



CLANN: IRELAND'S UNMARRIED MOTHERS AND THEIR
CHILDREN:
GATHERING THE DATA

Briefing Note on Access to Adoption Information

Justice for Magdalenes Research (JFMR) is a not-for-profit organisation whose main aim is to provide for the advancement of education of the general public by researching the Magdalene Laundries and similar institutions and by providing information and support to the women who spent time in the Magdalene Laundries and their families.

Adoption Rights Alliance (ARA) is a not-for-profit advocacy organisation which campaigns for the enshrinement of the rights of the adopted child and Ireland's estimated 100,000 adopted adults in legislation. In the absence of adoption information legislation, Adoption Rights Alliance provides practical advice and advocacy to those affected by Ireland's closed, secret adoption system.

1. Background

Legal adoption was first introduced in Ireland on 1 January 1953, when the 1952 Adoption Act was brought into force; since then, no legislation has been enacted which provides information rights to adopted people. Once an adoption order was made, all parties to the adoption—the infant, the natural mother, the adopters—were expected to move on with their lives as if the child had been born to the adopting parents. The Irish adoption system is, and always was, closed and secret; that is, Irish adopted people have no legal right to information about themselves or their natural families.

Instead of repairing the harm done by Ireland's closed, secret adoption system, the government's efforts to legislate for adoption information have compounded the situation even further. In 2001, former Minister Mary Hanafin's draft scheme on adoption information and post adoption contact was approved by cabinet. The draft legislation proposed that adopted people who were in breach of a contact veto would be fined or imprisoned.¹ In 2015 former Minister James Reilly published the General Scheme and Heads of an Adoption (Information and Tracing) Bill.² The proposals included a requirement for adopted people to sign a Statutory Declaration that they would not attempt to contact their natural parent(s) directly if their birth certificate was released to them. The Heads of Bill also included a provision whereby there may be *'a compelling reason, such as may endanger the life of a person, for not disclosing ... adoption information'*³ to an adopted person. Minister Reilly referred the proposals to the Joint Oireachtas Committee on Health and Children for pre-legislative scrutiny. In its report, the Committee said that:

'based on the weight of evidence and the legal submissions received from witnesses, the Committee can find no convincing reason for the inclusion of a Statutory Declaration in the Bill'.⁴

The present Minister for Children, Katherine Zappone, TD published the current *Adoption (Information and Tracing) Bill* in November 2016.⁵ The Statutory Declaration has been removed from the Bill, however the requirement of an undertaking appears to be little more than a rebranding of the declaration and would still have the effect of

¹ Department of Health and Children Press Release, 24th May 2001, Hanafin Announces New Draft Legislation on Adoption Information. Available at: <http://health.gov.ie/blog/press-release/hanafin-announces-new-draft-legislation-on-adoption-information/>. The same heads of bill were published in 2003 as proposals for discussion at the Adoption Legislation Consultation: <http://health.gov.ie/wp-content/uploads/2014/03/Adoption-Legislation-Consultation-Discussion-Paper.pdf>

² Adoption (Information and Tracing) Bill, General Scheme and Heads of Bill. Available at: <https://www.dcyv.gov.ie/documents/legislation/20150727AdoptionInfoandTracingHeadsOfBill1.pdf>

³ Adoption (Information and Tracing) Bill, General Scheme and Heads of Bill. Available at: <https://www.dcyv.gov.ie/documents/legislation/20150727AdoptionInfoandTracingHeadsOfBill1.pdf> (Head 7, Page 72).

