

PROTOCOL FOR ACCESS AND DISCLOSURE OF INFORMATION BETWEEN THE MINISTRY OF CHILDREN AND YOUTH SERVICES AND THE OFFICE OF THE PROVINCIAL ADVOCATE FOR CHILDREN AND YOUTH

A. PREAMBLE

Prior to 2007, advocacy services for children and youth operated within the Ministry of Children and Youth Services (MCYS). The *Provincial Advocate for Children and Youth Act, 2007*, provides for advocacy services to be delivered by an Independent Officer of the Legislature. MCYS and the Provincial Advocate for Children and Youth (PACY) are committed to working together and sharing information in support of PACY's advocacy to children and youth.

MCYS interacts and exchanges information with PACY in a variety of ways. This often involves sharing personal information to resolve a particular issue, incident or situation involving a child or youth. Both parties are committed to developing the most efficient and timely processes possible for sharing personal information, including one-window access for receiving and responding to requests that cannot be addressed locally.

Accessing and disclosing information will be conducted in a cooperative manner that is respectful of the role each party plays in supporting children and youth. This includes operating within the legislative requirements for accessing, using and disclosing personal information that govern both parties.

B. PURPOSE

This information-sharing protocol provides a framework for MCYS to provide access to and disclosure of information to PACY.

MCYS will consider all requests for information that are made in relation to PACY's duties and mandate including:

- Individual case advocacy; and
- Systemic reviews.

C. LEGISLATIVE FRAMEWORK

MCYS is governed by the rules set out in *Freedom of Information and Protection of Privacy Act* (FIPPA) for the collection, use and disclosure of personal information. FIPPA prohibits the disclosure of personal information except in limited circumstances. Personal information may be released to a person other than the person to whom the information relates upon the prior consent of the individual. FIPPA also sets out a person's right to access Ministry records and provides exceptions to that right.

The Office of PACY is governed by the Confidentiality and Privacy provisions of the *Provincial Advocate for Children and Youth Act, 2007* (PACYA) for the collection, use and disclosure of personal information. PACY can collect personal information about an individual either from the individual directly or from other persons with the individual's consent. If it is not reasonably possible to obtain the individual's consent then consent may be provided by a person authorized by the PACYA to do so. PACYA also provides for the use and disclosure of personal information by PACY in limited circumstances.

Both MCYS and PACY may have records that contain personal health information and youth justice information, which have additional privacy implications.

Depending on who is collecting, using and disclosing the information, personal health information may be governed by the *Personal Health Information Protection Act, 2004* (PHIPA). In general, a person's consent is required under that Act in order to collect, use or disclose information from a health care provider to a non-health care provider.

Records that contain youth justice information are governed by the federal *Youth Criminal Justice Act* (YCJA). The YCJA sets out the rules for the disclosure of youth justice records. Unlike FIPPA and PHIPA, there are no consent-based disclosure provisions in the YCJA so that any disclosure must be authorized by the provisions of the Act. The Provincial Advocate for Children and Youth is explicitly named at paragraph 119(1)(l) of the YCJA as a person who may have access to youth justice records when he or his office is acting in the course of their duties. However, subsections 119(2),(4),(5) and (6) must be considered and may restrict disclosure of records to PACY.

PACY is not precluded from applying to youth justice court for access to youth justice records, under s. 119(1)(s) of the YCJA. If the access periods for youth justice records under subsection 119(2) have expired, PACY must apply to youth justice court under section 123 for access to those records.

There may be other privileges or requirements existing at law that would affect the disclosure of information or records, for example, court orders relating to the disclosure of information.

D. ACCESS AND DISCLOSURE OF WRITTEN INFORMATION INCLUDING CASE SPECIFIC INFORMATION AND CORPORATE REQUESTS

When seeking information PACY will:

1. Provide a written request (electronic or paper version) to the Ministry's Freedom of Information and Protection of Privacy Unit which will serve as a point of coordination for the Ministry. PACY will:
 - a. Identify the information sought as specifically as possible;
 - b. Complete "Request Form"

- c. If the information requested includes personal information, ensure the consent of the child or youth (or their representative where appropriate) has been received in order for MCYS to release the information to PACY (section included in the Request Form)

On receiving a written request for information, the Ministry's Freedom of Information and Protection of Privacy Unit will:

