

Information and Privacy Commissioner,  
Ontario, Canada



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

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## CYFSA Decision 14

Complaint FA21-00042

Family and Children's Services Niagara

November 30, 2023

**Summary:** An adopted person and former child in care made a request to Family and Children's Services Niagara (FACS Niagara) under the *Child, Youth and Family Services Act, 2017* (CYFSA or the *Act*), for access to all records containing his personal information, including his adoption file. FACS Niagara granted partial access to the requested records, disclosing all non-identifying information to the requester. The requester filed a complaint with the Information and Privacy Commissioner of Ontario (the IPC) because he seeks access to all records containing his personal information, without redactions.

In this decision, the adjudicator finds that the information in the records is excluded from the scope of Part X of the *CYFSA* under section 285(4)(a) because it is information related to an adoption. As a result of the application of the exclusion, Part X does not apply and the requester does not have a right of access to the redacted 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 "service," "service provider" and "society"), 34(1), 224, 225 (2), 227(1), (3) and (4), 281 (definition of "service"), 285(1) and (4), 312 and 346(1)17; *Adoption Information Disclosure*, O. Reg. 158/18, sections 2(1), 8 and 9.

**Decisions Considered:** CYFSA Decisions 2 and 6.

### BACKGROUND:

[1] This decision considers the extent of an adopted person and former child in

care's right of access under Part X of the *Child, Youth and Family Services Act, 2017* (the *Act* or the *CYFSA*) to his records with Family and Children's Services of Niagara (FACS Niagara, the society or the service provider).<sup>1</sup>

[2] In a request submitted under the *CYFSA*, the complainant sought access to the records in his adoption file, as well as to all records containing his personal information in the custody of FACS Niagara.

[3] In an initial response letter advising that the request had been received, FACS Niagara provided the complainant with information about the disclosure of adoption information. It explained that the *Adoption Information Disclosure Act*<sup>2</sup> allows identifying information to be released by the Ministry of Community and Social Services (MCSS) and that adopted adults can apply for a copy of their original Registration of Birth and Adoption Order. FACS Niagara also noted that, if the Adoption Order was made before September 1, 2008, adopted adults and birth parents can file a disclosure veto to prevent the release of any identifying information.<sup>3</sup> FACS Niagara provided the complainant with a link to a page on the Ontario government's website that addresses adoption records and a toll-free number to call for further information.

[4] FACS Niagara then processed the request and issued a decision, providing the complainant with partial access to his records regarding his birth and adoption history as well as his child-in-care records. FACS Niagara redacted all identifying information.

[5] Following review of the records that were provided to him, the complainant contacted FACS Niagara with several questions and concerns about the information that had been redacted. In response, FACS Niagara explained that because Ontario Regulation 158/18<sup>4</sup> stipulates that a society shall only disclose non-identifying information related to an adoption, the records provided to him were redacted to

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<sup>1</sup> Section 312(1) in Part X of the *CYFSA* provides for a right of access to certain records in the custody or control of a "service provider", as that term is defined in section 285(1). In this complaint, the parties do not dispute that FACS Niagara qualifies as a "service provider" within the meaning of section 285(1) of the *CYFSA*. The definition of "service provider" in section 2(1) of the *CYFSA* includes a society that provides a service funded under the *CYFSA*. In section 2(1) of the *CYFSA* the definition of "service" in section 2(1) includes adoption related services and "society" is defined as an agency designated as a children's aid society by the Minister under section 34(1).

<sup>2</sup> *Adoption Information Disclosure Act, 2005, SO 2005, c 25.*

<sup>3</sup> More precisely, the *Adoption Information Disclosure Act* amends a number of acts, one of which is the *Vital Statistics Act, R.S.O. 1990, c. V.4 (VSA)*, to include provisions respecting the disclosure of information and records related to adopted persons and birth parents. As a result of these amendments, under the *VSA* an adopted person (over the age of 18) can obtain, from the Registrar General, an uncertified copy of his or her original Registration of Birth and Adoption Order identifying his/her birth parent(s) 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). Where a registered Adoption Order was made before September 1, 2008, birth parents have the right to submit a disclosure veto to the Registrar General to prohibit the disclosure of information to an adopted person. See sections 48.1, 48.3, 48.4 and 48.5 of the *VSA*.

