

**Information
and Privacy
Commissioner
of Ontario**

**Comments of the
Information and Privacy
Commissioner of Ontario
on Bill 89**



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Commissioner
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Bill 89, the *Supporting Children, Youth and Families Act* proposes to amend and repeal the *Child and Family Services Act*, enact the *Child, Youth and Family Services Act, 2016* in its place, and make related amendments to other Acts. Part X of the proposed *Child, Youth and Family Services Act* (the Act) sets out rules for the collection, use and disclosure of personal information by the Minister of Children and Youth Services (the Minister) and other child, youth and family service providers. The Office of the Information and Privacy Commissioner of Ontario (IPC) would be designated as the oversight body in relation to Part X of the Act. As a result, this submission will focus on that part of the Bill.

At the outset, the IPC commends the Minister and the Ministry of Children and Youth Services for introducing this legislation that will protect the privacy of individuals who receive child, youth and family services in the province of Ontario. Many child, youth and family service providers in Ontario, including children's aid societies, have never been subject to such legislation. As a result, many individuals involved with the sector have not benefited from legislative personal privacy protections, nor have they had a right of access to their own personal information. Over the years, the IPC has urged the Government of Ontario to address this legislative gap with the goal of enhancing privacy and transparency in a sector that receives significant public funding and provides services for some of our most vulnerable citizens, specifically children and youth. In our 2004, 2008, 2012 and 2013 Annual Reports, the IPC recommended legislative amendments to bring children's aid societies within the scope of access and privacy legislation. The Act represents a significant step toward closing this legislative gap.

The IPC offers the following comments and recommendations with respect to Part X of the Act with the goal of strengthening the privacy protections provided. The comments and recommendations focus on four main issues:

1. the expansion of the Minister's powers to collect, use and disclose personal information;
2. inter-ministerial sharing of personal information without adequate safeguards;
3. the disclosure of personal information to persons and entities that are not prescribed; and
4. the application of Part X of the Act to personal information collected only for the purpose of delivering services.

Each of these issues is discussed in detail below.



1. POWERS OF THE MINISTER TO COLLECT, USE AND DISCLOSE PERSONAL INFORMATION

Part X of the *Act*, sets out rules for the collection, use and disclosure of personal information by service providers that are subject to the *Act*. However, the vast majority of these rules would not apply to institutions that are subject to the *Freedom of Information and Protection of Privacy Act (FIPPA)* or health information custodians that are subject to the *Personal Health Information Protection Act (PHIPA)*. This means that although the Minister is a service provider as defined under the *Act*, the Minister will not be subject to the privacy protection provisions that will apply to other service providers.¹ Instead, the Minister will continue to operate under the privacy regime established under *FIPPA*. Given the scope of information sharing contemplated by the *Act*, the *FIPPA* regime is insufficient.

The rules in the *Act* for the collection, use and disclosure of personal information by service providers other than the Minister were modeled after those set out in *PHIPA*, which is a modern, consent-based statute that applies to the health sector in Ontario. In contrast, *FIPPA* is one of the first access and privacy statutes introduced in Canada and was not designed to meet the privacy challenges of a digital environment that permits rapid data sharing and data integration on an unprecedented scale. Consequently, *FIPPA* does not incorporate many of the common features of modern privacy laws, such as mandatory breach notification, strong independent oversight and a requirement for consent.

The IPC is concerned that, unlike other service providers under the *Act* and service providers that are health information custodians subject to *PHIPA*, the Minister will be subject to privacy rules that are not consistent with these other modern privacy laws. For example, the Minister will not be required to notify the IPC in the event of a privacy breach and the IPC will have limited authority to order the Minister to comply with the *Act*. Also, unlike other service providers, the Minister will not be required to obtain consent when collecting personal information for the purpose of delivering services. This lack of harmonization across the child, youth and family services sector may lead to confusion on the part of service providers, individuals and Ministry staff.

In light of the proposed expansion in the powers of the Minister to collect, use and disclose personal information and direct disclosures of personal information to the Minister, the IPC believes that the Minister must be subject to a greater degree of accountability and oversight than what is currently provided under *FIPPA*. This could be accomplished by amending the *Act* to make the Minister subject to the same privacy rules as other service providers, by narrowing the Minister's authority to collect, use and disclose personal information and by building in additional safeguards where the Minister has been granted new powers to collect, use and disclose personal information.

¹ See section 281(2) of schedule 1 of Bill 89 which would enact of the *Child, Youth and Family Services Act, 2016*.

Limiting the Minister's powers to collect and use personal information

Section 279 of the *Act* would give the Minister the authority to collect personal information, both directly and indirectly, and use personal information for a broad range of purposes including: administering the *Act* and its regulations; determining compliance with the *Act*; planning, managing or delivering services, allocating resources to services, evaluating or monitoring services, detecting, monitoring or preventing fraud or any unauthorized receipt of services or benefits; conducting risk management and error management; conducting activities to improve or maintain the quality of services; and conducting research and analysis that relate to children and their families.² The consent of the individual does not appear to be a requirement for any of these direct or indirect collections and uses.

