



## **ANNUAL REPORT 2016**

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## 1. Introduction

Privacy First was founded in 2008 as an independent foundation with the aim to preserve and promote the right to privacy. Privacy is a universal human right which also encompasses the protection of personal data, confidential communication and physical integrity. It is Privacy First's established policy to focus its attention primarily on (impending) privacy violations that can affect large groups of people simultaneously. Selecting our themes, we are guided by 1) the scale, 2) the seriousness and 3) the possible impact and consequences of a certain violation. As an initial step, Privacy First examines and publicly identifies mass violations of a grave nature. We then try to put an end to the violation by means of quiet diplomacy and political lobbying, a public campaign, legal action or – as a last resort – a lawsuit. In line with these criteria, over the past few years Privacy First has primarily focused on biometrics, camera surveillance, public transport chip cards, medical confidentiality as well as mobility and anonymity in public space. Furthermore, Privacy First is increasingly active in respect of privacy and secret services, Big Data and profiling. In 2015 we added a new and overarching component to our activities: Privacy First Solutions. It is Privacy First's core mission to make sure that the Netherlands develops into a global pioneer in the field of privacy and data protection. We will elucidate on this below.

## 2. Court cases

As a civil society organization, Privacy First seeks to operate as effectively as possible with the limited means at its disposal. If quiet diplomacy and political lobbying prove fruitless, Privacy First brings forward court cases of principle against legislation and policies that lead to large scale privacy violations. In recent years Privacy First did so successfully against the central storage of fingerprints under the Dutch Passport Act and against the retention everyone's telecommunications data under the Dutch Data Retention Act. Privacy First enters such cases preferably in coalition with other parties and through the pro bono services of suitable law firms.

### 2.1 'Citizens against Plasterk'

Since the end of 2013, Privacy First, other organizations and citizens are parties to the lawsuit *Citizens against Plasterk* ('*Burgers tegen Plasterk*'). The revelations by Edward Snowden about the practices of (foreign) intelligence services such as the American NSA and the British GCHQ were the reasons this civil case was filed against the Dutch government. Our coalition demands that the Netherlands puts a stop to the use of foreign intelligence that has been received in ways not compliant with Dutch law. Our attorneys of Bureau Brandeis are taking care of the litigation on the basis of their own pro bono fund for matters that are in the general interest of society. The organizations that have joined the coalition are: the Privacy First Foundation, the Dutch Association of Criminal Defence Lawyers (*Nederlandse*

*Vereniging van Strafrechtadvocaten, NVSA*), the Dutch Association of Journalists (*Nederlandse Vereniging van Journalisten, NVJ*), and Internet Society Netherlands (*ISOC.nl*). The participating citizens are Rop Gonggrijp, Jeroen van Beek, Bart Nooitgedagt, Brenno de Winter and Mathieu Paapst.

The case was unfortunately lost in July 2014 before the district court of The Hague and regrettably The Hague Court of Appeal equally dismissed all of the coalition's claims on 14 March, 2017, mainly due to a lack of factual evidence. After all, the *modus operandi* of secret services is a secret and because this is so, according to the Court, the coalition did not succeed in bringing forward evidence of concrete violations of fundamental rights caused by the cooperation between Dutch and foreign secret services. Accordingly, it seems this secret working method is the Dutch State's salvation, at least for the time being.



The judgment of the Court of Appeal thus constitutes a license for Dutch secret services to continue to collect large amounts of data of citizens through their foreign counterparts, i.e. without judicial protection for those whose data are being collected. Therefore, the coalition appealed the judgment before the Dutch Supreme Court. Nonetheless, the judgment of the Court of Appeal also contained a number of positive aspects:

- The Court confirmed that Dutch intelligence services should refrain from using data of which it is known or suspected that they have been obtained by a foreign intelligence service in a way that violates human rights;
- The Court declared that Dutch intelligence services may not resort to a 'U-turn' solution, i.e. requesting foreign intelligence services to carry out what they may not carry out themselves;
- According to the Court, it would be against the law if Dutch intelligence services were to systematically or knowingly receive data from foreign intelligence services that they may or could not have collected themselves.

