

TÚSLA

An Ghníomhaireacht um
Leanaí agus an Teaghlach
Child and Family Agency

Corporate Services

Transfer of the Mother and Baby Homes Commission of Investigation's databases and related records

Data Protection Impact Assessment

21 January 2021

Basic details

Subject / title of DPIA	Transfer of the Mother and Baby Homes Commission of Investigation's databases and related records
Team / unit name	National Adoption Service
Completed by	Seán O'Reilly Data Protection Unit (DPU) Operations General Manager, Tusla
Name of process owner (<i>the person responsible for signing off on this DPIA, that is, responsible for implementation any actions to remediate any risks identified in this DPIA and for confirming the factual accuracy of all content in this DPIA</i>)	Siobhan Mugan, National Manager for Adoption, Tusla
Name of systems owner (<i>the person responsible for the procurement, development, integration, modification, operation, maintenance, and disposal of an information system</i>)	Mark Conroy Information and Communications Technology (ICT) Data and Analytics Manager, Tusla
Document status	This document will be kept under review; submission of observations and commentary in respect of this document is welcomed via the contact points set out below at Appendix 1. ¹ This document may be subject to change.

Step 1: Identify the need for a DPIA

Explain broadly what subject of DPIA aims to achieve and what type of processing it involves. You may find it helpful to refer or link to other documents, such as a process document. Summarise why you identified the need for a DPIA.

The Commission of Investigation into Mother and Baby Homes and Certain Related Matters (the 'Commission') was established in 2015, under set terms of reference,² to investigate and make a report in respect of 14 mother and baby homes and certain county homes (the 'Homes').³ The Commission's work concluded with the 30 October 2020 submission of its final report to the Minister for Children, Equality, Disability, Integration and Youth.

In carrying out its work, the Commission compiled databases of all mothers and children who resided in the Homes. These databases were derived from documents which the Commission sought from the Child and Family Agency (Tusla) and other organisations. Tusla holds specific documents relating to the Ard Mhuire,

¹ See, in particular, point 2 of Appendix 1

² Commission of Investigation (Mother and Baby Homes and Certain Related Matters) Order 2015, SI 2015/57

³ Namely the Ard Mhuire, Belmont, Bessboro, Bethany, Bon Secours, Castle, Denny House, Kilrush, Manor House, Ms. Carr's, Regina Coeli Hostel, Sean Ross Abbey, St. Gerard's, St. Patrick's (Pelletstown), and Homes

Bessboro, Bon Secours, Castle, Manor House, Sean Ross Abbey, St. Patrick's (Pelletstown), and Stranorlar Homes, certain of which the Agency provided to the Commission for the purpose of facilitating its work. Tusla possesses the originals of the specific documents which the Agency provided to the Commission.

Other organisations provided the Commission with the documents they hold concerning the Belmont, Bethany, Denny House, Kilrush, Ms. Carr's, Regina Coeli Hostel, St. Columba's, St. Finbarr's, St. Gerard's, and St. Kevin's Homes, as well as certain specific documents relating to the Homes mentioned in the preceding paragraph. The original documents held by other organisations remain in those organisations' possession.

On 25 October 2020, the Commission of Investigation (Mother and Baby Homes and certain related Matters) Records, and another Matter, Act 2020 (the '2020 Act') became law. The 2020 Act requires the Commission to transfer its databases and any evidence received, or document created, by it for the purpose of creating those databases to the Agency.⁴

The General Data Protection Regulation (GDPR)⁵ requires assessment of the impact on the protection of personal data⁶ where processing⁷ is likely to result in a high risk to data subjects' rights and freedoms.⁸ Before taking the databases and related records, Tusla's DPU carried out an initial DPIA in respect of associated processing. The DPIA was required to ensure that all risks arising from the processing associated with the transfer are identified, assessed and mitigated. The development of the DPIA was monitored by Tusla's Data Protection Officer (DPO).

Controllership

Tusla was established on 1 January 2014 and is the dedicated State agency responsible for improving wellbeing and outcomes for children. As the 2020 Act requires the transfer of the databases and related records,⁹ and because the Agency determines the purposes and means of processing carried out post-transfer, Tusla is the controller.¹⁰

Processors

Tusla engaged certain organisations, which had earlier supported the Commission's work in this connection, in order to take and maintain the databases and related records. These organisations do not take any significant decisions in relation to determining the purposes or means of the processing. Acting only on foot of Tusla's written instruction, the below organisations are processors:¹¹

1. Invision Software and Technology Company Limited, company number 637295,¹² was engaged by Tusla in order to make arrangements necessary to ensure the secure transfer of the databases to the Agency.
2. Ace Draughting Limited, company number 284225,¹³ provides 'Zylab' to Tusla. 'Zylab' "*provides law firms, corporations and governmental agencies complete control over ... data security all while providing best-of-breed tools to ensure efficiency throughout the process from data ingestion to production*"¹⁴ and is used to store related records.

