

21 January 2021

Minister Roderic O’Gorman  
Minister for Children, Equality, Disability, Integration and Youth  
Department of Children, Equality, Disability, Integration and Youth  
Block 1  
Miesian Plaza  
50 – 58 Baggot Street Lower  
Dublin D02 XW14

**Commission of Investigation (Mother and Baby Homes and certain related matters)  
Data protection issues**

Dear Minister

I write further to communications between my office and your Department, and concerning the above Commission of Investigation and the intended transfer of the Commission’s records to you and to Tusla under Section 43(2) of the Commissions of Investigation Act 2004 (‘the 2004 Act’) and under the recent 2020 Act<sup>1</sup>. My office has also been in communication with the Commission about these matters and about related issues concerning the Commission’s processing of personal data. This matter is urgent in light of the Commission’s forthcoming dissolution on 28 February 2021 and the data processing (including potentially-irreversible deletion of personal data) that is taking place in preparation for that dissolution.

In light of media reports following the publication of the Commission’s report on 12 January last, it has come to my attention that there are concerns (expressed by witnesses to the Commission and others) about a number of matters, specifically, the ability of witnesses to access records of their evidence for the purpose of considering what redactions the Commission might apply to those records; the rights of third parties (e.g. the children of mothers who were resident in the homes) in relation to the potential redaction of their personal data (which may be mixed in with the personal data of the mothers); and what rights of access and other GDPR-provided rights individuals will be entitled to invoke once the Commission’s records come into your possession and into the possession of Tusla. These matters are all unclear, and to this end, we have written a comprehensive letter to the Commission today (**copy enclosed**) which sets out these concerns and raises a number of queries with the Commission designed to assist me in understanding the compatibility of the processing that has been and is being conducted by the Commission with the rights of individuals under Article 8 of the EU Charter of Fundamental Rights and the GDPR. I have also asked the Commission to consider suspending its redaction process pending its responses to me, so that no further prejudice arises to individuals (by the irreversible deletion of their personal data) in the meantime. I should also note that my office has started to receive complaints from data subjects relating to the Commission’s data processing and its approach to data subjects’ rights. It may be difficult to fully vindicate these rights

---

<sup>1</sup> The Commission of Investigation (Mother and Baby Homes and Certain Related Matters) Records, and Another Matter, Act 2020, Number 20/2020 (‘the 2020 Act’).

if the Commission progresses with its redaction process and other data processing without fully taking into account its obligations under the EU Charter and GDPR.

The processing which is currently being conducted by the Commission will also potentially affect your ability and that of Tusla to vindicate individuals' data protection rights once the Commission's records come into your and Tusla's possession, and therefore the responses by the Commission to the queries raised will be important to you as data controllers.

In order to enable individuals to access their personal data that are currently in the control of the Commission (which access may be impeded by the restriction contained in Section 11(3) of the 2004 Act), could I please confirm whether you are considering making an application to the High Court for the Commission to be relieved of the Section 11(3) obligation in order to give effect to the access rights of individuals, pursuant to Section 11(3)(a) of the 2004 Act? This would be an important step towards permitting you as Minister to provide access to witnesses to the records of their evidence so that they may properly exercise their data protection rights.

I am available to meet with you in order to discuss these issues if that would be helpful.

Yours sincerely

A handwritten signature in purple ink, appearing to read 'Helen Dixon', is written above a horizontal line.

---

Helen Dixon  
Commissioner for Data Protection

Encl. Letter from DPC to Mother and Baby Homes Commission of Investigation dated 21 January 2021