



Information and Privacy
Commissioner of Ontario

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

VIA ELECTRONIC MAIL

August 25, 2023

Saba Ferdinands
Director, Children and Youth at Risk Branch
Ministry of Children, Community and Social Services
101 Bloor St West, 6th Floor
Toronto, Ontario M5S 3L7

Dear Saba Ferdinands,

RE: Comments to the Ministry of Children, Community and Social Services with Respect to the Proposed Regulatory Changes to Ontario Regulation 155/18 and 156/18.

I am writing with respect to the [summary of proposed regulatory changes to Ontario Regulation 155/18 and 156/18](#) posted on the Ontario Regulatory Registry on July 13, 2023.

As an Office of the Legislature, the Information and Privacy Commissioner of Ontario (IPC) has a statutory mandate to protect and promote the access and privacy rights of Ontarians. The IPC offers the following comments and recommendations with the goal of strengthening the access and privacy protections afforded to Ontarians under the *Child, Youth and Family Services Act, 2017* (“CYFSA”) and its regulations.

It is our understanding that the proposed changes to O.Reg. 155/18 and 156/18 that were posted on July 13, 2023 are intended to complement the July 1, 2023 regulatory changes for the [Quality Standards Framework](#) by increasing oversight and strengthening the range of enforcement powers available to the Ministry of Children, Community and Social Services (“the Ministry”) where a licensee is unable or unwilling to comply with licensing requirements.

The *CYFSA* already gives the Ministry expansive powers to collect and use personal information for a broad range of purposes, including sharing with other Ministries.¹ As the Ministry contemplates establishing new legislative or regulatory powers that would require further collection, use and disclosure of personal information, these powers must be counterbalanced by a commensurate increase in robust privacy protection, particularly in a context of heightened sensitivity and risk.

¹ See section 283 of the *Child, Youth and Family Services Act*



2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel/Tél : (416) 326-3333
1 (800) 387-0073
TTY/ATS : (416) 325-7539
Web : www.ipc.on.ca

Through the proposed changes to O. Reg. 155/18 and 156/18, the Ministry is recommending further information-sharing and disclosure provisions related to the Quality Standards Framework, including:

- 1. Amendment #7: Requirements for Information Sharing and Service Coordination between Societies** – *This amendment requires information-sharing between societies when a society legally responsible for the child places the child in a placement that is in the jurisdiction of another society in Ontario.*

As proposed, this amendment would require the sharing of information between the society legally responsible for the child (“home society”) and the other society (“local society”) in the jurisdiction in which the child is being placed with a view to plan for the child’s service and safety needs.

At first instance, the home society would be required to provide notice to the local society of the child’s placement and information about the child’s service planning and safety needs. In turn, the home society would be required to request and document information about local services to plan for the child’s placement and ensure the necessary level of safety and supports in the other jurisdiction.

The home society would also be required to regularly assess whether it could continue to provide adequate oversight and supervision of the child in the out-of-jurisdiction placement. If the assessment indicated that adequate oversight and supervision were not possible, the home society would be required to negotiate an interagency service agreement with the local society to coordinate the provision of collaborative service delivery.

The proposed amendment does not specify what type of information-sharing would be required between societies and at which stage. Prior to entering into an interagency agreement with the local society for the provision of coordinated services to a specific child (or children), only non-personal information should be necessary to exchange between societies, consistent with the basic data minimization principles of Part X of the *CYFSA*.

- 2. Amendment #8: Society Investigations involving Children in Licensed Residential Settings- Reporting to the Director** – *This amendment requires a society to inform the licensing Director (MCCSS) when a child protection investigation has been initiated where it concerns the delivery of licensed out of home care, and, where applicable, the results of that investigation.*

As proposed, this amendment would require a society to notify the Ministry where a child protection investigation has been initiated involving the delivery of care to a child in a licensed residential setting, along with the results of the investigation, where applicable. The purpose of sharing information with the Ministry would be

to allow the Ministry to take action against a licensee where there are health and safety concerns arising from its delivery of out of home care.

This is despite the fact that the Ministry is not responsible for conducting such investigations, and nor is the Ministry subject to the same privacy rules as other service providers under the Part X of the *CYFSA*.

We are concerned that these information-sharing and disclosure provisions go beyond what is necessary for the intended purposes and lack the robust privacy protections of Part X of the *CYFSA*. This could lead to arbitrary and disproportionate negative impacts to the privacy of children, youth and families involved with service providers across the province depending on their individual situation and circumstances.

To support the laudable purposes behind these information-sharing and disclosure provisions, while also ensuring the privacy and protection of personal information of our most vulnerable Ontarians, the IPC urges the Ministry to carefully re-evaluate the potential privacy impacts of information-sharing regulations on privacy rights of children, youth and families. In particular, we recommend the following:

Recommendations

1. The information-sharing requirements in the proposed amendments should be limited to de-identified information only, particularly if identifiable information is not necessary for meeting the desired objectives of ensuring the safety and well-being of children and youth in out of home placements.
2. If identifiable personal information is required for such purposes, these provisions must be made subject to all of the protections otherwise available under Part X of the *CYFSA*. This includes but is not limited to, the consent-based framework, the data minimization principles, transparency requirements, access and correction rights, and complaint mechanisms.
3. As recommended in the IPC's [2023 CYFSA 5-Year Review Submission](#), the Ministry, to the extent it is receiving any identifiable information about children in care, must be made subject to the same privacy rules as service providers, and any personal information shared with the Ministry must be protected by the privacy framework of Part X of the *CYFSA*.

The IPC commends the Ministry for its efforts to ensure the high-quality care of all children and young persons who receive out of home care across the province, and to protect the safety of children and youth. However, to maintain public trust that their privacy and personal information will also be protected, any amendments to expand collection, use or disclosure of sensitive personal information for the safety and well-being of children and youth, must be matched by a proportionate level of robust privacy protection.

As the Ministry undertakes this work, my office would be pleased to offer its comments on the access and privacy policy implications of proposed information-sharing and disclosure amendments.

Thank you for receiving my comments and recommendations with respect to the Proposed Regulatory Changes to Ontario Regulation 155/18 and 156/18.

In the spirit of openness and transparency, I will be posting this submission on the IPC website.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Kosseim', with a decorative flourish underneath.

Patricia Kosseim
Commissioner

CC: Deputy Minister Denise Allyson Cole, Ministry of Children, Community and Social Services
Assistant Deputy Minister, Linda Chihab, Child Welfare and Protection Division,
Ministry of Children, Community and Social Services