



## Providing Access to Personal Data

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:

What does the right to access entail?

How should requests for access be submitted?

What is the scope of a data subject's right to access?

Under what conditions will a data subject gain access to his data?

In what cases may you refuse a request for access?

How may you deal with a request for access in practice?

Where should data subjects address their questions or complaints?

Which other rights do data subjects have?

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The titles in italics are also available on [www.cbpweb.nl](http://www.cbpweb.nl).

Perhaps you regularly send direct mail to individuals that are not familiar with your company and who would like access to their data. Or perhaps one of your employees would like to know which information is held in his employee file. Or perhaps you are approached by the parents of one of your pupils, who would like to have access to their son or daughter's pupil file. Under the *Wet bescherming persoonsgegevens (Wbp)* [Dutch Data Protection Act], data subjects are entitled to access to their personal data and its use by a company or institution.

### The right to access

An individual whose data are being used (hereinafter the data subject) is entitled to access to his personal data. The data subject is not obliged to indicate why he wishes to have access to his data. You are obliged to respond to his request in writing or by e-mail within a period of four weeks. If a data subject requests access to his data, you must inform him in a clear and comprehensible manner which data is being used, the purpose for which it is being used and to which parties, if any, his data has been disclosed. Where possible, you must also inform the data subject where you obtained his data.

Costs resulting from handling the request for access may be charged to the data subject. You may charge a fee of €0,23 per page with a maximum of €4,50. This fee is laid down by law in the *Besluit kostenvergoeding rechten betrokkene Wbp* [Individual Reimbursement Decree with the Wbp].

Besides the *Wbp* also the *Wet op de geneeskundige behandelingsovereenkomst (Wgbo)* [Medical Treatment Contracts Act] can apply when giving access to a medical record. You can find more information on the right to access, as laid down in the *Wgbo*, in the fact sheet *Rechten van uw patiënt* [The Rights of your Patients].

### How to submit requests for access

In practice, where requests for access are to be submitted to a government body, these must be made in writing or by e-mail. The Dutch Data Protection Authority (Dutch DPA) [College bescherming persoonsgegevens (CBP)] recommends that data subjects adopt the same approach for all other types of organisation.

### Scope of the right to access

The right to access arising for data subjects under the *Wbp* extends solely to access to data pertaining to the individual data subject. If you use personal working notes as a reminder, these notes do not fall within the scope of the right to access. However, if these notes are subsequently added to a file or disclosed to third parties, the data subject will be entitled to access to these notes, too. For those cases where you are requested to disclose data to third parties, please see the fact sheet entitled *Disclosing Personal Data* [Verstrekken van persoonsgegevens].

### Conditions applicable to access

Obtaining access is subject to the following conditions:

1. You must be able to establish that the data subject is the person to whom the personal data pertains. This is to prevent others from accessing another person's data by using that person's name. The identity can be established on the basis of a driving licence, passport or other identity document.

2. A data subject will only be able to submit a request for access if he is older than 16 and has not been placed under guardianship. Where a data subject is unable to submit a request for access himself, the request must be made by his legal representative (a parent, for example) and the response should be addressed to that representative.

### **Reasons for refusal**

You may refuse to comply with a request for access in the following four cases:

1. in order to prevent, detect and prosecute criminal offences. For example, the Social Security Fraud Department or a private detective agency may refuse access in the interest of the investigation;
2. in case of weighty economic and financial interests on the part of the state and other public bodies;
3. in order to supervise compliance with statutory regulations laid down to enable the detection and prosecution of criminal offences or to safeguard weighty economic and financial interests on the part of the state and other public bodies;
4. if this is necessary for the protection of rights and freedoms of other parties, including your own. In exceptional cases you may invoke this ground if you can demonstrate that the administrative burden will be increased to such an extent as to affect or threaten to affect your rights and freedoms.

You must be able to substantiate a refusal. You must be able to demonstrate that the matter was given careful consideration. This means that you must balance your own interest against the data subject's interest and rights when refusing a request for access.

### **Practical effects of right to access**

You may:

- provide a data subject with copies of all documents pertaining to him where paper files are concerned. In principle, these include reports of meetings and (telephone) notes that concern the establishment and implementation of a (contractual) relationship between you and the data subject, since these documents may contribute to the way in which he is assessed or treated in social and economic life;
- give a data subject a clear paper overview/printout of the data in the case of automated processing, i.e. digital files. If no such overview is provided, the data subject will be entitled to access to the electronic form, which he can use to make printouts himself. Listening to recorded telephone conversations may also fall within the right to access. The overview should enable the data subject in any case to exercise his right of correction. For more information on the right of correction, please see the fact sheet entitled *The Correction of Personal Data* [Het bieden van correctie];
- ask a data subject to make his request for access more specific if you have a considerable quantity of information on him;
- in highly exceptional cases, ask a data subject to inspect his file in situ. This would apply, for example, in cases where a file is very extensive and copying would take a disproportionate amount of time and effort on your part;
- refuse a data subject access to part of his data. This may be necessary, for example, in order to safeguard information about another person contained in a social services' file held on the data subject. If this person is likely to object to the provision of access to the data subject, you must give this individual the opportunity to state his views before allowing access;
- initially refuse to provide a data subject with copies that are already in his possession. This may concern copies of agreements and copies of correspondence, for example. In that case, you may restrict yourself to providing a list of the documents contained in the file. However, if the data subject indicates that he still wishes to have a copy, this copy should be provided after all;
- grant a data subject access to his file in situ only, in the event that the data subject requests access to a police register. This has been provided for by law. For more information, see the fact sheet entitled *Uw gegevens bij de politie* [Your Data Held by the Police] (this sheet is aimed at the data subject).

### **If the data subject has any 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. If you are a government body and you refuse to comply with a request for access or fail to respond in time, this will constitute a decision within the meaning of the Algemene wet bestuursrecht [General Administrative Law Act]. In that case, you must point out to the data subject that he can file an objection or lodge an appeal. 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 access, the data subject is entitled to request to supplement, correct, erase or block his data (this is the right to correction) and to lodge an objection. More information on exercising these rights can be found in the fact sheet entitled *Data Subjects and their Rights* [Rechten van de betrokkene].