



**ADOPTION RIGHTS ALLIANCE**  
**BRIEFING NOTE ON ACCESS TO ADOPTION INFORMATION**

**Updated: 18<sup>th</sup> June 2019**

*Adoption Rights Alliance (ARA) advocates for equal human and civil rights for those affected by the Irish adoption system. ARA operates a peer support network of 2,000 members, providing advocacy and practical advice to adopted people, natural parents, natural family members and others who were in informal care settings.*

## INTRODUCTION

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Adopted people in Ireland have no statutory right to their birth certificates or their adoption and early life files. This is out of step with Northern Ireland and the rest of the UK, and with countries such as Germany and Spain. The *Adoption (Information and Tracing) Bill 2016* is an opportunity for Ireland to begin to move on from its legacy of abuses against women and children, and towards a process of Transitional Justice. However, the Bill as *initiated*, would have the opposite effect, and if passed in its current format, it would further discriminate and stigmatise both adopted people and natural mothers, and set damaging precedents that have wide-ranging implications for access to historic abuse records. The Bill proposes to prevent adopted people and natural parents, and people who experienced ‘informal care arrangements’ from accessing their original files (instead receiving a ‘statement’ drafted by Tusla social workers containing non-identifying information from their files). It also proposes to prohibit contact between relatives, and it proposes to abandon the current National Adoption Contact Preference Register.

### 1. SYSTEM PROPOSED BY ARA

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Adoption Rights Alliance (ARA) has consistently proposed a simple, rights-respecting system, which is, in essence:

- (1) Provision by the General Registrar of access to birth certificates for all adopted/informally placed people following an information session which provides advice about (among other things) the operation of the National Adoption Contact Preference Register (which should be properly resourced and widely advertised);
- (2) Further provision by an Independent Information Service of access to full unredacted copies of personal data for natural mothers, adopted / informally placed people, and next of kin of the deceased; and
- (3) A non-compulsory, properly resourced and trained family tracing service.

### 2. ARA OBJECTIONS TO THE BILL

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Our principal objections to the Bill are, in brief, as follows:

#### 2.1 Government Amendments (Seanad Committee Stage, June 2019)

**What is the government proposing?** The government’s new amendments propose that the undertaking will be removed but will be replaced by a universal ‘system’ whereby Tusla will automatically attempt to locate and contact both natural parents as soon as an adopted person requests access to their own early life and adoption files. Where there is an objection, the adopted person will have to attend a hearing at the Adoption Authority of Ireland to make their case.

**Why is this unacceptable?** This proposed ‘system’ is a grave interference with the privacy rights and the dignity of both natural parents and adopted people. It mandates Tusla to gather information on people and step into their private lives in a way that is completely disproportionate and unjustified.

## 1.2 The Undertaking (Section 41)

**What is the undertaking?** The undertaking is a document which adopted people and people who experienced 'informal care arrangements' would have to sign in order to receive their birth certificates. They would have to promise never to *'contact, or attempt to contact, the birth mother, birth father or relevant guardian concerned'*.

**Why is this unacceptable?** The undertaking presumes that adopted people are deviant and incapable of respecting their mothers' privacy, that they cannot be trusted with information about themselves. It also presumes that information about oneself automatically implies contact with natural family, which is not always the case. No other group of Irish citizens is required to sign away their rights as a condition of receiving personal data, and adopted people do not require special measures to ensure they respect the privacy of others. See also Sections 3.5, 5.4 and 6.1.2 of the ARA [Guide](#) to the Bill; Section 3 of the [Clann Report](#); and Section 3, Myths and Facts, below.

## 1.3 Statements in lieu of Original Records (Section 40)

**What are the proposed statements?** The Bill proposes that, in lieu of copies of original adoption records, adopted people and people who experienced 'informal care arrangements' should be provided with non-identifying written statements drafted by Tusla.

**Why is this unacceptable?** Adopted people and people who experienced 'informal care arrangements' deserve nothing less than their full, non-redacted records, and not a written statement containing information which has been subjectively interpreted by employees of the Child and Family Agency. No other Irish citizen applying for their records held by the State would be supplied with a 'non-identifying' statement in lieu of copies of the original documents. This measure would set a dangerous precedent that could have wide-ranging implications for access to historic abuse records. See also Section 3.4 of the ARA [Guide](#) to the Bill; Section 3 of the [Clann Report](#); and Section 3, Myths and Facts, below.