⁴ 2020 Act, Section 2

⁵ Parliament and Council Regulation 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC OJ L119/1

⁶ GDPR, Article 4(1) defines 'personal data' as any information relating to an identified or identifiable natural person (data subject)

⁷ GDPR, art 4(2) defines 'processing' any operation or set of operations performed on personal data

⁸ GDPR, art 35(1)

⁹ *ibid* 4

¹⁰ GDPR, art 4(7) defines a 'controller' as the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data

¹¹ GDPR, art 4(8) defines a 'processor' as a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller

¹² Companies Registration Office, 'Core Customer Portal' (Companies Registration Office, 2021) <<https://core.cro.ie/e-commerce/company/search/669783>> accessed 4 January 2021

¹³ Companies Registration Office, 'Core Customer Portal' (Companies Registration Office, 2021) <<https://core.cro.ie/e-commerce/company/search/319455>> accessed 4 January 2021

¹⁴ Zylab, 'Datasheet CORP LAW eDiscovery General Use' (Zylab, 2020) <<https://www.zylab.com/en/product/zylab-one>> accessed 4 January 2021

Independent Controllers

A copy of the databases and related records was retained by the Commission following the transfer. Before its dissolution, on 28 February 2021,¹⁵ it is required to transfer this copy and all evidence received or documents created by it to the Department of Children, Equality, Disability, Integration and Youth (DCEDIY).¹⁶

Step 2: Describe the processing

Describe the nature of the processing: how will you collect, use, store and delete data? What is the source of the data? Will you be sharing data with anyone? You might find it useful to refer to a flow diagram or other way of describing data flows. What types of processing identified as likely high risk are involved?

The 2020 Act requires that Tusla take the databases and related records. In addition to processing for this purpose, the Agency also processes personal data for the purposes that the 2020 Act sets out,¹⁷ which are:

1. the “*legitimate purpose*”,¹⁸ i.e. maintenance, and;
2. where authorised or required by or under the GDPR, Data Protection Act 2018 (the ‘2018 Act’), or any other enactment, i.e. the:
 - a. Freedom of Information Act 2014, and;
 - b. Hague Convention on the Civil Aspects of International Child Abduction, Adoption Act 2010, Child and Family Agency Act 2013, Child Care Acts 1991-2015, Children and Family Relationships Act 2015, and Adoption Amendment Act 2017 (the ‘applicable adoption legislation’).

In taking the databases and related records:

1. Tusla’s ICT Directorate will maintain the relevant processing systems. It is intended that in carrying out maintenance, ICT staff will be permitted sight only of the related records which the Commission generated from the documents it received from the Agency, as required by the 2020 Act.¹⁹
2. The National Adoption Service will operate the relevant processing systems, using:
 - a. the databases and related records’ entire contents when handling data protection and Freedom of Information (FOI) requests, as permitted by the 2020 Act,²⁰ and;
 - b. only the related records which the Commission generated from the documents the Agency provided to it when handling adoption search and reunion requests, as required by the 2020 Act.²¹

Describe the scope of the processing: what is the nature of the data, and does it include special category or criminal offence data? How much data will you be collecting and using? How often? How long will you keep it? How many individuals are affected? What geographical area does it cover?

What types of personal data are processed?

The databases and related records contain personal data and special categories of personal data and are highly likely to contain other sensitive personal data. The databases and related records may potentially contain personal data which relate to criminal acts perpetrated against residents of the Homes, their relatives, or other individuals associated with the Homes. The specific volume and nature of personal data

¹⁵ 2020 Act, s 7(1)

¹⁶ Commissions of Investigation Act 2004, s 43(2)

¹⁷ 2020 Act, Sections 3(1)(c)(i) and (ii)

¹⁸ 2020 Act, s 3(4)

¹⁹ 2020 Act, s 3(2)

²⁰ 2020 Act, s 3(1)(c)(i)

²¹ 2020 Act, s 3(1)

associated with the transfer was unknown before it was made as the Commission was unable to supply information in this connection. The personal data is understood to comprise the following:

1. Residents of the Homes

Personal data relating to residents of the Homes is understood to mainly comprise records relating to admissions, discharges, and maternity, and include, for example, first names, surnames, dates of birth, and addresses. Personal data relating to these data subjects includes special categories of personal data, i.e. data relating to racial or ethnic origin, religious or philosophical beliefs, genetic data, biometric data, data concerning health, and data concerning sex life. Certain residents of the Homes may be vulnerable persons and certain records associated with these data subjects may comprise other sensitive personal data or relate to criminal acts perpetrated against them.

2. Relatives

Personal data relating to relatives of the residents of the Homes is, as described above at (a), understood to mainly comprise admission, discharge, and maternity records. Personal data relating to these data subjects may include special categories of personal data. Certain relatives of the residents of the Homes may be vulnerable persons and certain records associated with these data subjects may comprise other sensitive personal data or relate to criminal acts perpetrated against them or the residents of the Homes.

