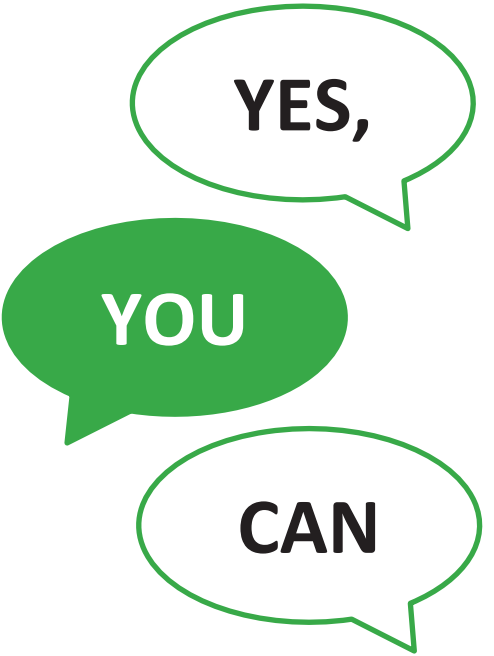

Dispelling the Myths About Sharing Information with Child Protection Workers and Peace Officers.

Office of the
Saskatchewan Information
and Privacy Commissioner

SASKATCHEWAN
advocate
FOR CHILDREN & YOUTH

WHY THIS BOOKLET?

All too often, a professional may become aware of a risk of harm to a child, but does not report that suspicion to the Ministry of Social Services based on the unfounded belief that "privacy" prevents them from doing so.

The Advocate for Children and Youth and the Information and Privacy Commissioner of Saskatchewan have worked together to develop this resource to clarify some common misunderstandings about privacy related to child protection and reporting. From a child's rights perspective, knowing when to share information is vital for child and youth well-being.

The Ministry of Social Services operates under the authority of *The Child and Family Services Act* (CFSA) and its regulations give it broad duties and powers relating to the protection of children, including the authority to conduct investigations into

allegations of harm (CFSA s. 13) and reviews of children in need of protection (CFSA s. 20).

The CFSA provides broad authority to aid in the care and protection of children, but at times well-intentioned health providers, police, teachers, and social services workers refuse to provide information to Child Protection Workers.

However, refusal to share information about a child in need of protection is contrary to the CFSA and may leave the child at risk of harm. This pamphlet is intended to clear up some of the confusion around these issues, in order to reduce barriers to disclosing information.

We thank the Ontario Information and Privacy Commissioner and the former Ontario Advocate for Children and Youth for allowing us to copy their concept and quote extensively from their publication "***YES, YOU CAN***."

Please take a few minutes to review this important information. We encourage you to share it with your colleagues.

If you require additional copies of this booklet, please contact the Advocate for Children and Youth or the Information and Privacy Commissioner.

PART I

WHAT DOES CHILD PROTECTION LEGISLATION SAY?

In June 2024 the definition of a child, under s. 2(1)(d) of the CFSA, was amended to mean, "a person under 18 years of age." Under s. 13 of the CFSA, a Child Protection Worker or a Peace Officer shall investigate allegations that children may be in need of protection. A child may be in need of protection if the child has suffered, or is likely to suffer, physical harm, sexual molestation, sexual exploitation, emotional harm, inadequate care, is exposed to domestic disharmony or violence, is being denied necessary medical treatment, has been abandoned or been subject to a pattern of neglect, or has committed a criminal act that requires the parents to seek support to meet their needs and to prevent a recurrence (CFSA s. 11).

DUTY TO REPORT

If a person has reasonable grounds to suspect that a child is in need of protection, the person must immediately report the suspicion and the information to a Child Protection Worker or Peace Officer (CFSA s. 12). The obligation to report applies to any person, including a person who performs professional or official duties with respect to children, and applies despite the provisions of any other Act (CFSA s. 12). The *Saskatchewan Child Abuse Protocol 2023* is a tool "to describe what constitutes child abuse under the law, to describe roles and responsibilities of service providers, and to describe the process by which they must respond." It has been signed by the Ministries of Health, Justice, Education, Government Relations, Parks, Culture and Sport, Social Services and the Saskatchewan Association of Chiefs of Police.

