

Information and Privacy Commissioner,
Ontario, Canada



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

CYFSA Decision 7

Complaint FA20-00008

York Region Children's Aid Society

February 28, 2023

Summary: The complainant sought access under the *Child, Youth and Family Services Act, 2017* (the *Act*) for his family's entire case file with the York Region Children's Aid Society (the society). The society granted access, in part, denying access to the name of an individual pursuant to the exemption at section 312(1)(d)(ii) of the *Act* (identification of an individual required by law to provide information to a service provider). The complainant filed a complaint with the Information and Privacy Commissioner of Ontario (IPC), asking the IPC to review the society's decision to withhold the individual's name.

In this decision, the adjudicator finds that the exemption at section 312(1)(d)(ii) applies to the name withheld from the record and upholds the society's decision not to provide it to the complainant.

Statutes Considered: *Child, Youth and Family Services Act, 2017*, sections 125(1), (5), (6), 285(1), 312(1)(d)(ii) and (3); *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A, section 52(1)(e)(i); *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 14(1), 20 and 49(d).

Decisions Considered: CYFSA Decision 2, PHIPA Decisions 34 and 100.

Cases Considered: *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII).

BACKGROUND:

[1] This review arises from a decision made under the *Child, Youth and Family Services Act* (the *CYFSA* or the *Act*) by York Region Children's Aid Society's (the society or the service provider) not to grant the complainant's request for access to the name of an individual who reported information about the complainant and his family to the society.

[2] The complainant made a request under the *Act* to the society for his "entire, unedited file." The requester specified that he sought access to:

...

My family's entire CAS case file (family name – address) including but not limited [to the] following information: ... I request all call logs. ... I also request all call logs involving [named individual] as well.

...

[Named individual] referral was NOT marked confidential ... I require this referral from [named individual].

I request all notes taken at school meetings by CAS staff. I specifically watched notes being taken by [named individual] and [named individual] and I require these notes.

[3] The society provided the complainant with a severed copy of the responsive records. The society advised the portions of the records were withheld pursuant to section 312(1)(d)(ii) of the *Act*. That section provides for an exception to the right of access to an individual's own record or personal information where granting access to information could reasonably be expected to lead to the identification of an individual who was required by law to provide information in the record to a service provider.

[4] The complainant filed a complaint with the Office of the Information and Privacy Commissioner of Ontario (the IPC). A mediator was assigned to attempt to help the parties reach a mediated resolution.

[5] During mediation, the complainant confirmed that he seeks access to the name of the individual from the York Region District School Board (the school board) who provided the society with information about him and his family (the referral source).

[6] The society maintained its position that it is unable to grant access to the name of the referral source, pursuant to section 312(1)(d)(ii) of the *Act*.

[7] As a mediated resolution was not reached, the file was moved to the adjudication stage where an adjudicator may conduct a review into the subject matter

of the complaint. I decided to conduct a review and sought and received representations from the parties which were shared between them in accordance with the IPC document *CYFSA Complaint Procedure at Adjudication*.

[8] In this decision, I uphold the society's decision not to grant access to the name of the referral source as a result of the application of section 312(1)(d)(ii) of the *Act* and dismiss the complaint.

RECORDS:

The information at issue is found in records from the Child Protection Information Network (CPIN) database that detail child protection concerns brought to the society's attention against the complainant regarding his own children. The concerns were reported by a referral source within the children's school board who asked that their identity remain confidential. The information that remains at issue the name of the referral source where it is found in two CPIN records: on pages 1 and 3 of a 9-page CPIN Intake record and page 11 of a 13-page CPIN Investigation record. The complainant was provided with access to the entire CPIN file, with the exception of the name of the referral source, which was severed.

DISCUSSION:

[9] The sole issue to be decided in this complaint is whether the society is permitted to deny the complainant access to name of the referral source in the CPIN records on the basis of the exemption in section 312(1)(d)(ii) of the *Act* – the exemption that applies when providing access to information could reasonably be expected to lead to the identification of an individual who was required by law to provide the information in the record to the service provider.

Preliminary issues:

The society is a "service provider" subject to Part X of the *Act*

[10] The *Act* is a provincial law that governs certain programs and services for children, youth and their families, including child welfare, residential care, adoption, youth justice, children's mental health and child and family services for First Nations, Inuit and Métis children. The paramount purpose of the *Act* is to promote the best interests, protection and well-being of children.¹

[11] The *Act* is divided into parts. As explained in section 285(1), Part X of the *Act*, which consists of sections 281 through 332, establishes rules that service providers must follow with respect to the collection, use or disclosure of records of personal

¹ Section 1 of the *Act*.

information. The IPC is the oversight body for this part of the *Act*.

[12] For Part X to apply to the society, it must be established that it is a service provider subject to section 285 (1) of the *Act*. In CYFSA Decision 2, I considered whether, and found that, the Children's Aid Society of Ottawa (CAST) is a "service provider" as that term is as defined in section 2(1) of the *Act* and within the meaning of section 285(1) the *Act*.² In reaching that finding, I concluded that CAST is a "society" under section 34(1) of the *Act* and that, pursuant to section 40(1), the services it provides are funded under that act.