3. Others

Personal data relating to other individuals associated with the Homes, e.g. employees, health and social care professionals, contractors, members of religious orders/congregations, government officials, etc., is understood to possibly include, for example, first names, surnames, dates of birth, and addresses. Personal data relating to other individuals associated with the Homes may include special categories of personal data. Certain of the other individuals associated with the homes may be vulnerable persons and certain records relating to these data subjects may comprise other sensitive personal data or relate to criminal activity perpetrated against them, the residents of the Homes, or relatives of the residents of the Homes.

How was the personal data in the databases and related records collected?

The personal data contained in the databases and related records was collected from a single source; the Commission. On 4 January 2021 the Commission provided the databases via secure electronic transfer to Tusla. The Agency then migrated the databases' contents to a working computer server, a backup computer server, and a tape backup. The related records were transferred to the Agency via the novation of the Commission's contract with Ace Draughting Limited.

How will the personal data be used?

The personal data in the databases and related records are stored by Tusla, in accordance with the Agency's obligation to take the databases and related records. Tusla will use the databases and related records' contents for the purpose of data protection and FOI request-handling and will use certain of the related records for the purpose of search and reunion request-handling in accordance with the:

1. Access control policy;
2. Administrative access policy – a practical guide for staff;
3. Clean desk and clear screen policy;
4. Electronic communications policy;
5. Encryption policy;
6. FOI legislation – guidance for health service staff;
7. Framework for the provision of a national information and tracing service;
8. Information classification and handling policy;
9. Information technology acceptable use policy;
10. Information technology security policy;

11. Manage data subject access requests standard operating procedure;
12. Password standards policy;
13. Physical security policy;
14. Privacy policy;
15. Records management policy;
16. Remote access policy;
17. Search and reunion process map;
18. Search and reunion suite, and;
19. Standards of integrity and codes of conduct.

How will the personal data be stored?

The personal data will be stored in specific Tusla systems. The databases are 'Lotus Notes' databases, which the Agency will continue to use. The related records are scanned documents that are stored in 'Zylab', which Tusla will also continue to use. The Agency will seek to implement certain technical and organisational security measures in connection with its operation of these systems, including:

1. encryption at rest by way of a public/private key system;
2. restricted access controls;
3. training delivered, inter alia, via technical briefing documents;
4. disaster recovery through a fully managed off-site disaster recovery solution;
5. network authentication, e.g. via active directory authentication, and;
6. business continuity and disaster recovery testing.

Tusla intends to develop and implement a digital preservation plan in order to ensure the long-term security, integrity, and usability of the personal data contained in the databases and related records. This activity will commence after 28 February 2021 and will be subject to a separate DPIA.

How long will the personal data be retained?

The 2020 Act provides for the transfer of the databases and related records,²² however it does not specify a retention period. At this time, Tusla understands that the 2020 Act requires the Agency to retain the databases and related records in perpetuity. It is noted that the 2020 Act may be amended, repealed, or replaced by proposed adoption information and tracing legislation.

Noting the obligations imposed by the 2020 Act, consideration will be given to storage for longer periods in accordance with the GDPR's storage limitation principle.²³

What is the source of the personal data?

The Commission derived the databases from the related records, which are scanned documents it received from Tusla and other organisations.

As outlined above at step 1, Tusla possesses the originals of the specific documents which the Agency provided to the Commission in respect of the Ard Mhuire, Bessboro, Bon Secours, Castle, Manor House, Sean Ross Abbey, St. Patrick's (Pelletstown), and Stranorlar Homes.

As also outlined above at step 1, the Commission received documents concerning the Belmont, Bethany, Denny House, Kilrush, Ms. Carr's, Regina Coeli Hostel, St. Columba's, St. Finbarr's, St. Gerard's, and St. Kevin's Homes and certain specific documents relating to the Homes mentioned in the preceding paragraph

²² *ibid* 4

²³ GDPR, art 5(1)(e)

from other organisations. The original documents which other organisations provided to the Commission remain in those organisations' possession.

How will the personal data be shared?

Personal data will be shared with data subjects, or individuals acting on their behalf, e.g. solicitors, in response to access, FOI, or search and reunion requests in accordance with applicable Agency procedures. All Tusla staff are required to participate in the Agency's 'Sharing Personal Data Safely' training.

The Commission's transfer of the related records to the DCEDIY may, due to the architecture of 'Zylab', give rise to a controller-controller, joint-controller, or controller-processor relationship in respect of those records.

Does the processing present a high-risk?

The GDPR identifies high-risk processing as, for example, processing which involves new technologies, processing of a new kind where no DPIA has been carried out,²⁴ processing which prevents data subjects from exercising a right, using a service, or a contract, processing which is carried out systematically on a large scale,²⁵ or processing which may result in damage or interference with data subjects' rights and freedoms.²⁶

The databases and related records contain special categories of personal data and may contain personal data relating to persons who may be vulnerable and personal data relating to criminal activities perpetrated against the residents of the Homes, their relatives, or other individuals associated with the Homes. If a personal data breach²⁷ concerning such personal data were to occur, the detrimental effects which may follow are expected to be severe. As such, processing associated with the transfer is considered to give rise to high-risk.

