FCSLLG ACCESS TO RECORDS POLICY

Service recipients have a right to access the records of personal information we hold about them that relate to the provision of services to them, subject to certain limits, pursuant to Section 312(1) of the CYFSA.

For a child under the age of 16 the custodial parent can act as the child’s substitute decision-maker. They can consent on behalf of the child for the collection, use or disclosure of the child’s information except where the information relates to:

* Counselling which the child consented to on their own under the *CYFSA* or
* Treatment about which the child made a decision under the *Health Care Consent Act*

However, if the child is capable, then a decision to give, withhold or withdraw consent by the capable child prevails over a conflicting decision by the custodial parent.

The request must be made in writing in order for the rules of Part X to apply. However, nothing prevents FCSLLG from granting access informally if an individual makes a request verbally or does not make a formal request at all.

The request must set out sufficient details for FCSLLG to identify and locate the record that is being requested. When an individual does not provide such particulars, FCSLLG must help them to do so.

**Time Frame:**

As soon as possible, but no later than 30 calendar days after receiving a written request for access to a record of person information related to the provision of service to the individual, FCSLLG shall, by written notice to the individual grant or refuse the individual’s request. We may extend the deadline for responding to the request by not more than 90 calendar days if:

* Responding to the request within 30 calendar days would unreasonably interfere with FCSLLG’s operations because the information consists of numerous pieces of information or locating the information would necessitate a lengthy search, or
* The time required to undertake an assessment of the factors that determine the response would make it not reasonably practical to respond within 30 calendar days.

If we extend the time limit beyond 30 calendar days, they we shall, by written notice to the individual:

* Set out the length of the extension (by up to 90 calendar days) and the reason for it, and
* Grant or refuse the individual’s request as soon as possible in the circumstances but no later than the expiry of the extended deadline. As the extension can be for a maximum of 90 calendar days, the longest possible time limit for a response is 120 calendar days from the receipt of the request for access.

Despite the time frames set out in the CYFSA, if the individual provides us with satisfactory evidence that they require access to the requested record of personal information within a specified time period, we shall respond within that time period if it is reasonable to do so.

**Responding to Request for Access:**

FCSLLG shall respond to the request by:

• Making the record available to the individual for examination and, at the request of

the individual, providing a copy of the record to the individual, and if reasonably

practical, we shall also provide an explanation of the purpose and nature of the

record and any term, code, or abbreviation used in the record

• Giving a written notice to the individual that, after a reasonable search, we have

concluded that the record does not exist, cannot be found, or is not a record to

which this Part applies, or

• Refusing the request, in whole or in part, and giving written notice of the refusal,

providing the reason (from the exceptions explained above), and advising the

individual of their right to make a complaint about the refusal to the IPC under s.

316. When giving reasons for a refusal, we must ensure we do not provide

information to which the requestor does not have a right of access.44

We shall not make a record of personal information or a part of it available to an individual or

provide a copy of it to an individual without first taking reasonable steps to be satisfied as to the

individual’s identity.

**Fees:**

FCSLLG cannot charge an individual a fee for accessing a record of their personal information.

**Reasonable Search:**

When we receive an access request for personal information from a service recipient, we must conduct a reasonable search to locate responsive records. When we find records, we must provide those records to the requester, subject to some limits. The IPC says that a reasonable search is one “where an experienced employee makes a reasonable effort to locate the records.”

What is a reasonable search?

* For simple and uncontested access requests, a reasonable search will involve looking for the service recipient’s electronic and/or paper “person” file and any related “case files”.
* For complex or contested access requests where a service recipient complains to us or to the IPC that we did not do a reasonable search, we may be asked to provide evidence to explain the following:
* The staff member who conducted the search for records was knowledgeable about the type of service provided, record keeping practices for that service, and any relevant records storage and filing systems.
* We must record details of our search practices, including where we looked; how long it took us to conduct the search; how many documents or files were reviewed; who was contacted and the search parameters that we used. These details should be recorded in the complaint management file responsive to the reasonable search complaint or in the affidavit (sample attached as Appendix) or letter to be sent to the IPC.
* We looked in the right places for all related records. The person who does the search should be provided with detailed information about the request, including any information needed to ensure a consistent understanding of the scope of the search and the approach to be taken when searching. A reasonable search for a service recipient will start with searching our normal filing spots for service recipient records such as CPIN, FASTTRACK or historic paper records. However, depending on the request, we may need to look in additional places. Records may exist in a variety of formats such as: electronic records, paper, emails, voice messages, video recordings, photographs, text messages, Facebook messenger, instant messages and calendars.
* If the scope of the request requires us to do so, we must identify all staff members within the CAS who may have responsive records and ask them to do a search. This might involve contacting case workers, finance staff, administrative staff, and executives. Any team member may need to be contacted to do a search for records.

