

# THE NETHERLANDS

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Data protection: Redress mechanisms and their use

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Art.1, Dutch knowledge centre on discrimination

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## Data Protection: Redress mechanisms and their use, in the Netherlands

A redress mechanism is ‘any procedure offered by the legal system of the respective Member State which provides for a legal consequence for data protection breaches’.<sup>1</sup> In the Netherlands, what constitutes a breach of data protection is determined by different laws and rights, which can be enforced under different procedures at different institutions.

This introduction is meant to provide a general overview of the judicial and alternative redress procedures available in the Netherlands. The alternative redress mechanisms could be divided into a general mechanism, and various sectoral procedures.

The redress mechanisms that will be explained in depth in this paper have been delimited to judicial redress mechanisms available in the Netherlands and to those provided by the Dutch Data Protection Authority (*College Bescherming Persoonsgegevens, CPB*). These are discussed in section 1 and 2 of the report and further elaborated upon in the annexes. The most important sectoral procedures are discussed in section 2 but fall outside the scope of the annexes of this report: these mechanisms are also supervised by the general Data Protection Authority, they often do not provide for legal consequences, and because they are little utilised.

### **1. Judicial redress mechanisms**

#### **1.1 Acts**

There are several Data Protection Acts. There is a general act, called the Dutch Data Protection Act (*Wet bescherming persoonsgegevens, Wbp*) and there are sector specific protection acts. These specific acts are *lex specialis*, which means that if these are applicable, the general Dutch Data Protection Act is not.

The Dutch Data Protection Authority is the general institution that supervises all data protection acts, thus including the general Personal Data Protection act, and all sector specific acts. These acts provide for individual rights, and specific redress mechanisms.

These are the most important specific data protection acts:<sup>2</sup>

- Intelligence and Security Services Act (*Wet op de inlichtingen- en veiligheidsdiensten 2002, Wivd*);
  - Article 40-56 determines the rights of individuals concerned. For example -under conditions- individuals have a right to take notice of the information in their dossier (article 47), but are not entitled to correct this personal data.
  - According to article 57, when this request is not granted, individuals can appeal at the civil court (see below).

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<sup>1</sup> Introduction FRA ad hoc information request.

<sup>2</sup> According to the Thematic Study on assessment of data protection measures and relevant institutions – report Netherlands, 2009, p. 10, par 21, these are the five most important specific data protection acts. There are additional data protection rights and obligations to be found in specific acts, such as the Medical Treatment Contracts (*Wet geneeskundige behandelingsovereenkomst*), Telecommunications Act (*Telecommunicatiewet*), Freedom of Information Act (*Wet openbaarheid van bestuur*), General Tax Act (*Algemene wet inzake rijksbelastingen*).

- Municipal Personal Records Database Act (*Wet gemeentelijke basisadministratie persoonsgegevens, Wet GBA*).
  - Article 78-86 determines the rights of individuals concerned.
  - Article 83 determines that The Board of Mayor and Aldermen's decision concerning the requests of individuals can be challenged at the Administrative court.
- Police Data Act (*Wet politiegegevens, Wpg*).
  - Article 25-31 determines the rights of individuals concerned. Individuals have a right to take notice and to correct (article 25 and 28).
  - Article 29 determines that first appeal procedures are excluded, because individuals should request the Dutch DPA for mediation. Ultimately, the administrative court is accessible.<sup>3</sup>
- Judicial Data and Criminal Records Act (*Wet justitiële en strafvorderlijke gegevens, Wjsg*);
  - Article 18-26 determine the rights of individuals concerned. Under conditions, individuals have a right to take notice, and correct (article 18 and 22).
  - Article 39n determines that first appeal procedures are excluded, because individuals should request the Dutch DPA for mediation. Ultimately, the administrative court is accessible
- Electoral Act (chapter D) (*Kieswet, hoofdstuk D*).
  - According to article D3a paragraph 2 and 3, individuals can request The Board of Mayor and Aldermen to be included in, or deleted from the register.
  - Article D9 determines that individuals can appeal at the Judicial Division of the Council of State.

The Dutch legislative system provides for a complex system of redress procedures regarding data protection. Firstly, when an individual wishes to access, change or delete his/her personal data, this possibility should be provided for by law (as is described above). Accordingly, this person should file his/her request with the responsible Administrative Authority (*bestuursorgaan*). If this Administrative Authority refuses to grant access to or change/delete the data, the specific law determines where the individual can file a complaint, which may differ per Act. Generally, an individual starts a grievance procedure at the same Administrative Authority, but sometimes an appeal procedure should be started at another Administrative Authority or Court. As shown above, and in the detailed schedule below, the described specific data protection acts exclude the grievance procedure, and enable direct appeal at the Court. Ultimately, individuals can appeal at the (Administrative) Court.<sup>4</sup>

## 1.2 Jurisdictional bodies

When an individual is of the opinion that his/her rights to protection of personal data have been infringed, this person can call upon the Dutch Data Protection Authority (see paragraph 2.1). Instead of the DPA - or after a procedure at the DPA - a procedure could be started at the applicable court. Depending on the circumstances, the administrative, civil or criminal court is applicable.<sup>5</sup> Below, the powers and procedures of these courts are clarified.

### 1) Administrative court

- on the basis of article 45 of the Personal Data Protection Act, in conjunction with 8:1 and 1:3 of the Dutch Civil Code, individuals can start administrative court procedures regarding decisions of administrative bodies with respect to rights in the Personal Data Protection Act, including the Commission for the Protection of Personal Data.
- Possible outcomes: ordering the administrative body to take a new decision, non-compliance penalty (*dwangsom*), reparation of -immaterial- damages

<sup>3</sup> See also the explanatory memorandum. <https://zoek.officielebekendmakingen.nl/kst-30327-3.html> (access date June 19, 2012).

<sup>4</sup> Sometimes, individuals can appeal directly at the Administrative Court, without a grievance or appeal procedure at an Administrative Authority. See <http://www.rijksoverheid.nl/documenten-en-publicaties/brochures/2011/01/05/bezwaar-en-beroep-tegen-een-beslissing-van-de-overheid.html>. (access date June 19, 2012).

