

Written answers

Tuesday, 29 September 2020

Department of Children and Youth Affairs Adoption Data



Gary Gannon (Dublin Central, Social Democrats)

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648. To ask the Minister for Children and Youth Affairs his views on whether adopted persons personal data access and contact with natural family members are separate issues; and if he will make a statement on the matter. **[27317/20]**

Roderic O’Gorman (Dublin West, Green Party)

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The distinction between access to personal data and contact with natural family is a point made by adoption stakeholder groups and I understand that, while a lot of adoptees would like access to family of origin details, it often does not necessarily follow that they want contact or to build a relationship with that family.

As I have noted in previous responses to legislative proposals for an information and tracing service, the legal advice received by my Department is that there are two rights at play, the right to identity and the right to privacy, and legislation in this area must seek to harmonise these rights.

I would also reiterate that adopted persons are entitled to avail of the provisions of data protection legislation for access to their personal data, subject to any restrictions or conditions set out in that legislation.



Gary Gannon (Dublin Central, Social Democrats)

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649. To ask the Minister for Children and Youth Affairs the evidence that exists of a guarantee of confidentiality to natural mothers whose children were adopted in view of the system of public registration of births in Ireland. **[27318/20]**



Gary Gannon (Dublin Central, Social Democrats)

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650. To ask the Minister for Children and Youth Affairs the evidence that exists that natural mothers wish to prevent their adult children from accessing their own personal data. **[27319/20]**

Roderic O’Gorman (Dublin West, Green Party)

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I propose to take Questions Nos. 649 and 650 together.

In considering the natural mother’s expectation of privacy in the adoption process, it is important to take account of the context in which adoption took place in the past. While adoption today is a child focused service, aimed at providing a family for a child where their own parents are unable to care for them, in the past, the focus of adoption was often on the needs of adults. This includes both adoptive parents, who may have been stigmatised as unable to have children, and also unmarried parents, in particular unmarried mothers of so-called “illegitimate” children.

In the development of the Adoption (Information and Tracing) Bill 2016, my Department received submissions from multiple stakeholders, including natural or birth parents, adoptive parents, and adopted people.

My Department has also had engagement with social workers who have years of experience working with natural mothers. These social workers have conveyed to the Department the serious concerns which some natural mothers have about the potential release of their information. In particular, they have indicated that, at the time of the child’s birth and placement for adoption, these birth mothers understood that their details would never be released. Some such birth mothers have spoken of how they were promised no contact would ever be made. It must be remembered that this happened in the context of secrecy around the adoption process in the past, and in a social climate where to be an unmarried mother was seen as shameful.

Many of these natural mothers were encouraged to keep the fact that they had placed a child for adoption secret, and have never told anyone, including their subsequent spouses and children. Consequently, the prospect of the release of their information makes them extremely fearful for the future of their relationships with their families, spouses, children, and wider community. It must also be remembered that many of these natural mothers are now at an advanced age, or are vulnerable for other reasons, including as survivors of incest and rape.

While there are many birth mothers who are happy to share their personal information with their children, it is clear this is not the case for all of them.

The advice received from the Attorney General in the development of the Adoption (Information and Tracing) Bill 2016 was clear: there must be some protection of birth parents' constitutional right to privacy reflected in the legislation. There are two rights at play - the right to identity and the right to privacy - and legislation must seek to harmonise these rights, as held by the Supreme Court in the *I.O.T v B* decision.

I am continuing to consider how best to progress these complex issues, and I intend to bring forward legislative proposals in due course.



Gary Gannon (Dublin Central, Social Democrats)

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652. To ask the Minister for Children and Youth Affairs his views on whether there will still be a right of access to personal data in the archive of the **Commission** of Investigation into Mother and Baby Homes after it is transferred to him according to the GDPR and **Commissions** of Investigation Act 2004 as amended by the Data Protection Act 2018. **[27321/20]**

Roderic O’Gorman (Dublin West, Green Party)

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When the Government decided to establish an inquiry into mother and baby homes, the model of investigation that it chose was a **commission** of investigation under the **Commissions** of Investigation Act of 2004. That decision by Government, and the subsequent establishment, under the law, of the **Commission**, had indelible consequences for the format of the investigation that was to be conducted, for the mode of engagement with the **Commission** by third parties who gave evidence, for the rights of those third parties, for the Commission’s report, and for its records.

The entire premise of the 2004 Act is that investigations are held in private. Where **commissions** are held entirely in private, their records constitute confidential evidence given in private. That confidentiality applies seamlessly to the evidence and records gathered by the inquiry, both during the life of a **commission** of investigation itself, and after its dissolution when records have been deposited with the Minister.

The GDPR right to access personal data is expressly restricted by the **Commissions** of Investigations Act 2004. The 2004 Act provides for the means whereby the archive, and the confidentiality of that archive, are to be preserved. Any disclosure by a department of the records deposited with it is prohibited by law and would be an offence.

Section 11(3) of the 2004 Act will continue to prohibit disclosure of evidence given or the contents of any document produced by a witness while giving evidence in private, except in very limited exceptions which would not be applicable in this instance. After a 30 year period has elapsed, decisions on access at that time and thereafter are governed by Section 8 of the National Archives Act.

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No! 0 people think not!

Does this answer the above question?

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No! 0 people think not!