaint. During mediation, the CAS issued a supplementary decision, in which it wrote:

The Society conducted a search of its records and found that there was no information relating to a child welfare service provided to you. As such, you are not a person who has a right of Access as contemplated by the *Child, Youth and Family Services Act, 2017*, (CYFSA). Despite this, on September 8th, 2021, the Society did provide you with a courtesy copy of the information about you contained in its records, which information relates to reports that you caused harm to [a] child while acting as a babysitter.

¹ CPIN is the acronym for the Child Protection Information Network.

[6] The CAS's supplementary decision also stated that, although the complainant does not have a legal right of access under section 312 of the *Act*, it severed the records in accordance with section 312(3) of the *Act*, removing information about other people and matters.²

[7] The complainant's position at the end of mediation was that he has a right of access to the personal information that the CAS holds about him, and he wished to pursue access to the information that the CAS had severed from the records. Because a mediated resolution of the complaint was not possible, the complaint was moved to the adjudication stage of the complaint process, in which an adjudicator may conduct a review under the *Act*.

[8] 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 the complaint and all of the information in the complaint file to decide whether a review under the *Act* is warranted. I also considered CYFSA Decisions 1 and 3, which address the right of access under section 312(1) the *Act*, and their relevance to this complaint.

Preliminary assessment that no review is warranted

[9] My preliminary assessment was that the complainant, who is an alleged wrongdoer who has not received "a service" as required by section 312(1) of the *Act*, has no right of access under Part X of the *Act*. I sent a letter to the complainant advising him of my preliminary assessment that, because he was not provided a "service" as required for the application of the right of access under section 312(1) of the *Act*, he has no right of access to the information in the records that the CAS had severed and withheld from him. As a result, my preliminary assessment was that there are no reasonable grounds to review the subject-matter of the complaint under sections 317(3) and 317(4) of the *Act*.

[10] In my letter, I referred the complainant to CYFSA Decisions 1 and 3, which addressed the right of access under section 312(1), and I included a copy of each for his consideration. I also summarized my reasoning in CYFSA Decisions 1 and 3, in part, as set out below, and advised him of my preliminary assessment that my reasoning applies equally in the circumstances of this complaint.

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:

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

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[.]³

[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 did not provide a "service" to him within the meaning of that section and, accordingly, he had no right of access to the records 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* did not extend to the teacher in that case were:⁴

- 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 requirement 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 in respect 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 establish a right of access under section 312(1) and, therefore, he had no right of access under the *Act*.

CYFSA Decision 3

[14] In CYFSA Decision 3, which addressed the issue of correction of records of personal information held by a service provider, I applied my reasoning from CYFSA Decision 1. CYFSA Decision 3 concerned an IPC complaint by a teacher whose correction request was refused by a children's aid society (the Society). The Society had interviewed the teacher as part of an investigation and subsequently provided a severed copy of the interview record to the complainant. The complainant requested that the Society correct the interview record and the Society denied his request.

[15] Applying my interpretation of section 312(1) from CYFSA Decision 1, I found that the complainant in CYFSA Decision 3 did not have a right of access to the interview record under section 312(1) of the *Act* because the interview record did not relate to the "provision of a service" to him as required for the application of that section. I further found that, as a consequence, he did not have a right of correction under section 315(2) of the *Act*.

³ Section 312(1) contains exceptions that are listed in paragraphs (a) through (d). These exceptions are not relevant in this complaint.

⁴ See paragraphs 27 to 34 of CYFSA Decision 1.

[16] In the complaint now before me, I invited the complainant in my preliminary assessment letter, 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 Decisions 1 and 3 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.

[17] In response to my letter, the complainant provided representations disagreeing with my preliminary assessment and arguing that he should have a right to access his personal information that the CAS had withheld from him. 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 of this complaint.

RECORDS:

[18] At issue are the withheld portions of approximately 85 pages of records relating to two intake cases, two investigations and two police reports.

DISCUSSION:

Should the complaint proceed to a review under the Act?

[19] 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[.]⁵

[20] 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 Decisions 1 and 3 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 of access under section 312(1), and for deciding not to review the subject-matter of this complaint in accordance with my authority under sections

⁵ Sections 317(1)(b) and (c) refer to the assignment of the complaint to a mediator.

317(3) and 317(4) of the *Act*.

The complainant's representations

[21] In his representations, the complainant does not address the access provision in section 312(1) of the *Act*. Instead, he offers an opinion on the CAS and expresses his displeasure with the fact that his personal information is contained in CPIN.

[22] The complainant states that he disagrees with my preliminary assessment, which, he claims, restricts his access to his personal information on CPIN. He submits that his personal information is protected by the Constitution, the Canadian Bill of Rights and the *Act*. He argues that the police cannot "seize" his personal information "without due process of law" and the CAS cannot then take "information acquired by government officials and convert this data as its property without judicial oversight."

[23] The complainant submits that he has not been given an opportunity to challenge the CAS's collection of his personal information, and the potential indefinite storage of his personal information on the "insecure CPIN online database" used by the CAS. He also attaches a copy of a document labelled "CPIN User Agreement." Finally, he complains that he has not been given an opportunity to "challenge in a court the unfair and unfounded allegation that [he] is a child abuser."

Analysis and finding

The complainant does not have a right of access to the records under the Act

[24] 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 in the service provider's custody or control "that relates to the provision of a service to the individual."

[25] The complainant does not argue that the records at issue relate to "the provision of a service" to him. As a babysitter who is alleged to have harmed a child and whose personal information is contained in CAS records relating to those allegations, 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*.

[26] As I found in CYFSA Decisions 1 and 3, children and/or their families are the recipients of "a service" for the purposes of section 312(1) of the *Act*, not alleged wrongdoers. The complainant does not meet requirements for access to the records under section 312(1) and, therefore, section 312(1) does not apply in this complaint.

The complainant's concerns that cannot be addressed in this complaint

[27] The complainant's representations raise various concerns that are not properly before me in this complaint. For example, the complainant's wish to challenge the CAS's collection of his personal information and the storage of his personal information on CPIN, and his assertions that the records contain incorrect information that should be

corrected. I make no comment on these issues because they are not before me. Regarding correction, however, I draw the complainant's attention to CYFSA Decision 3, referenced above. Finally, I decline to comment on the complainant's assertions that he was not given an opportunity to challenge the allegations against him in court since such concerns do not fall within my jurisdiction under the provisions of Part X of the *Act*.

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

_____ April 29, 2022