

# **Briefing Note on Adoption Information**

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**Compiled by Claire McGettrick**

**[claire@adoption.ie](mailto:claire@adoption.ie)**

**Co-founder, Adoption Rights Alliance**

**Co-founder, Justice for Magdalenes Research**

**Co-Director, Clann Project**

**Irish Research Council Postgraduate Scholar**

**School of Sociology, University College Dublin**

## **Introduction**

Since 2001, the Irish State has made a number of unsuccessful attempts to legislate for access to records for adopted people (see **Appendix 1**).<sup>1</sup> Each of these government schemes has prescribed (unwarranted) measures designed to ensure that adopted people do not infringe on their natural mothers' privacy. These measures are based on an erroneous presumption that adopted people and natural mothers are on opposing sides. According to this paradigm, it is only adopted people who want their personal information and contact with natural family, while mothers wish to live in secrecy and are fearful of their adult children violating their privacy. Based on my experience and research carried out over the past two decades, I can categorically confirm that the evidence (including testimony from natural mothers and adopted people) does not support these 'adoption myths', which I will discuss in further detail here. Below I also discuss the fact that (i) adopted people can already obtain their birth certificates, (ii) how they are marginalised by the current system, (iii) what legislative proposals would be acceptable to them, and (iv) a proposed short-term solution which would allow adopted people to access their birth certificates.

### **1. Adoption Myths**

#### **1.1 Were natural mothers given a guarantee of confidentiality?**

No evidence has ever been produced to substantiate the claim that natural mothers were given a guarantee of confidentiality. Moreover, as birth registrations have been public records in Ireland since 1864, it would have been impossible to give any such guarantee of confidentiality. Since that time, it has always been possible for any member of the public to view the *Register of Births* and obtain copies of birth certificates from the information contained therein, which reveals the identity of any woman who has given birth, including those women whose children were adopted.

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<sup>1</sup> See also: McGettrick, C. (2020) "'Illegitimate' Knowledge: Transitional Justice and Adopted People," *Éire-Ireland*, 55(1&2): 181-200. (Enclosed as **Appendix 2**)

The idea that natural mothers were given an assurance of confidentiality operates on a presumption that this was sought by natural mothers in the first place. Testimony from natural mothers is clear that, on the contrary, these women and girls were forced to swear that they would never contact their children again. The multi-award winning [Clann Project](#) is a joint initiative by Adoption Rights Alliance (ARA), Justice for Magdalenes Research and global law firm, Hogan Lovells. The Clann Project spoke with 164 witnesses and completed over 80 sworn statements, which were submitted to the Mother and Baby Homes Commission of Investigation. The natural mothers who spoke to Clann describe a system of forced adoption in Ireland, and many say they did not give their informed consent. One woman says that her six-week-old son ‘was wrenched from my breast by one of the nuns whilst I was breastfeeding him and taken away for adoption’.<sup>2</sup> Another said she was ‘terrified’ when a nun ‘dragged’ her down to an office and ‘forced’ her to sign the adoption papers.<sup>3</sup>

The testimony of natural mothers is also corroborated by documentary evidence. For example, the adoption form signed by Philomena Lee is reproduced on the inside cover of Martin Sixsmith’s *The Lost Child of Philomena Lee*. It reads: ‘I...undertake never to attempt to see, interfere with or make any claim to the said child at any future time’.<sup>4</sup> A further adoption consent form provided to the Clann Project, dated 1959, contains a legal undertaking to ‘agree and promise not to attempt to retake my said infant child from, or induce her to leave any place where she may be found’.<sup>5</sup>

Natural mothers’ testimony is further validated in the literature used to advise on best practice by Irish social workers. In 1952, Fr Cecil Barrett, advisor to Archbishop John Charles McQuaid, published a guide to adoption practice for Catholic social workers. Barrett devoted an entire section to the issue of secrecy, which is discussed in the context

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<sup>2</sup> See: *Clann: Ireland’s Unmarried Mothers and their Children: Gathering the Data: Principal Submission to the Commission of Investigation into Mother and Baby Homes* (the Clann Report): [http://clannproject.org/wp-content/uploads/Clann-Submissions\\_Redacted-Public-Version-October-2018.pdf](http://clannproject.org/wp-content/uploads/Clann-Submissions_Redacted-Public-Version-October-2018.pdf), p. 30.