<sup>4</sup> *Adoption information Disclosure, O. Reg. 158/18.*

remove all names and other identifying information. FACS Niagara further explained that Part X of the *CYFSA* that addresses access to personal information does not apply to information related to an adoption.<sup>5</sup>

[6] As the complainant was not satisfied with FACS Niagara's explanation, he made a complaint to the Information and Privacy Commissioner of Ontario (the IPC). A mediator was assigned attempt to assist the parties in reaching a mediated resolution.

[7] During mediation, FACS Niagara confirmed its position regarding access to the requested information and issued a supplementary letter to the complainant, identifying the relevant sections of the *CYFSA* and O. Reg. 158/18 and explaining why each redaction was made.

[8] The complainant advised that he was still not satisfied with FACS Niagara's response. He stated that the records he received were grouped in three packages that FACS Niagara labelled as child in care records, birth records and adoption records. It is the complainant's position that the child in care records and birth records from prior to his adoption should not be classified as adoption records.

[9] In addition, the complainant does not agree that any redactions should have been made to his records. He confirmed that he seeks access to all information contained in the records, including redactions to his own name, his adoptive mother's name and the names of all health care professionals who provided the complainant with health care. The complainant advised that access to the redacted information will assist him in making personal health decisions.

[10] As a mediated resolution could not be reached, the complaint moved to adjudication. As the adjudicator assigned to the complaint, I decided to conduct a review. I sought and received representations from both FACS Niagara and the complainant on the issues to be decided. Those representations were shared between them as is the practice of the IPC set out in the document *CYFSA Complaint Procedure at the Adjudication Stage*.

[11] In this decision, I find that the requested information qualifies as information related to an adoption that is excluded from Part X of the *CYFSA* under section 285(4)(a). I uphold FACS Niagara's decision, and I dismiss the complaint.

## **RECORDS:**

[12] FACS Niagara provided the complainant with partial access to the records with redactions made to information that it claims is identifying information related to an adoption. It has divided the records into three different packages:

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<sup>5</sup> The exclusion for adoption related information in Part X of the *CYFSA* at section 285(4) and O. Reg. 158/19 which addresses the disclosure of adoption related information will be discussed below.

1. Adoption Records – This package contains 25 pages of records, primarily completed forms, many of which originate from the Ministry of Community and Social Services. They include:
  - Adoption Record,
  - Information Chang Form,
  - Record of Inquiry, Adoption Placement,
  - Registration of Placement of a Child for Adoption, Acknowledgement of Adoption Placement,
  - Social History forms for the birth mother and her family, the birth father, and the complainant,
  - a Supplement to the Social History Form of the birth mother,
  - Medical History of Child form, with specific evaluations attached, and
  - information to and from the Ministry of Community and Social Services about a Crown Wardship Order.
  
2. Birth Records – This package contains 219 pages of records consisting primarily of records from FACS Niagara’s Case Management Information System including case worker notes and memos regarding interactions with and information about the complainant’s birth mother. However, these records also include:
  - FACS Niagara Social History forms for the birth mother and her family, the birth father and a Supplement to the social history forms,
  - medical records including assessments of the birth mother and the complainant,
  - Child’s Plan of Care records for the complainant,
  - Registration of Birth of the complainant,
  - records related to FACS Niagara’s Application of Crown Wardship,
  - records relating to “delayed registration of birth”,
  - case worker notes related to an Adoption Conference,
  - Ministry of Community and Social Services Social History forms (duplicates to records found in package 1), and

- Request for Adoption Placement form.
3. Birth Records and Child in Care records – This package includes 125 pages consisting primarily of records from FACS Niagara’s case management information system including case notes and memos from case workers regarding interactions with the complainant. However, these records also include:
- Adoption Placement form,
  - Ministry of Community and Social Services Social History forms of the complainant, the birth mother, the birth mother’s family, the birth father and a Supplement to Social History form,
  - Ministry of Community and Social Services Medical History of Child form,
  - records containing medical information about the complainant (some of which are duplicates of records found in package 2),
  - Child’s Plan of Care for the complainant (some are duplicates of records found in package 2),
  - Child Care Annual Review Summary,
  - Registration of Birth for the birth mother,
  - medical records including assessments of the birth mother (some of which are duplicates of records found in package 2), and
  - Delayed Statement of Birth for the complainant.

