

YES,

YOU

CAN.

**DISPELLING THE MYTHS ABOUT
SHARING INFORMATION WITH
CHILDREN'S AID SOCIETIES.**



**Information and Privacy
Commissioner of Ontario**

إعلام صوت الشباب
শিশুসহিত গণিত মিত্রবিশ্ব
ভাষা কলিত আওমিত্র ভূমিত্র
Ditorn CACHPCba DNP3da
Amplify Youth Voice
Donner une voix aux jeunes
Osnažiti glas mladih
Dzshapay voz. dšg yvovs
打大青年和聲音

**Ontario
Child
Advocate**

WHY THIS BOOKLET?

All too often, a professional may become aware of a risk of harm to a child, but does not report that suspicion to a children's aid society based on the unfounded belief that "privacy" prevents them from doing so.

The Provincial Advocate for Children and Youth (Ontario Child Advocate) and the Office of the Information and Privacy Commissioner of Ontario have worked together to develop this resource to clarify some common misunderstandings about privacy.

Children's aid societies (referred to here as "societies") operate under the authority of the *Child, Youth and Family Services Act, 2017* (CYFSA). This Act and its regulations give societies broad duties and powers relating to the protection of children, including the authority to conduct investigations into allegations of harm and review reports of children in need of protection.

Despite this broad authority, health providers, police, teachers and social service workers sometimes refuse to provide information to child protection workers.

While well-intentioned, a refusal to share information about a child in need of protection may leave the child at risk of harm. In some cases, it may also be an offence under section 125(5) of the *CYFSA*.

The Ontario Child Advocate and the Information and Privacy Commissioner are aware that there is confusion about different sets of privacy guidelines and policies. During a number of Coroners' inquests into the deaths of children, society case workers have testified about the frustration they experience when trying to obtain information from professionals and other parties. Professionals working with children must ensure that they do not wrongly see privacy as a barrier to disclosing personal information to society workers when a child is in need of protection.

Please take a few minutes to review this important information. We encourage you to share it with your colleagues.

PART I

WHAT DOES CHILD PROTECTION LEGISLATION SAY?

Under the *CYFSA*, societies investigate allegations or evidence that children may be in need of protection.¹ A child may be in need of protection if the child has suffered or is likely to suffer physical harm, sexual abuse or exploitation, emotional harm, or has been subject to inadequate care or a pattern of neglect.²

DUTY TO REPORT

If a person has reasonable grounds to suspect that a child under the age of 16³ is in need of protection, the person must immediately report the suspicion and the information on which it is based to a society.

¹ *CYFSA* s. 35(1)(a)

² *CYFSA* s. 74(2), also see *CYFSA* s. 125(1)

³ Under the *CYFSA* (s. 125(4)), a person may report to a society about a 16 or 17 year old whom they suspect is in need of protection, although there is not a duty under the law to do so. If a person chooses to make a report about a 16 or 17 year old whom they suspect is in need of protection, they may do so despite the information being confidential or privileged.

The obligation to report applies to any person, including a person who performs professional or official duties with respect to children, and applies despite the provisions of any other Act.⁴

The duty to report is also ongoing, meaning that even if a person has already made a report to a society about the child, they must make another report if they have additional information about a child who is in need of protection.

A person with a duty to report must make the report directly to the society, and must not rely on another person to make the report on their behalf.⁵

Professionals working with children may be guilty of an offence if they fail to report information that causes them to have reasonable grounds to suspect that a child is in need of protection. A director, officer or employee of a corporation who authorizes or permits this offence may also be guilty of an offence.⁶

⁴ CYFSA s.125(1)

⁵ CYFSA s. 125(2) and (3)

⁶ CYFSA s. 125(5-9). A person convicted of either offence is liable to a fine of up to \$5,000

A person's duty to report applies even if the information is confidential or privileged. No legal action for reporting the information can be taken against the person unless they act maliciously or without reasonable grounds to suspect that a child is in need of protection.⁷

DISCRETION TO DISCLOSE

Every society has a review team that recommends how a child can be protected.⁸ Despite the provisions of any other Act, a person may disclose to a review team information reasonably required by the team for this purpose.⁹

A person's ability to disclose such information to a review team applies even if the information is confidential or privileged.

