

**“Truth is our last battle,  
it is all we have left”**

**A personal submission to the  
Committee on Education and Skills**

Retention of Records Bill 2019

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## REPORT

### Introduction

1. I am pleased to present this submission to the Committee on Education and Skills as part of your review of the Retention of Records Bill 2019. I make this as a survivor of both a Mother and Baby Institution and an Industrial School, where I spent my entire childhood.
2. This submission is in two parts; a brief 2 page report and an attached set of appendices with further explanations and references.
3. **In my opinion the Retention of Records Bill 2019 is wholly inappropriate and I cannot support it in its existing form. It fails to protect several of my rights and aspirations as a survivor of Irish residential Institutions.**

### Key issues and reasons

4. I believe many survivors provided evidence and testimony to the Ryan Confidential Committees' and 'Investigation Committee' as well as to the Redress Board' in the understanding that this would be kept private<sup>1</sup>. I have recently provided evidence to the Mother and Baby Homes Commission and it was made clear to me that my testimony would be kept confidential.
5. If these Investigations were set up on the basis of confidentiality I cannot accept a subsequent law that proposes to reverse that condition/guarantee by allowing the public to see my personal records without my consent, no matter how far in the future it is. This seriously reduces my confidence in the assurances given by Commissioners about privacy and confidentiality. These Investigations are either private or they are not and this should be made clear at the outset. It seems to me that Survivors' and their families' rights to privacy is being put in jeopardy and this may have implications for those currently going through the current investigation into mother and baby homes. This is not to argue the merits of a public or private investigation process, it's simply to point out that confidentiality assurances were made. (See appendix A)
6. On the question of "Sealing" personal records for 75 years. I cannot accept any law that prevents me from having the same information access rights and privacy rights as any other citizen of Ireland. I believe this is a violation of my constitutional right to equality. This applies to any survivor who was in an Industrial School whether or not they went through the Residential Redress Board. There are several reasons why I would want to obtain my personal records, as well as records by witnesses, and those 'in-charge', (See appendix B).
7. The Bill takes no account of the important nuances in records held by the state. It should differentiate between personal records and those that are related to the running of institutions such as administrative, financial, inspection and operational records. There are no privacy issues associated with these non-personal records and they should be made available to the public as soon as possible.
8. I understand the public need to learn from the personal experiences of children in institutions as expressed by the Minister and I have great sympathy with this idea, but this should not be at the expense of survivors' privacy rights. Rather, it should be done through a process of engagement between Survivors and the State and by survivors giving consent to access and release of their Private Records in whatever form they choose. The Ryan Report recommended

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<sup>1</sup> <http://www.irishstatutebook.ie/eli/2000/act/7/enacted/en/pdf>

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memorialisation and many have called for a centre of learning, where these Records could be archived, regrettably the Government has failed to act on these calls to date. ( See appendix D)

9. I am concerned at the piecemeal nature of this Bill at a time when there are several other Record issues associated with Magdalen Laundries and Mother and Baby Homes. The lack of a consistent and central Strategy for all Institutions and how Records should be handled is a serious shortcoming in the State's approach to this institutional legacy. (See appendix E and F).
10. Finally, we should never underestimate the power and value of personal testimony and Personal Records in raising awareness about our past and reinforcing acknowledgment of the wrong doing at a personal and local level as people around the country come in touch with the truth. The State apology and acknowledgement needs to be translated into a deeper nationwide experience and this can only be done by allowing survivors access to their records so they can tell their own stories fully. These records have more value today than in 75 years and should be available to survivors and the public as soon as possible. (See appendix G).

### Concluding remarks

11. On 2 April 2019 the Minister for Education and Skills Mr Joe Mc Hugh said in the Dáil debate on the Retention of Records Bill 2019 that the purpose of this bill was to ensure that the records of the Commission to Inquire into Child Abuse, the Residential Institutions Redress Board and its review committee are **not destroyed, but are instead retained for posterity**.
12. Having considered this bill and the issues around it above I would like to make the following concluding remarks:
  - a. Where a survivor has given testimony in private/confidence I do not believe the state should now pass a law to make that personal testimony and personal records open to the public without the prior consent of the survivors.
  - b. These personal records should remain within the normal remit of current privacy laws, e.g. GDPR etc. They should not be "sealed" away from survivors who are the true owners. Survivors are citizens and should retain the same access and privacy rights as other citizens, in line with the equality provisions in the constitution. Survivors and their families should be given a set period of time to decide what they want to do with their personal records.
  - c. If the Government wishes to retain the personal records of survivors 'for posterity' and public access I would strongly encourage it to engage with survivors and seek a way or a formal process to retain the records with our consent. The government should also have a consistent strategy for all Institutions co-ordinated by a central body that can deal with Records and Retention issues for posterity.
  - d. For non-personal records of these institutions, such as administrative, financial, inspection records etc. all of these should be available to the public at the earliest possible time and no longer than 20 years. My preference is that these should be released within 5 years of any dissolution of a Commission of Inquiry of such national importance, such as those concerning residential institutions.