[13] As is evident from the descriptions above, there is some duplication of records both within the packages of records and between them. There is also some duplication of information as, in some cases, there are different versions of certain forms (for example, MCSS and FACS Niagara each have their own versions of Social History forms which have been completed with the same information).

[14] The complainant takes the position that he is entitled to access the information that FACS Niagara has redacted from these records.

## **DISCUSSION:**

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

[15] The central question in this complaint is whether the relevant provisions at Part X

of the *CYFSA*, and in particular, the complainant's right to access his own personal information at section 312(1), applies to any or all of the information sought by the complainant in the circumstances of this case. Section 312(1)s read as follows:

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, ....

[Certain exceptions are listed at subparagraphs (a) to (d), none of which are applicable here.]

[16] 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 exclusion for "adoption matters" at section 285(4).

[17] This case turns on whether section 285(4), 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.<sup>6</sup>

[18] 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 FACS Niagara as a service provider (including access rights under section 312) unless the *CYFSA* or its regulations specifically provide that those sections of Part X do not apply.

[19] 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 the right of access at section 312. If one of those sections apply, the information is excluded from Part X meaning that the provisions at sections 286 to 332 do not apply to its collection, use or disclosure by a service provider.

[20] Section 285(4) specifically excludes from Part X certain information that relates to an adoption. Again, that section reads:

(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

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<sup>6</sup> The IPC's jurisdiction is limited to reviewing complaints properly brought under Part X of the *CYFSA*.

(b) the collection, use or disclosure of information given to a designated custodian under section 224 or to another person under section 225.<sup>7</sup>

[21] The complainant is a former child in care with FACS Niagara who was subsequently adopted. He is seeking access to his adoption records as well as all other records containing his personal information in the custody of FACS Niagara. As a result, the exclusion for information that relates to an adoption at section 285(4)(a) may apply.

### ***Section 285(4)(a)***

[22] Section 285(4)(a) 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.

[23] Section 227 governs the use or disclosure of information that relates to an adoption after an adoption order is made. It reads:

(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,<sup>8</sup> 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.

[24] Section 227(3) provides that section 227(1) applies "regardless of when the adoption order was made." Section 227(4) provides that the *Freedom of Information and Protection of Privacy Act* does not apply to information that relates to an adoption.

[25] 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

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<sup>7</sup> Section 225 of the *CYFSA* considers the disclosure of information that relates to an adoption to others, while section 227 of the *CYFSA* considers the confidentiality of information that relates to an adoption. These sections will be discussed below.

<sup>8</sup> 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. The MCSS custodian (defined in section 1 of O. Reg. 158/18 as the Director of the Service Delivery and Supports Branch in the MCSS) manages an Adoption Disclosure Register which can help birth family members share information if they are both registered.

hand, is the provision that provides positive *authorization* for the disclosure of adoption related information by a society where prescribed by regulation. It states:

(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.

[26] The regulation-making authority for the disclosure of adoption related information by a society under section 225(2) is found at section 346(1)17 of the *CYFSA* as follows:

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;

[27] 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).

[28] 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 contains a number of provisions that address the release of information relating to an adoption.

[29] 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*."<sup>9</sup>

[30] Section 9 of O. Reg. 158/18 permits the disclosure of "non-identifying information related to an adoption" by the MCSS custodian<sup>10</sup> or a society.<sup>11</sup>

[31] 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.

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<sup>9</sup> *Supra*, note 3.

<sup>10</sup> As mentioned in note 8, the MCSS custodian maintains the Adoption Disclosure Register. This will be discussed below.