<sup>5</sup> Because the Civil and Administrative courts overlap in jurisdiction, sometimes it can be unclear which court is admissible.

(*Schadevergoeding*), paying legal fees (respectively art 8:72 paragraph 4, 8:72 paragraph 7, 8:73, and 8:74, 8:75 and 8:75a of the General Administrative Law Act (*Algemene wet bestuursrecht, Awb*)).

## 2) Civil court

- On the basis of article 46 of the Personal Data Protection Act, an individual can apply to the civil court with a written request (*verzoekschrift*) when a decision (referred to in article 45) has been taken by a body other than the administrative body, such as a private organisation. There is an additional procedure for financial compensation (*dagvaardingsprocedure*).
- There are exceptions to the rule that individuals with a complaint about a decision of an administrative body should go to the administrative court.
- Possible sanctions: access to data, correction or deletion of data, possibly with a non-compliance penalty (*dwangsom*), and the reparation of -immaterial- damages (*Schadevergoeding*).

## 3) Criminal court

- On the basis of article 75 paragraph 3, several articles of the Personal Data Protection Act concern misdemeanours (for example article 27 and 28). If these misdemeanours are committed intentionally by the person responsible, they are categorised as crime. The public prosecutor can commence a criminal proceeding against an individual on this basis. These cases however are extremely rare.<sup>6</sup>
- On the basis of communal crimes concerning privacy (article 285b Sr).<sup>7</sup>
- Depending on the categorisation of the offence, an individual could be sanctioned with a fine or prison sentence.

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<sup>6</sup> See C.M. Bitter (2007) 'Privacyprocesrecht', in: Berkvens, J.M.A. & Prins, J.E.J. (red.), *Privacyregulering in theorie en praktijk*, 4e dr., Deventer, 2007, p. 47-66, p. 47.

<sup>7</sup> *Ibid.*

## **2. Alternative Redress mechanisms**

There are numerous mechanisms that fall within the scope of alternative redress mechanisms. As explained before, this section provides an overview of the procedures of the Dutch Data Protection Authority and the most important sectoral procedures but does not further examine the latter in detail, because they are also supervised by the general Data Protection Authority, they often do not provide for legal consequences, and because they are little utilised.

### **2.1 The Dutch Data Protection Authority (*College Bescherming Persoonsgegevens, CBP*)**

The Dutch Data Protection Authority supervises all processing of personal data.

- The legal basis of this institution are articles 51-61 of the Personal Data Protection Act.
- The Dutch DPA provides for several rights, related to the protection of personal data, being the obligations to inform those involved (article 30, 33 and 35), the right to request information/take notice (article 35), the right to correction, supplementation, deletion or blocking of this information (article 36) and the right to object (article 40).
- At the Dutch DPA individuals cannot enforce their rights relating to personal data protection as they can at a court. They can give a signal to the Dutch DPA, which then decides if it will commence an investigation.<sup>8</sup>
- For the enforcement of the law (and these rights), the Dutch DPA has the power to sanction with administrative enforcement (*bestuursdwang*), administrative fines (*bestuurlijke boetes*), respectively article 65 and 66 of the Personal Data Protection Act. According to article 5:21 of the General Administrative Law Act (*Algemene wet bestuursrecht (Awb)*) it can also sanction with a non-compliance penalty.

### **2.2 Sectoral supervisory mechanisms**

Below, the most important sectoral supervisory mechanisms are described.

1. **National Ombudsman** (*Nationale Ombudsman*).
  - Provided for in the Dutch Constitution and the National Ombudsman Act (*Wet Nationale Ombudsman*).
  - Deals with complaints of individuals on decisions of administrative bodies.
  - The Ombudsman has discretionary research powers, but the government is not obliged to comply.
2. **Health Care Inspectorate** (*Inspectie voor de Gezondheid*).
  - Individuals can file complaints at the Health Care Inspectorate, however this institution does not investigate individual cases, and cannot provide individual redress.
3. **Independent Post and Telecommunications Authority** (*Onafhankelijke Post en Telecommunicatie Autoriteit, OPTA*).
  - Individuals can file complaints or give signals, after which the OPTA can start an investigation. It, however, does not provide individual redress.
4. The Public Personal Data Protection Act allows for **internal supervision** (article 62-64). Private organisations may appoint a **data protection officer** (*functionaris voor de gegevensbescherming*), responsible for supervising the Personal Data Protection Act in the (sectoral)organisation he/she appointed for. The Dutch DPA remains the final supervisor, and the only general institution qualified to apply sanctioning measures.

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<sup>8</sup> [www.mijnprivacy.nl/signaal/Pages/Signaal\\_geven.aspx](http://www.mijnprivacy.nl/signaal/Pages/Signaal_geven.aspx), retrieved on May 25, 2012.

5. According to article 25 of the Personal Data Protection Act, organisations that process personal data, according to the specific characteristic of the sector they work in, can formulate a **Code of Conduct** (*gedragscode*) which clarifies how to implement the Data Protection Acts. These Codes can provide for their own complaints mechanisms. The Dutch DPA has approved the following Codes of Conduct<sup>9</sup>:
- Code of Conduct on the Processing of Personal Data by Networkcontrollers in the framework of Installation and control of Smart Meters of Small Consumers (*Gedragscode Verwerking van Persoonsgegevens door Netbeheerders in het kader van Installatie en Beheer van Slimme Meters bij Kleinverbruikers*).
  - Code of Conduct on the Processing of Personal Data by the Dutch Business Information Offices (*Gedragscode Nederlandse Vereniging van (Handels)informatiebureaus*). A Supervision Council (*Raad van Toezicht*) has been put in place to supervise this Code.
  - Code of Conduct for Health insurers (*Gedragscode Zorgverzekeraars*).
  - Code of Conduct for Financial Organisations (*Gedragscode voor financiële instellingen*).
  - Code of Conduct for Private Detective Offices (*Gedragscode voor particuliere recherchebureaus*).
  - Code of Conduct on the Use of Personal Data in Research and Statistics (*Gedragscode voor verwerking van persoonsgegevens bij onderzoek en statistiek*).
  - Code of Conduct for the Pharmaceutical Industry (*Gedragscode voor de Farmaceutische Industrie*).