This broad authority in section 279(1) to collect and use personal information without safeguards is problematic from a privacy perspective. This is particularly the case since the Minister is also being provided with the authority in section 279(2) to direct service providers and other prescribed persons to disclose personal information to the Minister for any of these purposes. The purposes of the collections and uses are laudable. However, the rationale for permitting the collection, both directly and indirectly, and use of personal information without knowledge or consent to achieve these purposes is not clear.

By combining the Minister's authority to collect, directly and indirectly, and use personal information into one section, the *Act* conflates authority to collect personal information directly with the authority to collect personal information indirectly and conflates the authority to collect personal information with the authority to use personal information. In our view, this has resulted in a broadening of the Minister's power to collect personal information, both directly and indirectly, and use personal information beyond what is reasonably necessary and, perhaps, beyond what was intended.

The IPC recognizes that the Minister has two roles under the *Act*, that of a service provider and that of a funder and manager of the services provided by other service providers. As a service provider, the Minister will need to collect personal information **directly** from the individuals to whom services are being provided. As a funder, planner and manager of the services provided by all service providers, the Minister will also need to collect personal information **indirectly** from other service providers and use that information along with the personal information collected **directly** from individuals by the Minister for purposes that go beyond the delivery of services.

To ensure that the Minister's power to collect and use personal information is as limited and specific as possible, it is important to separate out the Minister's authority to collect personal

² See section 279 of schedule 1 of Bill 89 which would enact of the *Child, Youth and Family Services Act, 2016*.



information **directly** from the individual; the Minister's authority to collect personal information **indirectly**; and the Minister's authority to use personal information.

Direct Collection

Since the Minister is proposing to continue to operate under the privacy rules set out under *FIPPA*, it is important to note that *FIPPA* already permits the collection of personal information where it is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity. Personal information must be collected directly from the individual to whom it relates, with some exceptions, but the consent of the individual is not required. It is therefore not clear that the Minister needs any new authority to collect personal information **directly** from individuals for the purposes set out in the *Act*.

It is our view that *FIPPA* already provides sufficient authority for the Minister to collect personal information **directly** from the individual for purposes such as carrying out the Minister's functions under the *Act*, including delivering child, youth and family services; administering the *Act* and its regulations; and determining compliance with the *Act* and its regulations. Since these activities are authorized by the *Act*, the collection of personal information necessary for such purposes would be permitted under *FIPPA*.

The IPC recommends that the *Act* be amended to remove the Minister's authority to collect personal information **directly** from the individual for the purposes set out in section 279(1). Where there is a strong rationale for providing the Minister with authority to **directly** collect personal information for specific purposes, not already contemplated under *FIPPA*, the authority to **directly** collect personal information should be limited to those specific purposes and set out in a separate section of the *Act*.

Indirect Collection

As a funder, planner and manager of services, the IPC recognizes the Minister will need to collect personal information from all service providers and this information will have to be collected **indirectly**. Therefore, the *Act* must provide authority for the Minister to collect personal information **indirectly** for purposes that go beyond the delivery of services. This authority, however, does not need to extend to permit the Minister to collect personal information **directly** from the individual for such purposes.

Use of Personal Information

As a funder, planner and manager of services, the Minister will need to have the authority to use the personal information collected by all service providers, including that which is collected

by the Minister, for purposes that go beyond the direct delivery of services. Therefore, the Act must include the authority to use personal information for such purposes.

For example, two areas where the IPC would support additional powers for the Minister to use personal information would be with respect to planning and managing the delivery of services and research. The personal information that would be used for such purposes is that which has been collected by all service providers, including the Minister, during the course of providing services. This information would be acquired through the Minister's authority to collect personal information **directly** from individuals for the purpose of delivering services and information **indirectly** collected from other service providers specifically for these purposes.

However, the authority to collect and use personal information for such purposes must be accompanied by comprehensive privacy frameworks such as those described below. Further, whenever possible, closely related activities should be incorporated into these comprehensive frameworks. For example, activities such as risk management, error management and improving the quality of services could be carried out under the broad authority for the Minister to plan and manage the delivery of services.

Safeguards for indirect collection for planning and managing the delivery of services

Section 279(1)3 permits the Minister to collect, directly or indirectly, personal information for the purposes of planning, managing or delivering services that the Ministry funds, in whole or in part, allocating resources to any of them, evaluating or monitoring any of them or detecting, monitoring or preventing fraud or any unauthorized receipt of services or benefits related to any of them. Section 279(2) permits the Minister to direct service providers and other prescribed persons to disclose personal information to the Minister for these purposes.

