

Information and Privacy Commissioner,
Ontario, Canada



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

CYFSA DECISION 6

Complaint FA20-00028

Children's Aid Society of Ottawa

October 31, 2022

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 her complete file, including information about her birth parents, particularly about her birth father. The CASO granted partial access to the requested records, disclosing all information but for identifying information about the requester's birth parents, which it redacted. The requester filed a complaint with the Information and Privacy Commissioner of Ontario (the IPC) because she seeks access to her complete and unredacted file, including the identifying information about her birth parents.

In this decision, the adjudicator finds that the redacted information, 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 it is 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 her 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); *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, s. 2(2).

Decisions Considered: CYFSA Decision 2.

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 her file.

[2] In her request, the requester stated that she would like to receive her complete file. She noted that she received a summary of her file in or around 1984 but that she has recently had DNA testing and now wants access to her complete file, including identifying information about her birth parents, to assist her in researching information about her biological ancestors.

[3] The CASO issued a decision granting the requester partial access to her file. The CASO provided her with all records but redacted all information that might identify her birth parents. In its decision letter, CASO stated:

In response to your request for access to your records from the Children's Aid Society of Ottawa (the Society), please find enclosed your records redacted in accordance with Part X of the *Child, Youth and Family Services Act* and the Ontario Regulation 158/18 (Adoption Information Disclosure). Please note that current legislation prohibits the Society from providing any identifying information of your birth parents.

[4] The requester (now the complainant), filed a complaint with the Information and Privacy Commissioner of Ontario (the IPC) about the CASO's decision to withhold the identifying information of her birth parents. A mediator was assigned to the complaint to attempt to resolve the complaint through mediation.

[5] As a mediated resolution was not reached, the complaint proceeded 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.

[6] In this decision, I find that the withheld information, which is information that would 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.

RECORDS:

[7] 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,
- documents in support of the court proceeding regarding the adoption order including several reports and many pieces of correspondence,
- a number of completed forms under the *Child Welfare Act, 1954* and the *Vital Statistics Act, 1948* including:
 - Statement of Birth,
 - Declaration of Paternity,
 - Order for a Child found to be a neglected child,
 - Report to the Director General,
 - 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,
- completed Child Health History forms.

[8] The CASO provided the complainant with copies of the records but withheld (by redacting) identifying information about the complainant's birth parents. The complainant seeks access to the withheld information.

DISCUSSION:

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

[9] The central question in this complaint 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.]

[10] 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).

[11] 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.¹

[12] 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.

[13] 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

¹ 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.

[14] 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.”

[15] 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).

[16] 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.²

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

[17] Neither the CASO nor the complainant make any specific representations on whether the CASO is a service provider within the meaning of section 285(1) of the *CYFSA*. For the reasons that follow, I find that it is.

[18] In *CYFSA* Decision 2, I considered whether, and found that, the CASO is a service provider within the meaning of section 285(1). In that decision the CASO submitted that it is an agency designated as a children’s aid society pursuant to subsection 34(1) of the *CYFSA*. It also explained that one of its legislated functions as a children’s aid society is to place children for adoption.³

[19] For the same reasons that I articulated in *CYFSA* Decision 2, I accept that CASO

² 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.

³ Section 35(1)(f), *CYFSA*.

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.⁴

[20] As a result, I find that CASO is a "service provider" as that term is defined at section 2(1) and within the meaning of section 285(1).

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

[21] Section 285(1) dictates that sections 286 to 332 of Part X of the *CYFSA* would 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.

[22] 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.

[23] 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

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

[24] As the complainant is an adopted person seeking access to identifying information about her 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)

[25] 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.

⁴ 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)).

[26] 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,⁵ 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.

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

[28] 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:

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

⁵ 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 CASO refers to the MCSS custodian in its representations set out below.

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

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

[30] 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;

[31] 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).

[32] 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.

