

Child, Youth & Family Services Act: Part X (Personal Information)

Information Sharing – Access & Disclosure

This information sheet is intended for service providers funded or licensed under the *Child, Youth & Family Services Act, 2017* (CYFSA). It provides basic information only. **It must not take the place of legal advice.**

Background

Part X (Personal Information) under the CYFSA was proclaimed in April 2018 and came into effect on January 1, 2020. Generally, Part X will apply to service providers that are funded or licensed under the CYFSA and are not currently covered by other privacy legislation.

Part X is a new legislative privacy framework governing the handling and sharing of personal information in the child, youth and family services sector. Part X was developed to protect the privacy rights of children, youth and their families; to clarify how personal information can be collected, used and shared; and to enable the better use of data to understand sector outcomes. Under Part X, the Information and Privacy Commissioner (IPC) will be responsible for the oversight of information sharing and privacy protection by service providers.

Key Information to Know

Part X enables two types of information sharing - access and disclosure.

Access

What is Access?

Access refers to an individual's right and ability to request access to their records of personal information held by a service provider.

Access Requests

- An individual may request access to his/her/their own record of personal information held by a service provider related to the services he/she/they has received or is receiving.
- Any individual can make an access request.
- A service provider is required to make a record available for viewing and provide a copy to the individual upon request, at no cost and within specified timelines. See Information Sheet: Access for additional information.

Refusal of Access Request

A service provider may refuse an access request or only release a portion of the record in limited circumstances, including if:

- Another law does not allow its release;
- It is subject to legal privilege;
- Granting access could reasonably be expected to identify an individual who:
 - was required by law to provide the information to the service provider;
 - provided the information to the service provider in confidence - if the provider considers it appropriate that the individual's identity be kept confidential; and/or
- Granting access could reasonably be expected to result in a risk of serious harm to any individual

Disclosure

What is Disclosure?

Disclosure refers to personal information about an individual being shared by a service provider with another service provider, another person or entity.

Consent-Based Framework

- Part X is a consent-based framework designed to give individuals more control over their personal information.
- Service providers are required to obtain consent from individuals before sharing their personal information, except when an exception applies (e.g. risk of serious harm).
- For service providers, consent must:
 - Be given by the individual to whom the information relates or their substitute decision-maker (SDM);
 - Be knowledgeable, meaning it is reasonable to believe that the individual to whom the information relates knows:
 - the purposes of the collection, use or disclosure, and
 - that they may give, withhold or withdraw consent;
 - Relate to the information to be collected, used or disclosed; and
 - Not be obtained through deception or coercion.

Capacity

- Under Part X, an individual's ability to make consent decisions around the collection, use or disclosure of their personal information is based on capacity (rather than age).
- A service provider is required to presume an individual has the capacity to consent, regardless of age, unless they have reasonable grounds to believe otherwise.
- Capable means being able to:
 - understand the information that is relevant to deciding whether to consent; **and**
 - appreciate the reasonably foreseeable consequences of giving, withholding or withdrawing the consent.

- If an individual is determined to be incapable, an authorized SDM will make decisions about consent on their behalf.

Disclosure Without Consent

- A service provider may disclose without consent personal information collected for the purpose of providing a service:
 - To the Minister of Children, Community and Social Services;
 - To prescribed entities;
 - To a law enforcement agency in Canada to aid an investigation or to allow the agency to determine whether to undertake an investigation;
 - To a legal representative in certain circumstances for a legal proceeding;
 - To contact a relative, friend or potential SDM in the case of an emergency (e.g. injury of an individual);
 - To assess, reduce or eliminate a risk of serious harm;
 - By one children's aid society or child welfare authority outside of Ontario from another society if reasonably necessary to assess, reduce or eliminate a risk of harm to a child;
 - To a potential successor of the service provider; and
 - By law, treaty, agreement or arrangement made under a provincial or federal Act.

Case Information Disclosure Policy

Part X will prevail over the Case Information Disclosure Policy manual previously issued to service providers by the ministry to guide access to, confidentiality of, and the disclosure of personal information. As of January 1, 2020, the Case Information Disclosure Policy should no longer be used by ministry funded or licensed service providers to make decisions related to the collection, use and disclosure of clients' personal information.

Important Considerations

The intent of Part X is to provide clear rules to enable information-sharing between services providers while at the same time requiring service providers to protect the privacy of personal information. Service providers may consider developing a standardized process to record the sharing of clients' personal information. Elements of this process may include:

- **The authority under which the personal information may be shared**
 - State the legal or legislative authority that allows the service provider to share the client's personal information with other service providers (e.g. *CYFSA*, *Personal Health Information Protection Act*, *Youth Criminal Justice Act*).
- **The person giving consent**
 - Document the contact information of the client and, where applicable, the SDM giving consent (e.g. in cases where the child or youth may not have capacity to consent to the sharing of their personal information).
 - Documented information may include name, address, date of birth, the SDM's relationship to the client (e.g. in cases where the client is not capable).

- Consent may be written or oral, but an oral consent may be relied on only if the service provider who obtains the consent makes a written record that sets out the following information:
 - Name of the individual who gave the consent.
 - Information to which the consent relates.
 - Manner that the notice of purposes for the collection, use, or disclosure of the personal information was provided to the individual.
- **The service provider seeking consent**
 - Document the contact information of the service provider and the employee seeking consent.
 - Documented information may include the names of the service provider and employee, the service provider's address, position of the employee, and the service provider's telephone number.
- **The personal information to be shared**
 - Document the information that would be shared with other providers.
- **The purposes for which the personal information would be shared**
 - Document the purpose for which the personal information would be shared (e.g. providing a service).
- **With whom the personal information would be shared**
 - Document with whom the personal information would be shared (e.g. detailed list of service providers, types or classes of service providers).
- **The limitations for sharing personal information**
 - Document any limitations to the consent to share the personal information or specific instructions from the individual related to it being shared.
- **The circumstances when disclosure without consent is permitted**
 - State the circumstances when personal information may be shared without seeking the clients' consent, as outlined in the CYFSA (e.g. where necessary to assess, reduce or eliminate a risk of serious harm to a person or group).
- **The consent validation period**
 - Document the period for which the consent provided maybe effective, if applicable (e.g. defined time period, expiration of the consent, specifying an event or condition that would be completed)
- **Declaration of consent**
 - Document the client's understanding and consent for the sharing of personal information. This may include the understanding that:
 - Client's consent may be conditional and can be withdrawn at any time
 - Clients can raise concerns related to giving consent to share personal information and that any questions have been answered.
 - Dates and signatures of the client/SDM and employee of the service provider

Resources

- Information Sheet: Access
- Information Sheet: Consent
- Information Sheet: Capacity
- [The Information & Privacy Commissioner of Ontario](#)
- [The Ministry of Children, Community & Social Services](#)
- [The Child, Youth and Family Services Act, 2017](#)
- [Ontario Regulation 191/18 \(Personal Information\)](#)

For Additional Information

For specific inquiries about Part X or general inquiries about the CYFSA, please contact the Ministry of Children, Community & Social Services at cyfsa@ontario.ca

For information about oversight of Part X or general privacy inquiries, you can contact the Office of the Information and Privacy Commissioner at info@ipc.on.ca or 416-326-3333 (1-800-387-0073).