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## APPENDICES:

### A - Confidentiality of survivor's testimony

1. **Both the Ryan investigation and current Mother and Baby Homes Investigations had an 'Investigation Committee' and a 'Confidential Committee' which guaranteed survivors that evidence given would be kept confidential and private.**
2. Although, I missed the opportunity to give testimony to the Ryan investigation I did give testimony to the Mother and Baby homes investigation and I was assured that what I said and statements I provided would be kept confidential, and the memorandum on confidentiality also stated that where records contain non-relevant personal information that this would be kept confidential 'in the future'. I remember that this was an important matter for me in my very first communications with the Commission. **This Bill could set a bad precedent for the current MBH investigation and others in the future, if we know the rules are going to change after giving testimony.**
3. These confidentiality commitments are clearly put at risk by the Retention of Records Bill 2019 even if records are only released after 75 years.
4. We must recognise that survivors who provided testimony and evidence to the Commission to Inquire into child abuse and the Residential Institutions Redress Board did so under the understanding that this personal information and record would remain confidential, it is helpful to read about this type of concern in Canada in their own story of Institutional abuse at Indian Residential Schools<sup>2</sup>. I understood that this was to ensure trust and encourage people to give evidence.
5. However, the above is not in any way to condone or support the existing Investigations process, it is merely to state the fact that personal information and records is "personal" and is, in my view the property, of those who provided the testimony and should be protected by current privacy laws. Survivor testimony and statements do not belong to the state.
6. Note also that the Supreme Court in Canada ruled in October 2017 that the accounts given by survivors of Institutional abuse were meant to be confidential and private and that claimants and alleged perpetrators relied on the confidentiality assurances and therefore the records should be destroyed. **Importantly, it also decided that accounts are to be retained for a 15-year period, during which time survivors can choose to have their records preserved.** In the absence of a decision by the survivor the documents would be destroyed<sup>3</sup>. The survivors retained the right to decide over 15 years whether to preserve their records relating to their personal abuse or to give those records to the National Centre for Truth and Reconciliation, for preservation in a national archive. The Supreme Court ruled that, on appeal, an earlier court had struck the right balance<sup>4</sup>.
7. Note that in the above decision survivors were given option to obtain their records within a set period. While it is not ideal for records to be destroyed a 'get-out clause' was provided to survivors.
8. **In my view the Retention of Records Bill 2019 does not set the right balance between the rights of survivors to confidentiality and the desire to retain records for future posterity (is for public access). It completely ignores the wishes of living survivors to have full control over their own personal stories, testimonies and personal records.**

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<sup>2</sup> <http://www.irishstatutebook.ie/eli/2000/act/7/enacted/en/pdf>

<sup>3</sup> <https://www.documentcloud.org/documents/4081415-Fontaine-En.html>

<sup>4</sup> <https://www.canadianlawyermag.com/news/general/scc-rules-residential-school-survivors-testimony-should-be-kept-private/274564>

## APPENDICES - continued

### B - Individual Access to personal records and testimony

9. **As a general principal, I believe survivors should have the right to access their own person records and testimony, wherever they are stored/archived, at any time following the completion of an Investigation and dissolution of a Commission/Tribunal.**
10. One of the most serious criticisms many survivors have is the lack of access to information about their time in institutions, the level of redactions made in information obtained and the obstacles to finding adoption records and identity.
11. It has taken me many painful decades to piece together my identity and family background, having spent a childhood not knowing who I am and why I was put into institutions. I am still looking for answers and was hoping the M&BH Commission of investigation would finally put an end to this search and give me all the answers I need.
12. Personal Records held about me were kept by religious orders and state bodies running Industrial schools and Mother and Baby Homes. These include, correspondence between third parties concerning my case, social worker records about my welfare and fostering/adoption opportunities, medical records, school records, admission and exit ledger entries etc. I should have a right to obtain copies of all this information. I have received some information through FOI requests over the years but there were redactions and other information in my files that were not released.
13. I understand many of the Industrial Schools files obtained from the Congregations by state in the Ryan process may now not be accessible under this Bill. I fear that files obtained by the MBH commission may also suffer the same fate, even though I did not go through the Ryan Investigation my ability to access my records from Industrial Schools would be put in jeopardy by this Bill.
14. If I wish to **tell my story** fully one day or write about it for my family or for posterity how can I properly research it if information about my own story are “sealed”. This is a real concern for me and affects anyone who was in an Industrial School even if they did not go through the Ryan investigation and redress process.
15. **In the event of my death** I would want my immediate family and grand-children to have the right to access all of my personal records, correspondence and testimonies given to any commission of investigation, held in archives. Family histories are important to **the next generation** so they can understand the inter-generational effects of institutionalisation.
16. Family members of **children who died in** the institutions should have the right to access the personal records of their children. The impact of Tuam mass grave discovery highlights the importance of knowing what happened to members of families who were incarcerated in mother and baby institutions. It also highlighted the importance of dignity in death. I believe, it is important people know the truth as part of a grieving and healing process by having access to records so that families can reach closure.
17. I also believe in the **survivors’ right to destroy** their own personal records. However, this is a right that I would not currently exercise myself as I believe in passing it on to a national archive for society. However, this may not be a choice other survivors would make, but that should be their prerogative and choice.

