

16 May 2011

From: **LDI NRW <Poststelle@ldi.nrw.de>**
To: **"'edward@hasbrouck.org'" <edward@hasbrouck.org>**
Subject: **Lufthansa; right of access**
Date sent: **Mon, 16 May 2011 14:23:04 +0000**

Your complaint dated 11 August 2010
Az.: 67.5.4.2 - 2821/10

Dear Mr. Hasbrouck,

at first I apologize for the long delay in answering your complaint. There were some difficult legal points in your case concerning the relation between Amadeus und Lufthansa on which we tried to find clearance also with other European data protection authorities.

We welcome your critical view on the PNR transfer. After more than 8 years of experiences with PNR systems we have not seen a convincing proof for the necessity and proportionality of such a surveillance instrument targeting all flight travelers regardless of their involvement in criminal offences. Therefore it stands to reason that you want to receive more information on the processing of your PNR data.

We agree in so far with you that it is a task of Lufthansa to provide you with all PNR information that has been transferred by Amadeus to the US Department of Homeland Security on behalf of Lufthansa. Transferring passenger data to the US Department of Homeland Security is a legal obligation of Lufthansa. In so far Amadeus is only acting as processor on behalf of Lufthansa. Responsible for your right of access to your data is Lufthansa as controller of this transfer process. Therefore we have asked Lufthansa by a letter from today to inform you about all PNR elements which they have transferred to the US Department of Homeland Security concerning your person including data they transferred via Amadeus.

If you would like to know, whether there is additional passenger data concerning your person in the reservation system of Amadeus your right of access to your data is ruled by Regulation (EC) No 80/2009 of the European Parliament and of the Council on a Code of Conduct for computerized reservation systems (see here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:035:0047:0055:EN:PDF> . You should address such a request directly to Amadeus, which is according to Art. 11 No. 1 of Regulation (EC) No 80/2009 the controller of the data.

You gave an exhausted explanation why you believe that Lufthansa was obliged to inform you about all data that has been collected for reservation purposes irrespective the fact that Lufthansa does not store the data in its own systems. Primarily you see travel agencies which are involved in booking Lufthansa flights as data processors acting on behalf

of Lufthansa. Here it is necessary to understand, that commercial agreements on executing contracts on behalf of a company do not create automatically a controller-processor-relationship in which one party processes data on behalf of the other party. Significant for a controller-processor-relationship in the sense of Sec. 11 of the Federal Data Protection Code is that the processor may absolutely not take any decision on his own which, whether and how personal data is processed. Typically data processors support a controller technically e.g. by providing storage capacities or data bases programmed for the special requirements of the controller.

In our legal terms we describe the situation between Lufthansa and travel agencies who are selling tickets for Lufthansa flights as "delegation of a task". This means that the task of "selling tickets" is operated by other entities which are able to decide themselves within a certain framework how they handle the data processing. Entities which take over a task are controller of the data they collect in performing their task. To make that more clear I want to try to describe the difference between "processing on behalf" and "delegation of a task" related to practice. The travel agent usually decides about the kind of contact information he needs for performing his task. Some agents probably regard an e-mail address and a credit card number as sufficient to identify a client, others ask for a postal address or a bank account or passport number. It is usually also a matter of the travel agencies to decide about the collection of additional data for promotion purposes. Some agencies might even decide to transfer travelers data to an advertising agency for a promotion campaign. A processor never may take such decisions.

Another example I would like to refer to is Amadeus which transfers PNR on behalf of Airlines to government authorities. This is a typical case of "processing on behalf", because Amadeus only provides a technical support but may not take any decision about the amount or categories of data to be transferred or about the recipients of the data.

Crucial for a processing on behalf is that a controller determines all relevant decisions about the processing of the data. The processing of travel agents is not controlled in such a strict manner. Therefore I summarize that travel agents are not processing data on behalf of Lufthansa. Lufthansa is only obliged to give you the information about your data which is stored in the systems under their control. This includes, as above mentioned, PNR that has been processed by Amadeus on behalf of Lufthansa to fulfill Lufthansa's legal obligation to transfer PNR to the U.S. Department of Homeland Security.

Further you complained about Lufthansa not having informed you about the categories of recipients of your data. During our investigation Lufthansa has named the following recipients:

- United States Customs and Border Protection
- Passenger Handling Services on Airports
- Airlines cooperating with Lufthansa; in your case United Airlines
- Lufthansa Revenue Service GmbH

Finally you were of the opinion that Lufthansa had an obligation to give you a description of the logic of automated decisions taken by the U.S. Government on the basis of data which Lufthansa has transferred about your person. It would be most interesting to receive such information, for us as well, because we could learn more about the handling of PNR. But of factual reasons the legal obligation of Lufthansa under Sec. 6a, subsec. 3 and Sec. 34 as well as under Art. 12 of the European Data Protection Directive goes not so far. The right to obtain information from the controller is determined to the data processing, which is controlled by the controller. If data is transferred to a third party, this party is a new controller for all processing done by this party. The right of access to the data has to be addressed to this new controller. Lufthansa is not the controller of the data processing for the targeting system which is in use for passenger control in the U.S.

I hope that I made the main points of our findings clear enough. As we have no support by a professional interpretation service the wording might be a bit unskillful. Please do not hesitate to ask for further explanation if something remains unclear.

Yours sincerely,
Schonebeck

Almut Schonebeck
Referat 6
Landesbeauftragter für Datenschutz
und Informationsfreiheit
Nordrhein-Westfalen

Dep.6
Commissioner for Data Protection and
Freedom of Information
of North Rhine-Westphalia (Germany)

Kavalleriestr. 2-4, 40213 Düsseldorf

Tel: **49 - *211 - 38424-
Fax: **49 - *211 -3842410
www.ldi.nrw.de

Öffentlicher Schlüssel: www.ldi.nrw.de/metanavi_Kontakt/key_ldi.asc