⁴ Report on the Pre-Legislative Scrutiny of the General Scheme and Heads of the Adoption (Information and Tracing) Bill. (Page 12) Available at: [https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-\(Information-and-Tracing\)-Bill.pdf](https://www.oireachtas.ie/parliament/media/committees/healthandchildren/health2015/JCHC-Report-on-the-Pre-Legislative-Scrutiny-of-the-General-Scheme-and-Heads-of-the-Adoption-(Information-and-Tracing)-Bill.pdf)

⁵ Adoption (Information and Tracing) Bill 2016. Available at: <http://www.oireachtas.ie/viewdoc.asp?DocID=33905&&CatID=59>

introducing statute-based discrimination against adopted people. Moreover, the 'compelling reasons' ground was also retained. A detailed analysis of the Bill is available in ARA's 'Briefing Note and Amendments to the *Adoption (Information and Tracing) Bill 2016*'.⁶

2. Secrecy versus privacy and public records

Since 1864, birth, death and marriage registrations have been a matter of public record in Ireland, and anybody can visit the Research Room of the General Registrar's Office and view these registers. The absence of statutory rights for adopted people has led to policies and practices that are *ad hoc*, unprofessional and discriminatory. As a result, since the 1990s, Irish adopted people have conducted their own searches for their birth certificates and adoption information, using resources provided by ARA and its predecessor organisation (AdoptionIreland).

It has been repeatedly alleged by adoption agencies and others that an assurance of confidentiality was given to natural mothers whose children were going to be adopted. This supposed guarantee is often used as a means of denying adopted people a statutory right to information. However, as stated above, birth registrations have been a matter of public record in Ireland since 1864. 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 would, in an instant, reveal the identity of any woman who has given birth, including those women whose children were adopted. Therefore, regardless of any alleged (or implied) guarantees of confidentiality, it would have been impossible in practical terms, to give any such guarantee.

Moreover, the notion of there being an assurance of confidentiality presumes that such an assurance was sought by natural mothers in the first place. The fact that more women and girls chose to raise their children after supports were put in place for unmarried mothers from the 1970s onwards also strongly suggests that natural mothers would not have sought protection from their own children. Natural mothers would certainly have sought confidentiality and privacy from Irish society, which judged unmarried mothers so harshly. In this regard, the need for privacy has been wrongly confused with a supposed need for secrecy.

⁶ ARA's Briefing Note and Amendments to the *Adoption (Information and Tracing) Bill 2016*. Available at http://adoption.ie/wp-content/uploads/2018/05/ARA-Briefing-Note-Amendments-to-2016-Adoption-Bill_17-03-17.pdf

3. Information and contact

It is often wrongly assumed that for adopted people, information about one's origins and contact with one's natural family go hand in hand. Information relating to an adopted person's identity is in fact a completely separate issue to a desire to meet natural family members. In ARA's experience, 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 certificates⁷ before attempting to contact their natural mothers and/or family members. This is because adopted people often choose to absorb the information before progressing any further. In 2017, ARA learned that 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.⁸ Thus, even those adopted people who put themselves forward on the NACPR so that their natural parents might be made aware of the current identities of their now-adult children, are ten times more likely than natural parents to wish that they not be contacted.

4. The adopted person as data subject

In recent years, adopted people have exercised their rights as data subjects and have made data access requests to their adoption agencies, the Adoption Authority and Tusla. In all cases that the Clann Project is aware of, the records provided have been heavily redacted, and even information which has been provided by the applicant (e.g., proof of their original identity) has been removed. The rationale for these redactions is generally that the records contain 'third party information', i.e., information about the adopted person's natural mother and family members, as well as the adoptive parents, social workers and others involved in the adoption process. However, this rationale fails to acknowledge the adopted person as a data subject who has the same entitlement to information about themselves as any other citizen. It could be argued that these rights are enhanced even further in light of the General Data Protection Regulation (GDPR), which defines personal data as follows:

*'[A]n identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the **physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.**'*

In this regard, adoption records contain personal data about the adopted person themselves, such as their **physical** condition and circumstances during their early months and years, including their place of birth, their care records, the names of the

⁷ Adoption Rights Alliance provides information to adopted people on how to legally obtain their birth certificates by researching civil registration records.