### **3. Availability statistical information**

This last section provides an in-depth examination of the possible outcomes of available judicial or alternative redress mechanisms in the Netherlands, elaborating where each procedure can be started and how many times it was initiated in a given year.

With regard to the judicial redress mechanisms, we had to limit our search for statistics to the cases that are available in the national public database of Dutch courts ([www.rechtspraak.nl](http://www.rechtspraak.nl)). This database is the most complete database of court cases in the Netherlands but does not contain all cases. The Dutch Council for the Judiciary, which stores and oversees data on judicial redress mechanisms, could not provide additional statistical information about all legal procedures initiated to redress a data protection breach at short notice, due to complexities in the registration of court cases. Therefore the numbers provided below (of cases initiated at administrative, civil or criminal courts) may be a slight underrepresentation of the actual numbers of court cases that were initiated in a given year to seek redress for a data protection breach.

With regard to the alternative redress mechanisms, it should be noted that statistical information on the frequency of each initiated redress mechanism was only publicly available for the Dutch Data Protection Authority and the National Ombudsman.

For many other procedures statistical information was not available. It appeared impossible, for instance, to retrieve statistical information about the number of procedures initiated to redress a data protection breach at The Board of Mayor and Aldermen. The annual reports of the municipality do not specify the number of requests with regard to data protection issues or privacy related issues. In similar vein, no statistical information was publicly available on the number of requests submitted at the Minister or the Police. Detailed information could not be provided on short notice.

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<sup>9</sup> [www.cbpreweb.nl/Pages/ind\\_wetten\\_zelfr\\_gedr.aspx](http://www.cbpreweb.nl/Pages/ind_wetten_zelfr_gedr.aspx), retrieved on 25 May 2012.

## Annex 1

# Mapping of Redress mechanisms in the area of data protection

### Country: Netherlands

Redress Mechanism Number	Type of possible outcomes of procedure	first Instance	Total Number of times this procedure was initiated in 2009 (please provide source of information in footnote)	Total Number of times this procedure was initiated in 2010 (please provide source of information in footnote)	Total Number of times this procedure was initiated in 2011 (please provide source of information in footnote)
1	Access to data	Request to take notice with The Board of Mayor and Aldermen Wivd 47	No figures. <sup>10</sup>	No figures. <sup>10</sup>	No figures. <sup>10</sup>
2	Access to data	Request to take notice with The Board of Mayor and Aldermen WGBA 78	No figures. <sup>10</sup>	No figures. <sup>10</sup>	No figures. <sup>10</sup>
3	Access to information	Request to be informed of processing of data with The Board of Mayor and Aldermen WGBA 79	No figures. <sup>10</sup>	No figures. <sup>10</sup>	No figures. <sup>10</sup>
4	Change of data (regarding third person)	Request to change data with The Board of Mayor and Aldermen WGBA 80+81	No figures. <sup>10</sup>	No figures. <sup>10</sup>	No figures. <sup>10</sup>
5	Correction or deletion of data	Request to correct or delete data with The Board of Mayor and Aldermen WGBA 82	No figures. <sup>10</sup>	No figures. <sup>10</sup>	No figures. <sup>10</sup>
6	Access to data	Request to take notice with the Police WG 25	No figures. <sup>11</sup>	No figures. <sup>11</sup>	No figures. <sup>11</sup>
7	Correction of data	Request to correct or delete data with the Police WPG28	No figures. <sup>11</sup>	No figures. <sup>11</sup>	No figures. <sup>11</sup>

<sup>10</sup> The annual reports of the municipality do not specify the requests in data protection issues or privacy related. Therefore, It is impossible to find out this specific information.

<sup>11</sup> No public information available about number of requests submitted at the Police or at the Minister. The website of the Ministry's Judicial Information Service (*Justitiële Informatiedienst*) does not provide any detailed information nor an annual report with this information. Aggregated data for the total amount of requests submitted at the data protection supervisor of each police zone (25 in total) could not be found. Such requests must be addressed to the Mayor of the respective municipality, who is the head of the Police.

8	Access to data	Request to take notice with The Minister WJSG 18	No figures. <sup>11</sup>	No figures. <sup>11</sup>	No figures. <sup>11</sup>
9	Correction or deletion of data	Request to correct or delete data with The Minister WJSG 22	No figures. <sup>11</sup>	No figures. <sup>11</sup>	No figures. <sup>11</sup>
10	Registration in register	Request to be registered with The Board of Mayor and Aldermen. D3a par 2 KW	No figures. <sup>10</sup>	No figures. <sup>10</sup>	No figures. <sup>10</sup>
11	Deletion from register	Request to be deleted from register with The Board of Mayor and Aldermen. D3a par 3 KW	No figures. <sup>10</sup>	No figures. <sup>10</sup>	No figures. <sup>10</sup>
12	Revision of data	Request to revise the registration with The Board of Mayor and Aldermen D5 KW	No figures. <sup>10</sup>	No figures. <sup>10</sup>	No figures. <sup>10</sup>
13	Administrative enforcement ( <i>bestuursdwang</i> ) for example access, correction/deletion of data*	Dutch Data Protection Authority	26 <sup>12</sup>	35 <sup>12</sup>	6 <sup>12</sup>
14	Administrative fines ( <i>bestuurlijke boete</i> )	Dutch Data Protection Authority	0 <sup>12</sup>	0 <sup>12</sup>	0 <sup>12</sup>
15	Access to data. *	Civil Court	4 <sup>13</sup>	7 <sup>13</sup>	4 <sup>13</sup>
16	Correction/deletion of data. *	Civil Court	2 <sup>13</sup>	8 <sup>13</sup>	6 <sup>13</sup>
17	Reparation of -immaterial- damages ( <i>Schadevergoeding</i> )	Civil Court	0 <sup>13</sup>	1 <sup>13</sup>	1 <sup>13</sup>
18	Access to data	Administrative Court	1 <sup>13</sup>	5 <sup>13</sup>	13 <sup>13</sup>
19	Correction/deletion of data	Administrative Court	3 <sup>13</sup>	2 <sup>13</sup>	1 <sup>13</sup>
20	Reparation of -immaterial- damages ( <i>Schadevergoeding</i> )	Administrative Court	0 <sup>13</sup>	1 <sup>13</sup>	1 <sup>13</sup>
21	Penal sanction. Fine	Criminal Court	0 <sup>14</sup>	0 <sup>14</sup>	0 <sup>14</sup>
22	Penal sanction. Prison sentence	Criminal Court	0 <sup>14</sup>	0 <sup>14</sup>	0 <sup>14</sup>
23	Decision by the	Alternative	5 <sup>15</sup>	5 <sup>15</sup>	9 <sup>15</sup>

