



COMPLAINT TO THE EUROPEAN COMMISSION

RE

BIRTH (INFORMATION AND TRACING) BILL 2022

Compiled by
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When referencing this complaint please cite as follows:

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Clann Project [REDACTED]

Your complaint form has been successfully submitted

EC FPIS DO NOT REPLY [REDACTED]

Fri, Jan 28, 2022 at 2:45 PM

To: Claire McGettrick [REDACTED] >

Thank you for having completed the form. The European Commission will process it promptly.

Are you submitting this complaint on your own behalf?	yes
Representative Businesses or organisation	
Title	
Representative first name	
Representative last name	
Representative E-mail	
Representative street and number	
Representative postcode	
Representative town	
Representative country	Please select...
Representative telephone	
Businesses or organisation:	Clann Project / Article Eight Advocacy
Title	Ms
Firstname	Claire
Surname	McGettrick
e-mail	[REDACTED]
Language	English
Street and number	[REDACTED]
Postcode	[REDACTED]
Town	[REDACTED]
Country	Ireland
Telephone	
official contact for all correspondence	
Authority complained about name	Irish Government / Department of Children Equality, Disability, Integration and Youth
Authority complained about contact person	Minister for Children Equality, Disability, Integration and Youth, Roderic O'Gorman

Authority complained about email	minister@equality.gov.ie
Authority complained about	
Authority complained about telephone	+35316473000
Authority complained about address	Block 1, Miesian Plaza, 50 – 58 Lower Baggot Street
Authority complained about postcode	D02 XWI4
Authority complained about town	Dublin
Authority complained about country	Ireland
National measures suspected to infringe Union law	<p>The Birth Information and Tracing Bill published on 12th January 2022 contains multiple breaches of the General Data Protection Regulation.</p> <p>The Data Protection Impact Assessment mandated by article 35 GDPR does not contain any assessment of or justification for breaches of the Charter rights of individuals, as it is required to do. These breaches of Charter rights are not limited to breaches of the Article 8 right to protection of personal data.</p> <p>The DPIA does not contain any assessment of the necessity and proportionality of the multiple restrictions imposed on the Right of Access.</p> <p>The balancing of rights which underpins the draft legislation does not consider any of the Charter rights of individuals.</p> <p>The Bill is available here: https://www.gov.ie/en/press-release/4ac84-minister-ogorman-publishes-birth-information-and-tracing-bill/</p>
EU law you think has been breached	General Data Protection Regulation 2016/679 (GDPR)
Problem description	<p>The Bill places multiple impermissible restrictions on the Right of Access (Article 15 GDPR, Article 8 Charter), breaches the Charter rights to non-discrimination (Article 21) and remedy (Article 47), and the accompanying Data Protection Impact Assessment does not meet the requirements of Article 35 GDPR.</p> <p>The provisions of the Bill restrict and interfere with the Right of Access by establishing impermissible preconditions which must be met before the right can even be exercised, modifying the modes by which the right can be exercised, and unlawfully limiting the scope of personal data to be made available to data subjects.</p> <p>PRECONDITIONS</p> <p>In some cases the preconditions established are clearly discriminatory. In other cases the exercise of the right is made contingent on certain third-parties being deceased. Both of these are extremely unorthodox and completely unnecessary preconditions for the Irish Government to try and establish in law.</p> <p>It is well understood that consent is not an appropriate lawful basis for public authorities to rely on when processing personal data due to the large power imbalance between the state and an individual. Consent obtained cannot be regarded as "freely given, specific, informed and unambiguous" [Recital 32, GDPR]. Sections 6 and 9 of the Bill contain a requirement that consent is given to a public authority before the Right of Access can be exercised.</p> <p>INFORMATION SESSION & ARTICLE 21 CHARTER</p> <p>The Bill establishes a Contact Preference Register which allows individuals affected by Ireland's closed adoption and forced separation policies to register whether they wish to have contact with those they were separated from. Despite access to personal data and contact preferences being entirely separate matters the Irish Government conflates the two and seeks to use the contact</p>

preference of one individual to withhold the ability to exercise the Right of Access from another.

An adopted person whose parent has registered a 'no contact' preference on the new Contact Preference Register will have to attend an Information Session before their (public) birth certificate is provided to them. One of the express purposes of the Information Session is to inform the adopted person of 'the importance of...respecting the privacy rights' of their parent.

The Government regards the Information Session as a safeguard to mitigate a possible risk to a third-party's privacy rights. We cannot see how compelling an individual to receive a telephone call acts as a safeguard to mitigate against unspecified and undescribed risks to a third-party's privacy rights.

This provision is discriminatory based on the circumstances of an individual's birth. No other persons seeking to exercise their Right of Access are compelled to attend an Information Session.

MODES

The Bill states that access requests made for personal data "shall ... be in such form as the recipient body may specify". This is not permitted under the GDPR.

