

Disclosing Data From the Membership Records

This fact sheet is intended for association *members* and association *management*.

THIS FACT SHEET WILL ANSWER THE FOLLOWING QUESTIONS:

When is an association permitted to disclose data to individuals within the association?

In which situations may data be disclosed to individuals or companies outside the association?

When may an association disclose data for direct marketing purposes?

Which consequences does an exemption from the obligation to notify the Dutch DPA have for the disclosure of data?

Which rights do members have?

Number 30, March 2004

This information is also available on www.cbppweb.nl.

Associations hold various kinds of personal data on their members, such as their names and addresses. In general, associations will have obtained this data in confidence. For this reason, this data may not simply be disclosed to the association's sponsor, for example, and membership lists may not simply be published on the Internet. In short, associations must comply with a number of conditions. These conditions are described in the Wet bescherming persoonsgegevens (WBP) [Dutch Data Protection Act].

Disclosure to individuals within the association

In associations, membership lists are often disclosed to all members. In a sports club, for example, this would be done in order to enable members to contact each other for sports activities. This will only be permitted where customary within the club in question and agreed upon during a meeting of the club's members.

Naturally, there will be a number of people within the association that will have to receive data from members in order to ensure the association's smooth running. For example, a treasurer will need certain data if he is to be able to collect membership contributions.

Disclosure to individuals or companies outside the association

The disclosure of data to individuals or companies outside the association (a sponsor, for example) will be permitted where the association has requested its members' consent in this respect. An association may also be legally obliged to do this. For example, under Section 47 of the Algemene wet inzake rijksbelastingen [State Taxes Act], the tax inspector may request that an association provide him with all data relevant for taxation purposes.

Where activities are concerned that are customary for the association in question or which have been approved during a meeting of the association's members, the association will not be required to obtain the explicit consent of its members.

Disclosure to third parties for direct marketing purposes

Associations may also disclose data to companies for direct marketing purposes. They will only be permitted to do this where their members have been given a reasonable period of time in which to lodge their objection to a disclosure of this nature.

Once a member lodges an objection, an association must always immediately cease the use of his data for direct marketing purposes. The member will not be required to explain the reason for his objection and the association will not be permitted to request payment from the member for responding to his request. An association may inform its members of the disclosure proposed and the opportunity for members to lodge their objections to this via the club magazine or the association's Internet site.

An example of permissible disclosure for direct marketing purposes is the Royal Netherlands Football Association (KNVB), which is permitted to sell data from its membership database for commercial purposes. It is able to do this since it has included this type of disclosure in the object underlying the membership records. This object was laid down in a general members' meeting for amateur football. During the members' meeting, it was decided to make personal data available for commercial purposes. The KNVB offers its members the opportunity to lodge objections to disclosure. Members are reminded of this opportunity on an annual basis, via the members magazine.

Notification and exemptions

Except where an exemption applies, the Dutch Data Protection Authority (Dutch DPA) [College bescherming persoonsgegevens (CBP)] must be notified of the processing of personal data. The exemptions applicable are laid down in the *Vrijstellingsbesluit* [Dutch Data Protection (Exemptions) Decree]. In general, membership records fall under Article 3 of this decree. You can assess this yourself against the requirements stated in this Article. In any event, associations must notify the Dutch DPA of its membership records where their members have not been given the opportunity to lodge their objection to the proposed disclosure of their data for direct marketing purposes or where an association wishes to retain member data for a period in excess of two years.

The *Vrijstellingsbesluit* gives an indication of the parties to which an association is able to disclose data, and in which situations. However, associations will always be required to comply with the general stipulations of the WBP. Amongst other things, an association must have grounds for the disclosure of data, it will be required to protect the personal data obtained by it and it must inform its members of the disclosure proposed. An association will not be required to inform its members as referred to above where it is subject to a statutory obligation to disclose data. For information on the notification of the Dutch DPA and exemptions, please see the fact sheet entitled *Melden en vrijstellingen* [Notification and Exemptions].

Other rights for members

Besides the right of objection arising for employees in respect of direct marketing, members will also be entitled under the WBP to information on their personal data and also to access, supplement, correct, erase and block said data. Also see the fact sheet entitled *Data Subjects and Their Rights* [Rechten van de betrokkene]. In addition, members can lodge complaints with the association in question where they feel that it has disclosed their data to a third party without good reason. Also see the fact sheet entitled *Your Complaint and the Dutch DPA* [Uw klacht en het CBP].