⁸ Information provided at a meeting with 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'.

people responsible for their care; their **genetic** background and their **cultural and social identity**, which includes the adopted person's original name, their natural parents' names, their natural family members' names and the circumstances surrounding their adoption. If Irish citizens (including adopted people) are entitled to freely access personal data about themselves in other contexts, e.g., medical files, which also contain the names of doctors, nurses, social workers and even family members, there is no conceivable reason why the same information should be denied to adopted people about their adoption.

5. Countries which provide access to birth certificates and adoption files⁹

The following are examples of countries which provide adopted people with access to their birth certificates and adoption records.

United Kingdom

England and Wales

In England and Wales, adopted people over 18 years old have had the right to access their birth records since 1975, when the Children Act 1975 was introduced. In the debates surrounding the legislation before its enactment, some sections of the media, politicians and other activists predicted disastrous outcomes to the opening of adoption records. Triseliotis notes that adopted people were viewed as 'potentially vindictive 'second-class' citizens.'¹⁰ Ultimately however, in his empirical analysis of the impact of 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'.¹¹

Northern Ireland

Since 1987, adopted people over 18 in Northern Ireland have been able to access their birth certificates and adoption files.

⁹ We are grateful to Yasmin Waljee, María Hidalgo and their colleagues in the European offices of Hogan Lovells for providing research which contributed to this analysis.

¹⁰ 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. (Page 46)

¹¹ 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. (Page 51)

Scotland

In Scotland, since 1930, adopted people over 16 years of age can access their birth certificates and adoption records.

Germany

In Germany, since 1957, any child (including adopted children) can access their birth certificates once they reach the age of 16. Since 2002, adult adopted people in Germany have had the right to access their adoption files once they are 16 years or older. Additionally, since 1989, it is the constitutional right of every person in Germany to have knowledge of their parentage. It is important to note that under German law, the interests of the adopted person outweigh the interests of natural parents to protect their identities.

Spain

In Spain, since 2007 people adopted internationally who are over the age of 18 can access their birth certificates and adoption files. Since 2015, people adopted domestically who are over the age of 18 can also access their birth certificates and adoption files. Adopted people under the age of 18 can also access this information with their adoptive parents' consent.

Austria

In Austria, since 1983, adopted people have had a general legal entitlement to access their birth records, including the following information regarding their parents: name, date and place of birth and death, marital status and nationality (Sections 2 and 52/2 of the Austrian Personal Statute Law 2013). This also applies to *incognito* adoptions, although the access is limited to those who are 14 years or older. These regulations are considered as being consistent with Article 8 ECHR (the right to respect for private and family life).

The Netherlands

In The Netherlands, since 1994, since the '*Valkenhorst II*' case, adopted people have had the right to access their adoption records. In the case which came before the Dutch Supreme Court, an adopted woman who was born in Valkenhorst, an institution for unmarried mothers, sought access to the identity of her natural father, as her natural mother was not willing to provide the information. While the court considered that institutions such as Valkenhorst may have guaranteed confidentiality to mothers, it also recognised that the adopted person had a constitutional right to know the identity of her father. The court said that *'[t]he point of departure for deciding the case is that the general right to personality, which lies at the roots of such constitutional rights as the right to respect for one's private life, the right to freedom of thought, conscience and religion and the right of freedom of expression, also includes the right to know one's parents.'* While the use of the general right to personality as a basis for

the right to know one's origins was viewed as controversial at the time, this right was enshrined in legislation ten years later.¹²

Sweden

In Sweden, adopted people over the age of 18 have an absolute right to knowledge about their origins. A person's descent (*härstammning*) is seen as crucial to their identity and thus rights of the adopted person will always take precedence.¹³

Belgium

In Belgium, since 1960, adopted people have automatic access to their birth certificates.

¹² See Trstenjak, V. and Weingerl, P. (Eds) (2016) *The Influence of Human Rights and Basic Rights in Private Law*. Dordrecht: Springer. (Pages 49-50; 462-463)

¹³ See Yngvesson, B. (2010) *Belonging in an Adopted World: Race, Identity and Transnational Adoption*. Chicago: University of Chicago Press. (Page 24)