Do lost letters qualify as data breaches? And what about envelopes with credit card details or court files in garbage containers?

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A letter containing personal data is sent to the wrong address, is opened by the receiver and then returned to sender.

An envelope with credit card payment information of 800 people was inadvertently not shredded, but thrown into a dustbin. Someone pulled the data from the garbage on the streets and gave them to third parties.

In the context of the renovation of the Amsterdam Courthouse construction workers find lots of court files in empty rooms (or a garbage container?)

Dossiers op straat

do these incidents qualify as data breaches?

does the Data Protection Act apply?

• processing of personal data wholly or partly by automated means...
• processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system...?
**WHEN IS THERE PARTLY AUTOMATED PROCESSING?**

A letter that is sent to the wrong address is a security breach (Article 34a Dutch DP Act)?

And an envelope with credit card details? Garbage bags with court documents?..?

*The distinction between manually or automatically processed data or data to be processed cannot always be sharply made. Parliamentary Documents II 97/98, 25892, no. 3, p. 69*

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**automated processing**

**Article 2 Dutch DP Act**

1. This Act applies to the fully or partly automated processing of personal data, and the non-automated processing of personal data entered in a file or intended to be entered therein.

**Article 2 GDPR**

6. This Regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

"use is made of means and methods of automated data processing" Parliamentary Documents II 97/98, 25892, no. 3, p. 69

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**partly automated processing**

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«partly automated»

"combination of processing operations considered as a unity" Parliamentary Documents II 97/98, 25892, no. 3, p. 51

"automated data and a manual data collection [are] so [...] interconnected that they must be designated as one" Parliamentary Documents II 97/98, 25892, no. 3, p. 69

Examples:

"a manually kept help file of source documents that has an evidentiary function with respect to the automated data"

"if by means of the automated data access can be obtained to the non-automated file"

Parliamentary Documents II 97/98, 25892, no. 3, p. 69

printed documents

“[p]aper documents printed on a fax machine or by means of a personal computer, if they contain personal data, are governed by the provisions applicable to the non-automated processing of personal data.” Parliamentary Documents II 97/98, 25892, no. 3, p. 60

The delivery of a paper letter is no ‘partly automated processing’, just because the letter has been drawn up by means of word processing software...!

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Does the letter or the paper document contain personal data?

Yes

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Yes

Is there enough interconnectedness of the automated processing with non-automated processing?

Yes

Are automated means used for the processing of the personal data in the letter or the paper document?

Yes

Are automated means used for the processing of the personal data in the letter or the paper document?

Yes

Is there a wholly or partly automated processing of personal data?

Yes

Are there printed documents (prints of e-mails) filing cabinet with index?

Yes

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WHAT IS A FILING SYSTEM..?

A letter sent to the wrong address is a security breach (art. 34a Dutch DP Act)?

An envelope with credit card details?

Garbage bags with court documents..?

«non-automated processing»

Article 2 Dutch DP Act
1. This Act applies to the fully or partly automated processing of personal data, and the non-automated processing of personal data entered in a file or intended to be entered therein.

Article 2 GDPR
6. This Regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

«filing system»

Article 1 Dutch DP Act
(c) any structured set of personal data, regardless of whether or not this data set is centralised or dispersed along functional or geographical lines, that is accessible according to specific criteria and relates to different persons

Article 4 GDPR
(6) means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis

structured & systematically accessible
relates to different data subjects

systematic accessibility

This may concern a systematic composition of the files in accordance with a fixed structure that facilitates the access to the contents of the files or for the use of an automated index to make these files accessible. [...] Files for which such measures have not been taken are [...] not governed by the Dutch DP Act.

This is not altered by the fact that the files are filed in accordance with one single criterion, for example alphabetically or on the date of receipt Parliamentary Documents II 1998/99, 25892, no. 9, p. 2
What about ‘processing by a natural person in the course of purely personal or household activities’…?

questions?

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