

YES,

YOU

CAN.

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



Information and Privacy
Commissioner of Ontario
Commissaire à l'information et à la
protection de la vie privée de l'Ontario



Ombudsman
ONTARIO

Why This Booklet?

All too often, a professional may become aware of a risk of harm to a child or youth under the age of 18 but hesitates to report that risk to a children's aid society or Indigenous child well-being agency (referred to here collectively as "societies") based on the unfounded belief that privacy laws prevent them from doing so.

In 2016, the former Provincial Advocate for Children and Youth and the Office of the Information and Privacy Commissioner of Ontario (IPC) developed this resource to clarify some common misunderstandings about privacy. The Office of the Ombudsman of Ontario and the IPC have now updated *Yes, You Can* to reflect legal developments since its original publication and to address misconceptions that continue to persist across sectors.

Societies operate under the authority of the *Child, Youth and Family Services Act* (CYFSA). The act and its regulations give societies broad duties and powers relating to the protection of children, including the authority to investigate allegations of harm and review reports about children who are or may be in need of protection.

Despite this broad authority, health care providers, police, teachers, social service workers, and other professionals or individuals sometimes hesitate to provide personal information or personal health information (personal information) to child protection workers because of privacy concerns.

While well-intentioned, choosing not to report information about a child or youth in need of protection can leave that child or youth at risk of harm. In some cases, failing to report may also be an offence under section 125(5) of the CYFSA.

Ombudsman Ontario and the IPC are aware that confusion can arise about how different privacy laws, guidelines, and policies apply. Society case workers have testified about the challenges they face when trying to obtain information from professionals and other parties. In several coroner's inquests and reviews into

the deaths of children and youth, a lack of timely information sharing has been identified as a potential contributing factor.

Professionals working with children and youth must ensure that privacy is not mistakenly seen as a barrier to disclosing personal information to society workers when a child or youth may be in need of protection.

It is important to note that the federal law, an *Act respecting First Nations, Inuit and Métis children, youth and families*, affirms Indigenous groups' and communities' inherent right to exercise partial or full jurisdiction over child and family services. Therefore, when a report is made under a duty to report, assessment and subsequent services may be provided under governing First Nations, Inuit or Métis child and family well being laws.

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

PART I

What Does Ontario's 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 (including sex trafficking), 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 or may be in need of protection, the person must

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

immediately report the suspicion, and the information on which it is based, to a society.

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

The duty to report is ongoing. Even if a person has already reported concerns to a society about the child, they must make another report if they have additional information suggesting the child is or may be in need of protection.⁵

A person with the 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.⁶

Professionals working with children may be guilty of an offence if they fail to report information that gives them reasonable grounds to suspect that a child is or may be in need of protection. A director, officer, or employee of a corporation who authorizes or permits this failure to report may also be guilty of an offence.⁷

A person's duty to report applies even if the information is confidential or privileged. No legal action for reporting information, even if it is confidential or privileged, can be taken against the person unless they act maliciously or without reasonable grounds to suspect that a child is or may be in need of protection.⁸

It is important to note that although the mandatory duty to report only applies to children under 16, a person may voluntarily make a report concerning a child/youth who is 16 or 17-years-old if

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.

4 CYFSA s.125(1)

5 CYFSA s. 125(2)

6 CYFSA s. 125(3)

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

8 CYFSA s. 125(10)

they have reasonable grounds to suspect that that child/youth may be in need of protection.⁹

A society that receives a report that a child or youth is or may be in need of protection must carry out an assessment to verify the reported information,¹⁰ or ensure that the information is assessed and verified by another society or child well-being agency. This may include assessment and provision of subsequent services under governing First Nations, Inuit, or Métis child and family well-being laws.

Disclosure to review teams

In addition to duty to report obligations, anyone may disclose to a review team or any of its members information reasonably required by the team to conduct a review and recommend how a child can be protected.¹¹

Every society is required to establish a review team for use in certain circumstances.¹² When a society refers a case to its review team, the team will review the case and recommend how a child can be protected.¹³ If a case has been referred to a society's review team, a person may disclose to a review team or any of its members information reasonably required by the team for this purpose, despite the provisions of any other act.¹⁴

A person may disclose such information to a review team even if the information is confidential or privileged. A person cannot face legal action for disclosing the information unless they acted maliciously or without reasonable grounds to suspect that a child is or may be in need of protection.¹⁵

9 CYFSA s. 125(4)

10 CYFSA s. 126(1) and O.Reg. 156/18

11 CYFSA s. 129(5)

12 CYFSA s. 129(7) sets out one circumstance in which a society must refer a case to its review team.

13 CYFSA s. 129(4)

14 CYFSA s. 129(5)

15 CYFSA s. 129(6)

What Does Ontario's Privacy Legislation Say?