A preliminary concern about this provision is that it conflates "service delivery" with "planning and managing the delivery of services". These are very distinct activities. Typically, when services are being delivered, there is direct contact with the individuals to whom those services are being provided. In such circumstances, personal information needs to be collected **directly** from the individual, ideally with the knowledge and consent of the individual. However, when planning and managing the delivery of services across the child, youth and family services sector, personal information needs to be **indirectly** collected from all service providers. This personal information would typically be that which was collected by service providers, including the Minister, in the course of providing services. Since service delivery depends on the **direct** collection of personal information from individuals by the Minister, it should not be included among other activities which require the **indirect** collection of personal information from all service providers. To do so, results in an unnecessary expansion of the Minister's authority to collect personal information both **directly** and **indirectly**. For this reason and the fact that,



as noted above, *FIPPA* already provides the Minister with broad authority to **directly** collect personal information, the IPC recommends removing service delivery from section 279(1)3.

Once service delivery is removed, this provision relates solely to the planning and management of the delivery of services across the child, youth and family services sector. Specifically, sections 279(1)3 and 279(2) are intended to enable the Minister to **indirectly** collect personal information from all service providers and combine that information with other information in the custody or control of the Minister. Once personal information from all child, youth and family service providers is integrated, it can be used for analysis that will assist the Minister in planning and managing the delivery of services across the sector. While the IPC understands the need for the Minister to conduct such activities, the collection and integration of potentially massive amounts of personal information could pose serious risks to the privacy of individuals if it is not carried out in a privacy-protective manner.

This is not an issue unique to the child, youth and family services sector. The challenge of taking personal information from disparate sources, integrating that data and then performing detailed analyses to look for new insights has been consistently raised by the IPC with government organizations in recent years. The challenge is exacerbated by the fact that the province's public sector privacy laws are outdated and not up to the task.

The IPC therefore recommends that the *Act* be amended to include a privacy framework that incorporates data minimization, oversight and transparency. For example, Ministry staff who have access to personal information for planning and managing the delivery of services should be limited by prescribing one unit of the Ministry with the necessary expertise to receive the personal information for this purpose. The prescribed unit of the Ministry should be required to have in place practices and procedures that comply with requirements established by the IPC. These practices and procedures should include a requirement to de-identify the personal information as soon as possible before it is used for analysis. The Minister should be required to conduct a cost and benefit analysis prior to collecting personal information and should be transparent about what information is being collected, how that information is being used and disclosed, and the safeguards in place to protect the privacy of individuals.

In addition, the expanded powers for the Minister to collect and integrate personal information for the purpose of planning and managing the delivery of service should be accompanied by offence provisions aimed at deterring unauthorized use or disclosure of the personal information and de-identified information. The *Act* should be amended to make it an offence for any individual granted access to personal information or de-identified information by the Minister or any individual who receives such information from the Minister to use or disclose that information other than as authorized by the *Act*. This includes any unauthorized attempt to identify individuals from de-identified information.

The recommended framework for the collection of personal information by the Minister for planning and managing the delivery of services is set out in Appendix A.

Safeguards for indirect collection for research

It is important to note that “research” and “planning and managing the delivery of services” are very different activities. The use of personal information for research, particularly in the health sector, is accepted, but has been accompanied by well known safeguards to protect the privacy of the individuals whose information is being used. The IPC does not support the Minister’s approach of treating these two different uses in a similar fashion in section 279(1) of the *Act*. The collection, use and disclosure of personal information for research purposes requires a different set of privacy rules than the collection, use and disclosure of personal information for planning and managing the delivery of services.

As a preliminary concern, section 279(1)6 of the *Act* grants the Minister authority to directly and indirectly collect and use personal information for “research” and “analysis.” However, since the analysis of personal information is also contemplated in the provision relating to planning and managing the delivery of services, as well as in the term “research”, the IPC recommends removing the reference to “analysis” from this provision. This will help avoid any confusion about what safeguards are required when conducting analyses for planning purposes, as set out in Appendix A, as opposed to those that are necessary when conducting analyses for research purposes, as set out in Appendix B.

In our view, the *Act* should not permit the Minister to collect personal information **directly** from the individual for research purposes without the knowledge or consent of the individual as this would be inconsistent with universally accepted ethical principles for conducting research. Further, where personal information is collected **indirectly** for research purposes, the best privacy practice would be to obtain consent for this use. **Indirect** collection of personal information without consent for research purposes should be limited to those circumstances where it is impractical to obtain consent and other safeguards are in place to minimize the risks to privacy.

If the Ministry needs the authority to collect personal information for research purposes without consent, the IPC recommends that this authority should only apply in the context of **indirect** collection and should be accompanied by safeguards comparable to those set out in section 44 of *PHIPA*. The IPC would also support the use and disclosure of personal information previously collected by the Minister in the course of delivering services for research purposes, as long as there are safeguards in place that are comparable to those in *PHIPA*. Specifically, where research is conducted without the consent of the individual, *PHIPA* sets out the duties and obligations that apply to the health information custodian who collects, uses or discloses personal health information for research purposes; the research ethics board that reviews and



approves the research plan; and the researcher who receives personal health information from the health information custodian.