<sup>3</sup> Clann Report, p. 31.

<sup>4</sup> Sixsmith, M. (2009) *The Lost Child of Philomena Lee*. London: Macmillan.

<sup>5</sup> Clann Report, p. 91.

of women and girls wishing to keep the news of their pregnancy from their parents. There is no suggestion that natural mothers wanted to withhold information from their own children. Instead, it is clear that the veil of secrecy was in place in order to ensure a 'successful' adoption without interference from the natural mother: 'She must surrender her child completely to have him reared...by adoptive parents who will be absolute strangers to her...She will never see her child again...she must give him up forever: she may never claim him back'.<sup>6</sup>

## **1.2 Are natural mothers living in fear of their children being given personal information? Do they want to leave the past in the past?**

There is no evidence that natural mothers in the past sought secrecy from their children, nor is there evidence that most women are currently seeking the same thing. In fact, just 137 natural mothers who registered on the National Adoption Contact Preference Register indicated that they wish to have no contact with their daughter or son.<sup>7</sup> This figure represents just 5.3% of the total number of natural mothers on the register, and 0.14% out of approximately 100,000<sup>8</sup> natural mothers in Ireland. And, the small number of mothers who feel unable to have contact with their adult children generally do not obstruct them in their right to have information about themselves.

Few natural mothers speak out about their experiences, and this silence is often wrongly perceived as a wish for secrecy and a need to forget the past. Natural mothers' silence must be viewed in context; when their babies were adopted they were told to walk away and forget they gave birth.<sup>9</sup> This is well illustrated by Caitríona Palmer, who says that after she was born, her natural mother returned to her teaching job living 'as two separate people: the teacher, keeping it all together; and the secret mother, grief-stricken, who would never again feel whole'.<sup>10</sup> Most natural mothers have not yet been facilitated in

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<sup>6</sup> Barrett, C.J. (1952) *Adoption: The Parent, the Child, the Home*. Dublin: Clonmore and Reynolds, p. 51-52.

<sup>7</sup> See: <https://www.irishexaminer.com/news/arid-30961632.html>

<sup>8</sup> See: <http://adoption.ie/how-many-adopted-people-are-there/>

<sup>9</sup> Vivienne Darling, "Social Work in Adoption: Vignette," in *Social Work in Ireland: Historical Perspectives*, ed. Noreen Kearney and Caroline Skehill (Dublin: Institute of Public Administration, 2005), p. 187.

<sup>10</sup> Palmer C (2016) *An Affair with My Mother*. Dublin: Penguin Ireland, p. 191.

expressing their views, and in the ensuing vacuum, various commentators presume to know what mothers are feeling, i.e., allegedly terrified of their adult children.<sup>11</sup> The discourses surrounding adoption in Ireland are still dominated by a culture of shame and secrecy, and this hinders many women from moving past the rule of silence that they were forced to adhere to after they gave birth. However, it is possible to cultivate a more open culture, and this is confirmed by the fact that when natural mothers speak publicly about their experiences, other mothers feel encouraged to tell their family members about what happened to them. The impact of public empathy cannot be underestimated. For example, when natural mother Philomena Lee spoke out in 2013, it caused what has been termed the ‘Philomena effect’, where many natural mothers who were previously living in secrecy found the courage to come forward.<sup>12</sup>

A large number of natural mothers would very much like to trace their daughters and sons; however, many believe that it is not possible or even legal for them to do so. The (apparent) low number of tracing queries from natural mothers perpetuates the myth that they want to ‘forget about the past’. Unfortunately, when natural mothers have found the courage to approach adoption agencies to ask about their adult children, social workers have tended to contact the adoptive parents of the (adult) adopted person instead of the adopted person themselves.<sup>13</sup> Natural mothers have also been blatantly obstructed from seeking out their daughters and sons; for example, one witness told the Clann Project that she had always kept the nuns informed of her address in case her son ever came looking for her. However, she eventually found out that he made strenuous efforts to find his family, including when he was terminally ill, but the nuns had lied to him and told him that he had been abandoned by his natural mother and that ‘the nuns didn’t know where [she] was’.<sup>14</sup>