How many data subjects are affected?

The databases and related records are understood to contain personal data relating to approximately 130,000 data subjects. The related records, from which the databases were generated, are understood to comprise approximately 850,000 pages contained within 100,000 documents. The specific number of data subjects whose personal data were transferred to the Agency is unknown, pending validation of the databases and related records' contents, as the Commission was unable to supply information in this connection.

What geographical area is covered?

Data subjects are understood to be located primarily in Ireland because the databases are derived from the related records, which are documents relating to the Homes. Certain data subjects may currently be located outside Ireland including in third countries, e.g. the United Kingdom.

Describe the context of the processing: what is the nature of your relationship with the individuals? How much control will they have? Would they expect you to use their data in this way? Do they include children or other vulnerable groups? Are there prior concerns over this type of processing or security flaws? Is it novel in any way? What is the current state of technology in this area? Are there any current issues of public concern that you should factor in? Are you signed up to any approved code of conduct or certification scheme (once any have been approved)?

What is the nature of the relationship with data subjects?

Certain data subjects will have interacted with Tusla in the context of the Agency's handling of data protection, FOI, and search and reunion requests. Other data subjects will have no prior relationship with the Agency.

How much control will data subjects have?

As the personal data contained in the databases and related records were supplied to Tusla by the Commission, the conditions in which the right to data portability may be exercised do not arise.²⁸ Similarly, the conditions for the exercise of rights in respect of automated individual decision-making do not arise because no decisions are taken based solely on automated processing of personal data associated with the transfer.²⁹

²⁴ GDPR, Recital 89

²⁵ GDPR, rec 91

²⁶ GDPR, rec 94

²⁷ GDPR, art 4(12) defines a 'personal data breach' as a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed

²⁸ GDPR, art 20(1)

²⁹ GDPR, art 22(1)

Tusla considers that the 2020 Act constitutes a legal obligation imposed by Irish law, which requires processing of personal data contained in the databases and related records. As such, the Agency considers that the conditions in which the right to erasure may be exercised do not arise.³⁰ Similarly, because exercise of the right to object requires cessation of processing and because Tusla is required to process personal data contained in the databases and related records, the Agency considers that compelling legitimate grounds exist which override data subjects' interests, rights, and freedoms vis-à-vis objection.³¹

Noting the nature of the processing, data subjects have the right to:

1. information;
2. access;
3. rectification and completion, and;
4. restriction of processing.

How would data subjects expect Tusla to process personal data? Is the processing novel?

Although the Commission's creation of the databases and related records constitutes a novel use of those records, Tusla's use of personal data associated with the transfer is not new. The Agency provided certain of the documents which comprise the related records to the Commission in the first instance. Personal data contained in these records were processed for the purposes of data protection, FOI and search and reunion request-handling before the transfer.

The way in which the personal data is used, and the information to be provided where personal data are obtained otherwise than from data subjects, will be clearly presented via the Agency's website and are set out below at Appendix 1.³²

Do the data subjects include children or other vulnerable groups?

The databases and related records may contain personal data relating to persons who may be vulnerable, however the number of such data subjects associated with the transfer was unknown before it was made as the Commission was unable to supply information in this connection.

Are there prior concerns over this type of processing or security flaws?

As regards storage of the databases and related records, no. Tusla will also seek to implement specific technical and organisational measures, e.g. those outlined above at step 2, in connection with its operation of the 'Lotus Notes' in order to secure the databases' contents to the extent possible.³³

As regards the handling of data protection, FOI, and search and reunion requests, possible infringement of applicable data protection legislation may occur in the context of request-handling, e.g. by way of unauthorised disclosure.

What is the current state of technology in this area?

Tusla had no control over the format of or the technical controls associated with the databases prior to the transfer. 'Lotus Notes', which is used to store the databases, is considered 'legacy' technology. Notwithstanding Tusla's inability to influence the databases' creation, the Agency will seek to implement appropriate technical and organisational measures in order to secure the personal data contained in them.

As the Agency cannot guarantee the extent to which 'Lotus Notes' can be secured, Tusla will investigate whether this 'legacy' technology can be further developed as a short term measure to further enhance its security and access control capabilities. Tusla will also seek to implement specific technical and organisational measures, e.g. those outlined above at step 2, in connection with its operation of the 'Lotus Notes' in order to

³⁰ GDPR, art 17(3)(b)

³¹ GDPR, art 21(1)

³² GDPR, Articles 14(1) and (2)

³³ GDPR, art 32(1)

secure the databases' contents to the extent possible. Tusla will continue to monitor the state of the art as it relates to database storage in order to ensure the ongoing security of the personal data.