A recommended framework for the collection, use and disclosure of personal information by the Minister for research purposes, based on the framework established in *PHIPA*, is set out in Appendix B. Further, Section 287(1)(j) permits service providers, other than the Minister, to use personal information collected for research purposes. If service providers are going to be provided with authority to collect, use or disclose personal information for research purposes, the IPC recommends that they be subject to the same requirements as the Minister.

Data minimization required for disclosures

Sections 279(3) and (4) contain data minimization provisions requiring the Minister not to collect or use personal information if other information will serve the purpose and not to collect or use more personal information than is reasonably necessary. However, these provisions fail to require the Minister to take similar steps when disclosing personal information, for example pursuant to section 279(5). The IPC recommends that the *Act* be amended to require the Minister not to disclose personal information if other information will serve the purpose and not to disclose more personal information than is reasonably necessary.

2. INTER-MINISTERIAL POWER TO SHARE PERSONAL INFORMATION

Section 279(5) provides the Minister and other prescribed ministers with the authority to disclose to and indirectly collect personal information from each other for the purposes of planning, managing or delivering services and conducting research and analysis.

The IPC is greatly concerned about the potential for this provision to allow large-scale, integrated databases of personal information to be replicated across multiple institutions providing services to children and youth (e.g., education, health, social services, and children and youth services). In our view, it would not be appropriate to provide broad authority to share personal information across ministries in the context of this *Act*.

Data integration for analysis and research is part of a broader government strategy to improve the delivery of services, to deter and detect fraud and to achieve other goals. The IPC recognizes that data integration would enable longitudinal and cross sectional analysis to evaluate the effectiveness of programs and services. As previously noted, the privacy framework to safeguard personal information in the context of these large data integration initiatives is currently being discussed by the IPC and representatives of various ministries across the public sector.

Until a comprehensive privacy framework to support data integration is agreed upon and set out in legislation that applies across the Government of Ontario, there is no obligation for ministries to have comprehensive privacy and security policies and procedures in place to support wide-spread information sharing and data integration. Therefore, the IPC cannot support the inclusion of broad authority for inter-ministerial sharing of personal information in the context of this Act. However, the IPC would support the Minister being provided with the authority to collect personal information from other ministers for the purpose of planning and managing the delivery of services, but only if this authority is accompanied by the recommended safeguards set out in Appendix A.

3. DISCLOSURE OF PERSONAL INFORMATION TO PERSONS OR ENTITIES THAT ARE NOT PRESCRIBED

Section 289(2) permits service providers to disclose personal information to a person or entity that is prescribed or a person or entity that is not prescribed for the purposes of analysis or compiling statistical information with respect to the management of, evaluation or monitoring of services, the allocation of resources to or planning for services, including their delivery. This stands in stark contrast to *PHIPA* which only permits the disclosure of personal health information to **prescribed persons and entities** for such purposes. Under *PHIPA*, prescribed entities and persons must have in place practices and procedures to protect the privacy of the individuals whose personal health information they receive and to maintain the confidentiality of the information which meet the requirements established by the IPC.

The IPC is concerned about the provisions in the Act that would permit the disclosure of personal information to entities and persons that are not prescribed. In our view, any entity or person that receives personal information for the purpose of analysis or compiling statistical information without the knowledge or consent of the individual must be accountable, transparent and subject to public scrutiny. This could be accomplished by amending section 289 to only permit the disclosure of personal information to persons and entities that are prescribed and that comply with strict privacy safeguards such as the requirement to de-identify personal information prior to its use. To ensure privacy, transparency and accountability, the IPC recommends wording such as that which is set out in Appendix C for all prescribed entities and persons that may receive personal information for analysis and compiling statistical information, without the consent of the individuals to whom the information relates.

4. APPLICATION OF PART X

The Act sets out rules for the collection, use and disclosure of personal information by service providers. It is our understanding that these rules are only intended to apply to service providers



when they are providing services that are provided or funded under the *Act* or provided under the authority of a licence. Thus, while service providers may provide services that fall outside the scope of the *Act*, the intent is not to inadvertently regulate these other services under the *Act*.

With this goal in mind, the *Act* has been drafted such that the privacy rules only apply to personal information collected for the purpose of providing a service, as defined under the *Act*. For example, section 282 of the *Act* prohibits a service provider from collecting personal information for the purpose of providing a service or using or disclosing that information, unless the service provider has the consent of the individual or the collection, use or disclosure is permitted or required by law. However, the problem with this approach is that there are no requirements for personal information collected for other purposes, even if the information is collected during the course of providing services under the *Act*. For example, during the course of providing autism services to a child, a service provider may collect personal information necessary for the purpose of delivering that service, but may also, at the same time, collect additional personal information for other purposes such as research, fundraising and marketing. Any personal information collected for these other purposes would fall outside the scope of the *Act* since the rules only apply to personal information collected for the purpose of providing a service. The IPC does not believe the intent was to narrow the scope of the application of the *Act* in this manner.