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<sup>11</sup> E.g.: Martina Devlin, [Mothers of Adopted Babies Face a New Trauma if the Cloak of Invisibility Is Suddenly Torn Away](#), *Irish Independent*, 12<sup>th</sup> June, 2014; Evelyn Mahon, [Women who gave up their children for adoption should not be made to suffer twice](#), *Irish Times*, 4<sup>th</sup> July, 2019; Patricia Casey, [We must learn the lessons of adoptions as fertility treatments bring new identity crisis](#), *Irish Independent*, 18<sup>th</sup> November 2019; Sarah Carey, [Government had good cause to seal records of Mother and Baby Homes commission](#), *Irish Independent*, 31<sup>st</sup> October, 2020.

<sup>12</sup> See: <http://www.bbc.com/news/world-europe-26236475>

<sup>13</sup> Clann Report, p. 99-100.

<sup>14</sup> Clann Report, p. 100.

### 1.3 Information versus contact

Although there is a tendency to view ‘information and tracing’ as one and the same thing, for adopted people, the right to information about themselves and the prospect of relationships with natural family members are completely separate issues. Not all adopted people want contact with natural family members, and no adopted person is demanding the right to a relationship. Some adopted people do not want contact with their natural mothers at all, while others will wait for a period of time after obtaining their birth certificates before attempting to contact their natural mothers and/or family members.<sup>15</sup> Over ten times the number of adopted people than natural mothers have registered a ‘No Contact’ preference on the National Adoption Contact Preference Register (NACPR) to date.<sup>16</sup>

The UK *Children Act 1975* granted adopted people in England and Wales the right to access their birth certificates. Under that legislation, people adopted prior to 1975 have to attend a counselling session before obtaining their birth certificates.<sup>17</sup> In their research on this requirement, Erica Haines and Noel Timms found that the focus on conflating the right to identity with the presumption that the adopted person will insist on a relationship with their natural parents ‘unduly emphasizes’ a psychopathological image of the adopted person. They argue that:

...instead of a picture of adoptees as ‘psychological vagrants’ rushing around looking for a new set of family relationships, a more rational picture is available: that is, of adoptees seeking to place themselves socially... Adoptees are seeking to place themselves in a narrative, and they do this in order to correct that part of their lives which gives them a marginal identity, that is, their ignorance about certain key people and events in their lives.<sup>18</sup>

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<sup>15</sup> See Section 2 below

<sup>16</sup> Information provided at a meeting between ARA and the Adoption Authority in January 2017. ‘No contact’ entries on the NACPR include individuals who have opted for ‘no contact currently’ or ‘no contact but will share medical information’.

<sup>17</sup> ARA would oppose any such measures being introduced in Ireland.

<sup>18</sup> Haines, E. and Timms, N. (1985) *Adoption, Identity and Social Policy (The Search for Distant Relatives)*. Gower: Aldershot, p. 50.

#### **1.4 Do adopted people knock on their natural mothers' doors?**

It is often assumed that an adopted person will, once they obtain their personal information, arrive unannounced on their natural mother's doorstep. This simply does not happen in the vast majority of cases. ARA provides information to adopted people on how to legally obtain their birth certificates by researching civil registration records.<sup>19</sup> For adopted people who wish to contact their natural mothers or other family members, we recommend a discreet letter that would only make sense to the natural mother, and we provide samples in our resource materials. Additionally, adopted people who wish to have contact with their natural mothers are highly unlikely to jeopardise the success of any relationship by door-stepping their mothers. Crucially, in his empirical analysis of the impact of releasing birth certificates to adopted people in England and Wales under the *Children Act 1975*, Triseliotis found that:

The calamities anticipated by sections of the media, politicians, and some organizations have not materialized. The various studies carried out so far suggest that the vast majority of adoptees act thoughtfully and with great consideration for the feelings of both their birth and adoptive parents.<sup>20</sup>

