

to Koninklijke Luchtvaartmaatschappij NV
T.a.v. de heer K. J. Bruin
Privacy office (AMS/PI)
Postbus 7700
1117 ZL AMSTELVEEN

DATE October 5, 2007
OUR REF z2007-01048
CONTACT-PERSON mw. drs. S. Nas
070 - 8888 518

YOUR LETTER

YOUR REF

Dear Mr. Bruin,

SUBJECT mediation request

The Dutch Personal Data Protection Authority (College bescherming persoonsgegevens - CBP) has been approached by Edward John Hasbrouck (hereafter: the requestor) from San Francisco, United States of America, with a request to mediate in his request to access. A copy of his request is attached to this letter.

Following our telephone conversation on Friday 28 September I confirm your kind permission to conduct this mediation in English.

The CBP has the authority to mediate based on article 47, first paragraph of the Dutch Personal Data Protection Act (Wet Bescherming Persoonsgegevens, Wbp).

Article 35 Wbp lays down the right to access. As data controller, you are obliged to inform a requestor within 4 weeks in writing whether you process personal data relating to him. If that is the case, you need to provide a full and clear summary of these data, a definition of the purpose or purposes of the processing, the data categories to which the processing relates and the recipients or categories of recipients, as well as the available information about the origin of the data. You may only refuse access if there is an exceptional situation as defined in article 43 Wbp.

Based on the correspondence exchanged between you and the requestor between 3 April 2007 and 10 August 2007, the Dutch DPA is not convinced you have provided all the necessary information to the requestor and therefore sees room for mediation, especially with regard to the responsibility of all the different parties involved.

Summary of correspondence

On 3 april 2007 the requestor filed an access request to all personal data relating to him that were processed by KLM or transferred by KLM to other governmental or commercial parties inside and outside of the USA concerning a specific flight with KLM from San Francisco to Amsterdam on 24 March 2007 and return on 28 March 2007 from Brussels via Amsterdam to San Francisco.

On 20 april 2007 you responded by sending a 'purged' PNR record (from the offline KLM database, based on the Amadeus reservation system) and informing the requestor of the general obligation for KLM to disclose flight reservation data to the US Customs and Border protection authority. The same day, the requestor replied by saying this did not answer all his questions and specified the remaining questions. After some short e-mails inquiring about the process and explanations by you of the delay, on 25 June the requestor urgently requested you would take all necessary steps to retain data held about him in relevant systems pending his request for mediation. On 2 July you sent a more detailed explanation of the different

parties involved
in processing data
about him,

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including 3 different data controllers (Mill Run Tours, the booking agency in San Francisco; North West Airlines for the reservation process and sales of the ticket; and KLM for the operational process), 1 data processor (Avia Partner, for collecting the passport data in Brussels for the US Government) and 1 third party (United States government).

On 1 August 2007, the requestor sent a detailed explanation of explanations that were incorrect according to him and again, listed 7 questions that remained (partially) unanswered. On 10 August you replied that this letter did not give KLM any reason to change the reply or disclose additional information, since it would be outside the scope of your responsibility as data controller.

On 1 October 2007 the requestor provided both you and the Dutch DPA with additional information he received from the US CBP, following a privacy act request, stating that the PNR data for the US government were obtained from KLM, and not from North West Airlines or the Worldspan computer reservation system.

Specific questions to be answered

- 1 - Request to safeguard data
- 2 - Clarification of responsibilities
 - a. Mill Run Tours
 - b. North West Airlines
 - c. Avia Partners
- 3 - Records of further processing of the personal data

1 - Request to safeguard data

On 25 June the requestor urgently asked you to make sure all the necessary data were retained, in view of the fact that for example retention periods for system-level access logs are generally short.

Can you please specify which steps you have taken to ensure all necessary information is stored about the processing of the personal data of the requestor by you and other parties involved (controllers and processors?) Please provide copies of possible correspondence. If some of the requested files are no longer available, please specify what retention periods normally apply to these data.