RESTRICTION OF SCOPE OF PERSONAL DATA TO BE MADE AVAILABLE

The Bill does not provide a mechanism where a data subject can request all their personal data undergoing processing as is the case with a Subject Access Request made under Article 15 GDPR. Instead separate applications must be made for the distinct sub-categories of personal data created by the Bill. This will inevitably lead to incomplete responses to access requests which is a breach of the GDPR.

DATA PROTECTION IMPACT ASSESSMENT

The GDPR deliberately aims to bring into consideration the rights and freedoms in the Charter of Fundamental Rights of the EU, particularly through the use of a Data Protection Impact Assessment (DPIA). Article 35.7 of the GDPR states "The assessment shall contain at least ... an assessment of the risks to the rights and freedoms of data subjects".

The Irish Government's DPIA does not refer to the Charter or the rights within at all. Nor does the Bill, or any of the other accompanying documents.

Article 47 of the Charter gives individuals the right to an effective remedy. The attempt in Section 59 of the Bill to provide immunity to public authorities, agencies and other bodies as may be specified by a Government Minister is in conflict with this Article 47 right. There is no assessment in the DPIA of the impact of this Section on the rights and freedoms of individuals. In addition this appears to be an attempt to evade the principle of accountability in Article 5.2 GDPR and the obligation imposed by Article 24 GDPR on data controllers to be able to demonstrate compliance with the entirety of the GDPR.

There is no assessment of the impact of the imposition of the Information Session described above and whether it is compliant with the right to non-discrimination in Article 21 of the Charter. Recital 75 GDPR states "The risk to the rights and freedoms of natural persons, of varying likelihood and severity, may result from personal data processing which could lead to physical, material or non-material damage, in particular: where the processing may give rise to discrimination".

Nor is there any assessment of the necessity and proportionality of this measure, or of any of the other restrictions placed upon the Right Access which are described above. The Irish Government merely asserts that the provisions of the Bill are necessary and proportionate. An assertion of necessity and proportionality is not an assessment of necessity and proportionality.

THE PRINCIPLE OF FAIRNESS

As the Bill contains provisions which limit the scope of personal data and places pre-conditions which must be met before the exercise of a fundamental right we do not see how the above could comply with the principle of fairness [Article 5.1(a) GDPR]

CONCLUSION

Recital 4 of the GDPR states that the "processing of personal data should be designed to serve mankind." Rather than do this the Irish Government's Bill firstly prevents the exercise of the Right of Access until discriminatory provisions are complied with and then limits the scope of personal data to be provided to an individual when exercising the right.

We are extremely concerned that in an ostensible attempt to acknowledge grievous historical wrongs the Irish Government has seen fit to breach the fundamental rights of affected individuals in such a broad and careless manner, and we urge the Commission to investigate this matter.

Does the Member State concerned receive EU funding relating to the subject of your complaint	idk
Does your complaint relate to a breach of the EU Charter of Fundamental Rights?	no
Please explain how EU law is involved and which fundamental right has been breached	
List of documents	We are currently compiling a briefing document on the Bill which we can make available to the Commission when completed.
Have you already taken action in the Member State concerned to try to solve this problem?	yes
What action have you already taken in the Member State concerned to tackle the problem?	
What type of decision(s) resulted from your action.	<p>When the Minister published the General Scheme of the Birth (Information and Tracing) Bill, we provided a comprehensive submission to the Joint Committee on Children, Disability, Equality and Integration, which is available here:</p> <p>http://clannproject.org/wp-content/uploads/Clann-Project-Submission-to-Oireachtas-Childrens-Committee.pdf</p> <p>On 14th December 2021, the Committee published 83 recommendations which addressed our concerns with the Bill. The recommendations are available here:</p> <p>https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_children_equality_disability_integration_and_youth/reports/2021/2021-12-14_report-on-pre-legislative-scrutiny-of-the-birth-information-and-tracing-bill_en.pdf</p> <p>However, when the Minister published the Bill on 12th January it became clear that he ignored many of the Committee's most important recommendations.</p> <p>We will continue to appeal to the Minister to amend the Bill.</p>
Has your action has been settled by a court or is pending before a court.	
Why didn't you take any action to tackle your problem in the Member State concerned?	
Indicate why you are not	

eligible for particular remedy	
Other reason for not taking action in the Member State concerned	
Have you already contacted EU institutions or other services dealing with problems of this nature	
Petition to the European Parliament	
European Ombudsman	
European Commission correspondence	
European Commission complaint	
SOLVIT	
Other (please specify)	
Are you aware of any action in the Member State concerned covering the issue you raise	no
Please specify action you are aware of in the Member State concerned	
Do you authorise the Commission to disclose your identity	yes

Submission made: 2022-01-28 3:45 PM