



Your Employee File

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 what grounds are employers permitted to create employee files?

Which conditions must be observed by your employer when processing your employee data?

Which data may be held in an employee file?

Which rules apply to the processing of data pertaining to applicants?

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

Which other rights do you have?

In the framework of their employment relationship with staff, employers process a large quantity of personal data relating to employees. This data is often stored in employee files. When holding data of this nature, employers are subject to various obligations imposed on them through legislation and regulations. For example, under the Burgerlijk Wetboek [Netherlands Civil Code] an employer must show itself to be a ‘good employer’, one aspect of which is respect for the privacy of employees. This fact sheet uses the Wet bescherming persoonsgegevens (Wbp) [Dutch Data Protection Act] to answer questions such as: Which data may be held in an employee file and what are the stipulations regarding the protection of personal data when screening future employees? The question “To whom and in what situations are you permitted to disclose employee data to third parties?” is covered on the fact sheet entitled *Disclosing your Employee Data* [Verstrekken van uw personeelsgegevens].

Grounds for employee files

The processing of personal data for employee files is permitted where necessary in the framework of the performance of a employment contract or an appointment as a civil servant under public law.

Conditions applicable to the processing of employee data

The following obligations, amongst others, arise from the Wbp:

- your employer is responsible for the accuracy and exactness of the data held on you in its staff records;
- data held on you in an employee file must be adequate, relevant and not excessive, given the purpose for which they will be processed;
- your employer is obliged to inform you as to the purposes for which he/she/it collects data relating to you. For further information, please see the fact sheet entitled *Your right to Information* [Recht op informatie];
- your employer must ensure that the appropriate technical and organisational measures are put in place to protect your personal data against loss or any form of unlawful processing. For more information, please see the brochure entitled *Doe het zelf met privacy* [Privacy DIY];
- your personal data may only be retained while necessary for the achievement of the purposes for which it was collected, or for which it is subsequently used. For more information, please see the fact sheet entitled *Bewaartermijnen van uw persoonsgegevens* [Retention Periods for your personal data];
- your employer must offer you the opportunity to access and, if necessary, correct your data. In principle, the right to access applies for the employee file as a whole. For more information, please see the fact sheet entitled *Data Subjects and Their Rights* [Rechten van de betrokkene].

Content of employee file

In principle, the only data permitted in an employee file is the data necessary for the purpose for which the employee file has been created. Article 7 of the *Vrijstellingsbesluit* [Dutch Data Protection (Exemptions) Decree] indicates the sub-goals and data applicable in this respect. Data such as complaints, warnings, absenteeism, appraisal interviews and personal working notes made by your immediate manager may be held in an employee file.

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

By virtue of Article 55, paragraph 3 of the Wet Structuur uitvoering Werk en Inkomen (SUWI) [Work and Income (Implementation Structure) Act], your employer is required to hold a copy of your identity document. In principle, your employer is not entitled to include any medical data in your employee file. In the framework of reintegration and absenteeism management, your employer must limit the data included in employee files to information on the functional limitations of an employee on sick leave and the corresponding modifications required on the work floor (a modified chair, for example). For more information, please see the study entitled *De zieke werknemer en privacy. Regels voor de verwerking van persoonsgegevens van zieke werknemers* [The Sick Employee. Rules for the Processing of Personal Data of Sick Employees].

Applicant data

Should the employer wish to seek additional information (screening) in relation to applicants for a position of employment, the prior consent of the applicant must be obtained. In the majority of cases, screening involves checking the information given on the applicant's CV and seeking employment references. For each individual case in which screening is carried out, the employer should carefully consider what data is actually of relevance to the position being applied for and how these can be obtained. The reason for this is that personal data may actually only be used in so far as they are relevant. This means that in the case of an administrative assistant, for example, extensive screening is not required. For positions that will involve handling large amounts of money or confidential information, however, an employer is entitled to seek additional information. For certain positions, legislation exists that enables an employer to seek a Verklaring omtrent het gedrag [Criminal background check]. Furthermore, screening for positions involving an element of trust, such as police officers, employees of private security companies, employees of detective agencies, airline personnel and certain other positions in government organisations may be subject to specific statutory requirements.

In the event that an employer employs a detective agency in order to carry out screening, the applicant must be informed. Detective agencies are required to adhere to the Gedragscode sector particuliere recherchebureaus [Sectoral code of conduct for private detective agencies]. In the event that that it is known in advance that information relating to criminal background will be involved, screening may only take place with the express consent of the applicant. There is no provision within the law that requires an applicant to give an answer to the question "Do you have a criminal record?" when this is asked during an employment interview. The applicant should however take into account that screening may reveal that he/she has a previous conviction. It is not permitted for screening to be carried out into the health of an applicant. Subject to strict conditions, an employer is, in certain cases, entitled to have a medical examination carried out by a medical doctor. The results of a medical examination may only be disclosed to an employer (the party that commissioned the test or examination) with the applicant's consent.

When establishing a policy with regard to the screening of applicants, an employer is required to obtain the consent of the Works Council. Even if the company concerned does not have a Works Council or any form of employee representation, it is still advisable to seek internal agreement with regard to the policy relating to the screening of future employees.

It may well be the case that your (future) employer applies the Sollicitatiecode [Applications code] of the Nederlandse Vereniging Personeelsbeleid (NVP) [Dutch Association for Personnel Management]. In that case, you may submit any complaints to the NVP, which will then assess your complaint against its own Applications Code (www.nvp-plaza.nl).

If you have any questions or complaints

Your first course of action should always be to contact the organisation itself about your questions or complaints. For information on your right to access to your data in the event of a dispute, 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 the controller fails to respond to your complaints, or fails to respond 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 action open to you.

Your rights

In addition to your right to access, the provisions of the Wbp (Dutch Data Protection Act) entitle you to request that an organisation provide you with information on your personal data and/or the opportunity to have your data supplemented, corrected, erased and/or blocked. You are also entitled to lodge an objection to certain types of use to which an organisation puts your data. For information on how to exercise these rights, please see the fact sheet entitled *Data Subjects and Their Rights* [Rechten van de betrokkene].