## 1.4 Compelling Reasons (Part 5)

**What are 'compelling reasons'?** Under Part 5, the Bill states that there may be *'compelling reasons why an applicant...should not be provided with information where the provision of the information...is likely to endanger the life of a person'*.

**Why is this unacceptable?** It is hugely stigmatising, and wholly inaccurate, to suggest that the provision of information to an adopted person would endanger life. See also sections 3.6, 5.4 and 6.1.3 of the ARA [Guide](#) to the Bill; Section 3 of the [Clann Report](#); and Section 3, Myths and Facts, below.

## 2. IMPACT OF THE ABSENCE OF STATUTORY RIGHTS TO INFORMATION

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In the absence of statutory rights, Irish adopted people are routinely discriminated against, particularly when they are seeking access to information about themselves, thus perpetuating past abuses in the present.

### 2.1 ARA Peer Support Network

ARA operates a peer support network of 2,000 adopted people, natural mothers and other family members. Members report on a daily basis that they are denied even the most basic information, such as their own original first name or their natural mother's first name. Most adoption files are held by Tusla, and members of our peer support network report that since the implementation of GDPR, the situation has worsened. 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 we are 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 in terms of a person's **'physical, physiological, genetic, mental, economic, cultural or social identity'**.

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 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.

## 2.2 Clann Project Testimony

In October 2017, ARA and Justice for Magdalenes Research (JFMR) published the [Report](#) of the Clann Project which spoke to 164 people affected by Ireland's closed, secret, forced adoption system and related historical abuses, culminating in 77 witness statements. Clann witness statements demonstrate that from the perspective of adopted people and natural parents and family members seeking information or contact, Ireland's adoption system is opaque, discriminatory, prejudicial, and often unprofessional and obstructive. A small sample of extracts is set out below:<sup>1</sup>

*'I felt like I was treated as a threat to my mother, and that the social worker tried to keep us apart for as long as possible'. (Para 3.59)*

*'I haven't been entitled to review anything on my file held by the Child and Family Agency. They have been obstructive from the start and I have been refused access to a large amount of information. Without a birth certificate I managed to find my mother myself...'. (Para 3.61)*

*'It seems to me that some of the information I was given was deliberately inaccurate, or misleading. I felt that some of the details I was provided were given in order to lead me down a garden path.' (Para 3.71)*

*'...it makes me angry to think that I was pushed as far as becoming an emotional wreck in order to obtain such simple information about myself.' (Para 3.72)*

*'By the time St Patrick's Guild passed on the information they had about my mother ... after numerous phone calls and letters, she had passed away four months earlier...'. (Para 3.89)*

*'It has been the most daunting, depressing, miserable and lonely search. I have faced umpteen brick walls, and I don't know how to express it. All I know is that it has worn me out'. (Para 3.113)*

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<sup>1</sup> Further examples are available in Section 3 of the Clann Report (linked in the footnote above), and in the Clann Report press release available here: <http://clannproject.org/2018/10/15/clann-publishes-findings-of-three-year-project-on-adoption-and-mother-and-baby-homes/>

### 3. MYTHS VS FACTS

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#### **MYTH: For adopted people, information and contact go hand in hand.**

**FACT:** Information about oneself and contact with natural family members are separate issues. 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 (see below) before attempting to contact their natural mothers and/or family members. 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. Moreover, in their research on the counselling requirement<sup>2</sup> of the Children Act 1975, Haines and Timms<sup>3</sup> found 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.'*

#### **MYTH: Natural mothers are living in fear of their adult children knocking on the door.**

**FACT:** In Ireland when a mother lost her baby to adoption, she was told to walk away and forget about her child;<sup>4</sup> no counselling was offered and there was no opportunity to grieve. The impact of losing a child to adoption and then being forced to pretend it did not happen cannot be underestimated. Some mothers will initially react badly to a request for contact because it is a shock to have those feelings of loss brought up again. Some mothers may never be able to agree to contact, and although it is extremely painful to have to live with this, the vast majority of adopted people are respectful of their wishes. In ARA's experience, many natural mothers simply need time to process, and when they are offered an opportunity to speak to somebody who understands what they have been through (in most cases another mother) they will generally always change their minds.