2 - Clarification of responsibilities

a. Mill Run Tours

In your letter of 2 July you explain that the necessary personal data were collected by Mill Run Tours in San Francisco, as a separate controller of data. The requestor replied that he did not provide data directly to Mill Run Tours, a wholesale consolidator, but to some other unspecified travel agency. In his opinion both that agency and Mill Run Tours acted as processors of the data, and he only provided his personal data in order to fulfill a contract with KLM, not with Mill Run Tours or the agency where he actually booked the ticket. The Dutch data protection authority agrees with you that under the Dutch data protection act independent Dutch travel agencies can often be considered controllers of the data, because they decide independently on the means and purposes of processing data. They may for example process the data for their own purposes, such as direct marketing, if there is a ground for legitimate processing, such as permission of the customer. The Dutch data protection authority is unable to verify the exact contractual stipulations between the travel agency, Mill Run Tours and KLM, but proceeds on the assumption that KLM cannot be considered controller for the collection of the personal data by independent travel agents or any further other purpose

processing by
them such as
direct marketing.

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However, with regard to the mandatory hand-over of a PNR-record from a travel agent to an airline, the Dutch data protection authority does consider the airline controller and thus obliged to provide access when asked for. This record might also help to clarify the origin of your statement that the requestor paid for by check, since this is not indicated in the Amadeus PNR.

Please provide a copy of the PNR-record created by Mill Run Tours.

b. North West Airlines

Secondly, you state North West Airlines (NWA) acted as a North American reservation agent for KLM by processing the personal data through the Worldspan system and forwarding (some of the) data to KLM for the Amadeus reservation system. NWA also collected the necessary passport data (APIS) for the US government for the flight from San Francisco to Amsterdam, departure data also stored in the Worldspan system. In both roles NWA should be considered controller.

The requestor replied that in his opinion NWA should be considered processor, not controller, since he never had any contact with NWA, the flights were operated by KLM and according to the terms of NWA they only act as agents for the operating airline if they issue tickets for flights operated by other airlines. In his letter to the Dutch data protection authority and to KLM from 1 October 2007, the requestor states that the record he obtained from the US Government, the department of Custom and Border Protection, with his PNR data, shows that all data came directly from KLM, from the Amadeus reservation system. There is no indication in this record that NWA (through the Worldspan system or otherwise) has provided any PNR data to the US government.

The Dutch data protection authority proceeds under the assumption that -given the contractual relationship- NWA acted as processor of the data on behalf of KLM. If NWA has provided data to third parties, such as the US government (which is disputed in this case), this was done under the responsibility of KLM as controller of the data. KLM should thus be able to provide access to an overview of the processing of personal data of its customers by NWA.

Please provide a copy of the relevant PNR-record(s) created by North West Airlines and an explanation why apparently no PNR record was handed-over by NWA to the US government in this case, and how this relates to the general policy about the hand-over responsibilities. If you are unable to provide this information, or proceed under the assumption that NWA and KLM should be seen as co-controllers, please explain the nature of the relationship between NWA and KLM as co-controllers of the personal data. In that case, please also provide a detailed explanation of the procedure for passengers to get a complete overview of their personal data.

c. Avia Partners

Thirdly, you state, Avia Partners in Brussels acted as processors of the data by transferring the APIS data to the US government for the flight from Amsterdam to San Francisco. The requestor says he has not been in touch with Avia Partners.

Please clarify the role of Avia Partners. Please explain the nature of the agreement between KLM and AVIA Partners, whether there is a formal processing contract, or how the handling of the personal data is otherwise compliant with the policy of KLM as controller.

3 - Records of
further processing
of the personal
data

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The requestor has asked an overview of all the parties to whom his personal data were transferred, including their contact details. He has not received such a comprehensive overview, except for an e-mail address from someone at NWA. He specifically also asked for information about the processing of this data in the different computerized reservation systems, including the results from analysing transaction logs, in order to be able to specifically answer the question by whom his data were accessed and for what purpose.

Please provide a more detailed overview of all the parties to whom the requestors data have been transferred before, during and after the specific flights discussed in this case, including analysis of the transaction log from the computerized reservation system. If this log is no longer available, please specify which parties generally have access to this sytem, for what purpose and under what contractual agreement with KLM as controller of the data.

Will you let CBP know within 2 weeks if you can meet these requests? If not, please indicate the reason.

I will send a copy of this letter to the requestor, Edward John Hasbrouck.

Yours sincerely,

On behalf of het College bescherming persoonsgegevens,

mw. drs. S. Nas,
senior policy official