

INTERPRETATION BULLETIN

Part X of the CYFSA: Correction to Records

This interpretation bulletin outlines the factors for determining whether an individual's request to correct a record of personal information held by a service provider may be granted, as per **section 315** of Part X of the *Child, Youth and Family Services Act* (CYFSA). This bulletin explains who may request a correction to a record, when a service provider has a duty to correct, and exceptions to the duty to correct.

Section 315(9) of Part X of the CYFSA states:

The service provider shall grant a request for a correction if the individual demonstrates, to the service provider's satisfaction, that the record is inaccurate or incomplete and gives the service provider the information necessary to enable the service provider to correct the record.

Section 315(10) of Part X of the CYFSA states:

Despite subsection (9), a service provider is not required to correct a record of personal information if,

- (a) it consists of a record that was not originally created by the service provider and the service provider does not have sufficient knowledge, expertise or authority to correct the record; or
- (b) it consists of a professional opinion or observation that was made in good faith about the individual.



Information and Privacy
Commissioner of Ontario

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

What is the purpose of section 315 of Part X of the CYFSA?

Section 315 of Part X of the CYFSA gives an individual the right to ask for correction of a record of their personal information that is in the custody or control of a service provider and that relates to the provision of a service to them.¹

Is there a right of access to the records under section 312(1) of Part X of the CYFSA?

An individual's right to request the correction of a record under section 315(2) of Part X of the CYFSA is limited to records to which the individual has a right of access under section 312(1) of the CYFSA.² The interpretation of section 312(1) must be guided and informed by the key purpose of the act, which is to promote the best interests, protection, and well-being of children.³

There are three requirements to have right of access, and an individual must satisfy all three:

- the record must be a record of personal information about the individual
- the record must be in the service provider's custody or control
- the record must relate to the provision of a service to that individual⁴

Note, even when all three of these conditions are met, the right of access may still be subject to the exemptions in sections 312(1)(a) to (d).⁵

What is personal information?

The records must contain the individual's personal information, as the term is defined in section 2(1) of Part X of the CYFSA. Personal information is defined in section 2 of the CYFSA to have the same meaning as in the *Freedom of Information and Protection of Privacy Act* (FIPPA).⁶ Section 2(1) of FIPPA defines personal information as recorded information about an identifiable individual, including:

- information relating to the marital or family status of an individual
- the personal opinions or views of the individual (except where they relate to another individual)

1 **CYFSA Decision 33.**

2 **CYFSA Decision 3.**

3 ***Child, Youth and Family Services Act***, s. 1(1), also see **CYFSA Decision 1.**

4 ***Child, Youth and Family Services Act***, s. 312(1), also see **CYFSA Decision 1.**

5 **CYFSA Decision 34.**

6 ***Child, Youth and Family Services Act***, s. 2(1), see also **CYFSA Decision 33.**

- the views or opinions of another individual about them
- the individual's name where it appears with other personal information relating to the individual⁷

What is meant by custody or control?

The right of access applies to a record that is in the custody or under the control of a service provider. Custody and control are not defined in the CYFSA. However, the Office of the Information and Privacy Commissioner of Ontario (IPC) has interpreted these terms in a manner consistent with FIPPA and the other access and privacy laws it administers.⁸

What is meant by related to the provision of a service to that individual?

The records must relate to the provision of a service to the individual.

The term service is defined in section 281 of Part X of the CYFSA as “a service or program that is provided or funded under this Act or provided under the authority of a licence.”⁹ A service is defined in section 2(1) of the CYFSA as including services for children and their families related to child protection, residential care, physical or mental disabilities, mental health, adoption, counselling, community support and prevention, and services or programs under the *Youth Criminal Justice Act* and the *Provincial Offences Act*.¹⁰ Accordingly, children and/or their families must be the recipients of one of these types of services for the purposes of section 312(1).¹¹

Who can make a correction request under section 315 of Part X of the CYFSA?

A correction request can be made by an individual who has been granted access to a record of their personal information and who believes the record is inaccurate or incomplete.