<sup>11</sup> Section 8 of O. Reg 158/18 addresses the disclosure of identifying information by the MCSS Custodian under the Adoption Disclosure Register.



[32] 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***

#### *FACS Niagara's representations*

[33] FACS Niagara submits that the information in the responsive records relates to the complainant's adoption and is excluded from Part X of the *CYFSA* pursuant to section 285(4). It submits that as a society and a service provider, FACS Niagara is bound by section 227 of the *CYFSA* to maintain the confidentiality of information that relates to an adoption and disclose it only in accordance with the terms of that section. It submits that of particular relevance to this complaint is section 227(1)(b), which prohibits the disclosure of information that relates to an adoption unless it is authorized by the *CYFSA* or the regulations.

[34] FACS Niagara submits that, in keeping with subsections 9(1) and 9(2) of O. Reg. 158/18, it determined that it could partially release the records containing information relating to the complainant's adoption to him, provided that any identifying information was redacted prior to disclosure. It submits that these provisions state that an adopted person is only entitled to receive disclosure of non-identifying information from a society.

[35] FACS Niagara submits that all records leading up to the adoption finalization must be considered as adoption records, given they contain information that is defined as information related to an adoption in section 9(2) of O. Reg. 158/18.

#### *Complainant's representations*

[36] The complainant submits that FACS Niagara has misinterpreted the provisions of the *CYFSA* and O. Reg. 158/18. He submits that FACS Niagara should have processed his access request as a request for access to his own personal information subject to Part X, rather than a request for his "adoption file." He submits that it was inappropriate for FACS Niagara to classify all of the records as adoption records because some of them are better described as child in care records, emergency care placement records, foster care placement records, and birth records.

[37] The complainant submits that many of the responsive records predate the initiation of any adoption process or placement which, he submits, began in April 1989 and concluded in November 1990. He submits that these records should not be classified as "adoption records" but are more accurately characterized as child in care records. He submits that these records are not adoption records because they pertain

to the care and services that he received while in "care" during a temporary placement and subsequent foster care placement from September 1986 and November 1989.

[38] The complainant disputes the redaction of his birth name, throughout the records, as well as the names of his foster/adoptive mother, his birth mother and his half sibling, by birth, all of which he submits are within his knowledge. The complainant also disputes the redaction of the names of doctors and other professionals that he visited while in FACS Niagara's care. He submits that the names of professionals regulated under the *Health Professionals Act* should be disclosed to him.

[39] The complainant explains that he seeks greater access to the records. He notes that the records he received are so "heavily redacted" that they are unreadable and have "little value in meaning." He notes that FACS Niagara redacted his own name throughout the records, even though he "submitted both a Court certified change of name document as well as the FACS Niagara Release of Information consent as requested." He explains that he seeks access to the redacted information, in particular that which has been redacted from the caseworker notes of his child in care records because he believes that they contain information that will help him make informed personal health decisions and lifestyle and work choices.

[40] Finally, the complainant notes that most of the records are nearly 35 years old and some of them are nearly 50 years old. He submits that these records should be considered historic and disclosed without redactions.

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

[41] As previously explained, if section 285(4)(a) applies to the requested information it is excluded from the scope of Part X of the *CYFSA*, including the right of access to one's own personal information at section 312. In other words, if section 285(4) applies, Part X<sup>12</sup> does not apply to the information and the IPC has no authority under Part X to order that access be granted to it.

[42] FACS Niagara submits, and I agree, that all of the responsive records, whether they have been characterized by FACS Niagara as adoption records, birth records or child in care records fall squarely within the exclusion at section 285(4)(a) of the *CYFSA*. I make this finding despite the complainant's express disagreement with this approach and position that most of the records, in particular his child in care records and birth records, should not be characterized as adoption records and therefore, that he should be granted complete access to the personal information that they contain.