The *Act* should apply to the collection, use and disclosure of personal information for any purpose, during the course of providing services under the *Act*. To ensure the appropriate application of the *Act*, the IPC recommends that the privacy provisions not be limited to apply only to information collected for a specific purpose. Rather, the application should be broadened to apply to information collected in a specific context, namely during the provision of services under the *Act*.

For example, a provision could be included at the beginning of Part X stating that this Part applies only to the collection, use and disclosure of personal information during the course of providing services under this *Act*. The qualifying phrase “for the purpose of providing a service” could then be removed from other provisions governing the collection, use and disclosure of personal information throughout this Part.

CONCLUSION

The IPC recommends that the *Act* be amended to:

1. Limit the Minister’s powers to collect, use and disclose personal information, particularly with respect to direct collection;

2. Set out safeguards for the collection, use and disclosure of personal information for planning and managing the delivery of services (see Appendix A);
3. Set out safeguards for the collection, use and disclosure of personal information for research (see Appendix B);
4. Ensure that the data minimization principles apply in respect of disclosures by the Minister, as well as collections and uses of personal information;
5. Limit inter-ministerial sharing of personal information;
6. Remove the authority to disclose personal information to persons or entities that are not prescribed and to set out rules for prescribed persons and entities (Appendix C);
7. Ensure that Part X applies to all collections, uses and disclosures of personal information in respect of the delivery of services under the Act.

The IPC believes these amendments are necessary to enhance the protection of the personal information of Ontarians who receive child, youth and family services under the Act. They also enable the collection, use and disclosure of personal information for a broad range of purposes including planning and managing the delivery of services, risk management and research contemplated under Part X of the Act.

APPENDIX A

PLANNING AND MANAGING THE DELIVERY OF SERVICES

PART X

PERSONAL INFORMATION

Definitions

278. In this Part,

...

“de-identify”, in relation to the personal information of an individual, means to remove any information that identifies the individual or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify the individual, and “de-identification” has a corresponding meaning.

...

XXX. Collection, Use and Disclosure of Personal Information by the Minister for Planning and Managing the Delivery of Services

(NOTE: This section would replace section 279(1) 3 and related provisions of the Act)

Indirect collection of personal information by Minister

(1) Subject to subsection (2), the Minister may indirectly collect personal information for the purposes of,

- (a) planning or managing the delivery of services that the Ministry funds in whole or in part, directly or indirectly, or evaluating, monitoring or allocating resources to any of them; or
- (b) detecting or preventing fraud or inappropriate receipt of a payment, service or good, including any subsidy or other benefit funded in whole or in part, directly or indirectly, by the Ministry, where such payment, service or good is related to child, youth and family services or is prescribed in the regulations.

Practices and procedures prior to indirect collection

- (2) The Minister may only collect personal information under subsection (1), if,
- (a) the Lieutenant Governor in Council has prescribed not more than one unit of the Ministry to collect personal information under subsection (1) on the Minister's behalf;
 - (b) the Minister is satisfied that the prescribed unit of the Ministry has put in place practices and procedures,
 - (i) to protect the privacy of the individuals whose personal information the Minister collects, and to maintain the confidentiality of the information, and
 - (ii) that comply with the requirements established by the Commissioner;
 - (c) the Minister establishes one or more advisory committees that meet the prescribed requirements and that carry out the functions described in subsection (5);
 - (d) the Minister has considered the public interest in the collection of the personal information by the Minister and the public interest in protecting the privacy of the individuals whose personal information is to be collected;
 - (f) the Minister publishes a summary of the practices and procedures of the prescribed unit on the website of the Ministry; and
 - (g) the Minister publishes an annual report on the website of the Ministry that:
 - (i) describes how the practices and procedures of the prescribed unit meet the requirements established by the Commissioner;
 - (ii) describes the types of personal information that have been collected under subsection (1), along with the sources of that information;
 - (iii) describes any linkages of personal information that have been made under subsection (7); and
 - (iv) provides a summary of the uses and disclosures of the information that has been de-identified under subsection (7).



Personal information required by the Minister

(NOTE: This provision would replace section 279(2) of the proposed Act with respect to planning and managing the delivery of services)

(3) The Minister may require a person who provides a service or program that is provided or funded under this Act, or provided under the authority of a licence, to disclose to the unit of the Ministry prescribed under subsection (2), such personal information as is reasonably necessary for the purposes described in subsection (1).

