



GDPR and the legislation

The Birth Information and Tracing Act, 2022 sits within the framework of the GDPR. Similar to GDPR it provides for access to personal information, however unlike GDPR it provides for guaranteed and unredacted access to the suite of information covered by this legislation.

The right to rectification

The Birth Information and Tracing Act 2022, does not restrict the right to rectification. Persons who believe the information contained on a record may be incorrect or incomplete can apply directly to the data controller to requesting that the record is rectified. The data controller will advise on how to make such an application.

The right to apply through a subject access request under article 15

The Birth Information and Tracing Act 2022, does not restrict a person's right to apply under a Subject Access Request (SAR). A SAR may be made directly to a data controller. However applications made through a SAR will be processed as under the GDPR and not as an application under the Birth Information and Tracing Act 2022, and as such you may receive less through a SAR as the Data Controller will be required to undertake the balancing test on the release of information as under article 15.4 of the GDPR.

Restriction of GDPR rights and obligations

In order to ensure the efficient operation of the Birth Information and Tracing Act 2022, certain rights and obligations provided for in the GDPR are restricted.

As defined in Section 68 of the 2022 Act, the rights and obligations provided for in the following Articles of the General Data Protection Regulation, in so far as those rights and obligations relate to the processing of personal data and special categories of personal data by a person under the Act, are restricted to the extent necessary and proportionate to enable the person to perform his or her functions under this Act:

Article 14 – obligation that a data controller should provide information to the data subject where personal data have not been obtained from the data subject;

Article 17 - The right to erasure(GDPR)



Article 18 – the right to restriction of processing;

Article 21 – the right to object.

Article 12 will have an ancillary restriction due to the restrictions of these articles.

The justification for these restrictions is as follows:

Article 14 – the obligation that a data controller should provide information to the data subject where personal data have not been obtained from the data subject. It would be near impossible for a data controller to comply with this obligation given the historic nature of the records, the volume and diversity of the records and the different social norms and administrative practices in place at the time they were created. Some records will have been collected by the data controller, for instance the adoption file retained by the Adoption Authority. In other cases, such as mother and baby home records, the Child and Family Agency is now the data controller, however, the records were created by the relevant religious orders or governing authorities.

Article 17 - The right to erasure The right to erasure does not apply to data under the Act. The Act relies on releasing information that is present on records and the ability to erase data is contrary to that. Article 17(3) sets out the exemptions whereby the right to erasure does not apply and the exemption set out at 17 (3) (b) applies to data under the Birth Information and Tracing Act, 2022. Where a data subject becomes aware of an inaccuracy, an application pursuant to the Article 16 right to rectification can be made to the data controller.

Article 18 – the right to restriction of processing.

A parent named in the records may wish to restrict processing on grounds that they believe there are inaccuracies. The onus would then lie with the data controller to verify the accuracy or otherwise of the disputed historical record and ensure that any processing of the data is restricted while this verification is taking place. The verification may be wholly impossible or may be extremely difficult and onerous in terms of historic records. During the time that the data controller is carrying out the verifications, the data cannot be processed and this will have implications for an application made by an adopted person. In cases where accuracy cannot be verified or remains contested, it could result in a restriction of lengthy and indefinite duration, during which time the rights of the other party (i.e. the applicant) to their origins information cannot be vindicated. It may be noted that the right to rectification is not restricted and, so, a



person with a concern in relation to inaccuracies on a historical record would be able to request rectification, for example, by providing a clarifying statement to be appended to the record.

Article 21 – the right to object.

The core purpose of the legislation is to enshrine in law the right of a person to know his or her origins and provide for the release of a birth certificate and birth information to adopted people and others in all cases.

By restricting this Article 21 right, data controllers will no longer be obliged to consider applications of objection to processing on a case by case basis and this will reduce delays and blockages to the release of origins information to an adopted person.