

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION CYFSA DECISION 16

Complaint FA23-00046

CYFSA Decision 12

Family and Children's Services Niagara

December 18, 2023

Summary: In CYFSA Decision 12, the complainant, a former child in care, 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 service provider granted the complainant partial access to two files relying on certain exemptions under the *Act*. The adjudicator ordered the service provider to grant the complainant greater access to records contained in the complainant's care file having found that the records in this file are dedicated primarily to the provision of a service to the complainant and that no exemption applied.

However, the adjudicator upheld the service provider's decision to deny access to records contained in the protection file, finding that the exemption at section 312(1)(d)(iii) of the *Act* (identification of an individual who provided information explicitly or implicitly in confidence) applied.

The complainant requested reconsideration of CYFSA Decision 12. In this decision, the adjudicator finds that the complainant has not established any ground for reconsideration of the decision and denies the complainant's request.

Statutes Considered: *Child, Youth and Family Services Act, 2017*, section 324(1); and the *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*, section 27.01.

Decisions Considered: PHIPA Decision 25

Related Decisions and Orders: CYFSA Decisions 11 and 12, Orders P-1069 and PO-3995.

Cases Considered: *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848, at 861.

OVERVIEW:

[1] In this reconsideration decision, I consider the complainant's request that I reconsider CYFSA Decision 12. By way of background, the complainant filed a request under the *Child, Youth and Family Services Act, 2017* (the *Act* or *CYFSA*) to the Family and Children's Services Niagara (the service provider) for a "complete uncensored" copy of her file.

[2] In response, the service provider granted the complainant with partial access to two closed files.¹ The complainant, in turn, filed a complaint with the Information Privacy Commission of Ontario (IPC). A mediator was assigned to explore settlement with the parties, but mediation did not resolve the complaint. The complaint was transferred to the adjudication stage of the complaint process in which an adjudicator may conduct a review.

[3] At the end of my review, I issued CYFSA Decision 12 upholding the service provider's decision to withhold portions of records contained in the protection file on the basis that the exemption at section 312(1)(d)(iii) of the *Act* (identification of an individual who provided information explicitly or implicitly in confidence) applied.

[4] However, I ordered the service provider to grant the complainant access to certain withheld portions of records contained in the care file. I found the records located in the care file dedicated primarily to the service provider's provision of a service to the complainant, and that some of the withheld information was not exempt under the *Act*.

[5] Upon her receipt of CYFSA Decision 12, the complainant filed a written reconsideration request to me. I subsequently wrote to the parties informing them that I had granted an interim stay of the order provisions in CYFSA Decision 12 to allow me time to consider the complainant's reconsideration request.

[6] For the following reasons set out below, I deny the complainant's reconsideration request and lift the interim stay.

¹ CYFSA Decision 12 discusses the contents of the record in detail. In summary, the records comprise of 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, which the service provider refers to as the "care file." The second file is the closed historical protection file, which the service provider refers to as the "protection file."

DISCUSSION:

[7] Section 324 (1) of *CYFSA* provides for the reconsideration of orders made following a review. This section states:

After conducting a review under section 317 or 318 and making an order under subsection 321 (1), the Commissioner may rescind or vary the order or may make a further order under that subsection if new facts relating to the subject-matter of the review come to the Commissioner's attention or if there is a material change in the circumstances relating to the subject-matter of the review.

[8] As of the issuance of this decision, the IPC has not yet published a *Code of Procedure for Matters under the Child, Youth and Family Services Act, 2017*. However, section 324(1) of *CYFSA* is substantially similar to section 64(1) of the *Personal Health Information Protection Act, 2004*, (*PHIPA*) which provides for the reconsideration of orders made under *PHIPA*.² The IPC's *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004* (the *Code*) governs IPC proceedings including reconsiderations under that act.

