

THE PRACTICAL NOMAD

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The Practical Nomad: How to Travel Around the World (3rd ed. 2004, 4th ed. 2007)

The Practical Nomad Guide to the Online Travel Marketplace (2001)

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(by e-mail and fax)

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Dear Mr. Bruin:

I have just received your postal letter of 8 pages. This letter has 3 dates in its heading (4 April 2007, 29 June 2007, and 20 July 2007). I don't know when it was actually sent, but it arrived at my home in San Francisco last week, and just reached me this week in Argentina.

I appreciate the effort you have made, and the difficulty of your task. I understand that airlines have complex systems for collecting, receiving, transmitting, and processing personal information, which involve multiple agents, sub-agents, contractors, and subcontractors in addition to other airlines, CRS's/GDS's, and government agencies.

I have been patient in waiting more than 3 months for your response, and in allowing you time to prepare a proper reply to my request.

However, I am disappointed that your most recent letter:

- (1) incorrectly states many of the facts regarding the sources of data about me held by KLM and its agents and contractors, the paths followed by my data, and the third parties involved, as is evident from the partial data copy of some of my personal data which was included with your letter;

- (2) incorrectly states the law and KLM's legal responsibility as data controller and principal;
- (3) ignores most of my request, and fails to provide most of the information which I requested and to which I am entitled by Dutch and European Commission laws and regulations; and
- (4) was not sent within the time required by the Dutch "Personal Data Protection Act" (Wet bescherming persoonsgegevens).

I explain each of these problems in more detail below:

(1) In your "scenario", you state that "Mill Run Tours in San Francisco collected all required personal data from Mr. Hasbrouck." I know from personal experience that this claim is false. I had no direct contact whatsoever with Mill Run Tours, and there is no evidence in the information you provided as to the basis (if any) for your claim.

As a wholesale consolidator, Mill-Run Tours rarely collects information directly from customers or passengers. They receive passenger information mainly by way of various retail agents and sub-agents as intermediaries, often through the additional intermediaries of the CRS's used by those agents and by Mill-Run Tours, in which PNR's are created and "released" or transferred to the consolidator for ticketing. This is standard operating procedure for wholesale consolidators anywhere in the world.

You have provided only 1 PNR (apparently from Amadeus). That PNR showed that information was received by Amadeus from "HDQ RM AA" (Sabre) and "ATL RM 1P" (Worldspan). You have not yet provided the PNR(s) created and/or processed by Mill-Run Tours and/or NWA as agents for KLM. Without those Sabre and Worldspan PNR's, it would be difficult to know exactly by what path(s) and from what source(s) they obtained any of the information they transmitted to Amadeus, KLM, or other parties. That is why I requested, and continue to request, copies of all the PNR's related to my reservation, including those from Sabre, Worldspan, and Amadeus.

Your scenario continues, "The ticket was paid for by check". There is no basis in the information you provided for this claim. Probably this is indicated in the Worldspan and/or Sabre PNR's (which you did not provide me), in additional ticketing and/or form of payment data in the Amadeus PNR (which fields you did not provide me), and/or in an e-ticket record and/or interline settlement record received by KLM (but which you also did not provide me). Whatever the source of your claim regarding the form of payment for my ticket, it indicates that you have reviewed additional personal information about me which you have failed to disclose. I remind you that my request was, and is, for all of my personal information.

You continue, "It is likely that NWA collected the money from Mill Run Tours and remitted it to KLM, like it does for all N.A. purchases of KLM operated flights." There is no basis in the information you provided for this claim. This claim is almost certainly false, both as a general statement and with respect to my particular ticket.

As you should know, NWA almost never collects any money directly from travel agents in the USA. Payments for tickets on participating airlines such as NWA are made by travel agents to the Airlines Reporting Corporation (an additional third party and intermediary not

disclosed in your letter to me, but which almost certainly received my personal information contained in ticketing records), and by ARC to airlines.

You state that there is "no record available at KLM" with respect to ticketing or payment for my ticket. Of course, physical location of records is irrelevant to whether KLM is responsible for them. And KLM is responsible for the actions of its agents and contractors. In addition, normal interline settlement procedures would provide KLM with a record of tickets issued for travel on KLM flights and payments received by other airlines (as agents for KLM) and/or their agents. I specifically requested ticketing and settlement records, and I do not find your claim that KLM has no such records credible. I reiterate my unanswered request for all those ticketing, settlement, and form of payment records.

Next, you say that "NWA received and processed and processed Mr. Hasbrouck's Airline Reservation information through the PARS/Worldspan system from Mill Run Tours [on] behalf of KLM as its North American reservation agent. At the same time standard operational (reservation) information was forwarded from NWA to KLM in its Amadeus reservation system."