Collection of personal information from an institution

(NOTE: This provision would replace sections 279 (5) and (6) of the Act with respect to planning and managing the delivery of services and would provide authority for other institutions to disclose personal information to the Minister for the purpose of planning and managing the delivery of services by the Minister)

(4) If the Minister requests an institution under *the Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act* to disclose personal information that is reasonably necessary for the purposes of subsection (1), the institution is permitted to disclose the personal information to the Minister and the disclosure is deemed to be for the purposes of complying with this Act.

Advisory Committee

(5) Before the unit of the Ministry prescribed under subsection (2) may use or disclose the personal information collected by the Minister under subsection (1), an advisory committee established by the Minister under subsection (2) (c) shall provide advice to the Minister concerning the prescribed unit's compliance with the requirements in subsection (7) and (8).

Consideration by the Minister

(6) After considering the advice provided by the advisory committee on the matters set out in subsection (5), the Minister may permit the proposed use or disclosure of the personal information by the prescribed unit in accordance with subsection (7) and (8).

Linking and de-identification of personal information

(7) Where the Minister permits the proposed use or disclosure of the personal information, the prescribed unit shall, in accordance with the practices and procedures established by the Commissioner under subclause (2) (b) (ii) and subject to any additional requirements that are prescribed,

- (a) link the personal information collected by the Minister under subsection (1) to other information in the custody or control of the Minister if necessary for the proposed use or disclosure.
- (b) take steps that are reasonable in the circumstances to ensure that the personal information that has been collected under subsection (1) or the personal information that has been linked under paragraph (a), as the case may be, is as accurate, complete and up-to-date as necessary for the proposed use or disclosure; and
- (c) de-identify the personal information that has been collected under subsection (1) or the personal information that has been linked under paragraph (a), as the case may be.

Requirements for the prescribed unit prior to use or disclosure of de-identified information

(8) The prescribed unit shall only use or disclose the information that has been de-identified under subsection (7), if,

- (a) the use or disclosure is consistent with the purposes set out under subsection (1);
- (b) the prescribed unit takes steps that are reasonable in the circumstance to ensure that the use or disclosure of the information will not result in discrimination, stigmatization or otherwise pose a serious risk of harm to any individual or group of individuals;
- (c) the prescribed unit takes steps that are reasonable in the circumstances to minimize the risk that an individual could be identified from the information;
- (d) the prescribed unit determines that the potential benefits to be derived from the use or disclosure outweigh any potential risks; and
- (e) the prescribed unit complies with any additional requirements that may be prescribed.

Obligations with respect to de-identified information

(NOTE: This provision would apply to anyone who uses the de-identified information on behalf of the Minister or anyone who uses the de-identified information disclosed by the Minister)

- (9) A person who uses information that has been de-identified under subsection (7), shall not:
- (a) use the information except for the purpose for which it was provided under subsection (8);



- (b) use the information, either alone or with other information, to identify an individual, except for the purposes of subsection (10); or
- (c) disclose the information except as authorized by this section or required by law.

Use of personal information for audits

(10) The Minister may use personal information collected under subsection (1) to conduct audits where there are reasonable grounds to believe there has been inappropriate receipt of a payment, service or good, including any subsidy or other benefit funded in whole or in part, directly or indirectly, by the Ministry where such payment, service or good is related to child, youth and family services or is prescribed in the regulations, if,

- (a) the Lieutenant Governor in Council has prescribed not more than one unit of the Ministry, other than the unit prescribed under subsection (2), to use the personal information for the purpose set out in this subsection on the Minister's behalf; and
- (b) the Minister is satisfied that the prescribed unit of the Ministry has put in place practices and procedures,
 - (i) to protect the privacy of the individuals whose personal information the Minister collects, and to maintain the confidentiality of the information, and
 - (ii) that comply with the requirements established by the Commissioner.
- (c) the Minister publishes a summary of the practices and procedures of the prescribed unit on the website of the Ministry; and
- (d) the Minister publishes an annual report that describes how the practices and procedures of the prescribed unit meet the requirements established by the Commissioner on the website of the Ministry.

Disclosure of personal information used in audits

(11) The Minister may disclose personal information used in an audit mentioned in subsection (10) if,

- (a) the disclosure is required by law;
- (b) the disclosure is for the purpose of a proceeding or contemplated proceeding in which the Minister or an agent or former agent of the Minister is, or is expected to be, a party or witness and the information relates to or is a matter at issue in the proceeding or contemplated proceeding; or

- (c) the Minister has reasonable grounds to believe the audit reveals a contravention of the laws of Ontario or Canada and the disclosure is to a law enforcement agency in Canada to aid in an ongoing investigation by the agency or to enable the agency to determine whether to conduct an investigation, with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

Disclosure of personal information to prescribed entities

(NOTE: This provision would permit the Minister to disclose the personal information collected under subsection (1) to a prescribed entity for analysis)

(12) The Minister may disclose personal information collected under subsection (1) to a prescribed entity if the prescribed entity meets the requirements under subsection YYY (2).

