



WHO DO YOU THINK YOU ARE?

New *Birth Information Act* in force



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PICTURE: ALAMY





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For the first time in Ireland, adopted people have clear rights about birth information. Will the *Birth Information and Tracing Act* achieve its goals? Sinéad Kearney SC and John Anthony Devlin investigate



he signing into law of the *Birth Information and Tracing Act 2022*

means that, for the first time in Ireland, adopted persons – including persons who were boarded out or the subject of an illegal birth registration (referred to in the act as a ‘relevant person’, but for simplicity referred to here as ‘adopted persons’) – have clear rights in relation to birth information.

Enacted following a decades-long campaign, the act guarantees an unqualified right to the full and unredacted release of information to adopted persons who have attained the age of 16 years (and, in certain cases, other persons), in order to address the challenges in accessing birth certificates and birth and early-life information. But what does it mean for adopted persons?

New rights

Under the legislation in place prior to the *Birth Information and Tracing Act 2022*, a restrictive approach was taken to the right of access to personal information contained in files held by the State, religious orders, and adoption agencies. Under that legislative regime, previous governments and State agencies grappled with the balance to be struck between constitutional/convention rights, with a particular emphasis on the right to privacy protected under article 40.3 of the Constitution and associated rights.

Attempts to shift this balance over the past 20 years through legislation proved unsuccessful, with concerns raised that legislation would be unconstitutional and would prove challenging for elderly persons who placed children for adoption years ago – and, more recently, there have been concerns over GDPR. From 2022, however (and although some sections are yet to be commenced), in the words of the Minister for Children Roderic O’Gorman, the *Birth Information and Tracing Act 2022* “conclusively addresses the wrongful denial of people’s identity rights over many decades in this State”.

The new approach has similarities with the approach taken in Northern Ireland and in England and Wales, and will see:

- A clear right for adopted persons to full access to birth, early-life, care, and medical information,
- The establishment of a new statutory tracing service for adopted persons and, in certain cases, relatives of adopted persons, and



“THE APPLICANT WILL BE INFORMED OF THEIR ENTITLEMENT TO RECEIVE THEIR BIRTH CERTIFICATE AND INFORMATION, THEIR BIRTH PARENT’S EXPRESSED REQUEST FOR NO CONTACT, AND OF THE IMPORTANCE OF RESPECTING THEIR PRIVACY AND PREFERENCE IN RELATION TO CONTACT

- The establishment of a Contact Preference Register for people to make their wishes known about contact.

Access to information

Under the new legislation, adopted persons will be able to apply to the Adoption Authority of Ireland and Tusla (defined as ‘relevant bodies’) to obtain birth, early-life, care and medical information. They may also apply for their original birth certificate. This right is not restricted, and individuals will, for the first time, have an unqualified right of access to the information in question.

While some of this information may already have been accessible through data-access requests under GDPR or under the *Civil Registration Act 2004*, it is given a specific statutory expression and includes information relating to third parties (namely parents), which might not previously have been released. Persons applying will also be provided with support and guidance, including

assistance from relevant bodies to identify where their records might be held and guide them through the process. The *Birth Information and Tracing Act 2022* also mandates the roll-out of a public information campaign (currently underway) dedicated to informing all persons affected by the legislation of their rights. A website (www.birthinfo.ie) and other supporting materials have been made available.

While this is to be welcomed, there is one area where concerns have been raised anecdotally. Where a person placed a child for adoption many years ago, it may have been made on an understanding that information about that person or persons would not be shared and that they would not be contacted. Elderly persons who historically placed a child for adoption now have to accept that their information may be shared, which could be exceptionally challenging.



ELDERLY PERSONS WHO HISTORICALLY PLACED A CHILD FOR ADOPTION NOW HAVE TO ACCEPT THAT THEIR INFORMATION MAY BE SHARED, WHICH COULD BE EXCEPTIONALLY CHALLENGING

Tracing service

While a tracing service is currently provided by relevant agencies, this has been limited, due to the previous legislation and the requirements of GDPR. The *Birth Information and Tracing Act* establishes a new, more robust tracing service, which is intended to operate in a GDPR-compliant manner.

An application for tracing can only be made by a person who is 18 years or over, and for the purposes of locating a person who is 18 years or over, and to facilitate consensual contact or sharing of information. In addition to adopted persons, applications for tracing can be made by a parent of an adopted person, or genetic relatives consisting of a grandparent, sibling, aunt, uncle, or first cousin of an adopted person.

The act draws a clear distinction between information and contact. Relevant persons have a right to information, but equally, an individual's right to state their preference regarding contact – and to have that preference shared and respected – is protected in the legislation. If a preference for no contact is communicated by a birth parent, then the adopted person will be informed of this during an information session with a social worker. The applicant will be informed of their entitlement to receive their birth certificate and information, their birth parent's expressed request for no contact, and of the importance of respecting their privacy and preference in relation to contact.

Contact Preference Register

The act also establishes an updated Contact Preference Register, created and maintained by the Adoption Authority. The register will work to facilitate contact or the exchange of information between adopted persons and birth parents.

The register will enable people to register a preference regarding future contact with their family members. Applicants have the option to share information that could be beneficial to a family member, such as medical or background information. They may also lodge an item (for example, a letter, photograph, etc) for a specified person, which will be given to the specified person if they join or have previously joined the register.

The act also provides that, where parents register a preference for no contact, they will be informed of their right to access counselling and a range of supports, to be provided by Tusla. Counselling can be provided to all parents and relevant persons who request it.

Complex legal challenges

The *Birth Information and Tracing Act 2022* seeks to address complex legal challenges that have existed for decades and, in doing so, strikes a balance on the fundamental rights of persons affected by adoption. The provision of a clear legislative framework gives all persons who were adopted, boarded out, the subject of an illegal birth registration, or who otherwise have questions in relation to their origins a clear right of access to information.

It also allows for access to information by a child of a relevant person where their parent has died, and for access by the next-of-kin of children who died in an institution. The act facilitates tracing and consensual contact between adopted persons and family members, in order to ensure that contact will be easier in the future.

Hailed as “landmark legislation” by the Minister for Children, the *Birth Information and Tracing Act 2022* has the potential to provide significant assistance to people seeking birth information, while respecting the privacy rights of others and ensuring support for all parties. It remains to be seen how the new legislation will operate in practice, and whether it will achieve its goals.

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LOOK IT UP

LEGISLATION:

- [Birth Information and Tracing Act 2022](#)
- [Civil Registration Act 2004](#)
- [General Data Protection Regulation](#)