REPORT EVEN IF INFORMATION IS CONFIDENTIAL

A person's ability to disclose such information to a Child Protection Worker or Peace Officer applies even if the information is confidential or privileged.

No action for disclosing the information can be taken against the person unless the person acts maliciously or without reasonable grounds to suspect that a child is in need of protection (CFSA s. 12).

PART II

WHAT DOES SASKATCHEWAN'S PRIVACY LEGISLATION SAY?

JURISDICTION OF THE INFORMATION AND PRIVACY COMMISSIONER

The Information and Privacy Commissioner oversees:

- *The Freedom of Information and Protection of Privacy Act* (FOIP),
- *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP), and
- *The Health Information Protection Act* (HIPA).

When we talk about all three pieces of legislation, we call them "Saskatchewan's privacy legislation."

FOIP and LA FOIP govern the collection, use and disclosure of personal information by government institutions and local authorities. HIPA governs the collection, use and disclosure of personal health information by health information trustees (trustees).

For example, school boards, cities, towns and villages are local authorities under LA FOIP.

The Saskatchewan Health Authority is an example of a trustee under HIPA. Physicians and other healthcare practitioners may also be trustees under HIPA if they have custody or control of the personal health information involved.

GOVERNMENT INSTITUTIONS CAN DISCLOSE PERSONAL INFORMATION TO A CHILD PROTECTION WORKER OR A PEACE OFFICER UNDER FOIP

Under FOIP, personal information may be disclosed in various circumstances including:

- to comply with a law of Saskatchewan or Canada (FOIP s. 29(2)(i));
- where necessary to protect the mental or physical health or safety of any individual (FOIP s. 29(2)(m));
- for any purpose in accordance with any Act or regulation that authorizes disclosure (FOIP s. 29(2)(t)); and
- for the purposes of clause 29(2)(u) of the Act, personal information may be disclosed (FOIP Regulations ss. 16(q), (r)).

These provisions enable the disclosure of personal information by a government institution and its employees to a Child Protection Worker or a Peace Officer to comply with the CFSA's duty to report.

LOCAL AUTHORITIES CAN DISCLOSE PERSONAL INFORMATION TO A CHILD PROTECTION WORKER OR A PEACE OFFICER UNDER LA FOIP

Under LA FOIP, personal information may be disclosed in various circumstances including:

- to comply with a law of Saskatchewan or Canada (LA FOIP s. 28(2)(i));
- where necessary to protect the mental or physical health or safety of any individual (LA FOIP s. 28(2)(l)); and
- for any purpose in accordance with any Act or regulation that authorizes disclosure (LA FOIP s. 28(2)(r)).

These provisions enable the disclosure of personal information from a local authority and its employees to a Child Protection Worker or a Peace Officer to comply with the CFSA's duty to report.

HEALTH INFORMATION TRUSTEES CAN DISCLOSE PERSONAL HEALTH INFORMATION TO A CHILD PROTECTION WORKER OR A PEACE OFFICER UNDER HIPA

Under HIPA, personal health information may be disclosed by a trustee to a Child Protection Worker or a Peace Officer in various circumstances including:

- where a trustee believes disclosure will avoid or minimize a danger to the health or safety of any person (HIPA s. 27(4)(a));
- where the disclosure is being made for the provision of health or Social Services to the child, where the trustee believes disclosure will benefit the child (HIPA s. 27(4)(j)); and
- where the disclosure is permitted pursuant to any Act or regulation (HIPA s. 27(4)(l)).

PROTECTION FROM LIABILITY

Government institutions, local authorities, trustees and their employees are protected from liability (that is, monetary damages) if they act in good faith and do what is reasonable under the circumstances in the exercise of their powers or duties under Saskatchewan's privacy legislation (FOIP s. 66; LA FOIP s. 54; HIPA s. 61 and CFSA s. 12 and s. 79).

