



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.