How can an individual ask for a correction request?

If a service provider has granted an individual access to a record of personal information and the individual believes that the record is

⁷ *Freedom of Information and Protection of Privacy Act* (FIPPA), s 2(1), see also **CYFSA Decision 33** and the **interpretation bulletin about personal information** under FIPPA and the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA).

⁸ CYFSA **Decisions 4** and **33**; see also the **interpretation bulletin about custody or control** under FIPPA and MFIPPA.

⁹ *Child, Youth and Family Services Act*, s. 281.

¹⁰ *Child, Youth and Family Services Act*, s. 2(1).

¹¹ **CYFSA Decision 1**.

inaccurate or incomplete, the individual can request that the service provider correct it. The request must be in writing for the procedural rules of Part X to apply. Nonetheless, a service provider can choose to respond to a verbal or informal correction request (section 315(3)).

When does the duty to correct a record of personal information apply?

Once the requirements under section 312(1) of Part X of the CYFSA have been met by an individual, the individual must meet two further conditions to qualify for correction of the record under section 315(9) of Part X of the CYFSA:

- demonstrate to the satisfaction of the service provider that the record is inaccurate or incomplete
- give the service provider the information necessary to enable the service provider to correct the record¹²

The duty to correct in section 315(9) is conditional on the service provider being satisfied that the record is inaccurate or incomplete; it empowers the service provider to determine whether it is satisfied and whether the duty is engaged.¹³ Finally, if either condition under section 315(9) is not satisfied by the individual asking for the correction, then the service provider is not required to make the correction.

The CYFSA does not define the terms inaccurate and incomplete. In one decision, an adjudicator applied the grammatical and ordinary meaning to the terms “inaccurate” and “incomplete” as found in the Cambridge and Merriam-Webster’s dictionaries.¹⁴

Section 315(9) does not require that the inaccurate information be the personal information of the individual requesting the correction; it requires only that the record be of personal information.¹⁵

In one decision, a complainant requested seven corrections be made to certain records in his children’s services (child welfare) record.¹⁶ The children’s aid society (CAS) refused the correction request, and the complainant filed a complaint with the IPC. One of the correction requests concerned a letter from the CAS to the complainant. In the letter, there was an assertion that the complainant did not receive supportive intervention because he was unreachable (i.e., could not be contacted), which the complainant argued was inaccurate. The CAS initially refused this requested correction and asserted that that page reflected the CAS’s response to the complainant’s initial complaints at a particular point in time, and that the statement “there were times that you were unreachable” was accurate. The CAS acknowledged, however, that there were records that showed that the

¹² *Child, Youth and Family Services Act*, s. 315(9).

¹³ *Child, Youth and Family Services Act*, s. 315(9), see also **CYFSA Decision 24**.

¹⁴ **CYFSA Decision 24**, see paragraph 20 for definitions of the terms.

¹⁵ **CYFSA Decision 18**.

¹⁶ **CYFSA Decision 18**.

complainant's CAS worker was in contact with him at the time in question. The adjudicator determined that the CAS was required by section 315(9) to grant the complainant's correction request and it did so.

In another decision, a complainant asked a CAS to make several corrections to its records for her and her children.¹⁷ The CAS made three of the requested corrections but refused the rest. One of the refused corrections concerned a statement from the complainant's child to the CAS during an investigation interview, when the complainant was not present. The complainant asked the CAS to add contextual information about her children's stay at their father's house before her child gave the statement. The adjudicator determined that the information in the child's statement was not inaccurate or incomplete, because the complainant was not entitled to add contextual information she considered important to the CAS's interview notes. Accordingly, the complainant's request was not a request for correction within the meaning of section 315(9). The adjudicator agreed with the CAS that it had no duty to make that correction under section 315(9).

What are the exceptions to the duty to correct?

