

Data Subjects and Their Rights

This fact sheet is intended for both the *data controller*, i.e. the party that uses other individual's personal data for his own purposes, and the *data subject*, i.e. the individual whose data is being used.

THIS FACT SHEET WILL ANSWER THE FOLLOWING QUESTIONS:

What does the obligation to provide information entail?

What does the right to access entail?

What does the right to correct, supplement, remove or block entail?

What does the right to object entail?

How can data subjects exercise their rights?

Number 12, February 2007

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

The Wet bescherming persoonsgegevens (Wbp) [Dutch Data Protection Act] contains rules on what is allowed and what is not when personal data is at issue. This Act specifies the rights of a person whose personal data is being used (hereinafter the data subject). The Wbp also states the duties of a company or organisation that uses the personal data of the data subject for his own purposes (hereinafter: organisation).

Right to information

The data subject must be able to ascertain how his data is being used. As such an organisation must inform the data subject of its name and address and of the reasons underlying the collection of his data. The Wbp distinguishes two situations:

1. Where data is collected directly from a data subject, he must be informed of this beforehand. An organisation will not be required to notify the data subject where the latter is already aware that this data is collected. For example, an organisation obtains personal data from the data subject himself where a personal data form is to be completed when entering into a contract. The organisation can then comply with its obligation to provide information via the form to be completed.
2. An organisation must also inform a data subject as described above when data is recorded without the involvement of the data subject, or where data is collected solely in order to disclose it to a third party. In the latter situation, the organisation must inform the data subject of its disclosure of data before or at the same time as this data is first disclosed to the third party in question. This will not apply where notification is not possible, or where this would only be possible with disproportionate effort on the part of the organisation. Disproportionate effort will apply where an organisation is only able to ascertain the address of the data subject by means of extremely time-consuming efforts on its part. However, where this is the case, an organisation must record the origin of the data concerned, enabling the data subject to ascertain the use made of his data in retrospect. Another exception to an organisation's obligation to notify the data subject applies in situations where an organisation records or discloses the data in question pursuant to a statutory obligation.

More information on the obligation of an organisation to provide information can be found in the fact sheets *Right to information* [Uw recht op informatie] (this fact sheet is intended for data subjects) and *Obligation to provide information* [Informatieplicht] (this fact sheet is intended for organisations).

Right to access

A data subject has the right to request access to his data and its use by an organisation. A data subject can ask an organisation whether it is using his personal data. Where this proves to be the case, the organisation will be allowed a period of four weeks in which to provide the data subject with an overview of the data used. It must also provide information on the reasons underlying the processing of the data subject's data, the recipients of the data and, where available, the source from which the data was obtained. When providing the above information, the organisation may request a contribution towards the costs involved, subject to a maximum of €4.50.

Where an overview also contains data pertaining to a third party, which third party is likely to object to the provision of the overview to the data subject, the organisation must give the third party in question the opportunity to state its views.

An organisation may refuse a request for access where necessary, for example where this is in the interest of the prevention, investigation and prosecution of offences, or in order to protect the rights and freedoms of others. For more information on your right to access, please see the fact sheets entitled *Right to Access to your Personal Data* [Inzage in uw persoonsgegevens] (for data subjects) and *The Provision of Access to Personal Data* [Het geven van inzage in persoonsgegevens] (for organisations).

Right to correction

Further to his access to his data, the data subject may request that the organisation in question correct, supplement, erase or block his data. This will be possible in situations where the data being used by the organisation is factually inaccurate, incomplete or irrelevant to the purpose or purposes for which processing is intended. The organisation must respond to requests submitted by individual data subjects within a period of four weeks.

Where an organisation complies with a request submitted to it, the other organisations to which the (incorrect) data was disclosed during the course of the previous year must also be informed of the changes made, except where this is impossible or would require an unreasonable effort on the part of the organisation. The organisation must inform the above organisations of the changes made as soon as possible. You can find more information on your right to correction in the fact sheets *The Correction of your Personal Data* [Correctie van uw persoonsgegevens] (for data subjects) and *The Correction of Personal Data* [Het bieden van correctie] (for organisations).

Right to object

The right to object entails that a data subject has the right to object (lodge an objection) to certain forms of use made of his data by an organisation. Two forms of objection are possible:

1. A data subject may lodge an objection against the use of his data for direct marketing purposes. The organisation in question must then stop this use immediately in all cases. The data subject is not obliged to provide any reasons for his objection and the organisation will not be permitted to request payment for dealing with a request of this nature. Any organisation that uses personal data for direct marketing purposes must inform the data subjects in question of their right to object. More information on this kind of objection can be found in the fact sheets *Your right to object to Direct Marketing* [Uw recht van verzet bij direct marketing] (for data subjects) and *The Right to Object in Relation to Direct Marketing* [Recht van verzet bij direct marketing] (for organisations).
2. In several cases, a data subject is able to lodge an objection in connection with special personal circumstances. For instance a patient has participated in a medical research programme. The research results are collected in a central database. Afterwards he learns that an acquaintance of his works as a researcher in the place where this central database is situated. He prefers to hide his illness from his acquaintance and therefore has every interest in getting his data removed or kept in a form which no longer permits identification. In this case he can lodge an objection. The organisation in question will be allowed a period of four weeks in which to decide whether to cease processing the data subject's data or to continue processing this data where it feels it has good reason to do so. The organisation may request an amount of up to €4.50 for handling the data subject's request. This amount must be returned to the data subject if the organisation accepts his request.

Exercising rights

Data subjects may use the model letters (in Dutch) developed by Dutch Data Protection Authority (Dutch DPA) [College bescherming persoonsgegevens (CBP)] when wishing to exercise their rights. Where an organisation fails to respond to a request from a data subject within four weeks, or fails to do so to the data subject's satisfaction, see the fact sheet entitled *Mediation by the Dutch DPA in Respect of Your Data*

[Bemiddeling door het CBP inzake uw gegevens] for details of the action open to the data subject in question.

Where a data subject has a complaint that does not concern his ability to exercise his rights, but the use being made of his data, he will be able to submit this complaint to the Dutch DPA. For more information on the submission of complaints to the Dutch DPA and the Dutch DPA's complaints handling, see the fact sheets entitled *Your Complaint and the Dutch DPA* [Uw klacht en het CBP] (for data subjects) and *Complaints Handling by the Dutch DPA* [Klachtenbehandeling door het CBP] (for organisations).