

Information and Privacy Commissioner,
Ontario, Canada



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

CYFSA DECISION 12

Complaint FA20-00010

Family and Children's Services Niagara

October 25, 2023

Summary: The complainant sought access under Part X of the *Child, Youth and Family Services Act, 2017* (the *Act*) for her entire file with the Family and Children's Services Niagara (the service provider). The complainant was granted access, in part, but was denied access to information the service provider says relates to other individuals pursuant to the exemption at section 312(1)(d)(iii) of the *Act* (identification of an individual who provided information explicitly or implicitly in confidence). The complainant filed a complaint with the Information and Privacy Commissioner of Ontario (IPC), asking the IPC to review the service provider's access decision.

In this decision, the adjudicator upholds the service provider's decision in part. She upholds its decision to withhold information in records contained in the complainant's protection file, which includes records pertaining to the complainant's family. However, the adjudicator orders the service provider to grant greater access to records contained in the complainant's care file. She finds these latter records are dedicated primarily to the provision of a service to the complainant, and that the claimed exemption does not apply to some of the withheld information.

Statutes Considered: *Child, Youth and Family Services Act, 2017*, section 312(1)(d)(iii); *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A, section 52(1)(e)(i).

Decisions and Orders Considered: CYFSA Decisions 2, 4, 7 and 10; PHIPA Decisions 17 and 24.

Related Decisions and Orders: CYFSA Decision 11, Orders P-1069 and PO-3995.

OVERVIEW:

Background of complaint

[1] The complainant's family of origin is a large family with two parents and several siblings. The complainant says that her mother contacted the Family and Children's Services Niagara (the service provider) in the 1960's and that a file was created at that time.¹ The complainant says that she was subsequently placed in care and that the service provider obtained protection orders for herself and some of her siblings.

[2] In 1995, the complainant filed an access request under the *Freedom of Information and Protection of Privacy Act (FIPPA)* to the Ministry of Community and Social Services and was granted partial access to certain court orders relating to herself. The complainant, along with her sister who made a similar request under *FIPPA*, appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC) claiming that additional records beyond the court orders should exist in the ministry's record-holdings.² In the alternative, the complainant argued that any responsive records held by the service provider were under the control of the ministry and should be provided to her on that basis.

[3] The service provider, as an entity not subject to *FIPPA*, was not required to directly respond to any request for records under *FIPPA*. However, the service provider provided representations to the IPC on the control issue as an affected party in the complainant's appeal against the ministry. In Order P-1069, the adjudicator dismissed the complainant's *FIPPA* appeal. She found the ministry's search decision was reasonable and that any responsive records in the service provider's record holdings were not in the custody or under the control of the ministry and therefore not subject to the right of access under *FIPPA*. However, the adjudicator included a postscript in the order directing the service provider to consider "whether disclosure of records, such as the ones at issue in this appeal, would be in the best interests of individuals who were formerly in its care."

[4] In 2018, the complainant filed an access request under *FIPPA* to the Ministry of Children, Community and Social Services for the court file numbers she says were missing from the court orders provided to her. The complainant appealed the ministry's decision to the IPC and the IPC considered for the second time the question of whether responsive records in the service provider's record holdings are under the control of an institution under *FIPPA*. In Order PO-3995, Adjudicator Colin Bhattacharjee found that the information sought by the appellant was not in the ministry's custody or under its control for the purposes of access rights in *FIPPA*. Accordingly, the complainant's appeal was dismissed but Adjudicator Bhattacharjee stated:

¹ The service provider used to be called the Children's Aid Society, Niagara.

² The complainant did not appeal the ministry's decision to apply the personal privacy exemption under section 21(1) of *FIPPA* to withhold information in the court records.

I recognize that this will be an unsatisfactory outcome for the appellants, who are having significant difficulties in obtaining this information, which should be reasonably attainable in normal circumstances. However, I would draw the appellants' attention to the fact that a new access and privacy scheme that applies to [Children's Aid Societies'] will soon be coming into effect in Ontario. On January 1, 2020, Part X of the *Child, Youth and Family Services Act* will come into force and provide an individual with a right of access to a record of their personal information that is in a service provider's custody or control if it relates to the provision of a service to the individual.