In parallel, Privacy First and others have, at the end of 2015, joined a similar British case of Big Brother Watch against the British government before the European Court of Human Rights (ECtHR). If the case would end in favor of Big Brother Watch and Privacy First, the Dutch Supreme Court would have to follow the ECtHR ruling. Privacy First expects that the judges in Strasbourg will soon come up with a critical decision.

## 2.2 Number plate parking

In order to preserve the right to anonymity in public space, Privacy First has also brought lawsuits against (compulsory) number plate parking. At the start of 2015, Privacy First's chairman won an administrative case against the municipality of Amsterdam: ever since, motorists in the whole of the Netherlands are no longer obliged to enter their number plate code into a ticket machine when parking their cars. At the start of 2016, this decision was confirmed by the Dutch Supreme Court. In the view of Privacy First, at that moment in time number plate parking should have been halted altogether. In order to make anonymous parking possible without the need to enter one's number plate code, Privacy First initiated civil interim injunction proceedings in September 2016. However, the judge dismissed the case with an incomprehensible ruling, after which Privacy First lodged an accelerated appeal before the Amsterdam Court of Appeal. The Court of Appeal subsequently dismissed the case because of the (presumed) complexity of it. In so doing the Court implicitly steered towards new proceedings as to the substance in a district court. These proceedings took place at the end of June 2017 in the district court of Amsterdam. All privacy violating aspects of number plate parking were considered once again, including the absence of the possibility to pay cash or in any other anonymous way. Privacy First is confident about the outcome of this case.



Under pressure from our previous lawsuit, the municipality of Amsterdam changed the text on all ticket machines at the start of 2017: inserting the number plate code is no longer 'obligatory', but merely 'desirable'. However, those who do not enter a number plate code still receive a parking fine that can only be cancelled after an official objection that requires presenting a parking receipt. To this end, for years it has been possible to download a model complaint letter from the Privacy First website. Thousands of parking customers in a vast number of municipalities have successfully made use of this letter. This goes to show that the importance of our new lawsuit against number plate parking remains undiminished.

Privacy First's legal actions against number plate parking are sponsored by Alt Kam Boer Attorneys. In parallel, Privacy First structurally lobbies municipalities and the parking sector to introduce a privacy-friendly alternative: parking on the basis of numbered parking spaces with the possibility of anonymous payment.

In order to preserve the right to anonymity in public space, Privacy First (and its chairman) have for years also been involved in criminal cases against highway section controls (*'trajectcontrole'*) through Automatic Number Plate Recognition (ANPR). Two cases of our attorney Benito Boer (Alt Kam Boer Attorneys) concerning this issue are currently pending before the district court of The Hague and the Leeuwarden Court of Appeal. Furthermore, a new appeal of our chairman against highway section controls is pending before the district court of Utrecht.



### 2.3 Automatic Number Plate Recognition (ANPR)

It's Privacy First's constant policy to challenge mass privacy violations before court and have them declared unlawful. A current Dutch legislative proposal that lends itself very well to this, is the proposal by the current Dutch minister of Security and Justice, Stef Blok, relating to Automatic Number Plate Recognition (ANPR). The minister wants to store the number plate codes of all motorists (in other words all travel movements) on Dutch highways for four weeks in police databases through camera surveillance for criminal investigation purposes. As a result of this, every motorist will become a potential suspect. Privacy First deems this a wholly disproportionate measure. The proposal was originally submitted to the Dutch House of Representatives by former minister Ivo Opstelten in February 2013. Before that, in 2010, minister Hirsch Ballin also had the intention to submit a similar proposal, albeit with a storage period of 10 days. However, back then the House of Representatives declared this subject to be controversial. Blok has thus taken things a few steps further.