<sup>12</sup> Dutch Data Protection Authority (College Bescherming Persoonsgegevens, CBP), Jaarverslag 2011, The Hague: College Bescherming Persoonsgegevens

<sup>13</sup> These numbers indicate the number of cases found in the database of [www.rechtspraak.nl](http://www.rechtspraak.nl). This database is the most complete database of judicial cases in the Netherlands but does not contain all cases. The numbers provided may therefore present an underestimation of the actual number of court cases initiated.

<sup>14</sup> No cases found in the database of [www.rechtspraak.nl](http://www.rechtspraak.nl).

<sup>15</sup> Information retrieved from the website of the National Ombudsman, [www.nationaleombudsman.nl](http://www.nationaleombudsman.nl).



	National Ombudsman (not legally enforceable)				
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The outcome of inadmissibility is not included in this schedule.

\* With or without a possible non-compliance penalty (dwangsom)

\*\* With or without provisional judgement

## Annex 2: Detailed information

### 1. Access to data (at The Board of Mayor and Aldermen)

- Range of possible outcomes: access to data
- Legal basis: Article 47 Intelligence and Security Services Act (*Wet op de inlichtingen- en veiligheidsdiensten 2002, Wivd*).
- Type of procedure: administrative.
- Possibilities of appeal: civil court (according to article 57 Wivd).
- Burden of proof: the individual's identity.
- Available mechanism to lower the burden of proof: the act does not offer such a mechanism.
- Requirement of legal representation: there is no requirement of legal representation.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (*Ministry of Safety and Justice*). For free legal advice, individuals can consult the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? No, the individual is the only beneficiary of this provision, and thus the only initiator. Nevertheless, a person is allowed to mandate a lawyer or another individual to represent him.
- Cost of procedure: The procedure itself is cost-free.
- Average duration of procedure: there is no available information.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. The annual reports of the municipality do not specify the requests in data protection issues or those which are privacy related. Therefore, It is impossible to find out this specific information.

### 2. Access to data (at The Board of Mayor and Aldermen)

- Range of possible outcomes: access to data
- Legal basis: Article 78 Municipal Personal Records Database Act (*Wet gemeentelijke basisadministratie persoonsgegevens, Wet GBA*).
- Type of procedure: administrative.
- Possibilities of appeal: administrative court (according to article 83 Wet GBA)
- Burden of proof: the individual's identity.
- Available mechanism to lower the burden of proof: the act does not offer such a mechanism.
- Requirement of legal representation: there is no requirement of legal representation.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (*Ministry of Safety and Justice*). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? No, the individual is the only beneficiary of this provision, and thus the only initiator. Nevertheless, a person is allowed to mandate a lawyer or another individual to represent him.
- Cost of procedure: the procedure is cost-free.

- Average duration of procedure: there is no available information.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. The annual reports of the municipality do not specify the requests in data protection issues or privacy related. Therefore, It is impossible to find out this specific information.

### 3. Access to information(at The Board of Mayor and Aldermen)

- Range of possible outcomes: being informed if personal data is being processed.
- Legal basis: Article 79 Municipal Personal Records Database Act (*Wet gemeentelijke basisadministratie persoonsgegevens (Wet GBA)*).
- Type of procedure: administrative.
- Possibilities of appeal: administrative court (according to article 83 Wet GBA).
- Burden of proof: the individual's identity.
- Available mechanism to lower the burden of proof: the act does not offer such a mechanism.
- Requirement of legal representation: there is no requirement of legal representation.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (Ministry of Safety and Justice). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Council for Legal Assistance and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? No, the individual is the only beneficiary of this provision, and thus the only initiator. Nevertheless, a person is allowed to mandate a lawyer or another individual to represent him.
- Cost of procedure: the procedure is cost-free.
- Average duration of procedure: there is no available information.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. The annual reports of the municipality do not specify the requests in data protection issues or privacy related. Therefore, It is impossible to find out this specific information.

### 4. Change of data -regarding third person (at The Board of Mayor and Aldermen)

- Range of possible outcomes: change of the data with respect to a third person in the registry
- Legal basis: Article 80 and 81 Municipal Personal Records Database Act (*Wet gemeentelijke basisadministratie persoonsgegevens, Wet GBA*).
- Type of procedure: administrative.
- Possibilities of appeal: administrative court (according to article 83 Wet GBA)
- Burden of proof: the individual's identity and proof of the relation with the third person (spouse or adoptive child).
- Available mechanism to lower the burden of proof: the act does not offer such a mechanism.
- Requirement of legal representation: there is no requirement of legal representation.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (Ministry of Safety and Justice). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? No, the individual(s) that has(have) this specific relation is

(are) the only beneficiary (beneficiaries) of this provision, and thus the only initiator (s). Nevertheless, a person is allowed to mandate a lawyer or another individual to represent him.

- Cost of procedure: The procedure is cost-free.
- Average duration of procedure: there is no available information.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. The annual reports of the municipality do not specify the requests in data protection issues or privacy related. Therefore, It is impossible to find out this specific information.