**Dedicated Primarily to the Provision of Service To the Individual**

When we are preparing records for responding to access requests, we must analyze whether each record is “dedicated primarily to the provision of a service to the individual”. If so, the individual has a right of access to the entire record (subject to exceptions) even if it incidentally contains information about others and other matters. If not, the individual only has the right to their own personal information that can reasonable be severed from the rest of the record (and still subject to exceptions).

**Exceptions:**

An individual has the right to access a record of their personal information in FCSLLG’s custody or control related to the provision of service to them, unless:

* The record or the information in the record is subject to a legal privilege that restricts its disclosure to the individual
* Another Act, an Act of Canada, or a court order prohibits its disclosure to the individual
* The information in the record was collected or created primarily in anticipation of or for use in a proceeding, and the proceeding, together with all appeals or processes resulting from it, has not been concluded, or
* Granting the access could reasonably be expected to:
* Result in a risk of serious harm to the individual or another individual
* Lead to the identification of an individual who was required by law to provide you with the information in the record, or
* Lead to the identification of an individual who provided FCSLLG with information in the record explicitly or implicitly in confidence, if FCSLLG considers it appropriate in the circumstances that the identity of the individual be kept confidential.

**Risk of Serious Harm**

One reason we might deny an individual a right of access to their own records of personal information is if providing them with their records could cause them serious harm or there is a risk of serious harm to someone else. Occasionally, we will identify a situation where there is a history or episode of violence or an allegation of risky behavior that leads us to question whether there is a risk of serious harm in allowing someone to have a copy of their file or records. If we raise or receive concerns about safety or harm we need to take further steps to evaluate whether there is a risk of serious harm in granting a service recipient access to their own records. If we deny access to records based on a risk of serious harm, we must demonstrate a risk of harm that is well beyond the merely possible or speculative, but we do not have to prove that the access to the records will result in harm. We may be asked to provide evidence to explain the following:

1. We received a request for access by a service recipient for records of personal information, including the date of the access request, the scope of the request, the responsive records, and the specifics of which records give rise to the concerns of the risk of serious harm. We may also be asked to state that we intend to or have already denied the requester access to the whole or part of the record and explain our reasons for doing so.
2. We believe the risk of harm is more than merely speculative. We have to be able to provide evidence of why we reasonably expect that granting the individual access to the records requested could result in a risk of serious harm to the individual or another individual. For example, we may believe that there is a risk of serious harm because:
* Our staff have been threatened by the requester or know of a threat of harm to a particular person
* We believe the requester is highly vulnerable and at high risk of self-harm
* We have evidence that the requester has a history of violence
* We have evidence that the requester has a history of persistent and harassing behavior towards certain individuals
* We have issued a trespass order against the requester
1. When we are considering claiming a risk of serious harm, unless the risk of harm is obvious, we are permitted to seek the advice of a neutral third-party expert (such as a psychologist or psychiatrist) to provide objective evidence that a risk of serious harm exists beyond that with is
2. We believe the risk of harm is serious. The potential harm must be serious harm and more than trivial or inconsequential. The harm itself may be physical or psychological. Serious harm would include, for example:
* Death
* Disability
* Physical, verbal or sexual assault
* Damage to property
* Harassment or stalking
* Loss of function or ability to work or complete activities of daily living
1. We can say who is at risk of serious harm. We must be able to identify a specific person, people, group or organization who is at risk of serious harm. That might be the requestor, the requestor’s family members, staff members, third party providers or the public.
2. The serious harm relates to providing the records to the requester. We need to be able to demonstrate that the requested records relate to the risk of serious harm. A requester may have a history of violence or making threats but a risk of serious harm may not relate to the requester gaining access to records of personal information held by FCSLLG. To be relevant to deny access to records, the risk must be triggered by the act of granting access to the records.

**Redaction/Severance**

Every time an individual makes a formal request to us for access to their own records of personal information we hold about them, 3 questions must be asked, to inform what is released and what must be severed:

1. Is the requester a service recipient or were they service recipient in the past or is the requester legitimately acting on behalf of an existing or former service recipient as a substitute decision maker?
2. If the answer to any of the questions in 1 is yes, are the records requested dedicated primarily to the provision of a service to the requester?
3. If the answer to question 2 is no, is there personal information in the record to which the requester is still entitled?

It is important that we retain a copy of the prepared/redacted record provided to the individual, in keeping with the CPIN Harmonized Business Practice on disclosure.