


Chapter:	<b>Access and Disclosure of Information</b>	Classification:	<b>Public Document</b>
Subject:	<i>Youth Criminal Justice Act</i>		
For:	<b>Entire Division</b>	 Authorized by Executive Director	

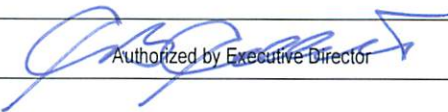
**1. Policy**

- 1.1 Policy and Procedures and Standard Operating Procedures (SOP) for access and disclosure of information about young persons will be in accordance with sections 110 to 129 of the *Youth Criminal Justice Act* (YCJA).
- 1.2 Where there is a conflict between policy and procedures or SOP and YCJA, YCJA prevails.


**2. Information Held in Accordance with Section 116(1) YCJA**

- 2.1 YCJA provides authority for Correctional Services to keep records
  - 2.1.1 for investigation of an offence alleged to have been committed by a young person
  - 2.1.2 for proceedings against a young person under the YCJA
  - 2.1.3 for administration of a youth sentence or an order of the youth justice court
  - 2.1.4 when considering whether to use extrajudicial measures
  - 2.1.5 as a result of the use of extrajudicial measures to deal with the young person
- 2.2 YCJA restricts access to files of specific individuals or groups, and for specific time periods.
- 2.3 Unless a youth court has withheld all or part of a report from a person in accordance with section 39(9) and (10) or section 40(7) of YCJA, Correctional Services may, in accordance with section 119(1) YCJA, on request, make a record available for inspection to
  - 2.3.1 the young person
  - 2.3.2 counsel for the young person or any representative of that counsel
  - 2.3.3 the Attorney General or the Attorney General's agent, i.e., crown attorney
  - 2.3.4 the victim of the offence
  - 2.3.5 the parent or guardian of the young person during the course of any proceedings related to the offence or during the term of any youth sentence made in respect to the offence

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- 2.3.6 an adult helping the young person pursuant to section 25(7) YCJA
- 2.3.7 a peace officer
- 2.3.8 a judge, court or review board holding proceedings related to the young person, whether as a young person or an adult
- 2.3.9 the provincial director or the superintendent of the provincial correctional facility for adults or the penitentiary at which the young person is serving a sentence
- 2.3.10 a person participating in a conference or in the administration of extrajudicial measures
- 2.3.11 a person acting as ombudsman, privacy commissioner or information commissioner who is investigating a complaint to which a record relates
- 2.3.12 a coroner
- 2.3.13 person acting as a child advocate who is acting in the course of their duties under an act of Parliament or legislature of a province
- 2.3.14 a person acting under the *Firearms Act*
- 2.3.15 any member of a department or agency of a government in Canada, or its agent, that is
  - 2.3.15.1 acting in the exercise of their duties under the YCJA
  - 2.3.15.2 engaged in the supervision of the young person or in an investigation related to the young person under an Act of the legislature of a province
  - 2.3.15.3 considering an application for conditional release or pardon made by a young person
  - 2.3.15.4 administering a prohibition order made under an act of Parliament or the legislature of a province
  - 2.3.15.5 administering a youth sentence while the youth is serving the sentence in a provincial correctional facility for adults or a penitentiary
- 2.3.16 a person carrying out a criminal records check required by Canada, a province or municipality for the purposes of employment or the performance of services
- 2.3.17 an employee or agent of the government of Canada for statistical purpose under the *Statistics Act*
- 2.3.18 an accused or counsel who swears an affidavit to the effect that access to the record is necessary to make a full answer and defence

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- 2.3.19 a person or a member of a class of persons designated by order of the Governor in Council or lieutenant governor in council for the purpose specified in the order
- 2.3.20 any person or class of persons that a youth justice court judge considers has a valid interest in the record and that access to the record is desirable for research or statistical purposes, or desirable in the interest of the proper administration of justice

- 2.4 Staff may release information to professionals or other persons engaged in the supervision or care of a young person, such as social workers or public-school officials. Disclosure will be in accordance with section 125 (5) and (6) of the YCJA which specifies who can have access to information and under what circumstances, to
  - 2.4.1 assist in the preparation of a report required under the YCJA
  - 2.4.2 ensure compliance with a court order or reintegration leave
  - 2.4.3 ensure the safety of students and staff, students or other persons
  - 2.4.4 facilitate the rehabilitation of the young person
- 2.5 A person to whom staff may make a record available can have any information contained in the record and a copy of any part of the record.

**3. Period of Access - Section 119(2) YCJA**

- 3.1 Staff may only release record information within specified time frames listed below
  - 3.1.1 the period ending two years after the young person consents to an extrajudicial sanction
  - 3.1.2 the period ending two months after the expiry of the time allowed to appeal a verdict of not criminally responsible or if an appeal is taken, three months after all proceedings have been completed
  - 3.1.3 the period ending two months after dismissal, withdrawal or finding of guilt
  - 3.1.4 a period of one year if the charge against the young person is stayed
  - 3.1.5 the period ending one year after a young person is found guilty and given an absolute discharge
  - 3.1.6 the period ending three years after a young person is given a conditional discharge

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- 3.1.7 the period ending three years after the completion of a youth sentence imposed for a summary conviction offence
  - 3.1.8 the period ending five years after the completion of a youth sentence imposed for an indictable offence
  - 3.1.9 if during the period calculated in accordance with paragraph 3.1.7 and 3.1.8 the young person is found guilty of a subsequent summary conviction offence the access period is calculated in accordance with paragraph 3.1.7 and 3.1.8 as the case may be, and the period ending three years after the youth sentence imposed for that offence has been completed
  - 3.1.10 if during the period calculated in accordance with paragraph 3.1.7 and 3.1.8 the young person is found guilty of an indictable offence, the period ending five years after the sentence imposed for that indictable offence has been completed
- 3.2 After the periods set out in section 119 (2) of the YCJA have passed, staff may no longer disclose information unless a judge orders disclosure.
- 3.3 YCJA records will be retained in accordance with the departmental records retention schedule. See Policy and Procedures Chapter 3: [Information Management](#).
- 3.4 Youth records and information disclosed by staff to other professionals, agencies or school representatives will be accompanied by the following written notification:
- “All records and information have been disclosed in accordance with section 125(5) & (6) of the Youth Criminal Justice Act (YCJA). Persons in receipt of these records and information will comply with section 125 (7) & (8) of the YCJA with respect to further disclosure and destruction. Unauthorized disclosure and/or access to these records and information could result in criminal charges.”***

#### 4. Clarifications

- 4.1 Correctional Services staff refer matters regarding the disclosure of information pursuant to the YCJA when

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- 4.1.1 sections 119 to 120 of the YCJA do not clearly speak to the situation, or
- 4.1.2 are not addressed in Correctional Services Policy and Procedures

4.2 When Correctional Services staff require clarification, they will refer the matter to their immediate supervisor, who may in turn refer the matter to Head Office for advice/direction.

**5. Application to Youth Court - Section 127 YCJA**

- 5.1 In accordance with Section 127 of the YCJA, the provincial director may apply to the youth justice court in order to disclose young person information to a person not identified in sections 110 to 125 of the YCJA, where
  - 5.1.1 the young person has been found guilty of an offence involving serious personal injury
  - 5.1.2 the young person poses a risk of serious harm to persons, and
  - 5.1.3 the disclosure of the information is relevant to the avoidance of that risk