## APPENDICES - continued

### C - Individual access to witnesses statements and testimonies

- 18. I believe a survivor should have access to all records, evidence and testimony provided by any witness where that survivor is the subject matter.**
  
19. By sealing these records we are further compounding the feeling that many perpetrators got off with immunity. Truth is the last battle we have got, it's all we have left. It is important we have access to this information to complete and fully understand our own stories and tell it in the way we feel most comfortable.
  
20. I would like to know, not only my own information/transcripts, but also what was said to the Commissioners by witnesses and those 'in charge' of these institutions. Witness statements should be available to survivors if they wish to have this for the same reason i.e. to better understand the circumstances around their childhood experiences.

## APPENDICES - continued

### D - Public access to survivor records and testimonies

- 21. In my view personal records and testimony of survivors, given to any commission or redress board, should only be made publically available with the consent of the survivor.**
22. Many of us would have given the most intimate details about abuse (sexual or otherwise), and about our personal experiences we would rather forget. The thought of this being released to the public without our consent is abhorrent even if it is 75 years away. Some of us may not even want our families to see it, ever.
23. As far as I am concerned when I gave testimony to the MBH commission it was given in confidence. I had no expectation that it would ever be released to the public. If I sign a contract I don't expect some subsequent law to change my agreement or if I make a will I would not expect a law to be passed subsequently to have the effect of changing my decision.
24. However, I fully understand the public interest and value in learning from our experiences. Like many survivors, I have been calling for memorialisation and a centre to hold survivor histories<sup>5</sup>. The Collaborative Forum and the Ryan Report also called for memorials to survivors.
25. If the government would at least honour these pleas I would be willing to work with and offer my records and testimonies to an appropriate and sensitive archive or museum. Other survivors may wish to do this at a time of their choosing and under a survivor designed process working along with archival experts and historians and social scientists etc., supported and funded by the State.
26. The format of any record disclosed in public could include anonymization with caveats and perhaps timelines for removal of anonymity. If survivors are involved in the design of this process it would give more assurance that the Archive is run in line with their wishes. Anonymity would clearly make it easier for me to deposit my personal information and records, for example my medical records would show my medical condition as a child in the institutions or the extent of racial profiling recorded by people who are 'in charge' etc. But my name would not be disclosed. There could be a time capsule outside which anonymity could be removed with the written agreements from survivors or their family if deceased. Ethical protocols would need to be in place about the whole process.
27. This sentiment about records was reflected in the recent survivor Consultation Report prepared by Barbara Walshe and Catherine O'Connell for the Dept. of Education in which it stated in the section on 'Remembering and Honouring Survivors' there is a need for a "*place of learning and information and should contain the records, photographs, books, films and documentaries for the families of future generations of survivors and for society*"<sup>6</sup>.
28. Some weeks ago I visited the 'National Folklore Collection' in UCD and met with the Archivist Críostoír Mac Cárthaigh. He worked with Dr Emile Pine on a Survivors' Stories series - a collaboration between the Christine Buckley Support Centre, Dr Emile Pine and the National Folklore Collection to record and preserve stories of survivors of residential

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<sup>5</sup> <https://www.thejournal.ie/readme/im-a-former-child-resident-of-a-mother-and-baby-home-we-want-truth-and-justice-3396783-May2017/>

<sup>6</sup> <https://www.education.ie/en/Publications/Education-Reports/consultations-with-survivors-of-institutional-abuse-on-themes-and-issues-to-be-addressed-by-a-survivor-led-consultation-group.pdf>

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institutions for women & children in Ireland. It is a collection of 16 volumes of oral history, each volume is the recorded story of one person who was interviewed. There were a range of people who contributed, the majority of them had been incarcerated as children in Industrial Schools, some had stories of mother and child institutions as well, and one a laundry.