No legal action for disclosing the information can be taken against the person unless the person acts maliciously or without reasonable grounds to suspect that a child is in need of protection.¹⁰

⁷ CYFSA s. 125(10)

⁸ CYFSA s. 129(4)

⁹ CYFSA s. 129(5)

¹⁰ CYFSA s. 129(6)

PART II

WHAT DOES ONTARIO'S PRIVACY LEGISLATION SAY?

JURISDICTION OF THE INFORMATION AND PRIVACY COMMISSIONER

The Information and Privacy Commissioner of Ontario oversees the:

- *Freedom of Information and Protection of Privacy Act (FIPPA)*
- *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*
- *Personal Health Information Protection Act, 2004 (PHIPA)*

When we talk about all three pieces of legislation, we call them “Ontario’s privacy legislation”.

FIPPA and *MFIPPA* govern the collection, use and disclosure of personal information by institutions under those acts. *PHIPA* governs the collection, use and disclosure of personal health information by health information custodians (custodians).

Municipal police services, school boards and municipalities are institutions under *MFIPPA*. The Ontario Provincial Police is an institution under *FIPPA*.

Hospitals are custodians under *PHIPA*. Physicians and other health care practitioners may also be custodians under *PHIPA*.

Children's aid societies are not governed by *FIPPA* or *MFIPPA*. Societies' information practices will be governed by Part X of the *CYFSA*, when it comes into force on January 1, 2020. Part X includes rules for how personal information may be collected, used and disclosed by societies, and gives individuals a right to access their personal information from a society. The Information and Privacy Commissioner will oversee compliance with Part X of the *CYFSA*. When these rules come into effect, they will not impact the duty to report.

INSTITUTIONS CAN DISCLOSE PERSONAL INFORMATION TO A SOCIETY UNDER FIPPA, MFIPPA AND THE CYFSA

Under *FIPPA* and *MFIPPA*, personal information may be disclosed in various circumstances including:

- to comply with a law¹¹
- in compelling circumstances affecting the health or safety of an individual¹²
- in compassionate circumstances to facilitate contact¹³

These provisions permit the disclosure of personal information by an institution and its employees to a society worker to comply with the *CYFSA*'s duty to report. They also permit the disclosure of personal information to a society review team.

¹¹ *FIPPA* s. 42(1)(e), *MFIPPA* s. 32(e)

¹² *FIPPA* s. 42(1)(h), *MFIPPA* s. 32(h)

¹³ *FIPPA* s. 42(1)(i), *MFIPPA* s. 32(i)

HEALTH INFORMATION CUSTODIANS CAN DISCLOSE PERSONAL HEALTH INFORMATION TO A SOCIETY UNDER PHIPA

Custodians and their agents may disclose personal health information to societies so they can carry out their statutory functions, including the conduct of investigations and reviews under the *CYFSA*.¹⁴ *PHIPA* also recognizes that societies may be lawfully entitled, in the place of the parent, to give or refuse consent to disclosures by a custodian of the child's personal health information.¹⁵

In addition, the provisions of the *CYFSA* setting out the duty to report a suspicion that a child is in need of protection prevail despite anything in *PHIPA*.¹⁶

PROTECTION FROM LIABILITY

Institutions and custodians are protected from liability (including monetary damages) if they act in good faith and do what is reasonable under the circumstances in the exercise of their powers or duties under Ontario's privacy legislation.¹⁷

¹⁴ *PHIPA* s. 43(1)(e), *PHIPA O. Reg.* 329/04 s. 7(2)(iii)

¹⁵ *PHIPA* s. 23(1)2, *PHIPA* s. 26(1)5

¹⁶ *CYFSA* s. 125(12)

¹⁷ *FIPPA* s. 62(2), *MFIPPA* s. 49(2), *PHIPA* s. 71(1)

PART III

QUESTIONS & ANSWERS

1. *A society is conducting an investigation at a school. The school did not instigate the investigation. Can teachers and other school staff speak to the society worker without the consent of the parents and child?*

Yes, they can. Nothing in Ontario's privacy legislation prevents teachers or other school staff from disclosing personal information to a society to comply with a duty to report. Nor does the legislation prevent disclosing personal information to a society review team. Even if the school staff did not provide the initial report that the child may be in need of protection, teachers and other school staff can provide information to a society worker conducting a child protection investigation or review. Again, Ontario's privacy legislation is not a barrier to such disclosure.