Present complaint

[5] After the passage of the *Child, Youth and Family Services Act, 2017* (the *Act* or *CYFSA*), the complainant filed a request to the service provider for a "complete uncensored" copy of her file.

[6] In response to the request, the service provider identified two files as responsive to the request.

[7] The first file is the closed historical child in care file from May 1968 to July 1969, which the service provider refers to as the "care file." The second file is the closed historical protection file from May 1968 to August 1971, which the service provider refers to as the "protection file."

[8] In its access decision, dated January 23, 2020, the service provider granted the complainant partial access to the files and cited the application of exemptions under the *Act*.

[9] The complainant filed a complaint under the *Act* with the IPC questioning the application of the exemptions claimed by the service provider.³

[10] A mediator was assigned to explore settlement with the parties. During mediation, the service provider issued a revised decision. In its revised decision, the service provider confirmed that the responsive records are the documents located in the care file and protection file. The service provider granted the complainant partial access to the responsive records relying on exemptions in parts of section 312(1)(d) to

³ In her complaint form, the complainant acknowledges her receipt of court documents relating to herself but asserts that she should be provided with the court file number or an explanation of why it is not available. I have examined the court documents in the records before me and confirm that they do not contain court file numbers. I know of no provision in the *Act* which would require the service provider to provide the complainant with an explanation as to why the court records in its custody do not contain court file numbers. It is outside my expertise to comment on the retention and filing policies of court documents created in the 1960's. I also lack the authority to direct the service provider to provide copies of the relevant court documents in its custody to a courthouse in Ontario to address any potential gap in the retention or filing of the original documents, which was requested by the complainant.

withhold information in the records. The service provider also provided details of its search efforts and indicated that no further records could be located, including court file numbers and medical records. The complainant subsequently confirmed with the mediator that she was not pursuing the reasonable search issue.

[11] The parties continued to explore resolution with the mediator regarding the application of the exemptions to the withheld information in the care and protection files. The service provider issued yet a further decision, clarifying that it was relying on the exemptions in sections 312(1)(d)(ii) (identification of an individual required by law to provide the information) and section 312(1)(d)(iii) (identification of an individual who provided information explicitly or implicitly in confidence) to deny access to the withheld portions of the records.

[12] At the end of mediation, the complainant confirmed that she continued to pursue access to the withheld portions of the records. As no further mediation was possible, the file was transferred to the adjudication stage of the complaint process in which an adjudicator may conduct a review. I commenced my review by inviting the written representations of the parties.⁴ The complainant submitted joint written representations with her sister. The non-confidential portions of the parties' representations were shared in accordance with the confidentiality provisions set out in the IPC's *CYFSA* Complaint Procedure at the Adjudication Stage.⁵

[13] In its representations, the service provider indicated that it no longer relies on the exemption under section 312(1)(d)(ii) and it instead relies only on section 312(1)(d)(iii).

[14] For reasons set out below, I uphold the service provider's decision to withhold portions of records contained in the protection file. However, I order the service provider to grant the complainant access to certain withheld portions of records contained in the care file. I find these latter records are dedicated primarily to the service provider's provision of a service to the complainant, and that some of the withheld information not exempt under the *Act*.

RECORDS:

[15] The records are found in two files stored in the Child Protection Information Network (CPIN) relating to the complainant. The files are identified by separate file numbers. The first file is the closed historical child in care file from May 1968 to July

⁴ Section 317(3) of the *Act* provides that the IPC may review the subject matter of a complaint if satisfied that there are reasonable grounds to do so.

⁵ The service provider's representations were submitted by a lawyer. The service provider objected to providing the name of its lawyer to the complainant who requested this information. Although the service provider's request is unusual, I have decided that sharing the lawyer's identity with the complainant is not necessary for procedural fairness to be respected.

1969, which the service provider refers to as the "care file." The second file is the closed historical protection file from May 1968 to August 1971, which the service provider refers to as the "protection file."