#### 5. Correction or deletion of data (at The Board of Mayor and Aldermen)

- Range of possible outcomes: correction or deletion of the personal data.
- Legal basis: Article 82 Municipal Personal Records Database Act (*Wet gemeentelijke basisadministratie persoonsgegevens (Wet GBA)*).
- Type of procedure: administrative.
- Possibilities of appeal: administrative court (according to article 83 Wet GBA).
- Burden of proof: the individual's identity and proof that the disputed data is incorrect, incomplete or that processing of the data constitutes an infringing of a legal regulation.
- Available mechanism to lower the burden of proof: the act does not offer such a mechanism.
- Requirement of legal representation: there is no requirement of legal representation.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (Ministry of Safety and Justice). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? No, the individual is the only beneficiary of this provision, and thus the only initiator. Nevertheless, a person is allowed to mandate a lawyer or another individual to represent him.
- Cost of procedure: the procedure is cost-free.
- Average duration of procedure: there is no available information.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. The annual reports of the municipality do not specify the requests in data protection issues or privacy related. Therefore, it is impossible to find out this specific information.

#### 6. Access to data (at the Mayor, head of the Police)

- Range of possible outcomes: access to data
- Legal basis: Article 25 Police Data Act (*Wet politiegegevens (Wpg)*).
- Type of procedure: administrative.
- Possibilities of appeal: mediation at the Dutch Data Protection Authority (*College Bescherming Persoonsgegevens*) and consecutively at the administrative court (according to article 29 Wpg).
- Burden of proof: the individual's identity.
- Available mechanism to lower the burden of proof: the act does not offer such a mechanism.
- Requirement of legal representation: there is no requirement of legal representation.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded

by national government (Ministry of Safety and Justice). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.

- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? No, the individual is the only beneficiary of this provision, and thus the only initiator. Nevertheless, a person is allowed to mandate a lawyer or another individual to represent him.
- Cost of procedure: the procedure is cost-free.
- Average duration of procedure: there is no available information.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. This information is not publically available and could not be provided at short notice. Aggregated data for the total amount of requests submitted to each Mayor, who is the head of the municipality' Police, could not be found.

#### 7. Correction, deletion or shielding of data (at the Mayor, head of the Police)

- Range of possible outcomes: Correction, deletion or shielding of data
- Legal basis: Article 28 Police Data Act (*Wet politiegegevens (Wpg)*).
- Type of procedure: administrative.
- Possibilities of appeal: mediation at the Dutch Data Protection Authority (*College Bescherming Persoonsgegevens*) and consecutively at the administrative court (according to article 29 Wpg).
- Burden of proof: the individual's identity and proof that the disputed data is incorrect, incomplete or that processing of the data constitutes an infringing of a legal regulation.
- Available mechanism to lower the burden of proof: the act does not offer such a mechanism.
- Requirement of legal representation: there is no requirement of legal representation.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (*Ministry of Safety and Justice*). For free legal advice, individuals can go to the Legal Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? No, the individual is the only beneficiary of this provision, and thus the only initiator. Nevertheless, a person is allowed to mandate a lawyer or another individual to represent him.
- Cost of procedure: the procedure is cost-free.
- Average duration of procedure: there is no available information.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. This information is not publically available and could not be provided at short notice. Aggregated data for the total amount of requests submitted to each Mayor, who is the head of the municipality' Police, could not be found.

#### 8. Access to data (at the Ministry's Judicial Information Service)

- Range of possible outcomes: access to data.
- Legal basis: Article 18 Judicial Data and Criminal Records Act (*Wet justitiële en strafvorderlijke gegevens (Wjsg)*).
- Type of procedure: administrative.

- Possibilities of appeal: mediation at the Dutch Data Protection Authority (*College Bescherming Persoonsgegevens*) and consecutively at the administrative court (according to article 39n Wjsg).
- Burden of proof: the individual's identity.
- Available mechanism to lower the burden of proof: the act does not offer such a mechanism.
- Requirement of legal representation: there is no requirement of legal representation.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative, individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (Ministry of Safety and Justice). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? No, the individual is the only beneficiary of this provision, and thus the only initiator. Nevertheless, a person is allowed to mandate a lawyer or another individual to represent him.
- Cost of procedure: € 4,54 (Article 25 Wjsg in conjunction with article 26 of the Decision Judicial Data (*Besluit Justiciële Gegevens*)).
- Average duration of procedure: there is no available information.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. This information is not publically available and could not provided at short notice. The website of the Ministry's Judicial Information Service (*Justitiële Informatiedienst*) does not provide any detailed information nor an annual report with this information.

#### 9. Correction, deletion or shielding of data (at the Ministry's Judicial Information Service)

- Range of possible outcomes: access to data.
- Legal basis: Article 22 Judicial Data and Criminal Records Act (*Wet justitiële en strafvorderlijke gegevens (Wjsg)*).
- Type of procedure: administrative.
- Possibilities of appeal: mediation at the Dutch Data Protection Authority (*College Bescherming Persoonsgegevens*) and after at the administrative court (according to article 39n Wjsg).
- Burden of proof: the individual's identity and proof that the disputed data is incorrect, incomplete or that processing of the data constitutes an infringing of a legal regulation.
- Available mechanism to lower the burden of proof: the act does not offer such a mechanism.
- Requirement of legal representation: there is no requirement of legal representation.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (Ministry of Safety and Justice). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? No, the individual is the only beneficiary of this provision, and thus the only initiator. Nevertheless, a person is allowed to mandate a lawyer or another individual to represent him.
- Cost of procedure: to correct, delete or shield the data, an individual first should be granted access to the data. This costs € 4,54 (Article 25 and 22 Wjsg read in conjunction with article 26 of the Decision Judicial Data (*Besluit Justiciële Gegevens*)).

- Average duration of procedure: there is no available information.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. This information is not publically available and could not be provided at short notice. The website of the Ministry's Judicial Information Service (*Justitiële Informatiedienst*) does not provide any detailed information nor an annual report with this information.