There are exceptions to the duty to correct that can apply even if the conditions of section 315(9) of Part X of the CYFSA are met. Under section 315(10) there is no duty to correct a record of personal information if one of these exceptions apply:

- (a) it consists of a record that was not originally created by the service provider and the service provider does not have sufficient knowledge, expertise or authority to correct the record
- (b) it consists of a professional opinion or observation that was made in good faith about the individual¹⁸

Section 315(10) also makes clear that if an exception applies, a service provider has no duty to correct a record, even if the individual can demonstrate that the record is inaccurate or incomplete within the meaning of section 315(9).¹⁹

The section 315(10)(b) exception includes a two-part analysis:

- first, establish that the information at issue is a "professional opinion or observation"
- second, meet the burden of proof to establish that the professional opinion or observation was made in good faith. To do so, the service provider can rely on the common law presumption of good faith. The burden then shifts to the requester to prove that the professional

¹⁷ **CYFSA Decision 24.**

¹⁸ ***Child, Youth and Family Services Act***, s. 315(10).

¹⁹ **CYFSA Decision 33.**

opinion or observation was not made in good faith for the purposes of seeking correction.²⁰

Professional opinion and professional observation are not defined in Part X of the CYFSA.²¹ The IPC has adopted the *Personal Health Information Protection Act* (PHIPA) interpretation of professional opinion or observation, meaning only observations and opinions that require a health information custodian or an agent to exercise or apply special knowledge, skills, qualifications, judgment, or experience relevant to their profession.²² As in the health care context, the professional opinions or observations of a child and family services provider or its employees require special knowledge, skills, qualifications, judgment or experience relevant to their profession.²³

The burden of proof for refusing a correction request rests with the service provider, as per section 315(8)(b) of Part X of the CYFSA.²⁴ Once the service provider establishes that the information at issue is a professional opinion or observation, the burden shifts to the individual seeking the correction to show that it was not made in good faith.

To demonstrate bad faith, the complainant must provide evidence of the service provider acting with malice or with the intent to harm, or with serious carelessness or recklessness.²⁵

The wording of section 315(10)(b) makes it clear that the time of the good faith assessment is when the records were created. Also, the professional opinion or observation does not have to be accurate. Rather, it overrides the accuracy requirement in section 315(9).²⁶

What are the timelines for a service provider to respond to a request for correction?

A service provider must respond to a request for a correction no later than 30 calendar days after receiving the request²⁷ and cannot charge fees. The response must be in writing and must explain that the service provider is doing one or more of the following:

- granting the correction request in whole or in part
- refusing the correction request, in whole or in part, with a written explanation
- extending the deadline for fully responding by up to 90 days, with a written explanation

20 *Child, Youth and Family Services Act*, s. 315(10)(b), see also **CYFSA Decision 33**.

21 **CYFSA Decision 32**.

22 *Personal Health Information Protection Act*, s. 55(9)(b). See: PHIPA Decisions **36** and **37**, see also **CYFSA Decision 32**.

23 **CYFSA Decision 32**.

24 *Child, Youth and Family Services Act*, s. 315(8)(b), see also **CYFSA Decision 32**.

25 **CYFSA Decision 32**.

26 **CYFSA Decision 32**.

27 *Child, Youth and Family Services Act*, s. 315(4).

A service provider that does not respond within 30 days is deemed to have refused the request.²⁸ The individual who made the request can then make a complaint to the IPC, as per section 315(8)(a) of Part X of the CYFSA.²⁹

What are the requirements for extending the deadline?

The service provider can extend the deadline to respond to a request in writing by no more than 90 calendar days. The service provider may only extend the deadline for one of these reasons:

- responding to the request within 30 days would unreasonably interfere with the operations of the service provider³⁰
- it is not reasonably practical to respond within the 30 days, given the time required to complete the necessary consultations³¹

If the service provider does extend the deadline for responding, then the service provider must provide written notice within 30 days to the individual, informing the individual:

- of the length of the extension and the reason for it³²
- that they will grant or refuse the individual's request as soon as possible in the circumstances but no later than the extended time limit³³

If the service provider fails to provide written notice within the time limit and/or fails to provide a full response granting and/or refusing the correction within the extended time limit, then the service provider is deemed to have refused the request. The individual may file a complaint with the IPC, as per section 315(8)(a) of Part X of the CYFSA for any refusal of a correction request (in whole or in part), including a deemed refusal.³⁴ An individual may also complain about the time extension itself if they don't agree that their request meets the criteria for an extension.