(NOTE: Section YYY relating to prescribed entities may be found in Appendix C)

No other uses and disclosures permitted

(13) Despite any other provision in this Act or the regulations, the Minister or anyone acting on behalf of the Minister shall not use or disclose the personal information collected under subsection (1) except as authorized by this section.

(14) Despite any other provision in this Act or the regulations, the Minister or anyone acting on behalf of the Minister shall not use or disclose the information that has been de-identified under subsection (7) except as authorized by this section.

Offences

310. (1) A person is guilty of an offence if the person,

- (k) Wilfully contravenes subsection XXX(9), XXX(13) or XXX(14).

APPENDIX B

RESEARCH

PART X

PERSONAL INFORMATION

Definitions

278. In this Part,

...

“research” means a systematic investigation designed to develop or establish principles, facts or generalizable knowledge, or any combination of them, and includes the development, testing and evaluation of research;

“researcher” means a person who conducts research;

“research ethics board” means a board of persons that is established for the purpose of approving research plans under section CCC and that meets the prescribed requirements;

...

Collection for research

(NOTE: These provisions would replace section 279 (1) 6.)

AAA. The Minister may collect personal information indirectly if the Minister collects the information for the purpose of carrying out research conducted in accordance with section BBB.

Use for research

BBB. The Minister may use personal information for research purposes if the Minister prepares a research plan and has a research ethics board approve it and for that purpose subsections CCC (2) to (4) and clauses CCC (6) (a) to (f) apply to the use as if it were a disclosure.

Disclosure for research

CCC. (1) The Minister may disclose personal information about an individual to a researcher if the researcher,

- (a) submits to the Minister,
 - (i) an application in writing,
 - (ii) a research plan that meets the requirements of subsection (2), and
 - (iii) a copy of the decision of a research ethics board that approves the research plan;
and
- (b) enters into the agreement required by subsection (5).

Research plan

(2) A research plan must be in writing and must set out,

- (a) the affiliation of each person involved in the research;
- (b) the nature and objectives of the research and the public or scientific benefit of the research that the researcher anticipates; and
- (c) all other prescribed matters related to the research.

Consideration by board

(3) When deciding whether to approve a research plan that a researcher submits to it, a research ethics board shall consider the matters that it considers relevant, including,

- (a) whether the objectives of the research can reasonably be accomplished without using the personal information that is to be disclosed;
- (b) whether, at the time the research is conducted, adequate safeguards will be in place to protect the privacy of the individuals whose personal information is being disclosed and to preserve the confidentiality of the information;
- (c) the public interest in conducting the research and the public interest in protecting the privacy of the individuals whose personal information is being disclosed; and
- (d) whether obtaining the consent of the individuals whose personal information is being disclosed would be impractical.

Decision of board

(4) After reviewing a research plan that a researcher has submitted to it, the research ethics board shall provide to the researcher a decision in writing, with reasons, setting out whether the board approves the plan, and whether the approval is subject to any conditions, which must be specified in the decision.

Agreement respecting disclosure

(5) Before the Minister discloses personal information to a researcher under subsection (1), the researcher shall enter into an agreement with the Minister in which the researcher agrees to comply with the conditions and restrictions, if any, that the Minister imposes relating to the use, security, disclosure, return or disposal of the information.

Compliance by researcher

- (6) A researcher who receives personal information from the Minister under subsection (1) shall,
- (a) comply with the conditions, if any, specified by the research ethics board in respect of the research plan;
 - (b) use the information only for the purposes set out in the research plan as approved by the research ethics board;
 - (c) not publish the information in a form that could reasonably enable a person to ascertain the identity of the individual;
 - (d) not disclose the information except as required by law and subject to the exceptions and additional requirements, if any, that are prescribed;
 - (e) not make contact or attempt to make contact with the individual, directly or indirectly, unless the Minister first obtains the individual's consent to being contacted;
 - (f) notify the Minister immediately in writing if the researcher becomes aware of any breach of this subsection or the agreement described in subsection (5); and
 - (g) comply with the agreement described in subsection (5).

Application of the *Freedom of Information and Protection of Privacy Act*

(7) The *Freedom of Information and Protection of Privacy Act* does not apply to the disclosure of personal information by the Minister to a researcher.

Transition

(8) Despite subsection (7), nothing in this section prevents the Minister from disclosing to a researcher personal information within the meaning of *Freedom of Information and Protection of Privacy Act*, if, before (DATE THIS ACT COMES INTO FORCE), the researcher entered into an agreement with the Minister under subclause 21 (1) (e) (iii) of the *Freedom of Information and Protection of Privacy Act* and the disclosure is within the scope of the agreement.

Disclosure under other Acts

(9) Despite any other Act that permits the Minister to disclose personal information to a researcher for the purpose of conducting research, this section applies to the disclosure as if it were a disclosure for research under this section unless the regulations made under this Act provide otherwise.