PART III

QUESTIONS & ANSWERS

1. ***Can a Peace Officer, teacher or other school staff, healthcare professional or a Child Protection Worker disclose information to staff of the Advocate for Children and Youth when the Advocate is conducting an investigation?***

   Yes, they can. Any person must provide information to the Advocate for Children and Youth when the Advocate is conducting an investigation under *The Advocate for Children and Youth Act* (ACYA s. 26). The ACYA (under s. 35) also provides that a ministry, agency of the government, or a publicly-funded health entity may provide information when requested by the Advocate in cases in which Notice of Investigation has not been served. Saskatchewan's privacy legislation is not a barrier to such disclosure.

2. ***A Child Protection Worker or Peace Officer is conducting an investigation at a school. The school did not instigate the investigation. Can teachers and other school staff speak to the Child Protection Worker or Peace Officer without the consent of the parents and the child?***

   Yes, they can. Saskatchewan's privacy legislation permits teachers or other school staff to disclose personal information to a Child Protection Worker or Peace Officer when they are conducting an investigation (LA FOIP ss. 28(2)(i) or (l) or (r) and CFSA s. 12).

   Even if the school staff did not provide the initial report that the child may be in need of protection, teachers and other school staff can provide information to a Child Protection Worker or Peace Officer conducting a child protection investigation. Again, Saskatchewan privacy legislation is not a barrier to such disclosure.

3. ***A Child Protection Worker or Peace Officer contacts a child's health care practitioner and asks for information to assist in an investigation. Can the practitioner disclose information about the child to the Child Protection Worker or a Peace Officer?***

Yes, they can. Health information trustees and their employees may disclose personal health information to a Child Protection Worker or a Peace Officer so they can carry out their statutory functions under the CFSA, s. 12 and s. 13 which is in keeping with ss. 27(4)(a), (j) or (l) of HIPA. This includes the duty to report if they have reasonable grounds to suspect that a child is in need of protection, in which case they must immediately report the suspicion and information on which it is based to a Child Protection Worker or a Peace Officer.

4. ***A Peace Officer and a Child Protection Worker BOTH respond to an allegation made to the Child Protection Worker. Can they share information with each other at that time? Can their organizations share information during joint investigations of the same caregivers and children?***

   Yes, they can. A Peace Officer who accompanies a Child Protection Worker on a call for safety reasons and who has reasonable grounds to suspect that a child is in need of protection must immediately report that suspicion and the information on which it is based to a Child Protection Worker (CFSA s. 12(4)).

   In addition, there is nothing in Saskatchewan's privacy laws that would prohibit a Peace Officer from making disclosures to a Child Protection Worker who is conducting an investigation under the CFSA.

5. ***Can a Peace Officer disclose information to a Child Protection Worker about a person's criminal record if they believe the individual poses a risk to children?***

   Yes, they can. A Peace Officer who has reasonable grounds to suspect that a child is in need of protection must immediately report the suspicion and the information on which it is based to the Child Protection Worker.

   If a Peace Officer believes a child is at risk due to an individual, then the peace officer must disclose that suspicion and the information it is based on.

6. ***Can an individual release information to a Peace Officer and a Child Protection Worker if the parents say no?***

   Yes, they can. You do not need consent to release this information (CFSA s. 12).

7. ***Ministry of Social Services' staff witness an interaction between a parent and a child that triggers a report to a Child Protection Worker. Can staff tell the worker about what they saw and what else they know about the family?***

   Yes, they can. Nothing in Saskatchewan's privacy legislation interferes with the Ministry of Social Services' staff sharing personal information with a Child Protection Worker to comply with the duty to report or disclose personal information. Even if the Ministry of Social Services' staff did not provide the initial report, if the staff person has reasonable grounds to suspect that a child is in need of protection, the staff person has a duty to immediately report the suspicion and the information on which it is based to a Child Protection Worker or a Peace Officer. Again, Saskatchewan's privacy legislation is not a barrier to such information sharing.