#### **MYTH: If adopted people are given access to their records they will knock on their natural mothers' doors.**

**FACT:** Not all adopted people want contact; and furthermore, adopted people can already obtain their birth certificates and (heavily redacted) records, but the process is difficult and time consuming as access is not automatic. ARA provides resources to adopted people on how to legally obtain their birth certificates by researching civil registration records, and for those who are seeking contact, we recommend a discreet letter and we provide samples in our Tracing Handbooks. Adopted people who wish to have contact with their natural mothers are highly unlikely to jeopardise the success of any relationship by arriving unannounced on their mothers' doorstep. Crucially, in his empirical analysis of the impact of the Children Act 1975 (which gave adopted people access to birth certificates), 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>5</sup>

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<sup>2</sup> Please note that ARA does not endorse compulsory counselling, especially as a condition to information access.

<sup>3</sup> Haines, E. and Timms, N. (1985) *Adoption, Identity and Social Policy (The Search for Distant Relatives)*. Gower: Aldershot. (Page 50)

<sup>4</sup> See Section 1 of the Clann Report (linked above)

<sup>5</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. (Page 51)

**MYTH: Giving adopted people unfettered access to information is a breach of natural mothers' privacy.**

**FACT:** 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. 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.

**MYTH: Natural mothers were given a guarantee of confidentiality.**

**FACT:** No evidence has ever been produced to substantiate this claim. Birth registrations have been a matter of public record in Ireland since 1864, so regardless of any alleged (or implied) guarantees of confidentiality, it would have been impossible in practical terms, to give any such guarantee. The notion of there being an assurance of confidentiality presumes that such an assurance 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. Natural mothers would certainly have sought confidentiality and privacy from Irish society, which judged unmarried mothers so harshly. The need for privacy has been wrongly confused with a supposed need for secrecy.

**MYTH: Only adopted people are interested in tracing and natural mothers want to leave the past in the past.**

**FACT:** In ARA's experience, a large number of natural mothers want to trace their daughters and sons, however many believe that it is not possible or even legal for them to do so. This perpetuates the myth that natural mothers want to 'forget about the past'. Moreover, in ARA's experience, when natural mothers approach the adoption agency asking about their adult children, the agency will, in all cases we have encountered, contact the adoptive parents of the (adult) adopted person instead of the adopted person themselves.<sup>6</sup> It is also our experience that natural mothers are often 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>7</sup>

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<sup>6</sup> See para 3.80 of the Clann Report

<sup>7</sup> See para 3.84-3.85 of the Clann Report 38

#### 4. ACCESS TO ADOPTION FILES IN OTHER EUROPEAN JURISDICTIONS

Country	Birth Certificates	Age	Adoption Records	Age
<b>United Kingdom</b>				
<i>England &amp; Wales</i>	Yes (1975)	18 years	Yes (1975)	18 years
<i>Northern Ireland</i>	Yes (1987)	18 years	Yes (1987)	18 years
<i>Scotland</i>	Yes (1930)	16 years	Yes (1930)	16 years
<b>Spain</b>				
<i>Spain (Intercountry Adoptions)</i>	Yes (2007)	18 years	Yes (2007)	18 years
<i>Spain (Domestic Adoptions)</i>	Yes (2015)	19 years	Yes (2015)	19 years
<i>Spain (U18s)</i>	With parental consent		With parental consent	
<b>Austria</b>				
<i>Austria</i>	Yes (1983)	TBC	Yes (1983)	TBC
<i>Austria (Incognito Adoptions)</i>	Yes (1983)	14 years	Yes (1983)	14 years
<b>Germany</b>	Yes (1957)	16 years	Yes (2002)	16 years
<b>The Netherlands</b>	Yes (1994)	TBC	Yes (1994)	TBC
<b>Sweden</b>	Yes (TBC)	18 years	Yes (TBC)	18 years
<b>Belgium</b>	Yes (1960)	TBC	TBC	TBC
<b>Ireland, if this Bill is passed.</b>	Yes, but only if adopted people agree to not contact their natural parents.	18 years	No. Adopted people will receive statements in lieu of original records, and will not receive any information that identifies their natural parents.	18 years