## **2. Adopted people can already obtain their birth certificates**

In the absence of an explicit right for adopted people to access their birth certificates, ARA provides information and resources to assist adopted people and others affected by adoption in locating their birth certificates and obtaining adoption records.<sup>21</sup> The methodology was first developed in the early-1990s by AdoptionIreland, ARA's predecessor organisation, and ARA has since expanded our guides to incorporate data protection rights and genetic genealogy resources. Over the past thirty years, countless adopted people have made use of these methods to obtain their birth certificates. In some cases, the adopted person has gone on to make contact with their natural mother and/or

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<sup>19</sup> See Section 2 below

<sup>20</sup> Triseliotis, J. (1984). Obtaining Birth Certificates. In P. Bean (Ed.), *Adoption: Essays in Social Policy, Law, and Sociology* (pp. 39–53). London and New York: Tavistock, p. 51.

<sup>21</sup> See: <http://adoption.ie/records/>

family members, and we are unaware of any instance where a natural mother has come to any harm as a result.

### 3. Marginalisation and management of adopted people

Adopted people are made marginal by the Irish State, which manages them as a distinct social group. For instance, Irish adopted people must use an *Extract from the Adopted Children's Register* in lieu of a birth certificate. They are registered twice in the civil registration system,<sup>22</sup> once under their original identity in the *Register of Births*, and again in the *Index to the Adopted Children's Register* under their adoptive identity—but they are denied access to the index linking the two registers. Adopted people are perpetually classified as children in the *Index to the Adopted Children's Register* and are further infantilised because despite reaching the age of majority, they fall under the remit of the Department of *Children and Youth Affairs*. Even the legislation which abolished illegitimacy singles out adopted people, as Section 35 (1) of the *Status of Children Act 1987* explicitly excludes them from obtaining a declaration of parentage:

- a) A person (*other than an adopted person*) born in the State, or
- b) any other person (*other than an adopted person*),

may apply to the Court in such manner as may be prescribed for a declaration under this section that a person named in the application is his father or mother, as the case may be, or that both the persons so named are his parents.

When adopted people make subject access requests under the General Data Protection Regulation (GDPR), a significant effort is invested in redacting their files prior to release.<sup>23</sup> Tusla carries out a risk assessment of all adopted people who ask for their records, assessing the 'likelihood of harm' that may be caused to natural mothers and family members (whether living or deceased) if personal data is released to an adopted person.<sup>24</sup>

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<sup>22</sup> Unless they were illegally adopted and registered as the natural child of their adoptive parents.

<sup>23</sup> See: Clodagh Finn, [Adoptees fear their struggle with 'culture of secrecy' is far from over](#), *Irish Independent*, 31<sup>st</sup> October, 2020.

<sup>24</sup> See: Conall Ó Fátharta, [Tusla considers damage release of personal information can cause](#), *Irish Examiner*, 16<sup>th</sup> July, 2019.

The government's announcement last week that it will 'ensure that the rights of all citizens to access personal information about themselves, under data protection legislation and the GDPR are fully respected and implemented' was widely welcomed amongst the 2,200 members of ARA's online peer support group. However, as heartened as they were by the announcement, when further details emerged in newspaper and online reports, they began to worry they would be marginalised once again as a group of people whose access to personal information must be restricted to 'protect' the rights of others. As I have demonstrated above, there is nothing to fear from treating adopted people equally under the law. As we move forward as a nation with a fresh approach to these issues, it is imperative to ensure that nobody is excluded.

#### **4. Dedicated Archive: Adopted people and Mother and Baby Homes**

The Mother and Baby Homes were only one element of the system that dealt with children born outside marriage and their mothers. Although it is often assumed to be the case, not all adopted people were born in Mother and Baby Homes. For this and other reasons, there is a tendency to assume that the injustices against women and children were solely *institutional*, which is not the case. In fact, there were numerous formal and informal arrangements involved in the treatment of unmarried mothers and their children, for example: state maternity hospitals, private hospitals (see **Appendix 3**), private nursing homes, homes where children were held but where natural mothers were not present, GP-assisted home births, women and girls who gave birth in the UK and were brought back to Ireland, County Homes, statutory and non-statutory adoption agencies, Children's Homes and Magdalene Laundries. The Terms of Reference for the Mother and Baby Homes Commission of Investigation covered 18 institutions, whereas ARA and Justice for Magdalenes Research (JFMR) are aware of at least 182 agencies, institutions and individuals that were involved with unmarried mothers and their children. This was one of the principal reasons ARA and JFMR decided to establish the [Clann Project](#), to ensure that all survivors, adopted people, natural mothers and other stakeholders had an opportunity to engage with the Commission.