RESOURCES

- *Saskatchewan Child Abuse Protocol 2023*
- *The Child and Family Services Act* (ss.11; 12; 13; 20; 79)
- *The Advocate for Children and Youth Act* (ss. 26; 35)
- *The Freedom of Information and Protection of Privacy Act* (ss. 29(2)(m), (l), (t); 66)
- *The Freedom of Information and Protection of Privacy Regulations* (ss. 16(c), (f), (q), (r))
- *The Local Authority Freedom of Information and Protection of Privacy Act* (ss. 28(2)(i), (l), (r); 54)
- *The Local Authority Freedom of Information and Protection of Privacy Regulations* (ss. 10(c), (f))
- *The Health Information Protection Act* (ss. 27(4)(a), (j), (l); 61)

APPENDIX A

THE CHILD AND FAMILY SERVICES ACT

Duty to report

12(1) Subject to subsections (2) and (3), every person who has reasonable grounds to believe that a child is in need of protection shall report the information to an officer or peace officer.

(2) Subsection (1) applies notwithstanding any claim of confidentiality or professional privilege other than:

(a) solicitor-client privilege; or

(b) Crown privilege.

(3) No action shall be commenced against a person with respect to making a report pursuant to subsection (1) except with leave of the Court of Queen's Bench.

…

(4) Every peace officer who has reasonable grounds to believe that a child is in need of protection shall immediately report the information to an officer.

Duty to investigate
13 Where a report is made pursuant to subsection 12(1) or (4), an officer or peace officer shall investigate the information set out in the report if reasonable grounds exist to believe that a child is in need of protection.

THE ADVOCATE FOR CHILDREN AND YOUTH ACT

Power to require information and examine persons
26(1) Subject to section 27, the Advocate may require any person who in the Advocate's opinion is able to give any information relating to any matter being investigated pursuant to this Act:

(a) to furnish information to him or her; and

(b) to produce any document, paper or thing that, in the Advocate's opinion:

(i) relates to the matter being investigated; and

(ii) may be in the possession or under the control of that person.

(2) The Advocate may exercise the powers mentioned in subsection (1) whether or not:

(a) the person mentioned in that subsection is an officer or employee of a ministry, agency of the government or publicly-funded health entity or a board member; and

(b) the document, paper or thing is in the custody or under the control of a ministry, agency of the government or publicly-funded health entity.

(3) The Advocate may take possession of any document, paper or thing mentioned in subsection (1) to make copies for the purposes of the investigation.

…

(7) Subject to section 27:

(a) a rule of law that authorizes or requires the withholding of any document, paper or thing or the refusal to answer any question on the ground that the disclosure or answer would be injurious to the public interest does not apply with respect to any investigation by or proceedings before the Advocate;

(b) a provision of an Act requiring a person to maintain secrecy in relation to, or not to disclose information relating to, any matter shall not apply with respect to an investigation by the Advocate;

(8) Except on the trial of a person for perjury or respecting an offence against this Act:

(a) no statement made by the person or any other person in the course of an investigation by, or any proceedings before, the Advocate is admissible in evidence against any person in any court, at any inquiry or in any other proceedings; and

(b) no evidence with respect to proceedings before the Advocate is admissible against any person.

(9) No person is liable to prosecution for an offence against any Act by reason of the person's compliance with any requirement of the Advocate pursuant to this section.

…

Voluntary provision of information to Advocate

35 At the request of the Advocate, a ministry, agency of the government or publicly-funded health entity may provide information in its possession, custody or control respecting any person who is receiving services from or dealing with the ministry, agency of the government or publicly-funded health entity to the Advocate if it is satisfied that providing the information will assist the Advocate in fulfilling any of the Advocate's duties or in exercising any of the Advocate's powers pursuant to this Act.

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