Role of the Information and Privacy Commissioner of Ontario

The IPC oversees compliance with privacy laws in Ontario, including 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 (PHIPA)*; and
- Part X of the *Child, Youth and Family Services Act (CYFSA)*

FIPPA and MFIPPA govern how institutions collect, use, and disclose personal information. Municipal police services, school boards, and municipalities are examples of institutions under MFIPPA. The Ontario Provincial Police, which is part of the Ministry of the Solicitor General, is an example of an institution under FIPPA.

PHIPA governs how health information custodians (custodians) collect, use, and disclose personal health information. Hospitals, physicians, and other health care practitioners who provide health care are examples of health information custodians under PHIPA.

Children's aid societies are governed by Part X of the CYFSA. Part X sets out rules for how societies may collect, use, and disclose personal information, and gives individuals who receive services the right to access their personal information held by a society. These rules do not affect the duty to report.

In this guide, we refer to these laws collectively as "Ontario's privacy legislation."

Disclosure of personal information with consent

Ontario's privacy legislation set the rules for how institutions, children and family services providers, and health information custodians share personal information. Generally, personal information can be shared only with the consent of the individual the personal information is about, unless sharing without consent is permitted or required by law.

In situations where a child or youth is or may be in need of protection, seeking consent is often not reasonable, practical, or safe. In these situations, a person's duty to immediately report still applies and is required by law with or without consent.

Disclosure of personal information to a society without consent

Ontario's privacy legislation does not prevent the disclosure of personal information by institutions and health information custodians in certain circumstances, including where there is a duty to report.

Under FIPPA and MFIPPA, institutions may disclose personal information¹⁶ in various circumstances, including:

- to comply with a law¹⁷
- in compelling circumstances affecting the health or safety of an individual¹⁸
- in compassionate circumstances to facilitate contact¹⁹

Under PHIPA, custodians and their agents may disclose personal health information²⁰ to societies so they can carry out their statutory functions, including investigations and reviews under the CYFSA.²¹ In addition, the provisions of the CYFSA

16 See ss. 2 of FIPPA and MFIPPA for a definition of personal information.

17 FIPPA s. 42(1)(e), MFIPPA s. 32(e)

18 FIPPA s. 42(1)(h), MFIPPA s. 32(h)

19 FIPPA s. 42(1)(i), MFIPPA s. 32(i)

20 See s. 4 of PHIPA for a definition of personal health information.

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

setting out the duty to report a suspicion that a child is in need of protection prevail despite anything in PHIPA.²²

PHIPA also recognizes that societies may be lawfully entitled, in the place of the parent, to give or refuse consent to disclosures of the child's personal health information by a health information custodian.²³

Consultation with the child or youth

Although institutions and custodians are permitted to share personal information without consent, they are not prevented from consulting the child or youth about why sharing their personal information is necessary for their health or safety.

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.²⁴

Protection from identification

Under Part X of the CYFSA, individuals of any age have the right to access records of their personal information that are in the custody or control of a society and relate to services provided to them.

However, there are limits to this right. Access to their record of personal information may be refused if granting access could reasonably be expected to lead to the identification of an individual who was required by law to provide information in the record to the society. Access may also be refused if the information in the record was provided to the society explicitly or implicitly in confidence,

22 CYFSA s. 125(12)

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

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

and if the society considers it appropriate in the circumstances to keep the individual's identity confidential.²⁵



25 CYFSA s. 312(1)(d)(ii), s. 312(1)(d)(iii). Note that these protections from identification apply in the context of requests for access to information under Part X and may not apply in other circumstances, such as where an individual is required to testify in court in relation to this information.

PART III

Sector-Specific Scenarios

Education sector

A society is conducting an investigation at a school. Can teachers and other school staff share information with the society worker without the consent of the parents and child?

Yes, they can. Regardless of who initially reported the child protection concerns that led to the investigation, teachers and school staff must immediately provide the society worker with information necessary to fulfil their duty to report. This duty to report continues if new information arises suggesting the child is or may be in need of protection.

