

Information and Privacy Commissioner,
Ontario, Canada



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

CYFSA DECISION 9

Appeal FA23-00009

Weechi-it-te-win Family Services

May 23, 2023

Summary: The complainant through her legal representative submitted an access request to Weechi-it-te-win Family Services (the service provider). This order determines that the service provider is deemed to have refused the complainant's request for access. The service provider is ordered to provide a response to the complainant regarding their request for access to records of personal information in accordance with the *Child, Youth and Family Services Act, 2017* and without a recourse to a time extension.

Statutes Considered: *Child, Youth and Family Services Act, 2017*, ss 2, 281, 301, 303, 312(1), 313, 314, and 321(1). *Freedom of Information and Protection of Privacy Act, 1990*, section 2.

BACKGROUND:

[1] This is a complaint under Part X of the *Child, Youth and Family Services Act, 2017* (the *Act*). The complainant seeks access to records of personal information relating to her children that are in the custody and control of Weechi-it-te-win Family Services (the service provider).

[2] On January 18, 2023, the complainant's legal representative made a written request for access, which stated the following:

the complete contents of your files with respect to her children, [...] born [...] and [...] born [...].

Without limiting the generality of the request, we would anticipate your disclosure to include:

- Referrals;
- Safety assessments;
- Investigations plans;
- Risk assessments;
- Case summaries;
- Strengths and needs assessments;
- Service Plans;
- Case notes;
- Complaints;
- Occurrence reports; and,
- Correspondence.

[3] The complainant's legal representative also provided a "Signed Consent and Authorization for Release of Information" form from his client to the service provider.

[4] On February 21, 2023, the Information and Privacy Commissioner/Ontario (IPC or this office) received a deemed refusal complaint from the complainant indicating that it had been more than 30 days since her legal representative had submitted a request for access to the service provider and had not received a response. As a result, file FA23-00009 was opened.

[5] On March 1, 2023, this office issued a Notice of Review (the Notice) to the complainant's legal representative and the service provider.

[6] The Notice of Review stated that the complainant filed a complaint alleging that the service provider was deemed to have refused the complainant's request for access to records of personal information relating to complainant's children, by not providing a response within the time period set out in section 314 of the *Act*.

[7] The Notice of Review directed the service provider to immediately respond to the complainant's request for access and to forward a copy to me, the Acting-Adjudicator assigned to this complaint. The Notice of Review indicated that if the service provider failed to do so and settlement was not reached by March 15, 2023, an order requiring the service provider to provide a response to the complainant may be issued.

[8] On March 17, 2023, the service provider wrote me an email advising that the decision letter would be delivered on March 21, 2023.

[9] On March 24, 2023, I contacted the complainant's legal representative who advised that he had not yet received a final decision on this matter.

[10] On March 30, 2023, I wrote to the service provider inquiring about the status of the final decision with respect to this matter.

[11] On March 31, 2023, the service provider wrote me an email attaching a copy of a letter purporting to be the final decision. The email stated the following in part:

Further to your most recent correspondence, I am pleased to enclose a copy of our Final Decision Letter that will be delivered to [complainant's legal representative].

[12] On April 3, 2023, I was contacted by the complainant's legal representative and was advised that he had not received the decision and/or the records. On this same date, I left a voicemail for the service provider inquiring about the method of delivery for the decision and the records. I did not receive a response.

[13] On April 5, 2023, I wrote to the service provider to follow-up on my voicemail message. I did not receive a response.

[14] On April 6, 2023, the complainant's legal representative advised that he still had not received the decision and/or the records. The complainant's legal representative expressed his dissatisfaction and requested an order be issued against the service provider. Following receipt of this information, on the same day, I emailed the service provider again, in a follow up to my voicemail/email and in an effort to receive an update.

[15] On April 11, 2023, the service provider wrote me an email, stating the following in part:

I am away on vacation, returning to the office the morning of April 17. I will ensure amendment of our closing letter and delivery of all documents upon my return.

[16] On April 12, 2023, the complainant's legal representative also wrote me an email explaining that he had still not received the decision and the records.

[17] On April 13, 2023, I contacted the service provider and requested that they provide me an update upon their return to the office. I did not receive a response.

[18] On April 21, 2023, the complainant's legal representative wrote me an email and requested an order be issued against the service provider.

[19] On April 26, 2023, I wrote to the service provider to follow up on their last email and again requested an update with respect to the issuance of the final decision letter. I also advised that the complainant's legal representative had not received the decision letter dated March 31, 2023 and requested the method of delivery used to issue the decision letter and the records. I did not receive a response.

[20] On May 4, 2023, in an effort to resolve this matter informally, I wrote to the service provider again to follow up on my previous email. I did not receive a response.

[21] On May 4, 2023, the complainant's legal representative also wrote to me and advised that no decision or records had been received. The complainant's legal representative expressed his frustration and again requested that an order be issued against the service provider.

[22] On May 15, 2023, I received an email from the service provider stating that the final decision and the records will be delivered by the end of the day on May 16, 2023. However, the complainant's legal representative advised that he did not receive anything.

[23] To date, the complainant's legal representative has not received the decision that the service provider said on March 31, 2023 it was intending to issue.

DISCUSSION:

[24] Section 314(3) of the *Act* requires a service provider that receives a request from an individual (including from an individual's representative pursuant to section 301(2) of the *Act*) for access to a record of personal information about that individual, to provide a response as soon as possible, but no later than 30 days after receiving the request. In certain circumstances, within the 30 days after receiving the request for access, a service provider may give the individual written notice extending the time for a response for a further period of time not to exceed 90 days.

[25] If a response or notice of extension is not given within 30 days after receiving a request for access, the service provider is deemed to have refused the individual's request for access pursuant to section 314(7), which states:

Deemed refusal

(7) A service provider that does not respond to a request for access within the time required is deemed to have refused the request.

[26] On January 18, 2023, the complainant's legal representative made a written request for access to the service provider. As noted above, despite the service provider advising this office that a decision was issued on March 31, 2023. However, the complainant's representative has not received a copy. I have also not received a

response to my inquiries to the service provider regarding how the decision was sent. As such, I have concluded, that the service provider has not responded to the complainant's legal representative's request for access in compliance with section 314 of the *Act*.

[27] There is no evidence to suggest that, within the 30 days of receiving the request for access, the service provider provided the complainant's legal representative with written notice extending the time for a response for a further period of time not exceeding 90 days. In light of the service provider's failure to respond to the complainant's legal representative's request for access, I find that the service provider is deemed to have refused the complainant's legal representative's request for access pursuant to section 314(7) of the *Act*.

[28] To ensure that there are no further delays, I will order the service provider to issue a response to the complainant no later than **June 6, 2023**, and to provide a copy to my attention to verify compliance.

ORDER:

For the foregoing reasons, pursuant to section 321(1) of the *Act*, I order that:

1. The service provider shall provide a written response to the complainant's request for access to the records of personal information relating to her children in accordance with the *Act* and without recourse to a time extension no later than **June 6, 2023**.
2. In order to verify compliance, the service provider shall provide me with a copy of the response referred to in Provision 1 by **June 6, 2023**. This should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8.

Original signed by: _____

Soha Khan
Acting Adjudicator

_____ May 23, 2023