Submission to the Joint Committee on Education and Skills on the provisions of the Retention of Records Bill 2019

1.Background

I am grateful to the Committee for considering my submission on the Records Retention Bill. I make the submission as a private citizen, with a background of working in the National Archives of Ireland for 42 years, where I gained some experience in the handling of sensitive records, in particular records relating to the foreign adoptions of Irish children in the mid-twentieth century.

2. The National Archives Act, 1986

The National Archives was, properly, consulted when this proposal was being first considered. Their advice was to add the two redress agencies to the schedule to the National Archives Act 1986 (Commissions of Inquiry are already covered by the Act), thus making all of these records subject to the provisions of the Act. They did not see a need for a new piece of legislation which proposes to bypass the National Archives Act with regard to access (75 years closure) with no provision for that to change or be appealed. The 1National Archives Act has served the country perfectly well since its passage in 1986, as regards the witholding of records from public inspection.

The section of the Act which provides for this allows for officers of Government departments, with the consent of the Department of the Taoiseach, to certify that the release of Departmental Records which are over 30 years old would in certain circumstances be contrary to the public interest, or would or might constitute a breach of statutory duty, or a breach of good faith on the ground that they contain information supplied in confidence or would or might cause distress or danger to living persons. Why that is not seen as adequate protection by the proposers of this bill in unclear. The Oireachtas Joint Committee on Education recommended its use, but the Minister turned it down, on unspecified grounds. Why?

3. Survivors' wishes

Are there reliable statistics on what proportion of those who gave testimony to the Commission require:
a) destruction of the records;
b) retention of the records with access under the terms of the National Archives Act, including redaction to preserve third party privacy;
c)Retention of the records with stricter rules of access than those of the National Archives Act;
d) Immediate access to the records?

How can a respectful, equitable solution to this problem be found without this information? Since the memorandum for Government proposing the bill

mentioned an alleged “chill factor” among survivors as one of the reasons for the extensive closure rule being proposed, one assumes that some information has been gathered from those on whose behalf this legislation purports to act. (How this “chill factor” was assessed is unclear.) It is probable that some proportions of survivors cleave to each of the options above. It is possible that the problem could be solved by giving each person who gave testimony a copy of their submission/testimony, with which they could do as they wished, including, if desired, placing them in public archives for consultation by the public.

Freedom of Information requests from journalist Conall O’Fatharta revealed that just four survivors responded to the Department 2015 call for submissions on the legislation. Two were against the sealing of records, while a third felt the records should be permanently sealed. The opinion of the fourth survivor was redacted.
A recent research study commissioned by the Department of Education, which consulted 100 of those who made submissions to the redress bodies to ascertain their views on the fate of the records, resulted in a majority expressing concern at the proposed “sealing” of the records:
“The planned legislation which will see records from the Commission to Inquire into Child Abuse and the Residential Institutions Redress Board put into the National Archives of Ireland and sealed for over 75 years was seen by some as a violation of their rights to their own stories, by others as excessive, while a smaller number who spoke about it expressed relief,” said the report. 15,000 people made submissions to the Commission. 100 is a very small number on which to base decisions about the disposition of these records.

4. Lack of investigation of other options

There is no evidence that the department has investigated the cost of digitising and redacting these records. The Minister has said that redaction (manipulation of documents to hide certain information, such as personal names) would lead to “considerable expense.” Software has advanced considerably since the commission and its associated bodies sat, and at the very least, a reputable company should be asked to scope and price this option.

5. No copies of testimonies for survivors

It seems that people who gave testimony to the Ryan Commission, the McAleese Committee and who are giving testimony to the current Mother and Baby Homes Commission have been and are being refused a copy of their testimony for their own information and use. The reasons for this are unclear; why should people be denied access to copies of their own information? The Military Service Pensions Acts 1924-50 required applicants to submit detailed information on military actions in which they were involved in the period 1916-23. In every case, a copy of his/her application was given to the

applicant. These records dealt with highly sensitive violent activities during such awful conflicts as our civil war. It would seem to be plain common sense as well as respectful treatment of those who gave testimony to the Ryan Commission, the McAleese Committee and the ongoing Mother and Baby Homes Commission to allow them the same courtesy. If every person who gave testimony to the Commission were given a copy of that testimony, any possible demand for access by those who should be, after all, at the centre of these deliberations would be obviated.

6. Freedom of Information and Data Protection

The Bill proposes to put the records beyond the scope of the Freedom of Information Act, a very serious step which weakens citizens' rights to access vital information pertaining to themselves.
There seems to have been no consultation with the Information Commissioner, and only informal consultation with the Data Protection Commissioner. Both Commissioners would need to be formally consulted to ascertain their views on these proposals.

This bill proposes to disable portions of the National Archives Act, to definitively close down important records from public scrutiny with no room for appeal, and to deny recourse to the Freedom of Information Act by those who may seek access to their own records. There is no need for any of this.

7. Administrative records

The existing provisions of the National Archives Act are more than adequate to cover access to these records, which will presumably also contain administrative records which should be in the public domain in the ordinary way after 30 (soon to be 20) years. These records are vital for an understanding of the policies and operations of the Commission, and there is no reason at all why they should be closed for 75 years.

Administrative records that are currently held in the archives of the Ryan Commission, the McAleese Committee and the Murphy Mother and Baby Homes Commission should be available when they are more than 30 (soon to be 20) years old. There are no privacy issues with these records, and it would set an extraordinary precedent if this Bill made it possible for the state to wrongly close important archives when it so chooses, without recourse to the National Archives Act.

8. Records held by religious congregations

A larger question mark hangs over the fate of the records of religious congregations which ran the various institutions with the full blessing of the state. They are currently deemed to be private records, and their owners have no obligation to make them available either to survivors of the institutions or

to scholars. This issue must be tackled in a timely way, perhaps by bringing the records under the scope of the National Archives Act, or by establishing a state-run religious records repository.

9. Summary

1. There would seem to be no good reason not to use the provisions of existing legislation to preserve, withhold and make accessible these very important records;
2. Information on the desires of those who gave testimony to the Ryan Commission and the McAleese Committee, and who are currently giving testimony to the Mother and Baby Homes Commission should be gathered, to ascertain what they would wish to happen to the records;
3. Copies of submissions made to these bodies should be given to those who made them;
4. Administrative records of these bodies should be subject only to the provisions of the National Archives Act, and not swept up in this ill-considered attempt to bypass its provisions;
5. A quote for digitisation and redaction of the records should be sought from a reputable IT company;
6. The records of religious congregations who ran the institutions should be brought under the aegis of the state, either through the National Archives Act or through the establishment of a state-run religious records repository.

10. Overview

Lastly, let us consider what these records actually mean. They are a comprehensive account of atrocious treatment of vulnerable children over a long period of time, producing a cohort of adults whose lives have been blighted by cruelty, abuse and neglect inflicted by people who should have provided kindness, care and compassion. Some did provide such care, but they were too few and they failed to complain of those who behaved badly.

The records will provide a unique account of institutional childcare in a small country new to independence, of poverty and its consequences, of the close links between Church and State in the delivery of welfare services, of the damage done to families from loss of their children and siblings, and of the suffering of a large cohort of children in these institutions. The loss of the records, or the inappropriate restriction of access being contemplated, would be a significant and profound loss to historical scholarship on 20th century Ireland.

The fact that so many survivors of this regime have managed to make normal lives for themselves is testimony to their courage and resilience. Let us not harm them again by treating their hugely important testimonies as outside the archival norms which operate for all other citizens.

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