Again, it is difficult to determine all of the data paths without access to all of the PNR's, including those from Sabre and Worldspan. But the messages in the Amadeus PNR indicate that at least some information was provided to Amadeus (and thus to KLM) through Sabre. This information sent by Sabre came, presumably, from Mill Run Tours, and not from NWA or Worldspan. This is significant because it means that KLM cannot claim that it received information only through NWA and/or Worldspan. In fact, there was information in the KLM PNR in Amadeus which had not been transmitted through NWA or Worldspan, but rather via Sabre, and for which NWA cannot possibly be considered responsible.

Finally, you refer to "Avia Partners", an entity of which I have no knowledge, and for which you provide no contact information. I dealt only with people and entities who identified themselves as agents of KLM, and I dealt with them solely in their capacity as self-declared agents of KLM.

In total, your "scenario" is false in many respects. It appears designed to avoid acknowledging the existence of many of the records you have not yet provided, and to support a false claim that other entities, and not KLM, were solely responsible for those records of your agents. It appears particularly designed to avoid any responsibility on the part of KLM for transfers of data to the government of the USA or to other commercial third parties in the USA, in violation of European law.

(2) In your description of "data controllers", you state that "Mill Run Tours must be considered the data controller with respect to the collection and processing of personal data for ... Airline reservation, etc. Northwest Airlines (NWA) must be considered the data controller regarding the airline reservation process and sales of the ticket (including administrative process)."

This mis-states the legal identification of the data controllers, in two fundamental respects:

First, your use of the singular article "the" suggests that there can be only one data controller for a particular act of collection or processing. If true, this would mean that if Mill Run

Tours or NWA is "the" data controller, KLM could not be the data controller.

But the law (directive 95/46/EC), as you yourself quote it in your letter, states that "controller' ... shall mean the natural or legal person, public authority, agency, or any other entity which alone or jointly with others determines the purposes and means of processing of personal data."

The use of the phrase "or jointly with others" makes clear that there can be multiple controllers for the same data, collection, or processing.

So while I thank you for your informing me that NWA and Mill-Run Tours are also data controllers for some of the collection and processing of some of my data, that does not eliminate the responsibility of KLM. KLM might not be "the" controller for all of this data, collection, and processing, but KLM is "a" controller for all of it, including data collected, processed or controlled jointly with other parties.

Second, your analysis of the data controllers ignores the law of agency, the legal relationship between a principal and an agent, the responsibility of the principal for the actions of the agent, and the explicit statements made by Mill Run Tours and NWA, on which I relied, regarding their relationship with KLM and status as agents of KLM.

Like most travel agencies, the terms of business of Mill-Run Tours provide that in the sale of tickets for air transportation they act solely as agents for the airline. The contract for air transportation is between the ticket purchaser and the transporting airline. The airline is the principal to the contract, and the agent is just that -- an agent.

Similarly, although I had (so far as I know) no contact with NWA, their terms provide that when they (or their agents) issue tickets for transportation on flights operated by other airlines, they do so solely as agents for the operating (transporting) airline, not as principals to the transaction. Your own letter states, correctly, that NWA acted on "behalf of KLM as its North American reservation agent."

Throughout my dealings with KLM's agents, sub-agents, contracts, and subcontractors, I dealt with them solely as agents for KLM. At no time did any of them identify themselves as acting in their own behalf (as would have been required by the EC directive if they were acting other than solely as agents for another data controller). Some of them, such as Avia Partners and NWA or its contractors or subcontractors at SFO, never identified themselves at all. I was never advised that NWA would be acting as ticketing and settlement contractor for KLM, or of the existence or identity of Avia Partners, Sabre, Worldspan, Amadeus, or ARC.

Your contractors and agents represented themselves as agents of KLM, and I dealt with them as such. I would not have provided any information to them in any capacity except as agents of KLM. All of my dealings were with KLM as principal in the transaction. My contract for transportation was, in fact and in law, with KLM as the transporting airline and principal. That contract was entered into in California, where the law provides that the principal is liable for the acts of its agents.

I deliberately chose to enter into a contract with KLM, an entity incorporated in the EU, in order to ensure that my data would be protected by EU law. I relied on KLM to ensure that your agents acted in accordance with EU and Dutch data protection laws and regulations.

Clearly, the relationship of principal and agent -- explicitly stated, and relied on by me -- defines a relationship in which the principal, KLM, is responsible as data controller for the actions of all its agents.

I had, and I have, no way to know who all of your agents, sub-agents, contractors, and subcontractors are, and no way to contact them or obtain my data from them. It is your responsibility as principal and data controller to identify them to me as third parties (which you still have not done). It is also your responsibility as principal and data controller to have contractual agreements in place to ensure that they act in accordance with your legal responsibilities. And it is your responsibility as principal and data controller, when I request my data and an accounting of how and to whom it has been disclosed, to retrieve my data and the records of access to my data from all of your agents, sub-agents, contractors, and subcontractors, and to provide it to me.