2. *A society contacts a child's health care practitioner and asks for information to assist in an investigation. Can the practitioner disclose information about the child to the society?*

Yes, they can. Health care practitioners who may be either custodians or agents of custodians under *PHIPA* may disclose personal health information so societies can carry out their statutory functions.¹⁸ This includes the duty to report if they have reasonable grounds to suspect that a child is in need of protection, in which case they must immediately report the suspicion and information on which it is based.

¹⁸ *PHIPA* s. 43(1)(e), *PHIPA O. Reg.* 329/04 s. 7(2)(iii), *CYFSA* s. 125(12)

3. *Police and a society worker respond to an allegation made to the society. Can they share information with each other at that time? Can their organizations share information during joint investigations of the same caregivers and children?*

Yes, they can. Police officers who accompany a society worker on a call for safety reasons and who have reasonable grounds to suspect that a child is in need of protection must immediately report the suspicion and the information on which it is based to the society worker. In addition, there is nothing in Ontario's privacy laws that would prohibit police officers from making disclosures to a society worker who is conducting an investigation or a review under the CYFSA. Police officers may also disclose personal information under the *Police Services Act* and its regulations.¹⁹ Societies are not limited by *FIPPA* and *MFIPPA* in what they can disclose to police, because they are not subject to those laws.

¹⁹ *Police Services Act*, s. 41 and O. Reg. 265/98 "Disclosure of Personal Information." These disclosures are deemed to be in compliance with *MFIPPA* s. 32(e). See *Police Services Act* s. 41(1.3). If proclaimed, see *Police Services Act*, 2018, s. 108

4. ***Can police officers disclose information to society workers about a person's criminal record if they believe the individual poses a risk to children?***

Yes, they can. Police officers who have reasonable grounds to suspect that a child is in need of protection must immediately report the suspicion and the information on which it is based to the society worker. If the officer believes a child is at risk due to an individual, then the officer must disclose that suspicion and the information it is based on. In addition to information disclosed to comply with the duty to report, police officers may disclose personal information under the *Police Services Act* and its regulations.²⁰

5. ***Can police officers disclose information to a society worker when that worker is conducting a child protection investigation?***

Yes, they can. Police officers can provide information to a society worker conducting a child protection investigation or a review under the *CYFSA*. Ontario's privacy legislation is not a barrier to such disclosure.

²⁰ *Police Services Act*, s. 41 and O. Reg. 265/98 "Disclosure of Personal Information." These disclosures are deemed to be in compliance with *MFIPPA* s. 32(e). See *Police Services Act* s. 41(1.3). If proclaimed, see *Police Services Act*, 2018, s. 108

6. *Social services office staff witness an interaction between a parent and a child that triggers a report to a society. Can staff tell the society about what they saw and what else they know about the family?*

Yes, they can. Nothing in Ontario's privacy legislation interferes with social services staff disclosing personal information to a society to comply with the duty to report or disclosing personal information to a society review team. Even if the social service staff did not provide the initial report that the child may be in need of protection, if there are reasonable grounds to suspect that a child is in need of protection, there remains the duty to immediately report the suspicion and the information on which it is based. Again, Ontario's privacy legislation is not a barrier to such disclosure.

RESOURCES

LEGISLATION

- *Child, Youth and Family Services Act, 2017*
- *Freedom of Information and Protection of Privacy Act*
- *Municipal Freedom of Information and Protection of Privacy Act*
- *Personal Health Information Protection Act, 2004*

STANDARDS

- Ontario Child Protection Standards
- Ontario Child Protection Tools Manual

GUIDANCE

- Disclosure of Information Permitted in Emergency or other Urgent Circumstances (Fact Sheet #7)
- Practice Tool for Exercising Discretion: Emergency Disclosure of Personal Information by Universities, Colleges and other Educational Institutions

APPENDIX – FIPPA, MFIPPA AND PHIPA DISCLOSURE PROVISIONS

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

42. (1) An institution shall not disclose personal information in its custody or under its control except,

- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;

MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

32. An institution shall not disclose personal information in its custody or under its control except,

- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;

PERSONAL HEALTH INFORMATION PROTECTION ACT, 2004

43. (1) A health information custodian may disclose personal health information about an individual,
- (e) to the Public Guardian and Trustee, the Children's Lawyer, a children's aid society, a residential placement advisory committee established under subsection 63 (1) of the *Child, Youth and Family Services Act, 2017* or a designated custodian under section 223 of that Act so that they can carry out their statutory functions.

NOTES



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