[9] While the *Code* is not applicable to requests for reconsideration under the *CYFSA* I accept that the reconsideration provisions that it contains are of assistance when considering grounds for reconsideration under the *CYFSA*. Given that section 324(1) of *CYFSA* is substantially similar to section 64(1) of *PHIPA* I find that it is appropriate in the circumstances to apply the same procedure for the reconsideration of *PHIPA* complaints to the reconsideration request before me. Accordingly, I will consider whether the complainant's request for reconsideration gives rise to one of the grounds of reconsideration set out in section 27 of the *Code*. Section 27.01 of the *Code* states:

The IPC may reconsider a Decision at the request of a person who has an interest in the Decision or on the IPC's own initiative, where it is established that:

- a) there is a fundamental defect in the adjudication process;
- b) there is some other jurisdictional defect in the Decision;
- c) there is a clerical error, accidental error or omission or other similar error in the Decision; or

² Section 64(1) of the *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A (*PHIPA*), states:

After conducting a review under section 57 or 58 and making an order under subsection 61(1), the Commissioner may rescind or vary the order or may make a further order under that subsection if new facts relating to the subject-matter of the review come to the Commissioner's attention or if there is a material change in the circumstances relating to the subject-matter of the review.

d) new facts relating to an Order come to the IPC's attention or there is a material change in circumstances relating to the Order.

The complainant's request for reconsideration

[10] In her request seeking reconsideration of CYFSA Decision 12, the complainant says that there are "fundamental and jurisdictional defects in the decision." In support of her position, the complainant made the following four arguments³:

- that the decision should be corrected to indicate that her mother's first contact with the service provider was on April 1, 1964 and her last contact was in 1974. The complainant questions the dates identified on the face page of the protection file,
- that she should have been granted access to redacted information under the heading "Referral Information" (page 100 of the protection file) on the basis that the withheld information does not constitute "personal information" as it relates to information about an individual in a business, professional or official capacity,
- that she should be granted access to names of her parents and other information withheld in the court orders provided to her from the protection file. The complainant appears to suggest that in CYFSA Decision 11, I ordered the service provider to grant her sister access to this type of information, and
- that she should be granted access to her parent's information in the protection file. In support of this position, the complainant says that it appears to her that "much of the information re: my parents/family that was withheld is the kind of information that would be withheld if someone who is adopted made a request to a children's aid society." The complainant also submits that during mediation stage of this complaint, the mediator had told her that the service provider could make an "adoption worker" available to discuss her concerns.

Analysis and decision

[11] The IPC has consistently recognized that the reconsideration power is not intended to provide a forum for re-arguing or substantiating arguments made (or to raise arguments not previously made) during a review, nor to address a party's mere disagreement with a decision or legal conclusion.⁴ In PHIPA Decision 25, the adjudicator

³ The complainant made a fifth argument which I addressed in a letter to her, dated November 21, 2023. The complainant responded to that letter in an email, dated November 27, 2023, indicating that the fifth argument set out in her reconsideration request was no longer an issue.

⁴ PHIPA Decision 25, citing Order PO-3558-R at paras 21-24. The adjudicator in PHIPA Decision 25 recognized that this order arose in the context of a different statute (the *Freedom of Information and Protection of Privacy Act*); she also noted, however, that the principles expressed in that order (and in the orders and decisions quoted there) are generally applicable to a request for reconsideration under *PHIPA*, while recognizing the different legislative context and the fact that *PHIPA* contains the power set

noted the Supreme Court's recognition of the sound policy basis for recognizing the finality of proceedings before administrative tribunals.⁵ In that decision she stated:

It is important to note that the reconsideration power is not intended to provide a forum for re-arguing or substantiating arguments made (or not made) during the review, nor is reconsideration intended to address a party's disagreement with a decision or legal conclusion.⁶ As Justice Sopinka commented in *Chandler v. Alberta Association of Architects* "there is a sound policy basis for recognizing the finality of proceedings before administrative tribunals."

[12] I agree with the approach taken in PHIPA Decision 25 and apply it in the circumstances of the matter before me. I have considered the complainant's arguments in support of her request that I reconsider CYFSA Decision 12 and find that her arguments amount to a disagreement with my findings or raise issues not relevant to the circumstances of my review. In addition, I find that the complainant's arguments do not give rise to one of the grounds for reconsideration mentioned above for the following reasons.