Under current Dutch law, ANPR data of innocent citizens should be erased within 24 hours. In fact, in the eyes of the Dutch Data Protection Authority (*Autoriteit Persoonsgegevens, AP*), all number plate codes that are not suspect (so-called 'no-hits') are to be removed from relevant databases immediately. Minister Blok's plan to also store the number plate codes of unsuspected citizens for four weeks thus directly flies in the face of this. This constitutes a blatant violation of the right to privacy of every motorist.

At the end of October 2016, Privacy First sent an open letter to the House of Representatives regarding this legislative proposal. This was followed by critical media attention. However, despite various motions and draft amendments, the House subsequently accepted the proposal unchanged in November 2016. Partly at the request of Privacy First, this was followed by a critical hearing about the proposal in the Dutch Senate on 20 June, 2017. If the current proposal will be adopted unchanged by the Senate too, Privacy First will instantly initiate proceedings before a court of law (in broad coalition with other parties) on account of a massive breach of the right to privacy. If necessary, Privacy First and co-plaintiffs will litigate all the way up to the European Court of Human Rights in Strasbourg. To this end, through the Public Interest Litigation Project (PILP, part of the Dutch section of the International Commission of Jurists, NJCM) Privacy First is already in contact with a law firm that will take up the case pro bono. However, partly due to new European case law about location data, Privacy First hopes that the Senate will soon dismiss the proposal and thus avert a court case.

#### *ANPR and the tax authorities*

In recent years, data on all vehicular traffic on Dutch highways obtained with the use of ANPR police cameras have been continuously monitored and stored by the Dutch tax authorities. In February 2017, the Dutch Supreme Court ruled that the tax authorities had no legal basis to do this. Prior to that, Privacy First had already warned the tax authorities about this. Since the judgment by the Supreme Court, the use of ANPR data by the Dutch tax authorities is unlawful and ought to be stopped. Moreover, all fiscal ANPR data already obtained ought to be destroyed. If the tax authorities refuse to do so, it will be up to the Dutch Data Protection Authority to act accordingly. Privacy First reserves the right to take its own legal measures in this regard. Suitable law firms that can perform the legal proceedings on our behalf have already come forward.



*ANPR and highway section controls on the A12 near Utrecht*

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## 2.4 The new Intelligence and Security Services Act

Under a current legislative proposal for the overall revision of the Dutch Intelligence and Security Services Act, the Dutch General Intelligence and Security Service (AIVD) and the Dutch Military Intelligence and Security Service (MIVD) will have the powers to tap into internet traffic on a massive scale ('digital trawling') and will have direct access to databases of public authorities and businesses. Moreover, innocent citizens may be hacked and huge amounts of their unevaluated data will be exchanged with foreign secret services, while third parties will be forced to decrypt their data (subject to being taken into custody). Therefore, on the initiative of Privacy First, a coalition of civil society organizations has recently warned the Senate: if this proposal would be adopted unchanged, it would mean a wholesale violation of the right to privacy and other fundamental civil rights. In the event the Senate approves the proposal nonetheless, a civil case will be brought against the Dutch government in order to suspend (part of) it. To this end, our coalition headed by Boekx Attorneys has already delivered a concept subpoena to the Senate. Apart from Privacy First, so far the main NGO's in the coalition include the Dutch Association of Journalists, the Dutch Association of Criminal Defence Lawyers and the Dutch Platform for the Protection of Civil Rights (*Platform Bescherming Burgerrechten*). Meanwhile, the Public Interest Litigation Project (PILP, NJCM) has taken on the further coordination of this case. Privacy First expects various other organizations and companies to join the coalition and that yet other organizations and people will act as *amici curiae*. Therefore, it is Privacy First's assumption that – in case the Senate does indeed soon approve the new Intelligence and Security Services Act – a large scale multiannual lawsuit will be imminent and will eventually end up before the highest courts in Europe.