#### 10. Registration in register (at The Board of Major and Aldermen)

- Range of possible outcomes: registration in register
- Legal basis: Article D3a paragraph 2 Electoral Act (chapter D) (*Kieswet Hoofdstuk D*).
- Type of procedure: administrative.
- Possibilities of appeal: at the Judicial Division of the Council of State (article D9)
- Burden of proof: the individual's identity.
- Available mechanism to lower the burden of proof: the act does not offer such a mechanism.
- Requirement of legal representation: there is no requirement of legal representation.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (Ministry of Safety and Justice). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? No, the individual is the only beneficiary of this provision, and thus the only initiator. Nevertheless, a person is allowed to mandate a lawyer or another individual to represent him.
- Cost of procedure: the procedure is cost-free.
- Average duration of procedure: there is no available information.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. The annual reports of the municipality do not specify the requests in data protection issues or privacy related. Therefore, it is impossible to find out this specific information.

#### 11. Deletion from register (at The Board of Major and Aldermen)

- Range of possible outcomes: deletion of personal data from register
- Legal basis: Article D3a paragraph 3 Electoral Act (chapter D) (*Kieswet Hoofdstuk D*).
- Type of procedure: administrative.
- Possibilities of appeal: at the Judicial Division of the Council of State (article D9)
- Burden of proof: the individual's identity.
- Available mechanism to lower the burden of proof: the act does not offer such a mechanism.
- Requirement of legal representation: there is no requirement of legal representation.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (Ministry of Safety and Justice). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? No, the individual is the only beneficiary of this provision, and thus the only initiator. Nevertheless, a person is allowed to mandate a lawyer or another individual to represent him.
- Cost of procedure: the procedure is cost-free.

- Average duration of procedure: there is no available information.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. The annual reports of the municipality do not specify the requests in data protection issues or privacy related. Therefore, It is impossible to find out this specific information.

## 12. Revision of data in register (at The Board of Major and Aldermen)

- Range of possible outcomes: revision of data in register.
- Legal basis: Article D5 Electoral Act (chapter D) (*Kieswet Hoofdstuk D*).
- Type of procedure: administrative.
- Possibilities of appeal: at the Judicial Division of the Council of State (article D9)
- Burden of proof: the individual's identity and proof of incorrect registration.
- Available mechanism to lower the burden of proof: the act does not offer such a mechanism.
- Requirement of legal representation: there is no requirement of legal representation.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (Ministry of Safety and Justice). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? No, the individual is the only beneficiary of this provision, and thus the only initiator. Nevertheless, a person is allowed to mandate a lawyer or another individual to represent him.
- Cost of procedure: the procedure is cost-free.
- Average duration of procedure: there is no available information.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. The annual reports of the municipality do not specify the requests in data protection issues or privacy related. Therefore, It is impossible to find out this specific information.

## 13. Administrative enforcement (*bestuursdwang*)

- Range of possible outcomes: administrative enforcement.
- Legal basis: Persona Data Protection Act (*Wet bescherming persoonsgegevens (Wbp)*) art. 65, and the Police Data Act (*Wet politiegegevens (Wpg)*) art.35.
- Type of procedure: Data Protection Authority.
- Possibilities of appeal: first the DPA itself, secondly the Administrative court.
- Burden of proof: the complainant only files a complaint. The DPA then has the discretion to commence an investigation and possibly use administrative enforcement.
- Available mechanism to lower the burden of proof: for example presumption of fact or reversal of the burden of proof or lump sum compensation arrangement etc. The act does not offer such a mechanism.
- Requirement of legal representation: legal representation is not required.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (Ministry of Safety and Justice). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? Civil society organisations and associations can file a



complaint at the Data Protection Authority which could lead to an investigation and subsequently to the imposition of a penalty order.

- Cost of procedure: filing a complaint is cost-free.
- Average duration of procedure: this information is not available.
- In 2009 twenty-six penalty orders were imposed, in 2010 thirty-five and in 2011 six.

#### 14. Administrative fine (*bestuurlijke boete*)

- Range of possible outcomes: fine up to 4500 Euro.
- Legal basis: Personal Data Protection Act (*Wet bescherming persoonsgegevens (Wbp)*) art. 66.
- Type of procedure: data protection authority
- Possibilities of appeal: first the DPA itself, secondly the Administrative court.
- Burden of proof: the complainant only files a complaint. The DPA then has the discretion to commence an investigation and possibly impose an administrative fine.
- Available mechanism to lower the burden of proof: for example presumption of fact or reversal of the burden of proof or lump sum compensation arrangement etc. The act does not offer such a mechanism.
- Requirement of legal representation: legal representation is not required.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (Ministry of Safety and Justice). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? Civil society organisations and associations can file a complaint at the Data Protection Authority which could lead to an investigation and subsequently to the imposition of a penalty order.
- Cost of procedure: filing a complaint is cost-free.
- Average duration of procedure: no procedures with this outcome have occurred in 2009, 2010 and 2011.
- No administrative fines were imposed in 2009, 2010 and 2011.

#### 15. Access to data (Civil Court)

- Outcome is to get access to personal data
- Legal basis: Personal Data Protection Act (*Wet bescherming persoonsgegevens (Wbp)*) art. 35 read in conjunction with art. 46.
- Type of procedure: civil
- Possibilities of appeal: Court of appeal (2<sup>nd</sup>) (*Gerechtshof*), Supreme court (3<sup>rd</sup>) (*Hoge Raad*).
- Burden of proof: the person must be subject to the law, and prove that the responsible authority has not provided the requested information in an understandable manner, and the purpose(s) and category(categories) of the data processing, the origins and the recipients of the personal data.
- Available mechanism to lower the burden of proof: the organisation that processes personal data has to justify this.
- Requirement of legal representation: generally legal representation is not mandatory, unless in the procedure the plaintiff also claims expenses over €5000.

- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (Ministry of Safety and Justice). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? Only beneficiaries can present a petition at the civil court. Nevertheless, a person is allowed to mandate a lawyer or another individual to represent him, and to call upon the testimonies of experts.
- Cost of procedure: there is no information available regarding average costs.
- Average duration of procedure: there is no information available regarding average duration.
- The outcomes of the procedures for each year are: 2009 4 procedure (in 2 cases access to data granted, in 2 cases not granted); 2010 7 procedures (in 3 cases access granted, in 4 cases not granted); 2011 4 procedures (in 2 cases access granted, in 2 case access not granted)

#### 16. Correction or deletion of data (Civil Court)

- Outcome is to obtain a correction or deletion of personal data
- Legal basis: Personal Data Protection Act (*Wet bescherming persoonsgegevens (Wbp)*) art. 36 read in conjunction with art. 46.
- Type of procedure: civil
- Possibilities of appeal: Court of appeal (2<sup>nd</sup>) (*Gerechtshof*), Supreme court (3<sup>rd</sup>) (*Hoge Raad*).
- Burden of proof: Burden of proof: proof that the disputed data is incorrect, considering the purpose(s) of the processing of the data, or are not of relevance, or that processing of the data constitutes an infringement of a legal regulation.
- Available mechanism to lower the burden of proof: the organisation that processes personal data has to justify this.
- Requirement of legal representation: generally legal representation is not mandatory, unless in the procedure the plaintiff also claims expenses over €5000.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (Ministry of Safety and Justice). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? Only beneficiaries can present a petition at the civil court. Nevertheless, a person is allowed to mandate a lawyer or another individual to represent him, and to call upon the testimonies of experts.
- Cost of procedure: there is no information available regarding the average costs of the procedure.
- Average duration of procedure: there is no information available regarding the average duration of the procedure.
- The outcomes of the procedures for each year are: 2009, 2 procedures (in all two cases correction or deletion granted); 2010 8 procedures (in 4 cases correction or deletion granted, in 4 case not granted); 2011 6 procedures (in 5 cases correction or deletion not granted, in 1 case not granted).

#### 17. Reparation of -immaterial- damages (*Schadevergoeding*) (Civil Court)

- Outcome is to get Reparation of -immaterial- damages (*Schadevergoeding*)
- Legal basis: Art. 6: 162 of the Dutch Civil Code
- Type of procedure: civil
- Possibilities of appeal: Court of appeal (2<sup>nd</sup>) (*Gerechtshof*), Supreme court (3<sup>rd</sup>) (*Hoge Raad*).
- Burden of proof: the plaintiff needs to prove criteria of article 6:162 and 6:163, being: attribution, damage, causality, accountability, and an infringement of law or unwritten law that has to be regarded as proper social conduct which is meant to offer protection.
- Available mechanism to lower the burden of proof: the organisation that processes personal data has to justify this. The act does not offer such a mechanism.
- Requirement of legal representation: generally legal representation is not mandatory, unless in the procedure the plaintiff also claims expenses over €5000.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (Ministry of Safety and Justice). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? The individual is the only beneficiary of this provision, and thus the only initiator because he/she needs to prove damage and causality. Nevertheless, a person is allowed to mandate a lawyer or another individual to represent him, and it is common to call upon the testimonies of experts.
- Cost of procedure: there is no information available regarding average costs.
- Average duration of procedure: there is no information available regarding average duration.
- The outcomes of the procedures for each year are: 2009 no procedures; 2010 1 procedure (reparation not granted); 2011 1 procedure (reparation granted)

#### 18. Access to data (Administrative Court)

- Outcome is to get access to personal data
- Legal basis: Personal Data Protection Act (*Wet bescherming persoonsgegevens (Wbp)*) art. 35, jo art. 45 of the Personal Data Protection Act, jo 8:72 of the General Administrative Law Act (*Algemene wet bestuursrecht (Awb)*), jo 8:1 and 1:3 of the Dutch Civil Code.
- Type of procedure: administrative
- Possibilities of appeal: Court of appeal (2<sup>nd</sup>) (*Gerechtshof*), Administrative Jurisdiction Division of the Council of State / Administrative High Court / Trade and Industry Appeals Tribunal (3<sup>rd</sup>). (*Raad van State/Centrale Raad van Beroep/College van Beroep voor het Bedrijfsleven*).
- Burden of proof: the person must be subject to the law, and prove that the responsible authority has not provided the requested information in an understandable manner, and the purpose(s) and category(categories) of the data processing, the origins and the recipients of the personal data.
- Available mechanism to lower the burden of proof: the act does not offer such a mechanism.
- Complainant can initiate a procedure on his own.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (Ministry of Safety and Justice). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.

- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? Only beneficiaries can present a petition at the civil court. Nevertheless, a person is allowed to mandate a lawyer or another individual to represent him, and to call upon the testimonies of experts.
- Cost of procedure: there is no information on the average cost of the procedure
- Average duration of procedure: there is no available information regarding duration of the procedure.
- The outcomes of the procedures for each year are: 2009, 1 procedure (access to data not granted); 2010 5 procedures (in 3 cases access granted, in 2 cases not granted); 2011 13 procedures (in 10 cases access granted, in 3 case access not granted)

#### 19. Correction or deletion of data (Administrative Court)

- Outcome is to obtain a correction or deletion of personal data
- Legal basis: Dutch Data Protection Act (*Wet bescherming persoonsgegevens (Wbp)*) art. 36, , jo art. 45 of the Personal Data Protection Act, jo 8:72 of the General Administrative Law Act (*Algemene wet bestuursrecht (Awb)*), jo 8:1 and 1:3 of the Dutch Civil Code.
- Type of procedure: administrative
- Possibilities of appeal: Court of appeal (2<sup>nd</sup>) (*Gerechtshof*) Administrative Jurisdiction Division of the Council of State / Administrative High Court/ Trade and Industry Appeals Tribunal (3<sup>rd</sup>). (*Raad van State/Centrale Raad van Beroep/College van Beroep voor het Bedrijfsleven*).
- Burden of proof: proof that the disputed data is incorrect, considering the purpose(s) of the processing of the data, or are not of relevance, or that processing of the data constitutes an infringement of a legal regulation.
- Available mechanism to lower the burden of proof: : the act does not offer such a mechanism.
- Complainant can initiate a procedure on his own.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (*Ministry of Safety and Justice*). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? Only beneficiaries can present a petition at the civil court. Nevertheless, a person is allowed to mandate a lawyer or another individual to represent him, and to call upon the testimonies of experts.
- Cost of procedure: there is no information available on the average cost of the procedure.
- Average duration of procedure: there is no information available on the average duration of the procedures.
- The outcomes of the procedures for each year are: 2009, 3 procedures (in all three cases correction or deletion granted); 2010 2 procedures (in 1 case correction or deletion granted, in 1 case not granted); 2011 1 procedure (correction or deletion not granted)