[13] In this complaint, where there is no dispute between the parties on this issue, for similar reasons as those expressed in CYFSA Decision 2, I find that the society qualifies as a "service provider" within the meaning of section 285(1) of the *Act*.

The complainant's right of access to the CPIN file

[14] Section 312 of the *Act* sets out an individual's right of access to information under the *Act*. Section 312(1) provides that an individual has a right of access to a record of personal information about the individual, in the custody or control of a service provider, provided that the record "relates to the provision of service to the individual." This right of access is subject to limited and specific exemptions, which are set out in sections 312(1)(a) to (d).

[15] Section 312(1) sets out three requirements for an individual to have a right of access to a record under Part X of the *Act*:

1. The record must be a record of personal information about the individual,
2. the record must be in the service provider's custody or control, and
3. the record must relate to the provision of a service to that individual.

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

[17] The extent of an individual's right of access to a record under section 312(1) of the *Act* also depends on whether each record is "*dedicated primarily* to the provision of a service to the individual requesting access" under section 312(3), which reads:

312 (3) Despite subsection (1) [which sets out exemptions from the right of access], if a record is not a record dedicated primarily to the provision of a service of the individual requesting access, the individual has a right of

² The definition of "service provider" in section 2(1) of the *Act* includes a society that provides a service funded under the *Act*. "Society" is defined in section 2(1) of the *Act* as an agency designated as a children's aid society by the Minister under section 34(1).

access only to the personal information about the individual in the record that can reasonably be severed from the record.

[18] In this case, the society has disclosed the majority of the CPIN records to the complainant but has severed the name of the referral source pursuant to section 312(1)(d)(ii).

[19] The parties did not make extensive submissions on whether the complainant has a right of access to the CPIN records under section 312(1) and, if so, the extent of his right of access to the record, as set out in section 312(3). In the circumstances, I do not need to address these questions. This is because whether or not the complainant has a right of access to the CPIN records in their entirety, or parts thereof, under section 312(3) of the *Act*, I find below that the name of the referral source is exempt from the right of access because of section 312(1)(d)(ii).

Granting access to the name of the referral source could reasonably be expected to lead to the identification of an individual who was required by law to provide the information

[20] The society claims that the exemption at section 312(1)(d)(ii) applies to the name of the referral source.³ That section reads:

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,

(d) granting the access could reasonably be expected to,

(ii) lead to the identification of an individual who was required by law to provide information in the record to the service provider[.]

[21] For section 312(1)(d)(ii) of the *Act* to apply the society must demonstrate that granting access "could reasonably be expected to" result in the identified consequence, specifically, the identification of an individual who was required by law to provide the information in the record to the society.

[22] Section 312(1)(d)(ii) of the *Act* has not yet been considered by the IPC. However, it is similar to the exemption at section 52(1)(e)(i) of the *Personal Health Information Protection Act, 2004*, which also address confidential sources,⁴ and to the exemptions in sections 14(1), 20 and 49(d) of the *Freedom of Information and*

³ None of the other exemptions in sections 312(1)(a) to (d) have been claimed, nor do they appear to apply in the circumstances.

⁴ *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A (*PHIPA*).

Protection of Privacy Act,⁵ which apply where disclosure “could reasonably be expected to” cause the harm contemplated by the exemption.⁶

[23] The Supreme Court of Canada found that, in order to satisfy the burden of proof for the exemptions in *FIPPA* using the “could reasonably be expected to” language, the institution must provide detailed evidence about the potential for harm; it must demonstrate a risk of harm that is well beyond the merely possible or speculative, although it need not prove that disclosure will in fact result in such harm. The Court also stated that how much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.⁷

[24] Subsequently, in PHIPA Decision 34, which was followed by PHIPA Decision 100, the adjudicator determined that because of the common usage of the “could reasonably be expected” language in the provisions, the standard of proof required under section 52(1)(e)(i) of *PHIPA* is the same standard as that applied to the exemptions in *FIPPA*.

[25] For reasons similar to those expressed by the adjudicator in PHIPA Decision 34, I find that the requisite standard of proof for section 312(1)(d)(ii) to apply is the same as that expressed by the Supreme Court of Canada in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*.⁸ As a result, to establish that information is exempt under section 312(1)(d)(ii), the society must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that granting the requester access will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.⁹

[26] In its representations, the society explains that the referral source was an individual affiliated with a school board who reported suspected child protection concerns to the society as required by law under section 125 of the *Act*. The society submits that the referral source explicitly requested to remain confidential.

[27] The society explains that section 125 of the *Act* requires those who perform professional or official duties to report to the society, suspicions with respect to suspected child abuse where there are reasonable grounds.

[28] The society submits that it withheld the name of the referral source from the

⁵ *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 (*FIPPA*).

