

Code of Conduct for Personal Investigations

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This translation is provided for information purposes only. In the event of a difference of interpretation or a dispute, the original Dutch version of this document is binding.

Introduction

Insurers record data that are necessary for the conclusion of the insurance contract and important for the performance of the obligations arising from that contract. In some cases, it is necessary to collect or verify additional data. The Code of Conduct for Personal Investigations has been drawn up for investigations that may affect the privacy of those involved.

This Code of Conduct¹ was formulated by the Dutch Association of Insurers and is intended for its members when conducting personal investigations. This Code of Conduct also applies to private investigation agencies that conduct these investigations on behalf of an insurer. The Association of Dutch Health Insurers ('Zorgverzekeraars Nederland') has stated that its members will also comply with this Code of Conduct insofar as this does not conflict with the investigative powers and requirements under the Dutch Health Insurance Act.

When entering into and performing an insurance agreement, tension can arise between:

- on the one hand, the interest of insurers to undertake activities aimed at recognising, preventing, investigating and combating improper use to obtain insurance cover, payment or performance;
- on the other hand, the interests of the data subject or subjects against unjustified infringements of their privacy.

This Code of Conduct contributes to the transparency of the investigation methods used by insurers and the investigation resources they deploy. The Code also specifies when the data subjects are informed of the fact that they are or will be the subject of an investigation.

The Code of Conduct describes the principles for initiating a personal investigation as part of activities aimed at identifying, preventing, investigating and combating improper use to obtain insurance cover, payment or performance. The Code of Conduct sets out the principles to be observed by the insurer in this regard, in which proportionality and subsidiarity are important underlying principles.

The Code of Conduct is in line with the Code of Conduct for the Processing of Personal Data by Financial Institutions, the Code of Conduct for the Processing of Personal Data by Health Insurers, the Privacy Code of Conduct of the Private Investigation Sector of the Association of Private Security Organisations, and the Protocol on Incident Warning System for Financial Institutions (PIFI). In addition to these codes of conduct, existing legislation in the area of privacy naturally applies, such as the Personal Data Protection Act (Wbp) and legislation on the open and covert use of cameras.

The Code of Conduct does not apply to internal investigations at insurers, unless the subject of the investigation is an employee in the role as policyholder or insured person who is entitled to benefits under a policy taken out with the employee's insurer who also happens to be the employer.

¹ The previous version of January 2004 ceased to be valid when this version of the Code of Conduct for Personal Investigations was introduced

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Code of Conduct for Personal Investigations

Definitions and terms

The following terms in this Code of Conduct have the following meaning.

Data Subject	The natural legal person to whom the investigation relates.
Investigation of facts	The investigation into the facts, circumstances and behaviour of the data subject that is necessary for the assessment of an insurance application, current insurance contract, claim notification or other claim to payment or performance.
Investigation agency	An agency as referred to in Article 1(1)(f) of the Dutch Private Security Organizations and Detective Agencies Act.
Personal investigation	The investigation, following a fact-finding investigation, into the behaviour of the data subject, using special investigation methods and special investigation equipment that infringes or may infringe on the person's privacy.
Proportionality	Consideration that the intrusion into the privacy of the data subject should not be disproportionate in relation to the purpose of the intended processing of personal data.
Subsidiarity	Consideration of whether the purpose of the personal investigation (and the special investigation methods and means to be used) cannot reasonably be achieved in another way that is less harmful to the data subject.
Insurance fraud	Deliberately misleading an insurer in the conclusion and/or performance of an insurance contract with the intention of unlawfully obtaining insurance cover, payment, performance or service.
Security Department	the department or person within a Financial Institution responsible for the processing of personal data within the framework of safeguarding the security and integrity;

Article 1 Personal investigation

1.1. A *personal investigation* may be instituted after:

The initiated fact-finding investigation does not provide any, or insufficient, conclusive information to take a decision in the case of an insurance application, current insurance contract, claim notification or other claim for benefit or performance;

Or:

Reasonable doubt has arisen as to the accuracy or completeness of the results of the fact-finding investigation, such that a reasonable suspicion of *insurance fraud* or other forms of improper use of insurance products or services has arisen for the insurer.

1.2. A personal investigation can be carried out simultaneously for several insurers.

1.3. In the event that healthcare insurers have specific powers under law and regulations regarding a personal or medical examination – for instance, in the context of

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assessing an application for a medical provision – these rules take precedence over the Code of Conduct.

Article 2 Balancing of interests between the data subject and the insurer (*Proportionality*)

2.1. When initiating a personal investigation, the insurer carefully considers the interests of the insurer during the course of the investigation against the right to protection of the data subject's privacy.

2.2. This balancing of interests must involve all relevant aspects, such as the right to privacy of the data subject, the financial interest, the interest in ascertaining the truth, the interest in rapid and careful decision-making, or the degree of loss of integrity or breach of security.

Article 3 Balancing of interests of the investigation resource (*Subsidiarity*)

3.1. The insurer assesses whether a personal investigation is the only means at its disposal or whether there are other means of investigation that would entail less of an intrusion into the privacy of the data subject but that could produce the same result.

3.2. In doing so, the insurer considers whether the objective of the personal screening (and the special investigation methods and means to be used) cannot reasonably be achieved in another manner that affects the protection of the data subject's privacy to a lesser degree.

Article 4 Decision on personal investigation

4.1. The responsibility for the decision to carry out a personal investigation and the manner in which it is to be carried out lies with the insurer.

4.2. Because a personal investigation can have an impact on the data subject's privacy, the decision about the investigation, including the method to be used, must state reasons. In any case, it must be recorded by whom and on what grounds the decision was taken.

