

Obligation to Provide Information

This fact sheet is intended for the *data controller*; i.e. the party that uses other individual's personal data for his own purposes.

THIS FACT SHEET WILL ANSWER THE FOLLOWING QUESTIONS:

Which information are you obliged to provide data subjects with?

When should you provide data subjects with certain information?

How must the information in question be provided to data subjects?

Which exceptions apply to the obligation to provide information?

Where should data subjects direct their questions and/or complaints?

Which other rights do data subjects have?

Perhaps, as an employer, you submit data pertaining to your employees to a health and safety executive. Or perhaps you would like to inform subscribers of your new products. You are obliged to inform your employees or subscribers of any use made of their data. The Wet bescherming persoonsgegevens (Wbp) [Dutch Data Protection Act] contains regulations on the provision of information to the individual whose personal data you are using (hereinafter the data subject). On a number of points, these regulations distinguish between the situation in which data are obtained from the data subject himself and the situation in which data are obtained through other means.

Extent of the obligation to provide information

You must inform the data subject of your identity and of the purpose or purposes for which you are collecting the data in question. In some situations, you will be obliged to provide the data subject with additional information on the use of his personal data:

- The data subject's expectations. Where the use to be made of the personal data is different to that which the data subject can reasonably expect, this may give reason to provide him with additional information. For example, where a data subject does not expect that you will disclose personal data to the police, on an incidental basis and when requested to do so, you must inform the data subject of this specific possibility. For more information on the disclosure of data to the police, please see the fact sheet entitled *Als de politie u vraagt persoonsgegevens te verstrekken* [If the Police Request the Disclosure of Personal Data].
- The circumstances in which you obtain data. Where you obtain personal data from another organisation, your obligation to provide information may be greater than would have applied had you obtained the data directly from the data subject himself. After all, the data subject is not always aware that the other organisation has disclosed his data to you. This would apply, for example, in a situation where you obtain data on someone's creditworthiness from a credit agency.
- The purpose or purposes for which you intend to use data. Additional information may be necessary, depending on the consequences resulting for the data subject from your use of his data.
- The nature of the data. The more sensitive the nature of the data pertaining to the data subject, the greater the reason to inform him of your intended use in more detail. For example, you may be obliged to provide parents of an underage patient with additional information.

When to provide information

You must inform the data subject prior to the time at which you receive the data pertaining to him. Naturally, you will only be able to do this in situations where you obtain the data in question from the data subject himself. This would apply, for example, when a data subject includes personal data in a form and sends this form to you.

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The titles in italics are also available on www.cbpreweb.nl.

In situations where you obtain data from another organisation, you must inform the data subject of this fact when recording the data obtained. Where you are only collecting the data in question for disclosure to a third party, you must inform the data subject accordingly, no later than the time of your first disclosure to the third party in question.

How to provide information

Information must be provided in such a manner that the data subject is actually able to gain access to it. For example, in situations where you obtain data from the data subject himself, you could include the information in the form to be completed by the data subject. Where the data subject provides you with his data via your website, it will be sufficient to make a clear reference to your privacy statement, in which you indicate the use made of personal data.

Where you have obtained data via third parties and a limited number of data subjects are involved, you must inform the data subjects in question personally. Where a large group is concerned, you may provide the information required via a newspaper or magazine, for example. However, you must ensure that each member of the group receives the information in question. Since national newspapers and free local papers are not read by everyone, an advertisement in these forms of media will not always be sufficient.

When providing information to data subjects, you could also refer to any notification issued by you to the Dutch Data Protection Authority (Dutch DPA) [College bescherming persoonsgegevens (CBP)] on your use of personal data. Any notification issued to the Dutch DPA must include the purposes for which data are used and the recipients of the data in question. All such notifications are available in the *public register*. Please note that you are not obliged to include the relevant notification number when providing information to the data subject.

Exceptions to the obligation to provide information

You will not be required to inform data subjects in situations where they are already aware of the information in question. However, it will not be sufficient for you to presume the data subject's awareness. You must be certain that this is the case. However, you may assume that the data subject is aware once information has been sent or issued to the data subject in question. You will not be obliged to check whether or not a data subject has actually read the information provided.

In situations where you as an employer provide the health and safety executive with data pertaining to an employee in the event of his illness, it will not be necessary to inform the data subject of this fact each time he reports ill. It will be sufficient to provide the employee with a general information brochure, information in the employee handbook or information upon the appointment of the data subject.

You will not always be obliged to inform the data subject when you obtain data through means other than the data subject himself. It may cost a disproportionate level of effort to contact someone. This would apply, for example, where it would be extremely time-consuming to retrieve a data subject's address. In this case, you will not be obliged to inform the data subject. However, you must record the origin of the data obtained. A data subject may already have been informed of the disclosure of his data by the organisation from which you receive the data pertaining to him.

In addition to the above, you will not be obliged to comply with the obligation to provide information where, for example, it is essential that you do not do so in the interests of the prevention, investigation and prosecution of criminal offences, or for the protection of the rights and freedoms of others.

If the data subject has questions or complaints

The data subject's first course of action must always be to approach you with any questions or complaints he may have. Where you are unable to resolve these together, the data subject will be able to submit his questions or complaints to the Dutch DPA. For information on mediation by the Dutch DPA, please see the fact sheet entitled *Mediation by the Dutch DPA in Respect of Your Data Processing* [Bemiddeling door het CBP inzake uw verwerkingen]. For information on the Dutch DPA's handling of complaints, see the fact sheet entitled *Dutch DPA Complaints Handling* [Klachtenbehandeling door het CBP].

Other rights available to the data subject

In addition to the right to information, data subjects also have the right to access their personal data, request the supplementation, correction, erasure or blocking of their personal data (this is the right to correction) and lodge objections. For information on these rights, please see the fact sheet entitled *Data Subjects and their Rights* [Rechten van de betrokkene].