⁶ Respectively, sections 52(1)(e)(i) of *PHIPA* and sections 14(1), 20 and 49(d) of *FIPPA* consider whether disclosure could reasonably be expected to result in harm to the treatment or recovery of the individual or serious bodily harm, harm in the law enforcement context, threat to the safety or health of the individual or prejudice to the mental or physical health of the individual.

⁷ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

⁸ *Ibid.* at paras. 52-4.

⁹ *Supra*, note 5 at paras. 52-4.

complainant under the exemption at section 312(1)(d)(ii) as granting access to it would clearly lead to the identification of an individual who was required by law to provide the information recorded in the CPIN records to the society.

[29] The complainant submits that he supports the need for child protection agencies such as the society. He submits that he also supports "whistle-blowers" who report instances of child abuse and neglect to child protection agencies but states that there must be repercussions for those who knowingly make false accusations. He submits that, the circumstances reported to the society, as detailed in the redacted CPIN records provided to him, are factually incorrect. From his representations, I understand his position to be that he seeks access to the name of the referral source to hold that individual accountable for their actions and to ensure that there are "no other victims." He asserts he does not seek compensation from anyone but simply wants "to protect the most vulnerable people we have, disabled children."

[30] I have reviewed the record at issue and considered the representations of the parties. I am satisfied that the granting of access to the withheld information could reasonably be expected to lead to the identification of the individual who provided the information that is set out in the CPIN records to the society and also that individual was required by law to provide that information to the society.

[31] Section 125 of the *Act* is the mandatory reporting provision that addresses the duty to report a child in need of protection. Section 125(1) states, in part:

Despite the provisions of any other Act, if a person, including a person who performs professional or official duties with respect to children, has reasonable ground to suspect one of the following the person shall immediately report the suspicion and the information on which it is based to a society:

[paragraphs 1 to 13 of section 125(1) identify a number of circumstances where, if suspected, a person is required to report to a society].

[32] Based on my review of the content of the CPIN records, of particular relevance in this complaint is paragraph 2(i) of section 125(1). That paragraph requires a person to report to a society if that individual has reasonable grounds to suspect that there is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's failure to adequately care for, provide for, supervise or protect the child.

[33] Section 125(5) makes it an offence not to report a suspicion of a circumstance listed in section 125(1), if the information on which that suspicion is based was obtained in the course of the person's professional or official duties.¹⁰

¹⁰ Section 125(5) states: A person referred to in subsection (6) is guilty of an offence if,

[34] Section 125(6) sets out a non-exhaustive list of individuals who perform professional or official duties with respect to children and who would be guilty of an offence under section 125(5) where they fail to report a suspicion set out in section 125(1). Of particular relevance to this complaint, paragraph (b) of section 125(6) identifies as being included as a person who would be guilty of an offence under section 125(5):

Subsection (5) applies to every person who performs professional or official duties with respect to children including,

(b) a teacher, person appointed to a position designated by a board of education designated by a board of education as requiring an early childhood educator, school principal, social worker, family counsellor, youth recreation worker, and operator or employee of a child care centre or home child care agency or provider of licensed child care within the meaning of the *Child Care and Early Years Act, 2014*.¹¹

[35] As this list is non-exhaustive, it also applies to “every person who performs professional or official duties with respect to children,” as set out in the introductory language of section 125(6).

[36] Based on the evidence before me, in particular from my review of the content of the CPIN file,¹² it is clear that the referral source suspected that there was a risk that the complainant’s child was likely to suffer physical harm were particular action taken by the complainant, the child’s primary caregiver, that would result in his failing to be in a position to adequately care for, provide for, supervise or protect the child. I find that this type of circumstance is enumerated in paragraph 2(i) of the mandatory reporting requirement at section 125(1) of the *Act* that requires a person who suspects such a circumstance to report their suspicion to the society.

[37] I also find, based on my review of the content of the CPIN records and the representations of the society, that under the mandatory reporting requirements of section 125 of the *Act*, the referral source was required by law under the provisions of that section to provide the information recorded in the CPIN records to the society. This is because I find that the referral source falls within the non-exhaustive list, at section 125(6), of individuals who perform professional or official duties with respect to children and whose failure to report a suspicion of a circumstance listed in section 125(1).

(a) the person contravenes subsection (1) or (2) by not reporting a suspicion; and
(b) the information on which it was based was obtained in the course of the person’s professional or official duties.

¹¹ None of the other paragraphs in section 125(6) are relevant to the circumstances of this complaint.

¹² As previously mentioned, with the exception of the name of the referral source which was severed, the complainant was granted access to the remaining content of the CPIN file.

[38] For the reasons set out above, I find that the exemption at section 312(1)(d)(ii) applies to the name of the referral source that has been severed from the CPIN records; granting access could reasonably be expected to lead to the identification of an individual who was required by law to provide the information in the CPIN records to the society.

[39] On this basis, I uphold the society's decision to deny access to the withheld information under the exemption at section 312(1)(d)(ii). I dismiss the complaint and no order is issued.

ORDER:

For the foregoing reasons, no order is issued.

Original Signed By: _____
Catherine Corban
Adjudicator

February 28, 2023 _____