Relatedly, not all adopted people identify as ‘survivors’; this is a matter of personal preference and reflects the wide range of experiences amongst this cohort. Such a preference does not imply that the adopted person did not suffer abuses. The members of ARA’s peer support group also welcomed the government’s announcement last week of a ‘national...archive of records related to institutional trauma during the 20th century’. For adopted people, whose identities were changed and hidden from them when they were adopted, such an archive has huge significance. It will not only be a place where adopted people can access their personal information, it also means that they can engage with their own records alongside administrative records and other testimonies, and also in context with the wider system. It is critical to ensure that the adoption system is seen as integral to the design of the archive, so that it can act as a repository for all adoption administrative records (created by both public and private entities).<sup>25</sup>

## **5. What legislative provisions would be acceptable to adopted people?**

In the first instance, Irish adopted people are asking for unconditional access to their birth certificates. Birth certificates are public documents, and there is no reason why access should be restricted in any way. Moreover, adopted people’s birth certificates do not provide their natural mother’s address or their natural father’s names; the information contained in these documents is minimal (see a redacted sample at **Appendix 3**). Secondly, in relation to their personal information, at a bare minimum, adopted people are simply asking to have the same GDPR balancing exercises applied to them as are implemented for every other Irish citizen. Given that the personal data in question relates to injustices to which adopted people were subjected, we strongly recommend a presumption towards openness. Thirdly, adopted people are unanimous in their desire to ensure that nobody is left behind. It was for this reason that they roundly rejected former Minister Zappone’s Option Two, which contained ‘a *presumption* in favour’ of the release of information to adopted people.<sup>26</sup> In our discussions around the Minister’s proposals, the 2,200 members of ARA’s peer support group made clear they were unwilling to leave any of their fellow adopted people behind.

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<sup>25</sup> See the safeguarding of records provisions under the Adoption (Information and Tracing) Bill 2016.

<sup>26</sup> See **Appendix 1**.

## 6. Birth certificate amendment

There is a simple solution available which would provide access to birth certificates for adopted people in the immediate term. This could be achieved by inserting the below amendment into the next piece of legislation being passed through the Oireachtas. The amendment is set out in two parts; the first of which provides for access to birth certificates. A legal opinion by Dr Conor O'Mahony, Dr Fred Logue and Dr Maeve O'Rourke (see **Appendix 4**) demonstrates the constitutionality of providing birth certificates to adopted people. The second section of the amendment deals with our proposed 'information session', which should be provided as a service to *assist* adopted people with understanding their personal records, and to inform them of the other services that are currently available, rather than a *warning* to them. The second part of the amendment is drafted as if the dedicated archive is open, and an interim measure would obviously be required in the meantime.

The amendment is as follows:

1. An tArd-Chláráitheoir shall on an application made in the prescribed manner by an adopted person, a record of whose birth is kept by an tArd-Chláráitheoir and who has reached the age of 18 years supply to that person on payment of the prescribed fee (if any) such information as is necessary to enable that person to obtain a certified copy of the record of his/her birth.
2. It shall be the duty of the [Dedicated Archive] to provide an information session to the adopted person, the format of which shall be prescribed in consultation with an Adoption Advisory Group. The information session shall serve the following purposes:
  - (a) To inform the adopted person about the records held by the [Dedicated Archive] about them;
  - (b) To provide the adopted person with information on how to read and understand adoption records;
  - (c) To inform the adopted person of the existence of the tracing service provided by the Child and Family Agency;

- (d) To inform the adopted person of the existence of the National Adoption Contact Preference Register.