4.3. The case handler or investigator are not allowed to take this decision to investigate on their own. The decision to start a personal investigation must be taken by the manager of the file handler concerned or by the Security Department. If the file handler or investigator works in the Security Department, their manager is to decide.

Article 5 Start and duration of the personal investigation

5.1. A *personal investigation* must be carried out within a reasonable period after the insurer has decided on this in accordance with Article 4.

5.2. The insurer will make every effort to complete the personal investigation as soon as possible.

Article 6 Purpose of the personal investigation

6.1. The personal investigation focusses on answering questions that may be important in taking a careful decision about an insurance application, a current insurance contract, a claim for benefits or performance, or answering investigation questions relating to (suspected) *insurance fraud* or other forms of improper use of insurance products or services.

Article 7 Methods of investigation

7.1. In the personal investigation, various investigation methods may be used, such as:

- a. interviewing the data subject;
- b. gathering information from third parties;
- c. observing the data subject.

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7.2. If, when conducting a personal investigation, information is obtained from third parties, the insurer does not provide more information about the data subject to these third parties than is necessary for the investigation.

7.3. If a personal investigation involves the observation of the person in question, situations are avoided where persons have a legitimate expectation that they can be themselves freely without being watched.

7.4. If a camera is used for observation, the following will also apply:

- a. the use of cameras is as targeted as possible;
- b. the period in which a camera is used is kept to a minimum;
- c. if the images give cause to do so, an evaluation will be held with the data subject insofar as the interest of the investigation permits this.

Article 8 Engaging research agencies

8.1. The insurer may contract out the personal investigation to an investigation agency.

8.2. The insurer only gives an assignment to an investigation agency if that agency has all the relevant licences prescribed by law.

8.3. The assignment that the insurer gives to the investigation agency sets out the objective and the nature of the investigation.

8.4. The assignment that the insurer gives to the investigation agency contains the following conditions:

- a. The data and investigation results (made available by the insurer) may only be processed in accordance with the purpose of the assignment;
- b. The investigation data and results may not be processed by the investigation agency in a way that is incompatible with the purposes for which the data was obtained, as referred to in Article 5.4 of the Privacy Code of Conduct of the Private Investigation Sector of the Association of Private Security Organisations;
- c. If investigation data or results are to be made available for inspection or given to a third party, the Client will be informed by the investigation agency without delay, unless the investigation agency is not authorised to inform the Client at that time under laws and regulations;
- d. The investigation agency will take the necessary technical and organisational steps to secure the investigation data against loss or damage and against unauthorised access, modification or provision;
- e. The investigation agency acts in accordance with the rules of this Code of Conduct.

8.5 If the insurer outsources the commission of an investigation to an investigation agency, the data subject will be informed by or on behalf of the insurer about the use of the investigation agency and about any organisational or legal links between the investigation agency and the insurer.

8.6 The data subject will not be informed that a personal investigation is being performed at the insurer's request if this is necessary in the interest of one or more of the cases referred to in Article 43(a-e). of the Personal Data Protection Act.

Article 9 Obligation to inform

9.1. Before the insurer collects information from third parties as referred to in Article 7.1.b, it will inform the data subject accordingly.

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9.2. In doing so, the insurer mentions the purpose and general nature of this personal investigation.

9.3. If the investigation is to take place on behalf of several insurers, the data subject must be informed by each insurer separately. If an insurer joins an ongoing personal investigation, the data subject must be informed of this by the insurer in question.

9.4. The data subject is to be informed that a personal investigation is being initiated if this is necessary in the interest of one or more of the cases referred to in Article 43(a-e) of the Personal Data Protection Act.

9.5. The insurer informs the data subject about the results of the investigation.

9.6. The data subject will be informed that an observation as referred to in Art. 7.1.c. has taken place.

9.7. The obligation to inform may be omitted if this is necessary in the interest of one or more of the cases referred to in Article 43 (a-e) of the Personal Data Protection Act.

Article 10 Investigation data storage

10.1. The insurer retains the investigation data and results for no longer than is strictly necessary to achieve the purpose for which the data was collected, taking into account the mutual interests of the insurer and the data subject.

10.2. The investigation data in the context of the personal investigation are included in the Records of Events in accordance with the Code of Conduct for the Processing of Personal Data by Financial Institutions / the Code of Conduct for the Processing of Personal Data by Health Insurers, or in the Incidents Register in accordance with the Protocol on the Incident Warning System for Financial Institutions.

10.3. The insurer takes the necessary technical and organisational steps to secure the investigation data against loss or damage and against unauthorised access, modification or provision.

Article 11 Access and correction

11.1 With due observance of the regulations referred to in Article 10.2, the insurer allows the data subject, on request, access to the personal data processed about the data subject for the investigation. The request will be answered within four weeks of receipt.

11.2 After access has been granted, the data subject is entitled to request the insurer, stating reasons, to correct the personal data if they are factually inaccurate, incomplete or irrelevant, or have been processed in conflict with a statutory provision.

Article 12 Complaints procedure

12.1 If data subjects have a complaint about compliance with this Code of Conduct, they may submit it to the complaints committee of the insurer concerned.

12.2 If the handling of the complaint by the complaints committee, as referred to in the previous paragraph, has not led to an acceptable result for the data subject, and the data subject meets the admission requirements of the Financial Services Complaints Institute (Kifid) in The Hague or, in case of a health insurer, of the Healthcare Insurance Complaints and Disputes Foundation (SKGZ) in Zeist, the data subject may submit the complaint about compliance with this Code of Conduct to Kifid or SKGZ.