

October 1<sup>st</sup> 2020

Gary Gannon TD  
Dáil Éireann

**To ask the Minister for Children; Disability; Equality and Integration if his attention has been drawn to the fact that a person (details supplied) has called into serious question the legality of Tusla's practice, for which there is no published policy, of risk assessing adopted persons that seek access to their personal data. 27310/20, Gary Gannon TD.**

Details Supplied: Details supplied: data protection law expert Dr Fred Logue Collaborative Forum report and Conall Ó Fátharta, 'Tusla relying on "flimsy grounds" to justify redacting records and birth certs' Irish Examiner (7 October 2019), link: <https://www.irishexaminer.com/lifestyle/arid-30955334.html>

Dear Deputy,

I refer to your question regarding Tusla's practice of risk assessing adopted persons who seek access to their personal data. Tusla does adhere to public policy as set out below.

By way of background, the Adoption Act 2010 Section 4 (k) 1 provides for the Child and Family Agency ("Tusla") to carry out one or more of the following:

assisting—

adopted persons (18 years of age or over) in tracing their birth parents or other relatives, and  
(II) birth parents or other relatives (18 years of age or over) of adopted persons in tracing the adopted persons;

(ii) counselling the persons described in subparagraph(i);

(iii) mediating between adopted persons described in subparagraph (i) and birth parents or other relatives, both as described in that subparagraph.

Section 4 (k) does not provide Tusla with the authority to provide certain categories of personal data. In the absence of such a legal provision, requests received by Tusla from adopted persons and other persons for personal data, whose records Tusla stand as the 'Controller', can only be processed under Freedom of Information 2014 and /or Subject Data Access requests, pursuant to the Data Protection Act 2018.

Notwithstanding the above statutes, Tusla may be further restricted in disclosing personal data, in particular to adopted persons as Section 86 of the Adoption Act states that:<sup>2</sup>

the General registry office...shall keep an index to make traceable the connection between each entry in the Adopted Children Register and the corresponding entry in the register of births and this index.... shall not be open to the public inspection, and no information from the index shall be given to any person except by order of a court or of the Authority.

---

<sup>1</sup> <http://www.irishstatutebook.ie/eli/2010/act/21/section/4/enacted/en/html>

<sup>2</sup>

[http://www.irishstatutebook.ie/eli/2010/act/21/section/86/enacted/en/html#:~:text=%E2%80%9420\(1\)%20An%20tArd%2D,in%20the%20register%20of%20births.](http://www.irishstatutebook.ie/eli/2010/act/21/section/86/enacted/en/html#:~:text=%E2%80%9420(1)%20An%20tArd%2D,in%20the%20register%20of%20births.)

Accordingly, you will note that Tusla is not permitted under this section of the Adoption Act 2010 to provide information to an adopted person that would disclose pre-adoption birth information without the Adoption Authority's or a Courts approval.

Tusla may in previous instances provided non-identifying third party information to tracing applicants. However, upon the introduction of General Data Protection Regulation ("GDPR") and the Data Protection Act 2018 this practice was ceased as the non- identifying information related to third parties and would have been disclosed without a valid lawful basis. This included inter alia birth forenames and physical descriptions of birth parents.

Personal data is defined by the GDPR as:<sup>3</sup>

... any information relating to an identified or identifiable natural person ('data subject'); an 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 many of the applications received by Tusla from an adopted person or persons to whom the article in the Irish Examiner refers, there is an indication that such persons are not only seeking personal data relating to themselves but are also seeking to access personal data relating to their birth family. As set out above, adopted persons are prohibited by law to personal data relating to their birth family without the necessary permissions. Freedom of Information and Data Protection Act have similar restrictions for example, Article 15 (4) GDPR states that:

" The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others."

Data Protection Legislation does not apply to deceased persons. However, Section 37(1) of the Freedom of Information Act 2014 does apply in such instances. The provisions of the Freedom of Information Act, 2014, Section 37(8)(b) and Statutory Instrument No. 218 of 2016 are relevant to the processing of requests where records of deceased persons are concerned. The Regulations provides that notwithstanding Section 37(8)(b), a request in relation to personal records of a deceased individual may be granted where: -

the requester belongs to one of the following classes:

a personal representative of the (deceased) individual acting in due course of administration of the individual's estate or any person acting with the consent of a personal representative so acting,

a person on whom a function is conferred by law in relation to the individual or his or her estate acting in the course of the performance of the function, or

the requester is the spouse or the next of kin of the individual and, in the opinion of the head, having regard to all the circumstances, the public interest; including the public interest in the confidentiality of personal data, would on balance be better served by granting than by refusing to grant the request.

When considering subject data access request pursuant to Article 15 GDPR for personal data relating to third parties, each case is individually assessed to determine whether the disclosure of such information will impact on the rights and freedoms of others. In carrying out such assessment Tusla often has very limited information available. In many instances the person to whom the personal data relates would have given the information on the understanding that it would not be disclosed i.e. birth mothers whose children were placed for adoption. In addition, the records were created several decades previously. As a consequence, the only viable way to obtain the personal data pertinent to informing the assessment process would involve conducting a trace of the individuals affected.

---


<sup>3</sup> <https://gdpr-info.eu/art-4-gdpr/>

As part of a tracing request a social worker obtains copies of birth, marriage and death certificates from the General Registry Office using the personal data available to them on the adoption record. A social worker can, from the record, identify the adopted person's pre adoption name thereby making the link between their birth family and their adopted family. Nevertheless, while birth, marriage and other such certificates are open to the public the adopted person would not know what records to look for unless Tusla gave them identifying information, this would be contrary to Section 86 of the Adoption Act.

As described above the Child and Family Agency is limited in the information it can release to adopted persons seeking access to their birth information.

Please do not hesitate to contact me if I can be of further assistance.

Yours sincerely,



---

**Amanda Pathe**  
**Parliamentary Affairs**

**Cc Siobhan Mughan, National Manager, Adoption**