I reiterate my request for an accounting of the collection, processing, disclosure to other parties, and retention of my data by KLM and all of KLM's agents, sub-agents, contractors, and subcontractors, including but not limited to NWA, Avia Partners, Amadeus, Worldspan, Sabre, and ARC.

For each of these agents, sub-agents, contractors, and subcontractors, I again request that you provide me with their full details and contact information, what information they received, how they processed it, to whom they disclosed it, and the relevant portions of the contracts between KLM and these entities governing their collection, use, retention, disclosure, and destruction of my personal data.

Finally, you state that "NWA was required to collect and disclose information to the US Government Authorities."

You provide no basis for this claim, and I know of none. There have been some public claims that airlines operating international flights to and from the USA are required to provide some information to US government agencies. But my flights were all operated by KLM, not NWA. Any legal requirement applied solely to the operating or transporting airline, KLM, and not to NWA. NWA was almost certainly not required by any law or regulation to provide any information to the US government.

If NWA was "required" to do anything, that was a "requirement" of a contract between NWA and KLM, not a requirement of US law or regulation. And in that case, KLM is responsible for those actions of NWA as its contractor. I again request a full accounting of exactly which of my personal information (such as which PNR or PNR's from which CRS's) was provided to exactly what US government agency by KLM and/or any of KLM's agents, sub-agents, contractors, subcontractors, or other intermediaries (particularly including NWA, Amadeus, Worldspan, and Sabre), when and how (e.g. by transmission from which CRS to which office or agency and set address, at what time and date, under what user ID), and under what terms regarding use, retention, disclosure, and destruction.

(3) Most of my request remains entirely unanswered.

I have received no information concerning KLM's policies for use, disclosure, retention, and destruction of my data.

I have received no contact information for any of the third parties to which my information was disclosed (except for an e-mail address for someone at NWA).

I have received no information concerning KLM's agreements with the third parties to which my data was disclosed.

I have received no information concerning the CRS's used by KLM or by your agents, sub-agents, contractors, and subcontractors.

I have received no CRS system logs or other records of what queries were made against my PNR's in Amadeus, Sabre, or Worldspan.

I have received no ticketing, payment, or settlement records.

I have received no information concerning whether any of my data was disclosed by KLM or your agents to PNR processing services such as Amadeus Revenue Integrity or Vistrío.

I again quote for your reference the unanswered portions of my original request:

"I request that you provide me with ... the details of all processing of my data (including the purposes of the processing), and all recipients of my data."

"In accordance with the European Data Protection Directive, I also specifically request that you inform me whether any of my personal data have been transferred outside of the territory of the European Union, in whatever form or by whatever means, whether to governmental or commercial or other entities, and if so exactly which data, when, to whom, for what purposes or programs such as the USA's "Automated Targeting System (ATS) or "Advance Passenger Information System" (APIS), and subject to what enforceable contractual commitments from the recipient, including to which agency or agencies of the government of the United States of America and to which commercial entity or entities in the USA or other countries, including PNR hosting services (such as computerized reservation systems or global distribution systems), PNR processing services (such as the Amadeus Revenue Integrity division, formerly Airline Automation, Inc.), travel transaction and customer data aggregation and analysis services (such as the Vistrío joint venture of Sabre and Equitec), and code-sharing "partners" including Northwest Airlines."

"I also request that you inform me of your policies for use, access, retention, and destruction of this data, and those of any recipients of this data, particularly those outside the European Union."

"If you subscribe to a computerized reservations system (CRS), I request in accordance with Article 9a(1)(d) of the EU Code of Conduct for CRS's (Council Regulation No 2299/89 of 24 July 1989, as amended), that you inform me of the name and address of the CRS system vendor, the purposes of the processing, the duration of the retention of individual data and the means available to the data subject of exercising her or his access rights."

"This request includes all personal data processed by you of which I am the data subject, including but not limited to:

1. Passenger name records (PNR's)
2. PNR histories
3. Cancelled PNR's and their histories
4. System logs of access to these PNR's and PNR histories
5. Departure control system records and access logs
6. Advance Passenger Information (API) records and logs
7. AIRIMP, EDIFACT, or other message records
8. Ticketing records
9. Bank Settlement Plan (BSP), interline, or other settlement records
10. Financial and billing records
11. Frequent flyer account records
12. Customer, Web user, or traveller records or profiles
13. Web site visitor, usage, and query records and logs"

(4) According to article 35 of the Dutch Personal Data Protection Act, you were required to provide the information I requested within 4 weeks of your receipt of my request. You have not done so. Your most recent letter was not sent until more than 3 months after you received my request (more than 2 months after the legal deadline), and still does not provide most of the requested and required information.