[16] The information withheld in the **care file** consists of:

- Names and addresses of various foster parents whom the complainant was placed with. This information is written on what appears to be a large index card. The service provider refers to these records as "child care record/card" (pages 2-3),
- Names and addresses of various foster parents along with the names and ages of other children in the home in which the complainant was placed. The names and address of individuals the complainant was released from "paid care" to. Also withheld are the social workers notations regarding her observations of the foster parents. The service provider refers to these records as "reports" (pages 4-9),
- The names of foster parents appearing in correspondence the service provider says relates solely to administrative matters (ie: travel permission). The service provider refers to this record as "correspondence from service provider" (page 11),
- The first names and in some cases the birth dates of various individuals referenced in letters the complainant wrote. The service provider refers to these records as "correspondence of requester" (pages 12-17),
- The names and addresses in forms which record the foster parents' contact information. The service provider refers to this record as "child care face sheet" (page 20),
- The names, addresses and relationships to the complainant of the individuals who the complainant was released from "paid care" to. The service provider refers to this record as the "Discharge Form" (page 23),
- The names and addresses in forms which record the foster parent's names and address. The service provider refers to these records as the "various child care placement slips" (page 28-31), and
- Names and addresses appearing in a court disposition form of individuals from whose "paid care" the complainant was released. The service provider refers to this record as the "court information" (page 35).

[17] The information withheld in the **protection file** consists of:

- Names and birthdates, addresses of the complainant's parents and the first names and birthdates of her siblings on what appears to be a large index card. The service provider refers to these records as "family record/card" (pages 1-2),
- Names and addresses and other information the complainant's parents provided the service provider about themselves and the complainant's siblings. Also withheld are the social worker's comments about the complainant's siblings and their placements, along with information the worker collected about other individuals such as potential and actual foster parents. In addition, the worker's observations and assessments of individuals other than the complainant were withheld. The service provider refers to these records as the "reports" (pages 4-22),
- Names, addresses, birthdates of the complainant's parents and siblings. Also withheld is the social worker's summation of the background which led to the service provider's involvement with the complainant's family. The service provider refers to these records as the "referral forms" (pages 23 -24),
- The names and addresses of the complainant's parents and other individuals who exchanged correspondence with the social worker. The service provider says that the correspondence addresses administrative issues. The service provider also withheld other information contained in the letters. The service provider refers to these letters as "correspondence from service provider" (pages 25-28, 39-44 and 46-48),
- Names, addresses and other information about other individuals, contained in letters exchanged with the service provider. The service provider refers to these records as "correspondence from others" (pages 29-38 and 45),
- Names, contact information and dates of birth of the complainant's immediate family members along with the dates of various hearings and the types of orders, if any, that resolved the court matter. The service provider refers to these records as the "protection face sheet" (pages 49-50),
- Names of the complainant's parents along with the names of other individuals in the social worker's handwritten notes regarding interviews and information she gathered from other individuals. The service provider refers to these records as "protection recording summaries" or "administrative records" (pages 51-59 and 61-62),
- Name and other information of the complainant's mother contained in an "evening and weekend log" (page 60),
- Court records relating to the complainant's siblings were withheld in full (pages 63-64, 67-69, 72-83, 86-91, and 94-95). Also withheld are the names of the complainant's parents in the court records relating to herself.

- Names of the complainant's parents and siblings/birth dates in a "Record of Inquiry" form the service provider says was completed by the complainant's mother's lawyer (page 96-97). The same form was also completed by another individual, whose information was withheld along with the names and address of the complainant's parents and first names of her siblings (pages 100-101). Also withheld are portions of the lawyer's correspondence to the service provider (page 99). The service provider refers to these records as "miscellaneous records".

[18] Throughout her representations, the complainant also asserts that the records contain a number of errors, such as incorrect birthdates, incomplete information or other errors. This decision will not address the complainant's assertions that the records contain errors that require correction.⁶

[19] I have examined the care and protection files and am satisfied that the complainant was granted access to information relating to herself.

[20] I note that although the service provider obtained protection orders for the complainant and some of her siblings, her parents and individuals who appear to be other adult members of her family had contact with the service provider. As a result, the protection file contain instances in which the service provider exchanged information with the complainant's parents and other individuals.

[21] The protection file also contains a considerable amount of information relating to the complainant's siblings.⁷ The service provider withheld any notations relating to the complainant's siblings and any court orders relating to them were withheld entirely.