Nothing in Ontario's privacy legislation prevents teachers or other school staff from disclosing personal information to a society to comply with their duty to report.



Health care sector

A child's health care practitioner has concerns that the child may be in need of protection. Can the practitioner disclose information about the child to the society?

Yes, they can. In situations where the practitioner has reasonable grounds to suspect that a child is or may be in need of protection, the practitioner must immediately report the suspicion and information on which it is based. If practitioners become aware of

additional information suggesting the child is or may be in need of protection, they must make another report.

PHIPA clearly states that health care practitioners who are custodians or agents of custodians are permitted to disclose personal health information to a society so the society can carry out its statutory functions.²⁶



Law enforcement sector

- 1. Police officers have concerns that a child or youth may be in need of protection: can they disclose information about these concerns to a society worker?**

Yes, they can. Police officers who have reasonable grounds to suspect that a child is or may be in need of protection must immediately report the suspicion and the information on which it is based to a society worker under the duty to report.

If police officers become aware of additional information suggesting the child is or may be in need of protection, they must make another report. Ontario's privacy legislation is not a barrier to such disclosures.

- 2. Can police officers disclose relevant 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 or may be in need of protection must immediately report the suspicion and the information on which it is based to a society worker under the duty to report. If police officers

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

become aware of additional information suggesting the child is or may be in need of protection, they must make another report.

In addition to information disclosed to comply with the duty to report, police officers may disclose personal information to others in compelling circumstances affecting the health or safety of an individual, and as permitted or required by law, such as under the *Community Safety and Policing Act* and its regulations.²⁷

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, 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 under the duty to report. If police officers become aware of additional information suggesting the child is or may be in need of protection, they must make another report.

In addition, police officers may share information with the society worker in compelling circumstances affecting the health or safety of an individual, such as safety concerns for the child and/or worker. Police officers may also disclose personal information under the *Community Safety and Policing Act* and its regulations.²⁸



27 *Community Safety and Policing Act*, s. 80 and O. Reg. 412/13 “Disclosure of Personal Information.” These disclosures are deemed to be in compliance with MFIPPA s. 32(e).

28 *Community Safety and Policing Act*, s. 80 and O. Reg. 412/13 “Disclosure of Personal Information.” These disclosures are deemed to be in compliance with MFIPPA s. 32(e).

Societies must follow the rules of Part X of the CYFSA when deciding what information they may disclose to police. The focus should be on sharing only the personal information that is reasonably necessary to fulfill requirements under the duty to report, to eliminate or reduce the risk of harm to an individual, and as otherwise required by law.

Social services sector

A social services staff member witnesses an interaction between a parent and a child that triggers a report to a society. Can the staff member tell the society about what they saw?

Yes, they can. Nothing in Ontario’s privacy legislation interferes with social services staff members disclosing personal information to a society to comply with the duty to report. Even if the staff member did not provide the initial report, if there are reasonable grounds to suspect that a child is or may be in need of protection, there remains the duty to immediately report the suspicion and the information on which it is based. If social services staff members become aware of additional information suggesting the child is or may be in need of protection, they must make another report. Again, Ontario’s privacy legislation is not a barrier to such disclosures.



Resources

For more information on duty to report obligations see section 125 of the [*Child, Youth and Family Services Act*](#).

Privacy legislation

[*Part X of the Child, Youth and Family Services Act*](#)

[*Freedom of Information and Protection of Privacy Act*](#)

[*Municipal Freedom of Information and Protection of Privacy Act*](#)

[*Personal Health Information Protection Act*](#)

Provincial standards

[*Ontario Child Protection Standards*](#)

Ontario Child Protection Tools Manual

IPC guidance

[*Sharing Information in Situations Involving Risk of Serious Harm: A Quick Guide for Professionals*](#)

[*Sharing Information in Situations Involving Intimate Partner Violence: Guidance for Professionals*](#)

[*Disclosure of Personal Information to Law Enforcement*](#)

Additional information

[*An Act respecting First Nations, Inuit and Métis children, youth and families*](#)

[*Indigenous child and family services legislation*](#)

[*The First Nations Principles of OCAP® – The First Nations Information Governance Centre*](#)

Appendix – Select FIPPA, MFIPPA, and PHIPA Disclosure Provisions

Freedom of Information and Protection of Privacy Act (FIPPA)

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

(e) where permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada;

Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

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

(e) where permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada;

Personal Health Information Protection Act (PHIPA)

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.



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