Research approved outside Ontario

(10) Subject to subsection (11), the Minister may disclose personal information to a researcher or may use the information to conduct research if,

- (a) the research involves the use of personal information originating wholly or in part outside Ontario;
- (b) the research has received the prescribed approval from a body outside Ontario that has the function of approving research; and
- (c) the prescribed requirements are met.

Same

(11) Subsections (1) to (4) and clauses (6) (a) and (b) do not apply to a disclosure or use made under subsection (10) and references in the rest of this section to subsection (1) shall be read as references to this subsection with respect to that disclosure or use.

Regulations relating to Research

Research ethics boards

A. The following are prescribed as requirements that must be met by a research ethics board:

1. The board must have at least five members, including,

- i. at least one member with no affiliation with the person or persons that established the research ethics board,
 - ii. at least one member knowledgeable in research ethics, either as a result of formal training in research ethics, or practical or academic experience in research ethics,
 - iii. at least two members with expertise in the methods or in the areas of the research being considered, and
 - iv. at least one member knowledgeable in considering privacy issues.
2. The board may only act with respect to a proposal to approve a research plan where there is no conflict of interest existing or likely to be perceived between its duty under subsection CCC (3) of the *Act* and any participating board member's personal interest in the disclosure of the personal information or the performance of the research.

Requirements for research plans

B. The following are prescribed as additional requirements that must be set out in research plans for the purposes of clause CCC (2) (c) of the *Act*:

1. A description of the research proposed to be conducted and the duration of the research.
2. A description of the personal information required and the potential sources.
3. A description of how the personal information will be used in the research, and if it will be linked to other information, a description of the other information as well as how the linkage will be done.
4. An explanation as to why the research cannot reasonably be accomplished without the personal information and, if it is to be linked to other information, an explanation as to why this linkage is required.
5. An explanation as to why consent to the disclosure of the personal information is not being sought from the individuals to whom the information relates.
6. A description of the reasonably foreseeable harms and benefits that may arise from the use of the personal information and how the researchers intend to address those harms.
7. A description of all persons who will have access to the information, why their access is necessary, their roles in relation to the research, and their related qualifications.

8. The safeguards that the researcher will impose to protect the confidentiality and security of the personal information, including an estimate of how long information will be retained in an identifiable form and why.
9. Information as to how and when the personal information will be disposed of or returned to the Minister.
10. The funding source of the research.
11. Whether the researcher has applied for the approval of another research ethics board and, if so the response to or status of the application.
12. Whether the researcher's interest in the disclosure of the personal information or the performance of the research would likely result in an actual or perceived conflict of interest with other duties of the researcher.

Disclosure by researcher

C. Despite clause CCC (6) (d) of the *Act*, a researcher may disclose the information to an entity prescribed under subsection (YYY) of the *Act* or to another researcher if,

- (a) the disclosure is part of a research plan approved under section CCC of the *Act*; or
- (b) the disclosure is necessary for the purpose of verifying or validating the information or the research.

(NOTE: *The requirements for prescribed entities are set out in Appendix C)*

APPENDIX C

DISCLOSURES TO PRESCRIBED ENTITIES

PART X

PERSONAL INFORMATION

YYY. Disclosure to Prescribed Entity

(NOTE: These provisions would replace section 289. These provisions permit the disclosure of personal information by service providers, including the Minister, to prescribed entities)

- (1) A service provider may disclose personal information collected under the authority of this Act to a prescribed entity for the purpose of analysis or compiling statistical information with respect to the management of, evaluation or monitoring of, the allocation of resources to or planning for child, youth and family services, if the entity meets the requirements under subsection (2).

Practices and procedures

- (2) A service provider may disclose personal information to a prescribed entity under subsection (1) if the entity,
 - (a) has put in place practices and procedures,
 - (i) to protect the privacy of the individuals whose personal information it receives, and to maintain the confidentiality of the information, and
 - (ii) that comply with the requirements established by the Commissioner;
 - (b) publishes a summary of its practices and procedures on its website; and
 - (c) publishes an annual report that describes how the practices and procedures of the entity meet the requirements established by the Commissioner on its website.

Minister may require disclosure

- (3) The Minister may require a service provider to disclose information, including personal information, to a prescribed entity for the purposes described in subsection (1) and a

prescribed entity to whom a service provider discloses information under this subsection shall comply with any prescribed requirements and restrictions with respect to the use, security, disclosure, return or disposal of the information.

Authorization to collect

- (4) A prescribed entity is authorized to collect the personal information that a service provider is permitted or required to disclose to it under subsections (1) or (3).

Use and disclosure

- (5) Subject to the exceptions and additional requirements, if any, that are prescribed, an entity that receives personal information under subsections (1) or (3) shall not use the information except for purposes for which it received the information and shall not disclose the information except as required by law.

Offences

- 310. (1) A person is guilty of an offence if the person,
 - (a) Wilfully contravenes subsection subsection YYY(5).



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