[33] 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, it is significant that section 2(1) of the regulation also permits “any disclosure of information relating to adoptions that may be authorized under the *Vital Statistics Act*.”⁶

[34] Section 9 of O. Reg. 158/18 permits the disclosure of “non-identifying information related to an adoption”⁷ by the MCSS custodian⁸ or a society.⁹

⁶ *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. I note that where a registered adoption order was made before September 1, 2008, section 48.5(5) of the *VSA* gives birth parents the right to submit a disclosure veto to the Registrar General to prohibit the disclosure of information under section 48.1 to the adopted person. There is no indication whether or not such a disclosure veto has been submitted in this case.

⁷ 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

[35] 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.

[36] 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

[37] 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).¹⁰ It submits that subsection 285(6) of the *CYFSA* stipulates that "except if this Act or its regulations provide otherwise," Part X applies to any record in the custody and control of the Society. It submits that for an adoption matter, there is a specific legal exception that provides otherwise when the record meets the following test:

- i. the information in the record relates to an adoption,
- ii. the information is kept by a society;
- iii. an adoption order was made.

[38] The CASO submits that the information that is responsive to the complainant's request meets this test. It explains that the entirety of the information in the record kept by the society relating to the complainant relates to only one involvement that the CASO had with the complainant which ultimately resulted in an adoption order. It

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.

⁸ As mentioned in note 7, the MCSS custodian maintains the Adoption Disclosure Register. This will be discussed below.

⁹ 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.

¹⁰ 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."

submits that for this reason, the complainant's request is not an access to information matter governed by Part X of the *CYFSA* but rather an adoption disclosure matter, which is excluded from the application of Part X pursuant to section 285(4) of the *CYFSA*.

[39] The society acknowledges that, in some other cases, it may have records with information about "adoption services"¹¹ that do not amount to "an adoption matter." It explains that, for example, "adoption services" could include the assessment and training of prospective adoptive parents or a search for a potential adoptive family for a specific foster child without obtaining an adoption order. In those instances, it submits Part X would continue to apply.

[40] The CASO further explains that in the Province of Ontario, after an adoption order is made, adoption information kept by the society remains highly confidential pursuant section 227 of the *CYFSA*. It submits that, as explained in section 227 of the *CYFSA*, the society is not permitted to disclose adoption information unless expressly authorized.

[41] The CASO explains that disclosure of information related to adoption matters is governed entirely by O. Reg. 158/18, which is entitled *Adoption Information Disclosure*.¹²

[42] The CASO submits that, where an adoption order is made, sections 9(1) and 9(2) of O. Reg. 158/18 state that a society is only able to disclose and an adopted person is only entitled to receive non-identifying information about their adoption. Specifically, addressing the records at issue here, the CASO submits that, in keeping with these provisions, it determined that it could release to the complainant portions of the record containing information relating to her adoption, so long as any identifying information was redacted prior to disclosure. Specifically, it determined that once identifying information about the complainant's birth parents was removed, the record contained disclosable adoption information including background information on the complainant's birth parents, the circumstances leading to the adoption, and the care received prior to the adoption.

[43] The CASO submits that, in this case, the complainant received all the information in the records relating to her adoption except for identifying information (primarily the names) of her birth parents. It submits that it is legally prohibited from disclosing the

¹¹ "In its representations, the CASO uses the term "adoption services" which is not a defined term in the *CYFSA*. The CASO may be referring to paragraph (e) of the definition of "service" at section 2(1), which states, in part: "service" includes, ... (e) a service related to adoption for a child, the child's family or others[.]

¹² As will be discussed below, O. Reg. 158/18 also permits disclosure authorized by the VSA. Section 2(1) of the Regulation states: "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*."

names of her birth parents because section 9(6)3 of O. Reg. 158/18 stipulates that identifying information must not be disclosed.

[44] 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.¹³ 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.”¹⁴ The CASO also submits that although it referred the complainant to the adoption registry maintained by the MCSS custodian, she continues to seek access to identifying information about her birth parents from the CASO.¹⁵

[45] 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

[46] The complainant disagrees with the CASO’s characterization of her request as being limited to adoption records or adoption information and its position that identifying information about her birth parents is excluded from Part X of the *CYFSA* under section 285(4).¹⁶ She submits that she is seeking access to her own record that is in the CASO’s possession which contains personal information about her. She submits that her request includes all identifying information, without redactions, including that found in the “unwed mother” file, the “child in care” file, the “family file” and the “crown ward” file.