PRELIMINARY ISSUES

[22] Before addressing whether the exemption under section 312(1)(d)(iii) claimed by the service provider applies to the withheld information in the records, I make the following findings:

The service provider is a "service provider" within the meaning of Part X of the *Act*

[23] Part X of the *Act* sets out rules to protect the privacy of individuals and to enable individuals to seek access to records of their "personal information" that are in the custody or control of "service providers," and that relate to the provision of a "service."

⁶ Sections 315(9) and (10) of the *Act* set out a service provider's duty to grant a correction along with the exceptions to this duty. However, the party seeking a correction, must first make the request directly to the service provider.

⁷ Though the two sisters filed joint submissions with the IPC, they did not provide consents to the service provider concerning the release of their personal information to one another.

[24] "Service provider" is defined in section 2 of the *Act* to include a person or entity, including a "society," that provides a service funded under the *Act*. "Society" is defined to mean an agency designated as a children's aid society under section 34(1) of the *Act*.

[25] Part X of the *Act* defines "service" as a service or program that is provided or funded under the *Act* or provided under the authority of a licence (section 281). "Service" is further defined at section 2 to include services for children and their families related to child protection.

[26] The parties do not dispute, and I find, that the service provider is a "service provider" within the meaning of the *Act*, and thus subject to the requirements of Part X in the *Act*.

The complainant has a right of access to her personal information in the records

[27] The parties do not dispute that the complainant has a right of access under section 312(1), subject to the application of exemptions from that right of access, to records of her personal information that relate to the provision of a service to her. Section 312(1) reads:

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 ...

[28] 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.

[29] The right of access in section 312 belongs only to the individual to whom the personal information relates. Part X does not grant a general right of access to records of another individual's personal information.⁸

[30] 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

⁸ In some circumstances, a person other than the individual to whom the personal information relates may make an access request, on behalf of that individual. Such a person must be a lawfully authorized "substitute decision-maker" for the individual (sections 281, 303). There is no evidence before me, and the complainant has not asserted, that she has the appropriate authority to act on behalf of any other individuals who may be identified in the records.

a service to the individual requesting access” within the meaning of section 312(3). This section reads:

Despite subsection (1), 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 access only to the personal information about the individual in the record that can reasonably be severed from the record.

[31] Before I consider the question of whether the records are dedicated primarily to the provision of a service to the complainant, I will address whether the records contain the complainant’s personal information.

The records contain the personal information of the complainant

[32] Section 312(1) of the *Act* grants an individual a right of access to a record of their own personal information that is in the custody or under the control of a service provider and relates to the provision of a service to the individual, subject to limited exemptions and exclusions, such as the exemption in section 312(1)(d)(iii) claimed by the service provider.

[33] If a record contains the individual’s personal information, it is a record of their personal information. The right of access is determined on a “record by record” basis.⁹

[34] “Personal information” is defined in section 2 of the *Act* as having the same meaning as in *FIPPA*.

[35] The IPC has addressed the meaning of personal information in numerous orders issued under *FIPPA* and its municipal counterpart, the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* (which contains an identical definition).

[36] Through these orders, the IPC has established some principles that assist in determining whether information qualifies as “personal information” within the meaning of those statutes. Among other things, these orders have established that the list of examples contained in section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) of section 2(1) may still qualify as personal information.¹⁰

[37] The service provider says that “it is clear on the face of each record” that the

⁹ Under *PHIPA*, as well as *FIPPA* and *MFIPPA*, the IPC applies the “record-by-record” method of analysis to records subject to an access to information request. Applied to requests for access to one’s own personal information, the “record-by-record” approach gives requesters a right of access to entire records that contain their own personal information, subject to any applicable exemptions. See *PHIPA Decision 17*, particularly paragraph 61 and footnotes 7 and 110, for a summary of the “record-by-record” approach.

¹⁰ Order 11.

records contain the personal information of the complainant (along with information relating to other individuals).

[38] The complainant takes the position that all the information contained in the records constitutes her personal information. The complainant argues that the only reason the records in question exist is that her mother contacted the service provider.