[43] When determining whether section 285(4) applies to exclude "information that relates to an adoption" from Part X, it is not the way in which the records are characterized that is relevant, but whether the information that they contain qualifies as "information that relates to an adoption." In this case, I find that the information in all

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<sup>12</sup> Specifically, the use and disclosure provisions in sections 286 to 332.

of the records, whether they are identified by the society as adoption records or whether they are identified as birth records or child in care records that predate the adoption order, is "information related to an adoption" as defined in section 9(2) of O. Reg 158/18. Specifically, the records contain:

- background information relating to the complainant's birth parents, birth grandparents, birth siblings and other birth family members (paragraph (a) i)),
- background information relating to the complainant's adoptive parents and family (paragraph (a) ii)),
- the circumstances leading to the complainant's adoption placement (paragraph (b)),
- the details relating to the birth of the complainant (paragraph (c)),
- the care received by the complainant prior to the adoption placement (paragraph (d)), and
- the developmental progress of the adopted person (paragraph (e))

[44] The exclusion in section 285(4)(a) applies to the release, by a society, of information that relates to an adoption under section 227.<sup>13</sup> As explained above, the prohibition at section 227(1)(b) requires that after an adoption order is made,<sup>14</sup> 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.<sup>15</sup> Section 225(2) provides the society with the statutory authority to disclose adoption related information by a society where prescribed. Accordingly, only the disclosure of adoption related information that is prescribed by regulation falls within the terms of the exception to the prohibition at section 227(1)(b).

[45] In this case, FACS Niagara disclosed all non-identifying information relating to the complainant's adoption pursuant to section 225(2) and 227(1)(b) of the *CYFSA*, as authorized by section 9 of O. Reg. 158/18. I have reviewed all of the redactions made by FACS Niagara which include names, locations and, in some cases, portions of narrative in certain records such as caseworker notes. I accept that all the information that was disclosed to the complainant is non-identifying information that relates to his adoption and that the redactions made by FACS Niagara were in accordance with paragraph 3 of section 9(6) of O. Reg. 158/18.

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<sup>13</sup> 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.

<sup>14</sup> It is clear from the records that an adoption order related to the complainant's adoption was made in 1990.

<sup>15</sup> 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.

[46] I note that the complainant disputes the redactions that FACS Niagara has made to the records. In particular, he disputes redactions that have been made to his own name, and to the names of his foster mother/adoptive mother, his birth mother and his half sibling by his birth mother. He also disputes the redactions made to the names of medical doctors and other professionals as they appear in the records and the redactions made to the child in care caseworker notes. From my review, given the context in which this information appears in the records, it can be described as identifying information.

[47] I understand that the complainant seeks greater access to the records. I also acknowledge that some of the redacted information, particularly names (including his own, pre-adoption), is within the complainant's knowledge. However, as the information in the responsive records relates to an adoption where an adoption order has been made, the prohibition at section 227(1) remains in effect. FACS Niagara is permitted to disclose only that which is authorized by the *CYFSA* or its regulations which, pursuant to section 9 of O. Reg 158/18 is non-identifying information. Having considered the redacted information in the context of the relevant provisions, it is apparent that FACS Niagara has followed the adoption disclosure requirements set out in O. Reg. 158/18 by redacting identifying information from the responsive records and disclosing only non-identifying information about the complainant's adoption. Nothing in the *CYFSA* or its regulations permits the disclosure of identifying information related to an adoption, even if it is within the requester's knowledge.

[48] I also acknowledge that the complainant's adoption occurred nearly 35 years ago and that it is his position that due to the passage of time these records should be disclosed without redaction. However, as I noted above, section 227(3) specifies that section 227(1) applies regardless of when the adoption order was made. The passage of time is not relevant to whether the exception at section 285(4) applies to exclude information that relates to an adoption from the use and disclosure provisions in Part X of the *CYFSA*.

[49] I find that, as information related to an adoption, the responsive records are excluded, pursuant to section 285(4), from the use and disclosure provisions in sections 286 to 332 of Part X of the *CYFSA*. In other words, Part X of the *CYFSA* does not apply and the complainant does not have a right of access to the information that he seeks under that part. I dismiss the complaint.

**ORDER:**

I issue no order and dismiss the complaint.

Original Signed By: \_\_\_\_\_  
Catherine Corban  
Adjudicator

November 30, 2023