¹³ This submission is inaccurate. As explained above in note 6, 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.

¹⁴ Section 8 of O. Reg. 158/18 provides for consensual disclosure where the names of adopted persons and birth parents who have applied to be added to the Adoption Disclosure Register are matched. Section 15 of the Regulation permits adopted persons to secure copies of their adoption orders from the MCSS custodian, but only with information identifying birth parents redacted.

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* for a copy of her original registration of birth or adoption order. I will do so below.

¹⁶ The complainant does not dispute that the redacted information would identify her birth parents and from my review of the information. I am satisfied that it would.

[47] The complainant notes that “personal information” as defined in section 2(1) of the *Freedom of Information and Protection of Privacy Act (FIPPA)*¹⁷ does not include information about an individual who has been dead for more than thirty years.¹⁸ She notes that, from her research, both her birth mother and father would have died more than thirty years ago. She explains that she has determined that her birth father is one of three brothers, all of whom are deceased. The complainant provided copies of obituaries in support of her position.

[48] The complainant notes that she received identifying information from the MCSS Adoption Disclosure Unit regarding her birth mother and now she is seeking the same information on her birth father. She notes she was given the identity of her birth mother in 2004, with no explanation as to why information was provided about one parent but not the other. She submits that she should be entitled to both names contained in her personal records. She advised that she has no intent to initiate contact with her birth father. She advised that she is in her seventies and is only seeking the name of her birth father for the purpose of passing the information on to her children and grandchildren and to confirm lineage to her birth family with whom she has already been connected through Ancestry.com and 23andMe.com.

[49] The complainant submits “many areas of access to information [have] been challenged and relaxed” and submits that she believes that Saskatchewan, Alberta, British Columbia and Newfoundland/Labrador “have open access to identifying information for adoptees.”

[50] Finally, the complainant submits that the failure to release her birth parents’ personal identifying information in her CASO file can be seen as discrimination under Ontario’s *Human Rights Code*¹⁹ on the basis that it is “unequal and different treatment” that she is receiving as a former Temporary Ward and then Crown Ward of Ontario. She also submits that the *Canadian Charter of Rights and Freedoms*²⁰ protects her right to equality and states that if she is not entitled to the names of her birth parents her access to that information that is not equal to that of other Canadians.

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

[51] 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 X²¹ would not apply to the

¹⁷ Section 2(1) of the *CYFSA* defines “personal information” as having “the same meaning as in the *Freedom of Information and Protection of Privacy Act*.” Section 2(1) of *FIPPA* defines “personal information,” in part, as “recorded information about an identifiable individual”

¹⁸ Section 2(2) of *FIPPA*.

¹⁹ *Human Rights Code*, R.S.O. 1990, c. H. 19.

²⁰ *Canadian Charter of Rights and Freedoms*, s. 15, Part 1 of the *Constitution Act*, 1982, being schedule B to the *Canada Act 1982* (UK), 1982 c 11.

²¹ Specifically, the use and disclosure provisions in sections 286 to 332.

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.

[52] 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) of the *CYFSA*. 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.

[53] The exception in section 285(4)(a) applies to the release of information by a society that relates to an adoption under section 227.²² 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.²³ 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).

[54] The CASO submits, and I agree, that the records at issue contain information that relates to the complainant's adoption. I make this finding despite the fact that the complainant disagrees with this characterization, stating that her request was not limited to adoption records or information but was for all personal information in her own records, including identifying information without redactions. The CASO submits that it has provided the complainant with all of the records in her file²⁴ and, from my review, all of the information in those records falls squarely within the type of information that can be described as being "information that relates to an adoption" set out in section 9(2) of O. Reg 158/18. Specifically, the records that were provided to her contain:

- background information relating to her birth parents (paragraph (a) i)),
- the circumstances leading to her adoption placement (paragraph (b)),
- the care she received prior to her adoption placement (paragraph (d)),
- the developmental progress of the adopted person (paragraph (e)),

²² 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.