[39] I have considered the representations of the parties along with the records and find that all of the records contain the personal information of the complainant. Namely information relating to the complainant's family status along with her name.¹¹ I am also satisfied that the personal information in such records would have been collected for or relate to the provision of a "service" to the complainant and her family, within the meaning of the *Act*.

[40] I will now turn to my discussion of the two key issues in this complaint matter: Whether the records at issue are dedicated primarily to the provision of a service to the complainant; and, whether or not the records are so dedicated, whether to uphold the service provider's decision to withhold certain information in the records.

DISCUSSION:

Issue A: Is each record "dedicated primarily to the provision of a service to the individual requesting access," within the meaning of section 312(3) of the *Act*?

[41] Earlier in this decision, I made a finding that all the records relate to the provision of a service to the complainant (and her family), and are thus subject to the complainant's right of access in section 312. However, the scope or extent of the complainant's right of access also depends on whether each record is "dedicated primarily to the provision of a service to the individual requesting access." This is because the right of access in the *Act* applies either to a whole record of personal information under section 312(1) or only to certain portions of the record under section 312(3).

[42] Under section 312(3) of the *Act*, if a record is not dedicated primarily to the provision of a service to the complainant, then the complainant only has a right to access her own personal information that can reasonably be severed from the record.¹² If the record is dedicated primarily to the provision of a service to the complainant, her right of access applies to the entire record, even if it incidentally contains information about other matters or other parties.

¹¹ See paragraphs (a) and (h) of the definition of "personal information" in section 2(1) of *M/FIPPA*.

¹² See PHIPA Decision 17 at paras 85-115, which address a similar "dedicated primarily" requirement under section 52(3) of the *Personal Health Information Protection Act, 2004*, SO 2004, c 3.

[43] Accordingly, I must determine whether each record is “dedicated primarily” to the provision of a service to the complainant.

[44] Past IPC decisions interpreting a similar provision in another statute under this office’s jurisdiction may be instructive. In determining whether a record is “dedicated primarily to the personal health information of a requester” for the purpose of section 52(3) of the *Personal Health Information Protection Act (PHIPA)*, IPC adjudicators apply a qualitative (not merely quantitative) analysis.

[45] Under *PHIPA*, the qualitative approach for determining whether a record of personal health information is dedicated primarily to the personal health information of an individual asks whether the personal health information is central to the purpose for which the record exists. Factors to be considered include: the quantity of personal health information of an individual in the record, the purpose the information serves in the record, the reason for the record’s creation, the uses of the record, and whether the record would exist “but for” the personal health information of the individual in it.¹³

[46] Given the similar wording of the “dedicated primarily” requirement under section 312(3) of the *Act* and section 52(3) of *PHIPA*, I find that it is appropriate to adopt the same qualitative approach in determining whether records at issue in this complaint are “dedicated primarily” to the provision of a service to the complainant for the purposes of the *Act*.¹⁴

[47] For the reasons stated below, I find that certain records are dedicated primarily to the service provider’s provision of a service to the complainant, while others are not, because they relate to the provision of a service to the family as a whole.

The parties’ representations

[48] The service provider submits that taking a qualitative approach, none of the records are dedicated primarily to the provision of a service to the complainant. The service provider says that the information in the records may be related to the service it provided to the complainant, but that for a record to be “dedicated primarily to the provision of a service” to the complainant, the “main purpose for its creation must be to facilitate services for the [complainant].” The service provider says that the records were created and maintained for internal administrative purposes and not for the purpose of facilitating services to the complainant.

[49] The complainant submits that:

The only reason [the records exist] is because the judge made a decision that we were children apparently in need of protection based on the

¹³ PHIPA Decision 17, and others.

¹⁴ During the representations stage of my review, the parties were given an opportunity to comment on my preliminary views about adopting this approach. Neither party disagreed with my preliminary views.

application submitted by [the service provider] thus writing an order that placed us in care.

[50] The complainant also states that the records “are a continuum of services provided to [her] and cannot be divided into two sections designating one section as not being dedicated primarily” to the provision of a service. The complainant appears to suggest that the fact that the care and protection files were uploaded to the CPIN demonstrates that there is only one file, and that it is dedicated primarily to the provision of a service to her.