29. The Archivist explained to me that there are strict ethical guideline in place to collect and manage the archive and its sensitive survivor information. I read through many of these testimonies and I felt that the National Folklore Collect have started something that could grow into something similar to Canada's National Research Centre at Manitoba University<sup>7</sup> which archives records relating to the Indian Residential Schools. This is something I would feel comfortable with contributing to if the Irish State were to support it as recommended in the Ryan Report.
30. The Retention of Records Bill stops any opportunity for survivors today to engage with the public through use of the personal records collected by the Commissions of Investigation. I believe the nation is losing a valuable account of its past. The State needs to engage honestly with the owners of these personal records, which are of significantly more value today than in 75 years.

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<sup>7</sup> <http://nctr.ca/archives.php>

## APPENDICES - continued

### E - Public access to administrative records

- 31. In my view all records associated with the management and operation of these state institutions as well as those run by religious congregations should be available to the public.**
  
32. Many of us are well aware that children were often held in institutions because of the capitation grants system, which acted as an economic incentive to keep child numbers up. This was reported in both the 1970 Kennedy Report and the 2009 Ryan Report. This may have played a part in my own prolonged incarceration.
  
33. We need to understand these inhumane systems and allow researchers and academics access to study them so we can all learn. To this end the administrative and financial records are vitally important and we should not hide away from the truth by sealing these records away for an unnecessarily long period of time.
  
34. The Congregations who ran these Industrial Schools and other institutions were in fact agents of the state. Management were funded by the state through the capitation grants process. For this reason I believe all records held by Congregations should be open to the public. In addition, any testimony or statements given to the Commissions of investigation should also be open to the public. However, information/statements /testimony given by a member of a congregation relating to a particular survivor should be deemed to be the property of that survivor and should not be disclosed unless consent of the survivor has been given. A survivor should be able to access this information as a subject matter request.

## APPENDICES - continued

### F - Archiving records

35. **In my view it is not appropriate that records of the relevant bodies should be “deemed” to be records of the Department of Education** (R of R Bill 2019 para 3(1) a).
36. The Department of Education were responsible for the Industrial schools and were heavily criticised in the Ryan Report 2009 for its deference to religious congregations. Stating that “*The deferential and submissive attitude of the Department of Education towards the Congregations compromised its ability to carry out its statutory duty of inspection and monitoring of the schools*”<sup>8</sup>.
37. I find it ironic and somewhat disconcerting that the same Government Department is proposing records, associated with its own past area of responsibility, be “sealed” for 75 years. This is not to cast aspersions on current members of that department, it’s simply to point out the state’s inappropriate responses to the issue of accountability.
38. The records and testimonies are not the property of any department. They belong to the survivors and those who provided the evidence.
39. All records should be held for safe keeping by an independent body, possibly a statutory body which would house a ‘one-stop-shop’ archive of all residential institutions records. **There is a call by survivors in the Collaborative Forum First Report for records in general, associated with Institutions, to have a separate and centralised body**<sup>9</sup>. Non personal Institutional records such as administrative and financial records should also be housed in this central archive.
40. **There is also a call in the Collaborative Forum’s First report (recommendation 2.15) for a central Minister or Representative for Survivors who could act as an advocate for Survivors** interests and dealing independently with issues such as this Retention of Records Bill and other important legacy issues as they emerge. For example in Northern Ireland there is a post called the Commissioner for Victims and Survivors<sup>10</sup>.
41. The point I make is that **there is no overall strategy concerning Survivors legacy** (Ryan, Magdalen Laundries and Mother & Baby Institutions) **which should include a consistent strategy/policy for the Records of all residential Institutional investigations which reflects the wishes of survivors**. It concerns me that steps taken are done in a piecemeal fashion and this Retention of Records Bill is a classic example of this fragmented and short-sighted jigsaw.
42. Why does the State continue to ignore examples of how Records and histories are preserved and managed, within a human rights framework, in other countries that are dealing with similar issues of survivors of residential institutions?

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<sup>8</sup> <http://www.childabusecommission.ie/rpt/04-06.php>

<sup>9</sup> <https://www.gov.ie/pdf/?file=https://assets.gov.ie/25774/085e9ecf9bb4495c94b8a21b4c143998.pdf#page=1>

<sup>10</sup> <https://www.cvsni.org/what-we-do/conferences/2016/march/conference-on-the-review-of-the-strategy-for-victims-and-survivors-2009-19/>

## **APPENDICES - continued**

### **G - Raising awareness and acknowledgment**

43. It is well known that telling the truth has a special healing effect which is why several countries with similar experiences of institutional abuse have set up research centre ad centres of learning.
44. I believe there is a public expectation that we learn from our dark past which is why these records are so important so that they can be used in research and feed into the national curriculum. This will ensure the next generation lean and future generation never forgets.
45. The act of acknowledgment has only happened at a State level and I believe we need to start deepening this by setting up the museums and research/learning centres as soon as possible. There is absolutely no reason we need to waiting 75 years to open up these records. But the State needs to have the courage to work with survivors in an atmosphere of consent and compassion.