#### 20. Reparation of -immaterial- damages (*Schadevergoeding*) (Administrative Court).

- Outcome is to get Reparation of -immaterial- damages (*Schadevergoeding*)
- Legal basis: Dutch Data Protection Act (*Wet bescherming persoonsgegevens (Wbp)*) art. 49, jo art. 45 of the Personal Data Protection Act, jo 8:73 of the General Administrative Law Act (*Algemene wet bestuursrecht (Awb)*), jo 8:1 and 1:3 of the Dutch Civil Code.
- Type of procedure: Administrative

- Possibilities of appeal: Court of appeal (2<sup>nd</sup>) (*Gerechtshof*), Administrative Jurisdiction Division of the Council of State, Administrative High Court, Central Council of Appeal and Trade and Industry Appeals Tribunal (3<sup>rd</sup>). (*Afdeling Bestuursrechtspraak van Raad van State, Centrale Raad van Beroep, Centrale Raad voor het Bedrijfslevens*).
- Burden of proof: the plaintiff must prove that he has suffered damage because the Dutch Data Protection Act was infringed by the defendant.
- Available mechanism to lower the burden of proof: the act does not offer such a mechanism.
- Complainant can initiate a procedure on his own.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (*Ministry of Safety and Justice*). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? Only beneficiaries can present a petition at the civil court. Nevertheless, a person is allowed to mandate a lawyer or another individual to represent him, and to call upon the testimonies of experts.
- Cost of procedure: there is no information available on the average cost of the procedure.
- Average duration of procedure: there is no information available on the average duration of the procedure.
- The outcomes of the procedures for each year are: 2009 no procedures; 2010 1 procedure (reparation not granted); 2011 1 procedure (reparation not granted)

## 21. Penal sanction (Fine)

- Outcome a fine.
- Legal basis: article 75 paragraph 3 Personal Data Protection Act. And the Dutch Penal Code.
- Type of procedure: Criminal
- Possibilities of appeal: Court of appeal (2<sup>nd</sup>) (*Gerechtshof*), Supreme court (3<sup>rd</sup>) (*Hoge Raad*).
- Burden of proof: the burden of proof lies upon the prosecutor.
- Available mechanism to lower the burden of proof: not applicable since the burden of proof lies upon the prosecutor.
- Requirement of legal representation: legal representation is not mandatory.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (Ministry of Safety and Justice). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? The Public Prosecutor initiates the procedure, only direct beneficiaries (mostly victims) can object to the decision of the Public Prosecutor not to prosecute. Experts can be called upon as witnesses.
- Cost of procedure: not applicable.
- Average duration of procedure: there is no information available.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011: no cases found.

## 22. Prison sentence.

- Outcome is prison sentence.
- Legal basis: article 75 paragraph 3 Personal Data Protection Act. And the Dutch Penal Code.
- Type of procedure: Criminal
- Possibilities of appeal: Court of appeal (2<sup>nd</sup>) (*Gerechtshof*), Supreme court (3<sup>rd</sup>) (*Hoge Raad*).
- Burden of proof: the burden of proof lies upon the prosecutor.
- Available mechanism to lower the burden of proof: not applicable since the burden of proof lies upon the prosecutor.
- Requirement of legal representation: no.
- Is there free legal advice/representation available from a public body (please specify the public body)? For financial assistance regarding a representative individuals can apply at the Legal Aid Board (*Raad voor de Rechtsbijstand*), which is an Administrative Authority, funded by national government (*Ministry of Safety and Justice*). For free legal advice, individuals can go to the Legal Services Counter (*Juridisch Loket*) which is funded by the Legal Aid Board and the Ministry of Safety and Justice.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? The Public Prosecutor initiates the procedure, only direct beneficiaries (mostly victims) can object to the decision of the Public Prosecutor not to prosecute. Experts can be called upon as witnesses.
- Cost of procedure: not applicable.
- Average duration of procedure: there is no information available.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011: no cases found.

## 23. National Ombudsman

- Range of possible outcomes: The National Ombudsman makes a decision whether the complaint is founded or not. The decision by the National Ombudsman however is not legally enforceable.
- Legal basis: The Netherlands has a special National Ombudsman Act (*Wet Nationale ombudsman*). In addition, the work of the National Ombudsman's Office is covered by the Dutch General Administrative Law Act (*Algemene wet bestuursrecht*) and the existence of the National Ombudsman is guaranteed by the Dutch Constitution (Chapter 4, Article 78a). The National Ombudsman uses relevant laws to find out whether the complaint is founded. In this case the Dutch Data Protection Act (*Wet bescherming persoonsgegevens (Wbp)*).
- Type of procedure: alternative mechanism
- Possibilities of appeal: The National Ombudsman deals with complaints about administrative authorities. Complainant has to settle matters with the administrative authority; only if they fail to settle the matter can the complainant go to the National Ombudsman.
- Burden of proof: Ombudsman investigates the complaint by the complainant.
- Available mechanism to lower the burden of proof: no such mechanism available.
- Requirement of legal representation: complainant can initiate a procedure on his own?
- Is there free legal advice/representation available from a public body (please specify the public body): no.
- Is there locus standi for DP authorities, civil society organisations and associations: no.
- Cost of procedure: no information.
- Average duration of procedure: no available information.
- The outcomes of the procedures for each year are: 2009, 5 procedures (in three cases the complaints were founded, in two cases unfounded) ; 2010, 5 procedures (in four cases the

complaints were founded, in one case unfounded); 2011, 9 procedures (in five cases the complaints were founded, in four cases unfounded).