Decision and analysis

[51] As stated above, I find that it is appropriate to adopt the same qualitative approach the IPC has applied to *PHIPA* matters to determine whether the records before me are “dedicated primarily to the provision of a service” to the complainant for the purposes of the *Act*.

[52] Based on my examination of the records, I disagree with the service provider’s assertion that the records were created primarily for internal administrative purposes. It is clear on the face of the records that the service provider provided a service to the complainant and her family and that the service was related to child protection. In doing so, the service provider collected and recorded information from the complainant’s parents and others about the complainant, themselves and the complainant’s siblings. I agree with the complainant’s argument that the records would not exist but for the service provider’s interaction with the complainant and her family. The purpose, use and creation of the records relate to the service provider’s interaction with the complainant and her family. There is insufficient evidence before me, including the records themselves, demonstrating that the records were created for any purpose other than providing a service to the complainant and her family such as personnel, employment-related or legal matters. Accordingly, I am satisfied that the central purpose for which the records exist relates to the provision of a service the service provider provided the complainant and her family. I will now go to explain why I find that the records in the care file are dedicated primarily to the provision of a service to the complainant but find that the records in the protection file are not.

The records in the care file are dedicated primarily to the provision of a service to the complainant

[53] In my view, the records contained in the **care file** represents the service provider’s record of the service it provided solely to the complainant. I am satisfied that all the records in the care file are dedicated primarily to the provision of a service to the complainant alone (and not to the complainant together with her family). This includes the letters written by the complainant contained in the care file. I have examined the letters and find that the content clearly establishes that on its receipt, the service provider was to facilitate a provision of a service to the complainant. In this case, the

service provider was to facilitate the exchange of correspondence between the complainant, who at the time was a child in care, and outside individuals.

[54] Section 312(1) of the *Act* provides that the complainant's right of access applies to each of the records in the care file in its entirety, even if the record incidentally contains information about other matters or other parties, (such as foster parents or individual the complainant referenced in her letters), subject to any applicable exemptions claimed by the service provider. Later in this decision, I will go on to determine whether the exemption at section 312(1)(d)(iii) applies to the withheld information in the records in the care file.

The records in the protection file are not dedicated primarily to the provision of a service to the complainant.

[55] However, I find that the records in the **protection file** are not dedicated primarily to the provision of a service to the complainant. The records in the protection file serve to document the service provider's provision of services to the complainant's immediate family as a whole (and not solely to the complainant). Though the complainant's information appears in these records, it appears alongside the information of her parents and siblings, in the context of the service provider's provision of services to them all. The information in the protection file about the provision of a service to the complainant alone cannot be said to be the central purpose for which in the protection file was created. Accordingly, I find that these records are not dedicated primarily to the provision of a service to the complainant.

[56] Section 312(3) of the *Act* provides that if a record is not dedicated primarily to the provision of a service to the individual requesting access, the individual has a right to access only her own personal information that can reasonably be severed from the record. In this case, the service provider has provided the complainant with a severed copy of the records in the protection file. I have examined the severed copy provided to the complainant and am satisfied that the complainant was granted access to all her personal information that can be reasonably be severed from other information in the records. Accordingly, I uphold the service provider's decision regarding the access it granted the complainant to records in the protection file.

Issue B: Does the exemption at section 312(1)(d)(iii) apply to the withheld information contained in the care file?

[57] Section 312(1) of the *Act* sets out certain exemptions from the right of access to one's own personal information. The service provider claims that the exemption in section 312(1)(d)(iii) of the *Act* applies to the withheld information. 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,

(iii) lead to the identification of an individual who provided information in the record to the service provider explicitly or implicitly in confidence if the service provider considers it appropriate in the circumstances that the identity of the individual be kept confidential.

[58] For this exemption to apply, the service provider must demonstrate that granting access “could reasonably be expected to” result in the consequence identified at clause (iii).