²³ 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.

²⁴ The complainant does not dispute that she has been provided with all of the information in her file (but for the identifying information about her birth parents) nor does she assert that additional records might exist. The reasonableness of the CASO's search for responsive records is not at issue in this complaint.

- the date of her adoption placement and her adoption order (paragraph (f)), and
- the name of the society responsible for the adoption placement (paragraph (g)).

[55] It is clear from the records that the adoption order related to the complainant's adoption was made in the mid 1950s. Section 227(1)(b) therefore requires that the CASO shall not disclose information that it keeps related to her adoption unless it is authorized to do so by the *CYFSA* or its regulations.

[56] 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 only information that has not been disclosed to her and that remains at issue is adoption information which is governed by the prohibition at section 227(1), I find that the exception at section 285(4) applies and the use and disclosure provisions in sections 286 to 332 of Part X of the *CYFSA* do not apply to that information.

[57] The complainant submits that the identifying information of her birth parents should be disclosed because they have both been dead for more than 30 years and section 2(2) of the *Freedom of Information and Protection Act (FIPPA)* states:

Personal information does not include information about an individual who has been dead for more than thirty years.

[58] Section 2(1) of the *CYFSA* states that the term "personal information" has the same meaning as in *FIPPA*. As I understand the argument, the complainant says that because her birth parents have been dead for more than thirty years, the exception at section 2(2) of *FIPPA* applies and their names would not qualify as their personal information.

[59] In the context of this complainant, however, the identifying information that has not been provided to the complainant, which includes the names of the complainant's birth parents, was not redacted because it is personal information; rather, it was redacted because it is identifying information about the complainant's birth parents. This type of information is excluded from Part X of the *CYFSA* and cannot be disclosed under the authority of that *Act*. The definition of "personal information" has no bearing on the application of the exclusion being discussed here.

[60] As previously mentioned, section 227(1)(b) stipulates that despite any other act, after an adoption order is made the CASO shall not disclose information that relates to an adoption unless disclosure is authorized by the *CYFSA* or its regulations and section 9 of O. Reg 158/18 only permits the disclosure of non-identifying information related to an adoption.

[61] Therefore, the fact that the names of the complainant's birth parents might not qualify as personal information under *FIPPA* does not alter the fact that they qualify as

identifying information related to an adoption, disclosure of which is not permitted under the *CYFSA*.

[62] The complainant also submits that her inability to obtain identifying information in her CASO file regarding her birth parents' identity can be seen as discrimination under Ontario's *Human Rights Code*²⁵ on the basis that it is "unequal and different treatment" arising because she is a former Temporary Ward and then Crown Ward of Ontario. Ontario's *Human Rights Code* prohibits actions that discriminate against people based on a number of protected grounds²⁶ that are listed in the *Human Rights Code*. The complainant's arguments in this regard are very brief; she has not provided any evidence or argument to demonstrate how her former status as a Temporary Ward or Crown Ward of Ontario has operated to distinguish her circumstances from any other adopted person in Ontario. As a result, I find that these are not the circumstances to address this argument and, without deciding the issue, I will not consider it any further.

[63] I also do not accept that the complainant has provided sufficient evidence or argument to establish that her denial of access to identifying information about her birth parents is in breach of her rights under the *Charter*, specifically, her right to equality, which is set out under section 15(1) of the *Charter*.²⁷ As I understand the complainant's brief statement, she submits that as a result of the CASO's decision to withhold her birth parents' names, she is not being treated as equal to other Canadians who are able to know the identity of their birth parents.

[64] Aside from her general statement that her right to equality under the *Charter* has been infringed upon, the complainant did not provide the requisite factual or legal foundation for an allegation of a *Charter* breach. In particular, I note that the complainant has not alleged that her right to equality under section 15(1) of the *Charter* has been infringed upon based on one of the grounds enumerated under that section or based on an analogous ground.