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## 2.5 Association of Practicing General Practitioners v. Association of Healthcare Providers for Healthcare Communication

A few years ago the Association of Practicing General Practitioners (*Vereniging Praktijkhoudende Huisartsen*) brought a large scale and still ongoing civil case against the private successor of the Dutch Electronic Health Record: the National Switch Point (*Landelijk Schakelpunt*, LSP), which is administered by the Association of Healthcare Providers for Healthcare Communication (*Vereniging van*

*Zorgaanbieders voor Zorgcommunicatie, VZVZ*). Following unsatisfactory rulings by the district court of Utrecht and the Arnhem Court of Appeal, the case is pending before the Dutch Supreme Court since the fall of 2016. Since then (and on the advice of Privacy First), this case has pro bono support from law firm Houthoff Buruma through the Public Interest Litigation Project (PILP, NJCM). As *amicus curiae*, Privacy First and the Platform for the Protection of Civil Rights filed a letter with the Supreme Court in December 2016 in support of the general practitioners. This is in line with our common campaign [SpecifiekeToestemming.nl](http://SpecifiekeToestemming.nl) which pursues the continuation and promotion of the right to medical confidentiality. The Supreme Court is expected to come up with a ruling midway through 2017.

## **2.6 Data Retention Act**

In March 2015, in agreement with the European Court of Justice, the district court in The Hague rendered the Dutch Data Retention Act inoperative on account of violation of the right to privacy in interim injunction proceedings initiated by Privacy First and others. Under this 2009 Act, the telecommunications data (telephony and internet traffic) of everyone in the Netherlands used to be retained for 12 months and 6 months, respectively, for criminal investigation purposes. As a result, every citizen became a potential suspect. Although the annulment of the Act in March 2015 seems not to have led to any major problems in relation to criminal investigations and prosecutions, former Dutch minister for Security and Justice Ard van der Steur submitted a similar legislative proposal to the House of Representatives in September 2016. However, in December 2016 the European Court of Justice again ruled (this time very explicitly) that such legislation contravenes European privacy laws. Since then, no parliamentary debate about the proposal has taken place. Privacy First expects that the current proposal will soon be withdrawn. In case it will be adopted after all, Privacy First and others will again through interim injunction proceedings demand the Act to be annulled.

## **3. Privacy First Solutions**

At the end of 2014, Privacy First launched its Privacy First Solutions initiative with the aim to encourage both public authorities as well as industry to operate in a privacy-friendly manner and make privacy-friendly policy and innovation a national standard. By now Privacy First Solutions is an integral part of all of Privacy First's activities, including its lobbying and legal proceedings. It is Privacy First's core mission to turn the Netherlands into a guiding nation in the field of privacy and data protection. The Netherlands already disposes of all the prerequisites to develop itself into a privacy pioneer, including a technologically well-developed society, a booming IT industry, relevant university centers of excellence, increasing privacy awareness within society and a growing demand among citizens and consumers for privacy-friendly services and products. Like no other organization, Privacy First has

links to all these parties and can inspire, stimulate and connect government bodies and companies to work towards optimal privacy protection and enhancement. In 2016, Privacy First did so primarily through continuous lobbying, knowledge transfer, organizing public debates, active participation in relevant events, public campaigning and media appearances. In addition, Privacy First Solutions features legal practices and lawsuits: after all, sometimes the best solution to a privacy breach consists of eliminating privacy violating legislation or policy, accompanied, where possible, by the introduction of a privacy-friendly alternative and privacy-by-design. Below we provide an overview of our main Solutions events in 2016.

### **3.1 National Privacy Innovation Awards**

Since 2015, under the banner of Privacy First Solutions and in cooperation with the Institute for International Research (IIR), Privacy First organizes the annual IIR National Privacy Innovation Awards. These Awards offer a podium to companies that consider privacy innovation as an opportunity to positively distinguish themselves. The winners of the Awards are important forerunners in a new industry with which the Netherlands can become a guiding nation in the field of privacy. By rewarding these companies, Privacy First gives a boost to the creation of a privacy-friendly business community and (consequently) to a privacy-friendly society.