[59] I accept and adopt the reasons expressed by Adjudicator Catherine Corban in CYFSA Decision 10 and I find that the requisite standard of proof for section 312(1)(d)(iii) 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)*.¹⁵ In that decision Adjudicator Corban stated:

For reasons similar to those expressed by the adjudicator in PHIPA Decision 34, and because of the language “could reasonably be expected to” used in section 312(1)(d)(iii), I find that the requisite standard of proof for section 312(1)(d)(iii) to apply is the same as that expressed by the Supreme Court of Canada in *Ontario (Community Safety and Correctional Services)*.¹⁶

[60] Accordingly following the reasoning in CYFSA Decision 10, for the information at issue to be found exempt under section 312(1)(d)(iii), the service provider 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.¹⁷

[61] The failure to provide detailed evidence will not necessarily defeat the service provider’s claim for exemption where harm can be inferred from the surrounding circumstances. However, parties should not assume that the harms under section 312(1) are self-evident or can be proven simply by repeating the description of harms

¹⁵ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4 [*Ontario (Community Safety and Correctional Services)*]

¹⁶ Paragraph 26 of CYFSA Decision 10.

¹⁷ See CYFSA Decisions 7 and 10 along with PHIPA Decisions 24, 34, 100 and others.

in the *Act*.¹⁸

[62] I also accept and adopt Adjudicator's Corban's reasoning in CYFSA Decision 10 that the language in section 312(1)(d)(iii) also requires the service provider to demonstrate that, in the circumstances, it considers it appropriate to keep the individual's identity confidential.¹⁹

[63] For each of the records containing information claimed to be exempt under section 312(1)(d)(iii), the service provider was invited to make submissions as to whether granting access to the withheld information could reasonably be expected to lead to the identification of an individual who provided information in the record to the service provider explicitly or implicitly in confidence; and why the service provider considers it appropriate in the circumstances that the identity of the individual(s) be kept confidential.

Representations of the parties

[64] The service provider, in its representations, states that the information it withheld from the complainant has "historically been treated as confidential. They are not routinely disclosed or made available through other sources to which the requester or other members of the public would have access."

[65] In support of its position, the service provider provided an affidavit in which it asserts that its "routine practice" prior the implementation of Part X of the *Act* was to "deny access to the personal information of individuals other than the individual child in care who was making the request unless consent to do so existed."²⁰

[66] The complainant questions the service provider's assertion based on her claim that the service provider previously granted her greater access to records which are now being withheld under the *Act*.²¹

[67] In its reply representations, the service provider does not dispute the complainant's submission that prior to the passage of the *Act* it granted her greater access to certain records in her file. However, the service provider takes the position that "any prior disclosures made were not subject to [the *Act*] which was not in force at the time."

¹⁸ Order MO-2363; See also PHIPA Decisions 24, 34, 100 and 123.

¹⁹ Paragraph 27 of CYFSA Decision 10.

²⁰ The service provider also references a provision of a disclosure policy it says was established by the Ministry of Community and Social Services in the mid-1980's.

²¹ The complainant's submission was based on her impression that she had in the past received greater access to court orders pertaining to herself. The court orders identified in this complaint appear in the protection file and I already made a finding upholding the service provider's access decision with respect to records in that file.

Decision and analysis

[68] The withheld information in the care file is described in the records section of this decision. In summary, it consists of the names and/or signatures and/or contact information of foster parents along with the names of other children in their care. Also withheld are the names and contact information of other individuals. The service provider also withheld the social workers' notations about:

- the ages of children in the foster parents' home,
- her working relationship or opinion of the foster parents, and
- Names and birth dates of individuals the complainant referenced in letters she wrote.

[69] To recap, earlier in this decision I found that all the records in the care file are dedicated primarily to the provision of a service to the complainant. This means that the complainant's right of access to these records is under section 312(1) of the *Act*. Her right of access applies to each record in its entirety, even if the record incidentally contains information about other matters or other parties, subject to any applicable exemptions claimed by the service provider.

[70] The parties each provided evidence in support of their opposing positions as to whether the withheld information is subject to the exemption under section 312(1)(d)(iii) claimed by the service provider. However, I find their evidence speaks to specific contexts before the passage of the *Act*. I have therefore made my decision based on my examination of the records and the circumstances of the complaint.

[71] Having regard to the withheld information in the records relating to other individuals, I find that granting the complainant access to the names, signatures and contact information of foster parents and their children along with the name and contact information of other individuals could reasonably be expected to lead to the identification of persons who provided information in the records.

