

The publicity principle, land registration systems, and data protection



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Maastricht
Law
Series

2

Anna Berlee

Access to personal data
in public land registers

Balancing publicity
of property rights
with the rights to privacy
and data protection

eleven
international publishing

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CONTENT

- The **publicity** principle of property law
- Land registration systems
- **Privacy**
- Data protection
- **Access** to personal data in land registries

2

Part I

Part II

Part III



PUBLICITY

THEORY



PUBLICITY PRINCIPLE



TIED TO THIRD PARTY EFFECT



INFORMATION



TRANSACTION-RELEVANT INFORMATION



PUBLICITY

IN PRACTICE

LAND REGISTRIES



HIGH LEVEL OF PUBLICITY

All systems looked at,
have a high level of
attaining publicity



INFORMATION MONOPOLY

No more bank or notaries
only who had access



LEGAL DEVELOPMENTS

England & Wales
The Netherlands
(Germany)



PRACTICAL DEVELOPMENTS

From practical obscurity
to accessible within
minutes



www.landregistry.gov.uk
www.kadaster.nl

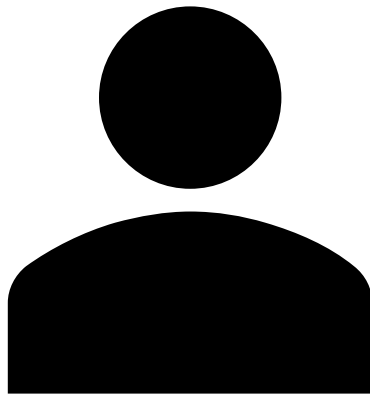


**LAND REGISTRIES
SIT ON A TREMENDOUS
AMOUNT OF (VALUABLE) DATA**



PRIVACY

From the right to be let alone
to the General Data Protection Regulation



You?

PERSONAL DATA IN DUTCH DEEDS

- Full name
- Current address
- Marital status
- ~~Profession~~
- ID-number
- Date of marriage
- Date of divorce
- Purchase price
- (max) mortgage loan value
- Whatever was agreed upon
- Other (personal) data (combined deeds)

A FUNDAMENTAL RIGHT

ARTICLE 8 ECHR

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

**Includes protection
of home address**
(Alkaya v. Turkey)



A FUNDAMENTAL RIGHT

15

ARTICLE 8 EU Charter

Protection of personal data

GENERAL DATA
PROTECTION
REGULATION

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must **be processed fairly** for **specified purposes** and on the basis of the consent of the person concerned or some other **legitimate basis laid down by law**. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.



A FUNDAMENTAL RIGHT

16

ARTICLE 8 EU C

Protection of personal data

1. Everyone has the right to the protection of his or her personal data.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

Art. 5(1)(b) GDPR:

Personal data shall be:

collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes ('purpose limitation');



A FUNDAMENTAL RIGHT

17

ARTICLE 5

Protection of p

1. Everyone has the right to the protection of his or her personal data concerning

Art. 5(1)(c) GDPR:
Personal data shall be:
adequate, relevant and limited to what is necessary
in relation to the purposes for which they are
processed ('data minimisation');

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

**COMPATIBLE WHEN ACCESS
IS RESTRICTED BASED ON
THE PUBLICITY PRINCIPLE**





ACCESS

Who get's access to personal data in the land registries?

VERY ROUGH COMPARISON

	The Netherlands	England & Wales	Germany
GENERAL CHARACTERISATION	Open	Open	Limited
Search by property	Yes	Yes	Yes
Search by name	Yes	Limited	Limited
Access to registration	Yes	Yes	Limited
Access via internet	Yes	Yes	Limited
Access to underlying documents	Yes	Limited	Limited
Possibility to shield information?	Not yet (officially)	Yes	No
SPEED	Instantaneously	Instantaneously	Depends (public vs. notaries)

Please consult the book for all the nuances

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2

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OLD ALREADY?

• Netherlands:

- Advice DPA (public: 2 July 2018)– Introduce request for reasons for access
- Answer government: No, legal certainty & speed
- Change of law proposed to shield individuals (4 July 2018)
- Discussion regarding business registers (Sept –)

• Belgium:

- Advice DPA (26 sept 2018) – Reform *Hypotheekwet* in light of protection of personal data legislation – Introduce request for reasons for access

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