The National Privacy Awards were handed out on 14 September, 2016 on the occasion of the National Data Protection & Privacy Conference in Amsterdam. The winner in the category 'business solutions' was TomTom with their Fleet Management OptiDrive360: the privacy-friendly solution for vehicle fleets. With their ID cover for ID documents, Qiy Foundation won in the category 'consumer solutions'. Zivver (anonymous communication services) won both the audience award as well as the incentive award in the category 'start ups'. Rather telling, there were no entries in the category 'government services'. Other nominees were Pseudonimiseer (pseudonymization and anonymization of personal data), Ydenti (a new privacy platform of CDDN for personal data of consumers) and Soverin (anonymous internet services).

As of 2017, it is Privacy First's intention to independently organize the Dutch Privacy Awards in cooperation with various other partner organizations, including the Dutch Electronic Commerce Platform ECP (*Platform voor InformatieSamenleving*) and branch organization Netherlands ICT. The existing specialist jury for the Awards has 'moved along' with us and its composition has been partly renewed. By and large, the organization of our new Dutch Privacy Awards will correspond with the initial setup. The Awards ceremony will from now take place on or around 28 January, which is European Privacy Day. The ceremony will become a widely accessible public event where relevant CEOs, politicians, journalists, scientists, privacy professionals, citizens and consumers will be in attendance. After the Awards ceremony the report of the jury will be made public. Please contact us if you would like to become a partner of our new Awards!



*From left to right Paul Korremans (jury), John Borking (jury), the winners Maarten Louman (Qiy), Simon Hania ( TomTom), Rick Goud ( Zivver) and Bas Filippini (jury).*

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### **3.2 Consultancy**

Privacy First often receives requests for advice by public authorities and businesses. When the intentions of the organization concerned are in line with the goals of Privacy First Solutions, we are happy to make a contribution. Lobbying companies can also create new sources of income for Privacy First, for example through corporate sponsoring or through consultancy of companies by external privacy consultants for the benefit of privacy baseline measurements, Privacy Impact Assessments, the elaboration of privacy policies, the implementation of privacy-by-design etc. – as long as this is compatible with the mission and statutory objectives of Privacy First, whose task it is to operate in the general interest. Privacy First may not operate on a commercial basis, but may receive corporate donations. In this respect, in 2016 Privacy First was successfully involved in an external consultancy project with a company in the Dutch insurance sector. During the past period, Privacy First has also been approached by, among others, a Dutch bank and an information center. Privacy First expects a number of trendsetting privacy projects to come out of this in 2017.

### **3.3 Privacy First public debate about the right to anonymous payment**

Will paying with cash come to an end? In more and more locations, cash is being banned and paying for products or services is still only possible electronically. Although this is a noticeable trend particularly in Amsterdam, this is increasingly

becoming an everyday reality outside of the Dutch capital too. In this regard, also think of the vast amount of online purchases that are being made.

The question that arises is to what extent there is a right to paying cash or to paying in another anonymous way? And how can this right be legally reinforced and realized on a technical level? On 7 April, 2016, Privacy First organized a public debate about this which was led by Ancilla Tilia (columnist in national newspaper *Financieel Dagblad* and leader of the Dutch Pirate Party). It became an exciting night that saw various speakers express their personal visions about this subject and elaborate on their personal expertise.

Attorney Olivier Oosterbaan outlined the legal context, discussing the right to privacy and the protection of personal life and what this means (or should mean) with respect to being able to pay anonymously. Vincent Jansen of Innopay shed light on the data that are exchanged during financial transactions (the amount of data involved in such transactions is remarkable and by no means all of these data are indispensable for them to be completed). He also evaluated the trends in the area of digital payments. From the perspective of government regulator, Bram Scholten of the Dutch Central Bank made an important contribution to the debate. Even though there is a huge increase in cashless payments, he added nuance to the discussion by arguing that at least half of all payments is still done in cash. This also concerns very large (foreign) transactions. Moreover, he emphasized the importance of preserving cash with a view to privacy and anonymity. Finally, Eric Verheul, professor at Radboud University Nijmegen and information security consultant at KeyControls, presented a possible solution to have more privacy-friendly ways of paying digitally. After all, he asserted, digital payment is a reality and the discussion should therefore not focus merely on the preservation of cash but also on privacy-friendly digital payment solutions.