[13] First, the complainant argues that CYFSA Decision 11 should require the correction of the record to reflect her understanding of her mother's first and last contact with the service provider. The complainant's argument amounts to a request to correct information in the records. The complainant raised similar arguments during my review and was told she would first have to submit her correction request to the service provider directly and that the decision would not address her assertion that the records contain errors.⁷

[14] Second, the complainant says that she should be granted access to the name and contact information of the individual withheld in a record located in the protection file. The complainant argues that I should have ordered the service provider to grant her access to this information. However, as stated in paragraph 42 of CYFSA Decision 12, section 312(3) of the *Act* provides that if a record is not dedicated primarily to the provision of a service to the complainant, then she only has a right of access to her own personal information that can be reasonably severed from the record. Paragraphs 55 to 56 set out my reasons for concluding that the records in the protection file, including

out in section 64. I find that the principles expressed in PHIPA Decision 25 are instructive and relevant to a request for reconsideration under the *Child, Youth and Family Services Act, 2017* and adopt and apply this reasoning in the current reconsideration.

⁵ The Assistant Commissioner Sherry Liang cited Sopinka J. in *Chandler v. Alberta Association of Architects*, 1989 CanLII 41 (SCC), [1989] 2 SCR 848, at 861.

⁶ Footnote 2 in PHIPA Decision 25 states: See *Ontario (Health and Long-Term Care) (Re)*, 2015 CanLII 83607 at paras. 21-24. Although this decision arises in the context of the *Freedom Information and Protection of Privacy Act*, the principles expressed in this decision, and in the other decisions quoted therein, are generally applicable to a request for reconsideration under the Act, while recognizing the different legislative context and the fact that the Act contains the power set out in section 64.

⁷ See paragraph 18 and footnote 6 of CYFSA Decision 12.

the record in question, are not dedicated primarily to the provision of a service to the complainant.

[15] Third, the complainant says that she should be granted access to the names of her parents and other information withheld in the court orders appearing in the protection file. In support of this argument, the complainant appears to suggest that in CYFSA Decision 11, I ordered the service provider to grant her sister access to this type of information appearing in the protection file. This is not the case. The information I ordered the service provider to provide to the complainant's sister relating to their parents appears in her sister's *care* file.⁸ The complainant says I should order the service provider to grant her access to her parent's information withheld in records located in the *protection* file. However, I found that this information was not dedicated primarily to the provision of a service to the complainant.⁹ As noted above, section 312(3) of the *Act* provides that if a record is not dedicated primarily to the provision of a service to the complainant, then she only has a right of access to her own personal information that can be reasonably severed from the record.

[16] Finally, the complainant says that she should be granted access to her parent's information in the protection file because she was a child in care and was not adopted. In support of this argument, the complainant does not address my reasons set out in paragraph 55 to 56 of CYFSA Decision 12 to uphold the service provider's decision to withhold her parents' information.¹⁰ Instead, the complainant refers to a context (ie: adoption) that is not relevant in the circumstances of this complaint nor was considered in my decision to uphold the service's provider's decision to withhold information in the protection file.

[17] Having regard to the above, I find that the complainant's evidence fails to establish a fundamental defect in the review process, a jurisdictional defect in the decision, or other error warranting reconsideration of CYFSA Decision 12. In addition, the complainant's evidence has not established any new facts or material change in circumstances to warrant exercising my discretion in this manner as contemplated under section 324 (1) of *CYFSA* or section 27.01(d) of the *Code*.

[18] Accordingly, I conclude that the complainant has not established any ground for reconsideration of CYFSA Decision 12 and deny the reconsideration request.

⁸ See paragraph 74 of CYFSA Decision 11.

⁹ See paragraphs 55 and 56 of CYFSA Decision 12.

¹⁰ In paragraph 55 to 56 of CYFSA Decision 12, I find that the records in the protection file are not dedicated primarily to the provision of a service to the complainant. I go on to apply section 312(3) of the *Act* which provides that if a record is not dedicated primarily to the provision of a service to the individual requesting access, the individual only has a right to access only her own personal information that can be reasonably severed from the record, and find that the complainant was granted access to all of her personal information that could be reasonably severed from other information, including her parents' information, contained in the records.

NO RECONSIDERATION:

1. I deny the reconsideration request and lift the interim stay of CYFSA Decision 12.
2. In accordance with provision 2 of CYFSA Decision 12, I order the service provider to grant the complainant greater access to records in the **care file**, by providing the 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 CYFSA Decision 12. The service provider is to provide the complainant with a copy of the record by **January 26, 2024** but not before **January 22, 2024**.
3. In order to verify compliance with provision 2, I reserve the right to request a copy of the records the service provider is to grant the complainant access to in accordance with provision 2.

Original signed by: _____
Jennifer James
Adjudicator

December 18, 2023 _____