

Information and Privacy Commissioner,
Ontario, Canada



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

CYFSA DECISION 8

Complaint FA21-00034

Weechi-it-te-win Family Services

May 4, 2023

Summary: In this decision, the adjudicator orders Weechi-it-te win Family Services to produce the records at issue in the complaint to the Information and Privacy Commissioner of Ontario.

Statutes Considered: *Child, Youth and Family Services Act, 2017*, S.O. 2017, C. 14, Sch. 1, sections 320(2), 320(6), and 320(8).

BACKGROUND:

[1] This decision addresses Weechi-it-te-win Family Services' (the service provider's) refusal to provide the Information and Privacy Commissioner of Ontario (the IPC or the Commissioner) with the records at issue in complaint FA21-00034. The IPC is conducting a review into this complaint made under Part X of the *Child, Youth and Family Services Act, 2017* (the *CYFSA*).

[2] Complaint FA21-00034 relates to a request made by an individual, to the service provider, for access to her own Child in Care files, as well as the Child in Care files for each of her two daughters.

[3] The service provider responded to the request by issuing a decision letter granting access, in part, to the responsive records. The letter stated:

Pursuant to your request, and our obligations pursuant to the provisions contained in Part X of the *Child, Youth and Family Services Act*, I am

enclosing redacted copies of the requested documentation. This shall include copies of all Weechi-it-te-win Family Services Child in Care Records for yourself, and your children.

[4] The service provider withheld portions of the records based on the exemptions at sections 312(d)(i) (risk of serious harm), (ii) (identify an individual required by law to provide the information) and (iii) (identify an individual who provided the information in confidence) of the *Act*.

[5] The requester, now the complainant, made a complaint to the IPC about the service provider's decision. A mediator was assigned to attempt to assist the parties in reaching a mediated resolution.

[6] During mediation it was established that the complainant sought access to the redacted portions of the records that were provided to her and also, that she believed that additional records, responsive to her request, should exist.

[7] As a mediated resolution could not be reached, the file was moved to the adjudication stage of the complaint process where the IPC may conduct a review. As the adjudicator assigned to the complaint, I decided to conduct a review under Part X of the *CYFSA*.

[8] To begin the review, on May 18, 2022, I sent a Notice of Review setting out the facts and issues to the service provider, requesting that it provide me with representations in response to the issues, by June 8, 2022.

[9] In the Notice of Review, I also noted that the service provider had not provided the IPC with any of the records that it had identified as responsive to the request and provided, in part, to the complainant.¹ I stated that I require copies of these records for the purpose of my review into the complaint. I requested that the service provider provide me with copies as soon as possible, but no later than June 8, 2022.

[10] The service provider requested, and received, several extensions of time in which to provide its representations and records, with the final due date being September 30, 2022. To date, the service provider has provided me with neither its representations nor the records at issue.

[11] Despite dozens of calls from the IPC over the interim months, the society has not provided the IPC with either representations or the records that I require in order to conduct a review of the complaint under Part X of the *CYFSA*.

¹ In the complaint form provided to the IPC to initiate her complaint, the complainant consented to the IPC requesting access, under section 320(2)(b), to her records of personal information held by the service provider for the purposes of a review into her complaint. Under the introductory wording of 320(13), such consent is required except in the case of two limited exceptions set out in section 320(13)(a) and (b), neither of which are relevant in this complaint.

[12] In this decision, I find that the records are required for me to conduct a review under section 320 of the *CYFSA*. I order the service provider to produce the records at issue in this complaint to the IPC by **May 18, 2023**.

RECORDS:

[13] The records that are at issue in this complaint are the records that were provided to the complainant in response to her request for information.

[14] Below I order the service provider to produce these records to the IPC, in their entirety. The portions that were redacted pursuant to the exemptions at sections 312(d)(i), (ii) and (iii) of the *CYFSA* must be legible and clearly identified in the copies of the records that are provided to the IPC, with the applicable exemption claim clearly indicated for each redaction.

DISCUSSION:

The IPC has the authority under the *CYFSA* to compel production of the records

[15] I have decided to order the service provider to produce the records at issue in this complaint to the IPC for the purpose of conducting review under Part X of the *CYFSA*.

[16] Under section 316(1) of the *CYFSA* a person who has reasonable grounds to believe that another person has contravened Part X of that act may make a complaint to the IPC. Sections 317(3) and 317(4) of the *CYFSA* give the IPC the discretion to conduct a review of the subject-matter of a complaint made under Part X, if it is satisfied that there are reasonable grounds to do so. I have decided to conduct a review.

[17] The following provisions of Part X of the *CYFSA* are relevant to the production of records to the IPC, by a service provider, such as Weechi-it-te-win Family Services, for the purposes of a review.

[18] The IPC's authority to compel the production of records in the course of a review under the *CYFSA* derives from section 320(2). Section 320(2)(a) is particularly relevant to this review. Section 320(2), in its entirety, reads:

Review powers

320 (2) In conducting a review under section 317 or 318, the Commissioner may,

(a) **demand the production of any books, records** or other documents **relevant to the subject-matter of the review** or copies of extracts from the books, records or other documents;

(b) inquire into all information, records, information practices of a service provider and other matters that are relevant to the subject-matter of the review;

(c) demand the production for inspection of anything described in clause (b);

(d) use any data storage, processing or retrieval device or system belonging to the person being investigated in order to produce a record in readable form of any books, records or other documents relevant to the subject-matter of the review; or

(e) on the premises that the Commissioner has entered, review or copy any books, records or documents that a person produces to the Commissioner, if the Commissioner pays the reasonable cost recovery fee that the health information custodian or person being reviewed may charge.

[emphasis added]

[19] Under section 320(6), no person shall obstruct the IPC in exercising the powers under section 320. This includes a demand for the production of any records relevant to the subject-matter of the review considered in section 320(2)(a):

No obstruction

320 (6) No person shall obstruct the Commissioner who is exercising powers under this section or provide the Commissioner with false or misleading information.

[20] Under section 320(8) there is an obligation on the part of the service provider who has the custody of the record, to assist the Commissioner. This includes assisting the Commissioner in response to a demand for the production of records under section 320(2) (a).

Obligation to assist

320 (8) If the Commissioner makes a demand for any thing under subsection (2), the person having custody of the thing shall produce it to the Commissioner and, at the request of the Commissioner, shall provide whatever assistance is reasonably necessary, including using any data

storage, processing or retrieval device of system to produce a record in readable form, if the demand is for a document.

[21] As part of Complaint FA21-00034 relates to the service provider's claim that portions of the responsive records that were provided to the complainant in response to her request are exempt from the right of access under section 312(d)(i), (ii) and (iii), I find that copies of the records are required for me to conduct the review.

[22] The service provider's refusal to provide me with the records at issue in the complaint is obstructing my ability to conduct a review. I have decided, therefore, to order the service provider to produce to the IPC the records at issue in Complaint FA21-00034.

ORDER:

Pursuant to section 321(1) of the *Act*, I order the service provider to produce the records at issue in Complaint FA21-00034, in their entirety, to the IPC by **May 18, 2023**.

I also order that the portions of the records that were redacted pursuant to the exemptions at sections 312(d)(i), (ii) and (iii) of the *Act* must be legible and clearly identified in the copies that are provided to the IPC, with the applicable exemption claim clearly indicated for each redaction.

Original signed by: _____
Catherine Corban
Adjudicator

_____ May 4, 2023