Are there any issues of public concern?

The 2020 Act's passage through the Houses of the Oireachtas gave rise to significant public concern. The publication of the Commission's final report also attracted significant public concern. Public concern is expected insofar as the absence of adequate legislation to deal with the provision of certain information relating to adoption, and other historical alternative care arrangements, will continue to be a source of great anxiety; the resolution of this issue is beyond the reach of Tusla.

Are there approved codes of conduct or certification schemes?

No.

Describe the purposes of the processing: what do you want to achieve? What is the intended effect on individuals? What are the benefits of the processing – for you, and more broadly?

The 2020 Act requires that Tusla take the databases and related records. In addition to processing personal data for this purpose, the Agency also processes personal data for the purposes set out in the legislation,³⁴ namely that legislation's "*legitimate purpose*" and where authorised or required by the GDPR, 2018 Act, FOI Act 2014, or applicable adoption legislation.

In the context of taking the databases and related records, Tusla will process associated personal data for the purpose of complying with legal obligations to which it is subject and,³⁵ in respect of certain personal data, in the context of the exercise of official authority vested in the Agency.³⁶

What do we want to achieve?

The secure storage and use of personal data contained in the databases and related records in compliance with applicable data protection legislation.

What are the intended effects on data subjects?

The transfer of the databases and related records will contribute significantly to processing transparency and the discharge of the Tusla's obligations in respect of data subjects' rights.³⁷ The transfer is also expected to contribute significantly to the security of personal data, insofar as receipt of digitally scanned copies of the related records is anticipated to facilitate the ongoing availability of those documents.³⁸

What are the benefits for society?

The transfer of the databases and related records is anticipated to contribute to the efficient and effective delivery of services by the National Adoption Service. Receipt of the databases and related records is also anticipated to facilitate data subjects' exercise of applicable GDPR rights,³⁹ to the extent that personal data not previously held by the Agency will now be available for provision in the context of access and FOI request-handling.

³⁴ *ibid* 17

³⁵ GDPR, art 6(1)(c)

³⁶ GDPR, art 6(1)(e)

³⁷ GDPR, Chapter III

³⁸ GDPR, art 5(1)(f)

³⁹ *ibid* 37

Step 3: Consultation process

Consider how to consult with relevant stakeholders: describe when and how you will seek individuals' views – or justify why it's not appropriate to do so. Who else do you need to involve within your organisation? Do you need to ask your processors to assist? Do you plan to consult information security experts, or any other experts?

Data subjects were not consulted about the transfer due to the brevity and nature of the period, 21 December 2020 – 4 January 2021, which elapsed between confirmation of its specific occurrence and receipt. Tusla considers that although, due to the historical nature of associated personal data, it is impossible to inform each data subject of the transfer's occurrence and provision may as such not necessarily be required,⁴⁰ it is appropriate to communicate the information to be provided where personal data are obtained otherwise than from the data subject via the Agency's website and below at Appendix 1. Additionally, this document is made publicly available and will be kept under review; submission of observations and commentary in respect of this document are welcomed via the contact points set out below at Appendix 1.⁴¹

Step 4: Assess necessity and proportionality

Describe compliance and proportionality measures, in particular: what is your lawful basis for processing? Does the processing actually achieve your purpose? Is there another way to achieve the same outcome? How will you prevent function creep? How will you ensure data quality and data minimisation? What information will you give individuals? How will you help to support their rights? What measures do you take to ensure processors comply? How do you safeguard any international transfers?

What is the lawful basis for processing?

The GDPR allows processing where it is necessary for the exercise of official authority vested in a controller.⁴² The 2018 Act allows for such processing to the extent necessary and proportionate for the performance of a function of a controller conferred by or under an enactment or the Constitution.⁴³

Tusla considers that because the 2020 Act requires the transfer of the databases and related records,⁴⁴ processing of personal data contained therein is necessary for the exercise of official authority vested in the Agency.

As outlined above at Step 2, the transfer's contents are anticipated to include data relating to racial or ethnic origin, religious or philosophical beliefs, genetic data, biometric data, data concerning health, and data concerning sex life. As such, the GDPR's provisions in respect of the processing of special categories of data also fall for consideration.

Processing of special categories of personal data is generally prohibited,⁴⁵ however this prohibition is disapplied in certain circumstances.⁴⁶ Specifically, the GDPR provides that such processing may be carried out where necessary for the management of social care systems and services and where the processing is carried out "*by or under the responsibility of a professional subject to the obligation of professional secrecy under Union or Member State law*".⁴⁷

In this connection, the 2018 Act provides that such processing is lawful where it is necessary,⁴⁸ where suitable and specific measures are taken to safeguard data subjects' fundamental rights and freedoms,⁴⁹ and where it

⁴⁰ GDPR, art 14(5)(b)

⁴¹ *ibid*,1

⁴² *ibid* 36

⁴³ 2018 act, s 38(1)

⁴⁴ *ibid* 4

⁴⁵ GDPR, art 9(1)

⁴⁶ GDPR, art 9(2)

⁴⁷ GDPR, art 9(3)

⁴⁸ 2018 Act, s 52(1)

⁴⁹ *ibid*

is carried out by or under the responsibility of a person who owes a duty of confidentiality equivalent to that of a health practitioner.⁵⁰

Tusla considers that the conditions in which the general prohibition applies do not arise because:⁵¹

1. the 2020 Act requires the transfer and associated system and service management;⁵²
2. suitable and specific measures, i.e. the technical and organisational measures detailed above at Step 2, were taken, and;
3. the processing is carried out under the responsibility of the National Manager for Adoption, who owes an appropriate duty of confidentiality.