I remain deeply concerned that your continuing delay in providing the requested and required information will further prejudice my rights and deny me access to my personal data and records of its dissemination.

In particular, I remain concerned, as I made clear in my previous message, that CRS transaction logs (showing what queries were made against my PNR's, from what office or agency locations and terminal addresses and with what user ID's, and what data was provided in response to those queries) may not routinely be retained. If you have not taken steps to preserve this data, or to ensure that it is preserved by your agents and contractors (including CRS's), it may no longer be available.

In my previous e-mail message, I specifically asked whether you had taken steps to notify third-party processors and/or recipients of my data, including CRS's, of my requests, and to ensure that the information I have requested is preserved while my request is pending. You have not responded to this request, which I reiterate with the utmost urgency.

Please provide me immediately with copies of your communications with each third-party recipient and/or processor of my data (including but not limited to NWA, Avia Partners, Amadeus, Worldspan, Sabre, and ARC), showing when you notified them of my request, and what instructions you have given them as your agents and contractors regarding the retention of my data.

If I do not receive immediate confirmation that you have taken effective steps to ensure the retention of my data (particularly including the system-level CRS access logs), I will have no choice but to consider immediate action, on an emergency basis, to ensure the protection of my rights and the preservation of my data through legal means.

Most of the persons concerning whom KLM collects, controls, and processes personal data are your millions of passengers and customers. Most of the personal data controlled and processed by KLM is contained in PNR's and reservation and ticketing messages, and related records such as system logs of access to PNR data.

Protecting the privacy of passenger and customer data is your largest responsibility as Privacy Officer for KLM. Responding to requests from passengers and customers for copies of their personal data should be a routine matter for you, and you should have standard procedures in place to enable you to answer such requests simply, completely, and within the time limits set by the applicable laws and regulations.

You have no excuse for not being prepared for such a routine request.

Even if your response of 20 July 2007 were accurate and complete (which it is not, as discussed in detail in the preceding sections), it is more than 2 months late. Your failure to answer my request in a timely manner is a serious violation of the Dutch "Personal Data Protection Act".

In addition to providing the reminder of the information I have requested, please inform me what steps you have taken, and what systems and procedures you have put in place, to ensure that similar future requests from KLM passengers and customers will be answered properly, fully, and within the time limits prescribed by law.

Your failure to provide the requested and required information or to do so in a timely manner are serious, continuing, violations of the Dutch Data Protection Act, the EU data protection directive, and the EU Code of Conduct for CRS's. If I do not promptly receive the remaining information which I have requested, and to which I am entitled, I shall have no recourse except to bring formal complaints against KLM with the Dutch Data Protection Commission and/or Dutch courts (for violations of the Data Protection Act) and with the European Commission (for violations of the data protection directive and the Code of Conduct for CRS's). I urge you promptly to provide the information I have requested and to which I am entitled by law, and to bring KLM's practices and those of your agents into compliance with the law, so that this will not be necessary.

In your previous message, you said that you had discussed my request "informally" with the Dutch Data Protection Commission. I again request that you inform me of the identity and contact information of the person with whom you had this "informal" discussion. I also again request that you forward this message, and all of our previous correspondence, to this person at the Dutch Data Protection Commission, in order for me to be able to discuss this issue with them and seek their assistance.

I am now travelling, and do not expect to be back in the USA until July 2008. To avoid additional delays, please reply by e-mail and please send any further postal correspondence related to this request to Mr. James P. Harrison, my attorney in this matter, at the following address:

Mr. James P. Harrison, staff attorney
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I hereby authorize you, KLM, and your agents, sub-agents, contractors and subcontractors to discuss this matter with Mr. Harrison, and to disclose to him, as my attorney and agent, any of my personal information.

If you have any questions, please do not hesitate to contact me or Mr. Harrison. I am currently in Buenos Aires (GMT - 4) and expect to be here through 17 September 2007. You can reach me here at USA telephone numbers +1-415-692-6728 (temporary) or +1-415-824-0214 (permanent).

I look forward to your prompt and complete reply.

I telephoned your office as soon as I received your most recent letter, but I was told that you were on vacation until Monday, 6 August 2007, and that no other KLM employee could provide any information or assistance in your absence. I am, as you may know, a vocal advocate for corporate policies providing for longer vacations and leaves of absence. I am glad you had the opportunity to take a vacation, and I certainly hope you had a good vacation. But I encourage you and KLM to put in place systems to provide for backup when individual employees are unavailable.

I will telephone you on Monday, 6 August 2007, to confirm your receipt of this message and to discuss when I can expect to receive the remainder of the information I originally requested almost 4 months ago.

Sincerely,

Edward Hasbrouck

CC (by e-mail):

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