What happens when a correction is granted?

When a service provider grants a correction request, it must provide written notice to the individual explaining how the record was corrected. As per section 315(11)(a) of the CYFSA this means:

- recording the correct information in the record or, if that's not possible, ensuring a system is in place to inform anyone who accesses the record that it is incorrect or incomplete, and directs them to the correct information, or

28 *Child, Youth and Family Services Act*, s. 315(7).

29 *Child, Youth and Family Services Act*, s. 315(8)(a).

30 *Child, Youth and Family Services Act*, s. 315(4)(a).

31 *Child, Youth and Family Services Act*, s. 315(4)(b).

32 *Child, Youth and Family Services Act*, s. 315(5)(a).

33 *Child, Youth and Family Services Act*, s. 315(5)(b).

34 *Child, Youth and Family Services Act*, s. 315(8)(a).

- striking out the incorrect information without obliterating it or, if that's not possible, by labelling it incorrect, severing it, storing it separately and maintaining a link to trace the incorrect information³⁵

At the request of the individual, the service provider must give written notice of the correction to anyone to whom the information was disclosed, to the extent it is reasonably possible. An exception to this requirement is when providing notice cannot reasonably be expected to affect the ongoing provision of services.

In one decision, a complainant asked a CAS to make corrections to its records for her and her children.³⁶ The CAS made three of the requested corrections and refused the others. The complainant argued that the way the CAS made these corrections did not meet the requirements of section 315(1) and 315(11) of Part X of the CYFSA. The CAS explained that in accordance with section 315(11)(a)(ii), it added a note to the existing record correcting statements about the religious affiliation of the complainant and her son, and the complainant's mental health. It explained that the records, which are maintained in the Child Protection Information Network (CPIN), could not be corrected by striking out or severing the incorrect information as indicated in section 315(11)(a)(i) because CPIN does not technically include this function. The adjudicator was satisfied that the CAS corrected the records as prescribed by the CYFSA.

What happens if the correction is not granted in full or in part?

As per section 315(12) of Part X of the CYFSA, if the service provider decides not to make some or all of the requested corrections, they must provide the individual with written notice of this refusal to correct and explain why within the timelines set out in sections 315(4) and (5).³⁷ Additionally, the service provider must inform the individual of their right to file a statement of disagreement and to file a complaint with the IPC.

Statement of disagreement

The service provider must inform the individual of their right to have a concise statement of disagreement prepared about the correction that has been refused.

The individual has the right to require that the service provider:

- attach this statement to the record, and disclose it whenever the related information is disclosed³⁸

³⁵ *Child, Youth and Family Services Act*, s. 315(11)(a).

³⁶ *CYFSA Decision 24*.

³⁷ *Child, Youth and Family Services Act*, s. 315(12).

³⁸ *Child, Youth and Family Services Act*, s. 315(12)(b).

- make reasonable efforts to provide the statement to any person to whom the information was previously disclosed — unless the statement cannot be expected to affect the ongoing provision of services³⁹

In one decision, a complainant asked that all her submissions to the IPC be included in her child protection file.⁴⁰ The CAS refused because the child protection file had been closed since 2021. It explained that it attached a statement of disagreement in 2022 and added further documents to the file, at her request, in 2023. The adjudicator determined that the entirety of the complainant's submissions during the review, which included dozens of pages, could not be considered to be a concise statement of disagreement. The adjudicator found that the CAS satisfied its obligations under section 315(12)(a) by including the statement of disagreement and the additional records the complainant provided to her file.

39 *Child, Youth and Family Services Act*, s. 315(12)(c).

40 *CYFSA Decision 32*.