How is further processing prevented?

As outlined above at Step 2, personal data associated with the transfer will be processed only for the purposes set out in the 2020 Act, i.e. namely that legislation's "*legitimate purpose*" and where authorised or required by the GDPR, 2018 Act, FOI Act 2014, or the applicable adoption legislation.

How will data quality and minimisation be ensured?

As the related records were created by the Homes and because recording or transcription errors may have arisen prior to the transfer, Tusla cannot guarantee the accuracy of personal data which they contain. Similarly, as the databases were created by the Commission and because recording or transcription errors may have arisen in connection with associated matching and combination, the Agency cannot guarantee the accuracy of personal data therein. Inaccuracy may give rise to an infringement of the Agency's obligations in respect of the accuracy principle. It is noted, in this connection, that inaccuracy may also precipitate challenges in assessing necessity and proportionality, e.g in the context of request-handling under the 2018 Act.⁵³

In respect of data minimisation, the 2020 Act requires the transfer of the databases and related records "*without redaction therefrom*".⁵⁴ Tusla considers that the personal data contained in the databases and related records are adequate, relevant and limited to what is necessary in relation to the transfer.

What information will be provided to data subjects?

The information to be provided where personal data are obtained otherwise than from the data subject will be communicated via the Agency's website and is set out below at Appendix 1 to this document.

How will data subjects' rights be implemented and supported?

Data subjects may exercise their data protection rights by communicating a request to Tusla, e.g. via:

1. the Agency's data subject requests [portal](#);
2. by [email](#), or;
3. by post to Data Protection Unit, Tusla, 6th Floor, Brunel Building, Heuston South Quarter, St. John's Road West, Dublin 8, D08 X01F.

How is processor compliance ensured?

As outlined above at Step 1, Tusla engaged certain organisations in order for the Agency to take and maintain the databases and related records. As required by the GDPR, the Agency's relationships with these organisations are governed by contracts.⁵⁵ These contracts will be reviewed and updated as necessary to reflect any operational or regulatory changes.

How are international transfers safeguarded?

International transfers are expected to occur only in the context of Tusla's provision of responses to data protection, FOI, and search and reunion requests. The Agency considers such international transfers to be

⁵⁰ 2018 Act, s 52(2)(b)

⁵¹ GDPR, art 9(2)(h)

⁵² *ibid* 4

⁵³ 2018 Act, s 41

⁵⁴ 2020 Act, s 2(2)

⁵⁵ GDPR, art 28

carried out for important reasons of public interest,⁵⁶ which are recognised in Irish law to which it is subject.⁵⁷

Step 5: Identify and assess risks

Describe source of risk and nature of potential impact on individuals. Include associated compliance and corporate risks as necessary. Add new rows if required.	Likelihood of event	Severity of event	Overall risk
<p>Data accuracy</p> <ul style="list-style-type: none"> The databases and related records were created otherwise than by Tusla. The accuracy of, in particular, the related records from which the databases were generated is unknown due to the records' historical nature. Potential inaccuracy of personal data contained in the databases and related records may give rise to significant detrimental effects, e.g. distress. 	High	High	High
<p>Data retention</p> <ul style="list-style-type: none"> Regulatory examination may conclude that the 2020 Act does not require perpetual retention. 	Low	Low	Low
<p>Data security as it relates to 'Lotus Notes'</p> <ul style="list-style-type: none"> Tusla had no control over the databases' 'legacy' format or technical controls and was unable to verify the state of the art as it relates to the databases, which may give rise to risk of accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed. 	High	High	High
<p>Data security as it relates to processors</p> <ul style="list-style-type: none"> Existing contracts may not comply with the requirements set out at Art. 28 GDPR, which may precipitate infringement of Tusla's obligations in respect of the engagement of processors. 	High	High	High
<p>Data subject access requests</p> <ul style="list-style-type: none"> The transfer may give rise to expectation that data subject access requests will necessarily return additional or differing personal data, e.g. birth identity, vis-à-vis previously submitted requests. 	High	High	High
<p>Independent controllers</p> <ul style="list-style-type: none"> Tusla's future relationship with the DCEDIY in respect of the related records requires definition. 	Low	Low	Low

⁵⁶ GDPR, art 49(1)(d)