[72] Given the context in which the information was collected, I am also satisfied for the reasons that follow that at the time this information was provided to the service provider, it was provided implicitly in confidence. In arriving at this decision, I considered PHIPA Decision 24 in which Adjudicator Cathy Hamilton considered the application of an exemption under *PHIPA* which is analogous to section 312(1)(d)(iii).²²

²² Section 52(1)(e)(iii) of *PHIPA* states:

Subject to this Part, an individual has a right of access to a record of personal health information about the individual that is in the custody or under the control of a health information custodian unless,

(e) granting access could reasonably be expected to,

In that decision, Adjudicator Hamilton upheld a municipality's decision to withhold records created by a public health nurse relating to interactions the nurse had with the requester and other individual(s) about the requester. The municipality's evidence was that an individual in their personal capacity had contacted the municipality's health unit to report an issue relating to the requester. The municipality provided this information to its public health nurse who contacted the individual who reported the issue and provided assistance services (ie: referrals) to the requester in response to the information obtained. Adjudicator Hamilton concluded that granting the requester access to the withheld names and other information in the records could reasonably be expected to lead to the identification of individuals who provided information in confidence to the municipality.

[73] Here, the records in the care file contain information populated by social workers or provided to them in relation to services the service provider provided to the complainant. I find that the individuals referenced in the care file provided information about themselves, such as their names, contact information, signatures, addresses and phone number implicitly in confidence at the time the information was collected. I also find that foster parents providing the names and ages of other children in their care to the service provider did so implicitly in confidence given the sensitivity of the information and the context in which the information was provided.

[74] However, I find that granting the complainant access to other withheld information, such as the social worker's observations about certain individuals (with their names and contact information removed), would not lead to the identification of an individual who provided information implicitly in confidence to the service provider. I find that this context differs from the context described above. The difference here is that the information consists of the social worker's own observations as opposed to information that was provided to her. In addition, I find that the exemption at section 312(1)(d)(iii) cannot apply to the first names and birth dates relating to individuals referenced in the complainant's letters filed in the care file. The information the service provider seeks to withhold was provided by the complainant herself and cannot be said to have been provided in confidence to the service provider by the individuals in question. Having regard to the above, I find that the complainant has a right of access to this information as it appears in records that are dedicated primarily to the provision of a service to her, and no other exemption has been claimed for this information.

[75] As a result of my findings, I order the service provider to grant the complainant access to certain withheld information in the care file. However, I uphold the service provider's decision to withhold certain names, addresses, telephone and other contact information in the care file, as this information could, for the reasons above, lead to the

(iii) lead to the identification of a person who provided information in the record to the custodian explicitly or implicitly in confidence if the custodian considers it appropriate in the circumstances that the identity of the person be kept confidential;

identification of certain individuals who provided information to the service provider in confidence.

Postscript and a note about disclosure under the Act

[76] As noted above, the *Act* allows a service provider to disclose personal information in limited circumstances.²³ Whether the service provider was authorized, under the *Act*, to disclose the withheld information to the complainant was not an issue before me in this complaint and I made no determination about it in this decision. Based on my consideration of the parties' representations, it does not appear that a disclosure provision under the *Act* applies to the present circumstances of this complaint.

ORDER:

For the foregoing reasons, pursuant to section 321(1) of the *Act*,

1. I uphold the service provider's access decision regarding the **protection file**.
2. I order the service provider to grant the complainant greater access to records in the **care file**, by providing complainant with another copy of the care file and granting access to the information referenced in the schedule attached to the service provider's copy of this decision. The service provider is to provide the complainant with a copy of the record by **November 29, 2023** but not before **November 24, 2023**.
3. In order to verify compliance, I reserve the right to request a copy of the records the service provider is to grant the complainant access to in accordance to provision 2.

Original signed by: _____
Jennifer James
Adjudicator

October 25, 2023

²³ Section 286(b) contemplates disclosure without consent where other sections of the *Act* permit or require a service provider to disclose personal information relating to the provision of a service to an individual. These are found at sections 292 to 294 of the *Act*.