



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

May 14, 2024

*VIA ELECTRONIC MAIL & ONLINE SUBMISSION*

Steve Clark  
Chair of the Committee  
Standing Committee on Social Policy  
Legislative Assembly of Ontario  
99 Wellesley Street West  
Whitney Block, Room 1405  
Toronto, ON M7A 1A2

Dear Chair Clark:

**RE: Written Submission to the Standing Committee on Social Policy of the Legislative Assembly of Ontario: Bill 188, the *Supporting Children's Futures Act, 2024***

I am writing with respect to [Bill 188, \*Supporting Children's Futures Act, 2024\*](#) currently before the Ontario legislature and posted on the Ontario Regulatory Registry on April 17, 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 Bill 188 was tabled by the Ontario government to modernize and standardize important safeguards throughout the child and youth service sector. The proposed legislative amendments if passed, include new and enhanced enforcement tools to support improved compliance with out of home care licensing requirements and amendments to protect the privacy of individuals with previous involvement with the child welfare sector.

Through the proposed changes to the CYFSA, the Ministry of Children, Community and Social Services ("the Ministry") is recommending amendments that have important privacy and access implications for Ontarians. We are pleased to see that several of our previous recommendations for enhanced access and privacy protections have been adopted in the current legislative proposals. However, the IPC remains concerned with some of the proposed amendments, and reiterates the following recommendations:

- 1. Any exceptions to the publication ban must adequately balance the privacy interests of all affected individuals and should be clearly set out in legislation rather than regulation.**

Currently under section 87 of the CYFSA, no person is allowed to publish or make public information that could identify a child, their parent, foster parent, or other member of their family who is a witness or a participant in a child protection hearing or proceeding. However, the Ministry is



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proposing an amendment to Part V<sup>1</sup> of the act that would make exceptions to this rule to provide certain individuals with more control and ownership over their own stories and experiences. The exceptions would allow specific individuals in certain circumstances to publish or make public some information.

The current publication ban plays an important role in protecting the privacy interests of children, youth, and families. Given the complexity and sensitivity of child protection matters and the number of individuals involved in a hearing or proceeding, this amendment may have the unintended consequence of eroding the privacy rights of vulnerable children, youth, and families, and perpetuating harms that may have been caused by traumatic experiences that led to a child protection proceeding. For example, if individuals are directly or indirectly identified, intentionally or unintentionally, by the person allowed to publish (or make public) information under the regulation.

The Ministry is proposing to conduct further engagement and consultation on the development of regulations, which would guide who can publish (or make public) this information, when it can be published or made public, and any other necessary restrictions.

Despite the laudable purpose for introducing these exceptions, the IPC is concerned that Bill 188, as drafted, provides no meaningful statutory framework or principles for guiding how the privacy interests of all affected individuals should be adequately considered and balanced, instead leaving the entire substance of the exceptions to be defined in regulation.

To ensure the opportunity for meaningful public comment during the reform process, and greater transparency and certainty than changes made through the regulation-making process, the IPC recommends that the proposed bases for the exceptions be clearly set out in legislation rather than regulation.

## **2. Enhanced privacy protections for children and youth with previous involvement with the child welfare system must be more robust and have limited exceptions.**

Currently, service providers under the CYFSA continue to have access to the personal information of individuals that was collected while the individual was receiving care and support as a child. Part X places limits on how this personal information can be used and disclosed by service providers, and the proposed amendments in Bill 188<sup>2</sup> would impose further restrictions once the child is no longer eligible to receive care and support, subject to some exceptions.

The IPC supports these crucial amendments to enhance privacy protections for children and youth who have had previous involvement with the child welfare system. We are pleased to see that the language of the amendments appears to apply broadly to all children and youth who have received care and support services under the CYFSA, and is not limited to specific records, such as “child in care” records. Also, explicit exceptions to the restrictions properly address an individual’s right to access their own personal information and the IPC’s inspection powers.

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<sup>1</sup> Section 4, [Bill 188](#), *An Act to amend the Child, Youth and Family Services Act, 2017 and various other Acts*, 1<sup>st</sup> Sess., 43<sup>rd</sup> Legislature (Second Reading, 7 May 2024) (“Bill 188”), amending s. 87(8) of [Child, Youth and Family Services Act, 2017](#), S.O. 2017, c. 14, Sched. 1 (“CYFSA”).

<sup>2</sup> Sections 27 and 28, [Bill 188](#), above at footnote 1.

However, the IPC has concerns with some of the other exceptions listed in the proposed amendment. Specifically, the Ministry would still have continued access to the personal information of children and youth who are no longer eligible to receive care and support, for research, compliance, planning and the delivery of services under s. 283 and s. 284 of the act.

It is unclear why the Ministry would need to continue to use and disclose personal information for research, compliance, planning and delivery of services after an individual is no longer eligible to receive care and support. To carry out these functions at a macro level, non-identifiable information should be sufficient. To the extent personal information *is* necessary for such purposes, the IPC continues to take the position that s. 283 and s. 284 of the CYFSA should be repealed and that the Ministry should instead rely on Part III.1 of FIPPA that sets out a robust scheme for data integration.

As highlighted in the [IPC's 5-Year Review submission](#), Part III.1 of FIPPA provides a more balanced and privacy protective approach for the Ministry to conduct planning, management, analysis and research functions, particularly given the highly sensitive nature of the personal information involved. If the Ministry believes that there remain additional requirements for the collection and use of personal information beyond those authorized under Part III.1, the IPC would welcome an opportunity to discuss what additional limited authorities are required, as well as the appropriate safeguards that should accompany them.

Further, the proposed amendment leaves open, by way of eventual regulation, other exceptions whereby the personal information may continue to be used and disclosed after the individual is no longer eligible to receive care or support. Given the purpose of this amendment is to enhance the privacy protection for vulnerable children and youth with former child welfare involvement, the IPC recommends that any exceptions to the clauses related to no use or disclosure of personal information be set out directly within the legislation rather than prescribing such exceptions by way of regulation to be developed in the future. As stated above, this ensures meaningful public comment during the legislative reform process, and greater transparency and certainty than changes that are made through regulation.

The IPC commends the Ministry's efforts to enhance the protection of vulnerable children, youth, and families under the CYFSA. However, any proposed amendments to accomplish this laudable policy objective must be transparent, subject to appropriate public scrutiny, and matched by a proportionate level of robust privacy protection and oversight.

Thank you for receiving my comments and recommendations with respect to Bill 188, the *Supporting Children's Futures Act*.

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 horizontal line underneath the name.

Patricia Kosseim  
Commissioner