[65] I also note that the constitutional validity of a statute governing access to adoption-related information has been considered by the Ontario Superior Court of Justice. Specifically, I note that in *Cheskes v. Ontario (Attorney General)*,²⁸ Justice Belobaba of the Ontario Superior Court of Justice considered the constitutional validity of portions of the *Adoption Information Disclosure Act*, also known as Bill 183,

²⁵ *Human Rights Code*, R.S.O. 1990, c. H. 19.

²⁶ The protected grounds are: age, ancestry, colour, race, citizenship; ethnic origin, place of origin, creed, disability, family status, marital status, gender identity, gender expression, receipt of public assistance (in housing only), record of offences (in employment), sex (including pregnancy and breastfeeding) and sexual orientation.

²⁷ Section 15(1) of the *Charter* states:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

²⁸ 2007 CanLII 38387 (ON SC).

regarding the disclosure of information between parties involved in adoptions. One of the matters that he considered was the act's lack of a universal "disclosure veto" provision which permitted parties to an adoption to request that their identifying information not be released.²⁹ While Belobaba J. found that portions of the *Adoption Information Disclosure Act* breached the privacy provisions granted by the *Charter* vis-à-vis the parties who wished that their personal information not be disclosed, he noted that he did not see similar rights for those searching for information. Consequently, the case before him was not a case of "competing *Charter*-protected rights." He stated that "[t]he rights of the searching adoptees or birth parents to the disclosure of confidential adoption information, although important and heart-felt, are not protected under s. 7 or any other provision of the *Charter*" [emphasis added].³⁰

[66] Accordingly, without deciding the issue, for the reasons set out above I will not further consider the complainant's argument that her *Charter* rights have been infringed upon by the CASO's decision to withhold identifying information about her birth parent's.

[67] Finally, as mentioned above, 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 limited records, notably an uncertified copy of the original registration of the adopted person's birth, including the birth parents on record. From the complainant's representations, it is clear that she has been in communication with the Registrar General, however it is not clear whether she was provided with records to which she is entitled under the *Vital Statistics Act*, including an uncertified copy of the original registration of her birth.³¹ While the complainant may apply to the Registrar General for this information, if she has not already done so, such a request is a matter outside of Part X of the *CYFSA* and outside of the IPC's jurisdiction.

ORDER:

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

Original signed by: _____

Catherine Corban
Adjudicator

October 31, 2022

²⁹ Following Justice Belobaba's decision in this case, which the Government of Ontario decided not to appeal, the Ontario government introduced a bill to amend the act to include a universal disclosure veto for registered adoption orders made before September 1, 2008.

³⁰ 2007 CanLII 38387 (ON SC), at paragraph 28.

³¹ The CASO provided the complainant with a copy of her Statement of Birth, with all identifying information removed. It appears, from that record, that information about the complainant's birth father may not have been provided at the time of birth. The section where the birth father's name and information are to be recorded was not completed; it was left blank. Therefore, even if the Registrar General were to provide the complainant with the original registration of her birth, it is possible that there is no information about the complainant's birth father on record.

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.

Access to copies of adoption orders

15. (1) The following persons may request from the MCSS custodian a copy of the following adoption orders:

1. A current or former adoptive parent may request a copy of an adoption order in which the parent is named as an adoptive parent.
2. An adopted person who is 18 or older may request a copy of the adoption order relating to the adopted person.

(2) After receiving a request under subsection (1), if the MCSS custodian does not have a copy of the adoption order in its possession, the MCSS custodian shall request that the Registrar General provide a copy.

(3) If asked to provide a copy of an adoption order, the Registrar General shall provide the copy to the MCSS custodian.

(4) After receiving the copy of the adoption order or, if the MCSS custodian has a copy of the order in its possession, the MCSS custodian shall redact from the copy any information that may identify a birth parent or former adoptive parent, other than the person who made the request in the case of a request from a former adoptive parent, and provide the redacted copy to the person who made the request.

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.