1. Act as a one-window for coordination of the request working with PACY and ministry staff.
2. Directly contact the Office of PACY for clarification.
3. Engage in an on-going and timely dialogue with PACY during the disclosure period to refine the request, to provide status updates and to address outstanding issues.
4. Review the information in accordance with access and/or disclosure provisions, including *FIPPA*, *PHIPA* and the *YCJA*. In some instances, part or all of the records requested may have to be severed or withheld.
5. Where possible, within 10 days of receiving the request, provide the records and a response letter that details whether access to all or part of the information is granted.
6. The response letter will include:
 - a. An index of the relevant records held by the Ministry, except where disclosure of their existence is prohibited.
 - b. For each indexed record, an indication as to whether access has been provided in whole or in part or cannot be provided
 - c. Where access to an indexed record or part of an indexed record cannot be provided, the specific provision of the appropriate act that governs the disclosure will be provided.
7. Timelines:
 - a. Acknowledge receipt of request within one business day
 - b. Complete the request within 10 business days of receiving the request
 - c. As soon as possible after the request is made, confirm the need for an extension for all or part of the disclosure, when it appears that a complete response is not possible within 10 days
8. MCYS is responsible for the costs it incurs in disclosing information to PACY.
9. Where access to records will be provided, MCYS will make arrangements with PACY for the delivery of those documents.

E. ACCESS AND DISCLOSURE OF VERBAL INFORMATION RELATED TO LOCAL CASE ADVOCACY

The verbal exchange of information related to local case advocacy depends on an informal exchange of information in order to resolve issues quickly and cooperatively. Both MCYS and PACY will work to facilitate this exchange through the following:

When seeking verbal information PACY will:

1. Work with the appropriate MCYS contact person and:
 - a. Identify the information sought as specifically as possible;
 - b. Confirm that the consent of the child or youth (or if that is not possible, the consent of the person authorized to consent on the individual's behalf) has been received;
 - c. Confirm that PACY is advocating on behalf of the child or youth;

Upon receiving the request for information including the confirmation of the child or youth's consent as described, the MCYS contact will:

- a. Follow established ministry procedures to facilitate the exchange of information with PACY staff;
- b. Disclose information in accordance with the applicable access and disclosure requirements.

Note: If the youth is in the Youth Justice system, the YCJA rules for the disclosure of youth justice records will apply, in particular the sections of the YCJA referenced at Part C.

F. PROTOCOL REVIEW

MCYS and PACY mutually commit to review the terms of the Protocol periodically as required.

G. AVAILABILITY OF LEGAL REMEDIES

Nothing in the protocol limits any legal remedy that may be available to PACY and MCYS.

Signed on behalf of the Ministry this day of 2009,

by:

WITNESS

Trinela Cane
Assistant Deputy Minister
Business Planning and Corporate Services Division

Signed on behalf of the Office of the Provincial Advocate for Children and Youth this day of 2009,

by:

WITNESS

Irwin Elman
Provincial Advocate for Children and Youth

REQUEST FORM

Under the *Freedom of Information and Protection of Privacy Act, 1990/*
Personal Health Information Protection Act, 2004/ Youth Criminal Justice Act

Request For: <input type="checkbox"/> Access to Personal Information <input type="checkbox"/> Access to General Information	Request made to: Freedom of Information and Protection of Privacy Unit, Ministry of Children and Youth Services By Facsimile: 416-326-2567
---	---

If request is for personal information: First and Last Name appearing on records:
--

Forward Records To: Office of the Provincial Advocate for Children and Youth 250 Davisville Road, Suite 503, Toronto, ON M4S 1H2

Detailed description of requested records: <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>

If personal information is being requested: Where access and disclosure of the records being requested fall under FIPPA or PHIPA, the Office of the Provincial Advocate for Children and Youth affirms that consent to collect the requested records has been received from the child or youth or if that is not possible, from the legal guardian and that the office is advocating on behalf of the child or youth - OR - Where access and disclosure of the records being requested fall under the YCJA, the Office of the Provincial Advocate for Children and Youth affirms that the Office is advocating on behalf of the youth whose personal information is being requested.

Printed Name, E-Mail Address and Telephone Number:	
Signature:	Date:

For MCYS use only		
Date received:	Request Number:	Comments:

Personal Information contained on this form is collected pursuant to the Freedom of Information and Protection of Privacy Act/ Personal Health Information Protection Act, 2004/ Youth Criminal Justice Act and will be used for the purpose of responding to requests for information from the Office of the Provincial Advocate for Children and Youth.