⁵⁷ GDPR, art 49(4)

<p>Organisational risk as it relates to handling of data protection and FOI requests</p> <ul style="list-style-type: none"> - Policies for the handling of data protection and FOI requests may be inappropriately applied in the context of request-handling. 	High	High	High
<p>Organisational risk as it relates to handling of search and reunion requests</p> <ul style="list-style-type: none"> - Policies for the handling of search and reunion requests may not comply with the obligations imposed upon Tusla by applicable data protection legislation. 	High	High	High
<p>Organisational risk as it relates to the 2018 Act</p> <ul style="list-style-type: none"> - National Adoption Service staff may be unaware of the 2018 Act's requirement to ensure processing of special categories of personal data is carried out by or under the responsibility of a person who owes a duty of confidentiality equivalent to that of a health practitioner. 	Medium	Medium	Medium
<p>Transparency</p> <ul style="list-style-type: none"> - It is impossible to ensure that data subjects are fully aware of the transfer, this may potentially prevent data subjects exercising their data protection rights. This may give rise to risk of infringement of Tusla's obligations in respect of transparency. 	High	High	High

Step 6: Identify measures to reduce risk

Identify additional measures you could take to reduce or eliminate risks identified as medium or high risk in step 5				
Risk	Options to reduce or eliminate risk	Effect on risk	Residual risk	Measure approved
Data accuracy	<p>Correction of potentially inaccurate personal data via the addition of a supplementary statement in the context of the handling of rectification requests.</p> <p>Sampling of the databases and related records' contents in order to authenticate receipt safe receipt and assess, to the extent possible, the degree of inaccuracy which may be associated with personal data contained therein.</p>	Reduced	Unknown pending the conduct of the data sampling exercise	Yes
Data retention	<p>The 2020 Act may be amended, repealed, or replaced by proposed adoption information and tracing legislation, Tusla's DPU will monitor legislative developments in this connection and take appropriate action in respect of retention where necessary.</p>	Reduced	Low	Yes

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	<p>Consideration will be given to storage for longer periods in accordance with the GDPR's storage limitation principle.</p> <p>Tusla's DPU will seek legal advice in respect of the interpretation of s. 2 of the 2020 Act.</p>			
Data security as it relates to 'Lotus Notes'	<p>Tusla will implement the organisational policies and procedures highlighted above at step 2 in connection with the operation of 'Lotus Notes'.</p> <p>Tusla's DPO will monitor compliance with applicable data protection legislation and policies, including monitoring of the assignment of responsibilities, awareness-raising and the training of staff involved in processing operations, and related audits.</p>	Reduced	Medium	Yes
Data security as it relates to processors	<p>Tusla's DPU will audit existing contracts with Ace Draughting Limited and Invision Software and Technology Company Limited and propose updates or amendments in respect of any identified deficiencies.</p>	Reduced	Low	Yes
Data subject access requests	<p>Where restrictions are applied in respect of a data subject's access request, affected data subjects will be informed why the relevant restrictions were applied and of their rights to complain to the Data Protection Commission and seek a judicial remedy clearly, concisely, and in plain language.</p>	Reduced	Low	Yes
Independent controllers	<p>Tusla's DPU will engage with the DCEDIY in order to confirm the specific nature of the future relationship in respect of the related records.</p>	Reduced	Low	Yes
Organisational risk as it relates to data protection and FOI request-handling	<p>Tusla's DPU will liaise with the National Manager for Adoption to ensure that the operation of the relevant policies comply with applicable data protection legislation.</p>	Reduced	Low	Yes
Organisational risk as it relates to search and reunion request-handling	<p>Tusla's DPO will liaise with the National Manager for Adoption to ensure that the relevant policies are compliant with applicable data protection legislation.</p>	Reduced	Low	Yes
Organisational risk as it relates to the 2018 Act	<p>Tusla's DPO will liaise with the National Manager for Adoption to ensure awareness of the obligations imposed</p>	Reduced	Low	Yes

	upon the Agency by s. 52(2) of the 2018 Act.			
Transparency	Although Tusla is not required to provide information where its provision would prove impossible, the Agency will continue to communicate in respect of processing associated with the transfer. This communication will include provision of the information to be provided where personal data are obtained otherwise than from the data subject on the Agency's website and below at Appendix 1.	Reduced	Medium	Yes

Step 7: Sign off and record outcomes *(to be completed by Tusla's DPU)*

Item	Name/position/date	Notes
Measures approved by:	James Plunkett , DPO, Tusla Fergus O Cuanachain , Director of ICT, Tusla Mark Conroy , ICT Data and Analytics Manager, Tusla Siobhan Mugan , National Manager for Adoption, Tusla	Integrate actions into action plan, with date and responsibility for completion
Residual risks approved by:	James Plunkett , DPO, Tusla Fergus O Cuanachain , Director of ICT, Tusla Mark Conroy , ICT Data and Analytics Manager, Tusla Siobhan Mugan , National Manager for Adoption, Tusla	Nil.
DPU advice provided by :	James Plunkett , DPO, Tusla Seán O'Reilly , DPU Operations General Manager, Tusla	Nil.
DPU advice accepted or overruled by:	Mark Conroy , ICT Data and Analytics Manager, Tusla Fergus O Cuanachain , Director of ICT, Tusla Siobhan Mugan , National Manager for Adoption, Tusla	Nil.
<u>Comments:</u>		
Nil.		

