

## Recording Your Telephone Calls in the Workplace

This fact sheet is intended for the *data subject*, i.e. the individual whose personal data is being used.

THIS FACT SHEET WILL ANSWER THE FOLLOWING QUESTIONS:

On which grounds is the recording of telephone calls permitted?

What is a legitimate interest?

Which conditions will your employer be required to meet?

Which role do Works Councils play?

Should the Dutch DPA be notified of any monitoring?

Which rights do you have?

What can you do if you would like to know more or have a complaint?

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This information is also available on [www.cbpreweb.nl](http://www.cbpreweb.nl).

Perhaps your employer is planning to record employees' telephone calls in his company or institution (hereinafter: organisation). Unless your employer complies with a number of conditions, this will not be permitted. In the workplace, employees are entitled to limited use of the telephone for private communication. Employers must ensure that the privacy of these contacts is safeguarded. Listening in to telephone calls does not fall within the scope of the Wet bescherming persoonsgegevens (WBP) [Dutch Data Protection Act] and, as such, will not be discussed in this fact sheet. The situation in which a private individual records his telephone calls with an organisation does not fall within the scope of the Act either, since the individual is using the recordings made solely for personal purposes.

### Grounds for recording telephone calls

Telephone calls may only be recorded where essential for the protection of your employer's legitimate interest. However, your employer will be required to perform a privacy assessment, in which your interests and rights must be considered in relation to your employer's interest in the recording of telephone calls. Your employer will be expected to be able to substantiate his reasons for the above to you, the Works Council and, possibly, the Dutch Data Protection Authority (Dutch DPA) [College bescherming persoonsgegevens (CBP)] or a court of law.

### Legitimate interest

The telephone is an indispensable part of modern business communications. For example, financial transactions are concluded via the telephone, as does much information transfer. In some cases, it may be necessary to record business telephone calls. This would apply when seeking to improve the quality of the telephone service provided by employees in a call centre. Recordings can also be used as evidence where an employee is suspected of fraud or when dealing with a customer's complaint. However, your employer must have a sufficiently legitimate interest for the above and consider whether other, less drastic methods could be used to achieve the same goal.

### Conditions and limitations

Where there is reason to believe that an employee or group of employees is breaking certain rules, the targeted monitoring of business telephone calls will be permitted for a (short) fixed period of time. In principle, monitoring will be limited to telecommunications traffic data. These are data that provide information on who has made telephone calls, when and with whom. Content may only be monitored where absolutely essential.

The secret recording of telephone calls will only be permitted in the event of (bomb) threats and in situations where punishable behaviour is suspected, such as the disclosure of business secrets. Your employer may only make such recordings where a less drastic alternative (the introduction of preventive measures, for example) is no longer possible. If secret recordings are being made, your employer must ensure that adequate safeguards are put in place. This includes the prevention of wrongful access to recordings and the introduction of a procedure resulting in the automatic destruction of recordings where no punishable behaviour is found to be the case.

In general, the telephone calls recorded should not be kept any longer than necessary, preferably for a period of six months or less.

The continuous recording of telephone calls is essential in some forms of service provision. In the case of telephone stock market orders, for example, the essential proof of the conclusion of an agreement cannot be gained by any other, less onerous means. However, steps must be taken to ensure that the recordings made are not used for any other purposes, such as staff coaching or assessment.

Your employer must inform you that calls will be recorded; this could be achieved by means of a sound signal at the start of each recording, for instance. Given this requirement, it will not be sufficient to merely inform employees of the above upon the commencement of their employment with the company. In general, customers must also be informed that calls will be recorded for the purpose of complaint settlement or evidence.

In principle, the telephone calls made by Works Council members, company doctors and other members of staff with a position involving confidentiality will not be monitored. For more information on the conditions applicable to the recording of telephone calls in the workplace, please see the report entitled *Als de telefoon wordt opgenomen* [Recording Telephone Calls].

### **The role played by Works Councils**

According to the provisions of the Wet op de ondernemingsraden [Works Councils Act], Works Councils have a right of consent with regard to the decision to introduce a staff monitoring system *and* in regard to the corresponding privacy rules. Therefore, employee telephone calls may only be recorded with the consent of the Works Council. Where an organisation does not have a Works Council, employees must always be informed of the purposes for which and the situations in which calls will be recorded. An employer that wishes to record telephone calls on an incidental basis must discuss this with the Works Council. When exercising its right to consent, a Works Council may consult the brochure entitled *Privacy: Checklist voor de ondernemingsraad* [Privacy: checklist for Works Councils]. This checklist will be useful to Works Councils in their efforts to achieve an appropriate level of privacy protection within the organisation.

### **Notifying the Dutch DPA of call monitoring**

One of the obligations arising for companies and organisations under the WBP [Dutch Data Protection Act] is to notify the Dutch DPA of the automated processing of data. As a rule, companies and organisations will not be required to notify the Dutch DPA of non-automated processing. A number of types of data processing are exempted from the notification obligation. For example, Article 34 of the *Vrijstellingsbesluit* [Dutch Data Protection (Exemptions) Decree] exempts personal data processing effected due to the use of communication equipment made available to employees. Where processing is used with a view to employee assessment or performance measurement, for example, an exemption will not be possible.

### **Your rights**

Pursuant to the WBP, you are entitled to information on your personal data and also to the access, supplementation, correction, removal and blocking of said data. You are also entitled to lodge an objection to the use of your data by an organisation. For information on how to exercise your rights, please see the fact sheet entitled *Data Subjects and Their Rights* [Rechten van de betrokkene].

### **If you have any questions or complaints**

Your first course of action should always be to contact your employer about any questions or complaints you may have. For information on your rights in the event of disputes, please see the fact sheet entitled *Mediation by the Dutch DPA in Respect of Your Data* [Bemiddeling door het CBP inzake uw gegevens]. If you believe that your personal data has been used wrongfully and your employer fails to respond to your complaints, or fails to do so to your satisfaction, please refer to the fact sheet entitled *Your Complaint and the Dutch DPA* [Uw klacht en het CBP] for information on the subsequent actions open to you.