



CONSENT MANAGEMENT

Authority:

CYFSA s. 286-305

Policy:

Child and Family Services of Grand Erie (the Society) does not require consent to fulfill its primary role as a child protection Society, to protect children. The Society respects the rights of individuals to control their own personal information, subject to certain limits that are permitted or required by law.

When the Society is required to have an individual's consent to collect, use or disclose their information, that individual may choose to give the Society permission, may limit what they wish the Society to do with their information or may choose to withhold their consent. If an individual grants permission to collect, use or disclose their information, they may withdraw their consent at any time.

The Society endeavours to ensure service recipients understand the purpose and the process of providing their consent.

Procedure:

Elements of Consent

Consent must:

- be provided by the individual or if the individual is incapable to make their own decision, their substitute decision-maker;
- not be obtained through deception or coercion;
- relate to the information that we are collecting, using, or disclosing; and
- be knowledgeable.

A consent is considered knowledgeable if it is reasonable for the Society to believe that the individual knows:

- the purposes of the collection, use, or disclosure of their personal information; and
- that they have the right to give, withhold, or withdraw their consent.

When the Society provides services to children, youth and their families, the assigned worker discusses individual privacy rights, and the purposes for which the Society collects, uses and discloses personal information.

Capacity

Everyone is presumed to be capable to make their own information privacy decisions unless the presumption is unreasonable. For example, unconscious people and infants are not capable.

If an individual's capacity is questionable, then capacity is assessed. Capacity to make information privacy decisions is a two-part test; to be considered capable, a child, youth or adult must have the ability to:

- understand the information that is relevant to the decision to collect, use or disclose their information, and
- appreciate the reasonably foreseeable consequences of their choices about the collection, use or disclosure of their information (giving, not giving, withholding or withdrawing the consent).

If the individual fails either part of the two-part test, the individual is incapable of making information decisions.

Who Can Consent

When consent is required under the CYFSA, the following authorized persons may give consent:

1. The individual, if the individual is capable, or
2. If the individual is 16 or older and authorizes in writing another individual who is 16 or older; this individual can be a substitute decision maker if they are capable.
3. If an individual is under the age of 16 and capable, the individual may consent. The individual's parent or person who has lawful custody may also consent.

The parent or person with lawful custody may not consent if the information to be disclosed relates to "treatment" (as defined under the *Health Care Consent Act, 1996*) about which the child or youth has made their own decision or "counseling" (as defined under the *Child, Youth and Family Services Act, 2017*) about which the child participated on their own. For example, if a child or youth consented to the treatment or counseling on their own, a parent cannot consent to the release of that information on behalf of the child.

If there is a disagreement between a capable child or youth and the parent about consent, the capable child or youth's wishes prevail.

4. If the individual is incapable, a substitute decision maker can consent. The assigned child protection worker will verify the identity of any substitute decision-maker by checking their identification and any other required documentation as identified. The following is a prioritized list of possible substitute decision-makers. If someone or a group outranks another person or group lower on the list, the higher ranked person or group is the substitute decision-maker(s).
 - A substitute decision-maker under the *Health Care Consent Act*, for specified purposes.
 - The individual's "guardian of the person" or "guardian of property". If the consent relates to the guardian's authority to make a decision on behalf of the individual, a copy of the documentation is required.
 - The individual's attorney for personal care or attorney for property, if the consent relates to the attorney's authority to make a decision on behalf of the individual, a copy of the documentation is required.
 - The individual's representative appointed by the Consent and Capacity Board, if the representative has authority to give the consent, a copy of the documentation is required.
 - The individual's spouse or partner.
 - A child or parent of the individual, or a Children's Aid Society or other person who is lawfully entitled to give or refuse consent in the place of the parent [Note: This paragraph does not include a parent who has only a right of access to the individual. If a children's aid society or other person is lawfully entitled to consent in the place of the parent, this paragraph does not include the parent.]
 - A parent of the individual with only a right of access to the individual.
 - A sibling of the individual.
 - Any other relative of the individual.
5. The estate trustee, in the case of a deceased individual (unless the individual has been deceased for more than 30 years, in which case the information is no longer considered personal information).

The Society must verify the identity of the estate trustee by reviewing a will or the notarized "Certificate of Appointment of Estate Trustee with a Will" or "Certificate of Appointment of Estate Trustee without a Will". The method of verification will be documented in the file. If the deceased individual does not have an estate trustee, consent can be obtained from the person who has assumed responsibility for the administration of the deceased person's estate – if documented in writing.

Types of Consent: Explicit, Implied and Conditional

Explicit Consent

Other than as permitted or required by law above, the Society seeks explicit consent from an individual (or their substitute decision-maker) to:

- directly collect personal information from the individual (or their substitute decision-maker) for a purpose other than to provide a service
- indirectly collect personal information (i.e. collect from a third-party source)
- use personal information to provide a service, if we collected the personal information indirectly or for a purpose other than providing the service
- disclose personal information

Explicit consent can be given in writing or verbally. If given verbally, the consent is documented in a contact log including:

- the name of the individual who gave the consent;
- the personal information to which the consent relates; and
- how the individual was notified about the purpose(s) of the collection, use, or disclosure of personal information. If the purpose of the collection, use or disclosure changes at any time, the individual should be notified and further consent should be obtained and documented.

Implied Consent

The Society can rely on implied consent when the Society collects information directly from an individual for the purpose of providing a service. It is not required to specifically ask whether it is okay that information is collected or used. When the Society directly collects personal information from a service recipient, information practices are explained.

Conditional Consent

When the Society needs an individual's consent to collect, use or disclose their information, the individual may add limits to or conditions regarding their consent. They may choose to share parts of their information with certain people and not others. If an individual requests a restriction on the use of their personal information, the Society must comply with their instructions, unless:

- The information is reasonably necessary to assess, reduce or eliminate a risk of serious harm to any person or group; or
- The information is reasonably necessary to assess, reduce, or eliminate a risk of harm to a child.

If an individual requests a restriction on the use of and disclosure of their personal information, the assigned worker will determine the nature of the request. If necessary, the assigned worker and supervisor will then meet with the Privacy Lead to determine what is restricted and how this can be completed.

Withholding or Withdrawal of Consent

1. If consent is sought, a service recipient may choose not to give consent (“withholding consent”).
2. If consent is given, a service recipient may withdraw consent at any time, but the withdrawal cannot be retroactive; the withdrawal does not affect information that the Society has already collected, used or disclosed.
3. If an individual verbally notifies the Society that they are withdrawing consent, a contact log is completed in the file including documentation of the withdrawal and the date.
4. If an individual notifies the Society in writing that they are withdrawing consent, a copy of the correspondence will be uploaded to the case file.
5. The assigned worker will ensure that other staff who are providing services to the individual are made aware that consent has been withdrawn.

If consent is withheld or withdrawn, the assigned worker will review with their supervisor the need to obtain and/or disclose information without consent and determine any next steps.

Consent Not Required

There are certain activities for which the Society does not need consent to collect, use or disclose personal information. These activities are permitted or required by law under the CYFSA. If staff have questions about collecting, using or disclosing personal information without consent, they should speak to the Privacy Lead.