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Consultation responses reviewed by:	Seán O'Reilly , DPU Operations General Manager, Tusla	Nil.
<u>Comments:</u> Nil.		
This DPIA will kept under review by:	James Plunkett , DPO, Tusla Seán O'Reilly , DPU Operations General Manager, Tusla	

Appendix 1

Information to be provided where personal data are obtained otherwise than from the data subject

1. What is the identity and address of the controller?

Tusla;
Brunel Building, Heuston South Quarter, St. John's Road West, Dublin 8, D08 X01F;
01 771 8500;
info@tusla.ie.

2. What are the contact details of Tusla's Data Protection Officer?

Data Protection Officer, Tusla, 6th Floor, Brunel Building, Heuston South Quarter, St. John's Road West, Dublin 8, D08 X01F;
datacontroller@tusla.ie.

3. What are the purposes and lawful basis for processing personal data contained in the databases and related records?

The 2020 Act provides for the transfer of the Mother and Baby Homes Commission of Investigation's databases and related records to Tusla. The Agency processes personal data contained in the databases and related records to:

- (1) maintain the databases and related records;
- (2) comply with the obligations imposed by applicable data protection legislation, and;
- (3) comply with the obligations imposed by applicable freedom of information legislation.

Tusla processes personal data contained in certain of the related records to:

- (1) handle search and reunion requests made by adopted persons and birth parents, in accordance with the applicable adoption legislation;

Tusla's lawful basis for the processing of the relevant data is therefore the (1) 2020 Act, (2) applicable adoption legislation; (3) GDPR and 2018 Act, and; (4) FOI Act 2015.

4. What categories of personal data are processed?

The categories of personal data processed are (1) personal data, e.g. first names, surnames, dates of birth, addresses, etc., and; (2) special categories of personal data, that is, data relating to racial or ethnic origin, religious or philosophical beliefs, genetic data, biometric data, data concerning health, and data concerning sex life.

5. Who can expect to receive personal data?

The envisaged recipients of the personal data are (1) data subjects, (2) FOI requesters, and (3) users of the search and reunion service.

6. Will Tusla transfer personal data to a third country (i.e. a non-EU/EEA member state)?

International transfers will occur only where the recipient has made a search and reunion, access, or FOI request and lives in a third country.

7. For how long will personal data be kept?

The personal data contained in the databases and related records will be retained in perpetuity. Noting the transfer obligation imposed by the 2020 Act, consideration will be given to storage for longer periods in accordance with the GDPR's storage limitation principle.

8. Does Tusla rely on legitimate interests as its lawful basis for processing?

No, Tusla does not rely on legitimate interests as its lawful basis for processing.

9. What data protection rights can be exercised?

The right to access, rectification and completion, and restriction of processing may be exercised by communicating a request to Tusla, e.g. via the Agency's data subject requests [portal](#), by [email](#), or by post to Data Protection Unit, Tusla, 6th Floor, Brunel Building, Heuston South Quarter, St. John's Road West, Dublin 8, D08 X01F.

10. Does Tusla rely on consent as its lawful basis for processing?

No. Tusla does not rely on consent as its lawful basis for processing of the relevant data.

11. Can complaints be lodged in relation to Tusla's processing of personal data?

Complaints in respect of Tusla's processing of personal data may be lodged with the Data Protection Commission [online](#), by email to info@dataprotection.ie or by post to 21 Fitzwilliam Square South, Dublin 2, D02 RD28.

12. Where did the personal data come from?

Tusla received the personal data contained in the databases and related records from the Commission. In carrying out its work, the Commission compiled certain personal data in databases of all mothers and children who resided in the Homes. These databases were derived from documents held by Tusla and other organisations.

Tusla possesses the originals of the specific documents which the Agency provided to the Commission in respect of the Ard Mhuire, Bessboro, Bon Secours, Castle, Manor House, Sean Ross Abbey, St. Patrick's (Pelletstown), and Stranorlar Homes.

The Commission received documents concerning the Belmont, Bethany, Denny House, Kilrush, Ms. Carr's, Regina Coeli Hostel, St. Columba's, St. Finbarr's, St. Gerard's, and St. Kevin's Homes and certain specific documents relating to the Homes mentioned in the preceding paragraph from other organisations.

The original documents which other organisations provided to the Commission remain in those organisations' possession.

13. Will Tusla make automated decisions in respect of personal data?

Tusla will not make automated decisions in respect of personal data contained in the databases and related records.