It was a lively and instructive debate which provided a lot of food for thought. Are you curious to learn everything that was being discussed? Read our [report](#) (in Dutch) on our website! The more funding Privacy First receives, the more such events our foundation will be able to organize and the quicker the Netherlands will be able to develop into a guiding nation in the field of privacy.



*Public debate led by Ancilla Tilia, 7 April, 2016*

### **3.4 Privacy First New Year's reception 2017**

Midway through January 2017, Privacy First organized its annual New Year's reception plus debate at its office location in the Amsterdam Volkshotel. The event largely revolved around the concept of 'Shared Democracy': following Athens (democracy 1.0), and our current 19<sup>th</sup> century parliamentary democracy (2.0), in the view of Privacy First it is high time for further innovation and more civic participation: Shared Democracy, or in other words, democracy 3.0. In his New Year's speech, Privacy First chairman Bas Filippini expanded on our vision on this subject. Then IT researcher Brenno de Winter gave a presentation that was as interesting as it was amusing. He focused on current privacy issues, information security and the existing gap between citizens and governance. What followed was a prolonged debate with the public (the attendance well exceeded the hall capacity) and naturally a convivial closing drink, toasting to a privacy-friendly 2017.



*Brenno de Winter during Privacy First's New Year's reception, 19 January, 2017*

### **3.5 Other events and activities**

Under the banner of Privacy First Solutions, in 2016 Privacy First actively took part (as a speaker or as a participant) in various relevant conferences and seminars including iPoort, Frascati Theatre (speaker), the Dutch Ministry of Foreign Affairs, the Association for Biometrics & Identity (*Vereniging voor Biometrie & Identiteit*), Jewish Educational Centre Crescas (speaker), the Privacy Platform of the European Parliament, the Meijers Commission, the Dutch Scientific Council for Government Policy (WRR), the Netherlands Committee of Jurists for Human Rights (NJCM, speaker), Privacy Management Partners, Euroforum conference 'The Future of Data Protection & Privacy' (speaker), D66 privacy symposium (speaker), the Belgian Big Brother Awards (speaker), the Dutch General Intelligence and Security Service (AIVD), GroenLinks privacy symposium (speaker), Pro Bono Forum (speaker), the Vrije Universiteit (VU University) Amsterdam & Data Protection Authority of Albania (speaker), Dutch Reformed Political Party (SGP) Youth (speaker), the EU Fundamental Rights Agency, the municipality of Amsterdam, the Privacy & Identity Lab (PI.lab) and the HU University of Applied Sciences of Utrecht.

On 22 Augusts, 2016, in coalition with Bits of Freedom, the Dutch Association of Journalists, the Dutch Association of Criminal Defence Lawyers and the Netherlands Committee of Jurists for Human Rights (NJCM) among others, Privacy First participated in a personal meeting about Big Data and privacy with the Dutch

ministers of the Interior and Security & Justice. Furthermore, in the context of the Intelligent Transport Systems (C-ITS) program of the Dutch Integrated Test-site Cooperative Mobility (DITCM), Privacy First is a permanent participant in the Roundtable Legal Aspects of Smart Mobility and also participates in the new Roundtable about strategic litigation of Bureau Brandeis. Privacy First is also an active member of the Dutch Platform for the Protection of Civil Rights (*Platform Bescherming Burgerrechten*), the Discussion Platform on Human Rights in the Netherlands (*Breed Mensenrechten Overleg Nederland*) and involved with the Association for Biometrics & Identity (*Vereniging voor Biometrie & Identiteit*) as an external advisor.



*Bas Filippini (Privacy First) during the Privacy symposium organized by D66, 30 June, 2016*

In the context of the Dutch general elections, at the start of 2017 Privacy First analyzed a large number of electoral programs and published an extensive report about this on our website. In addition, Privacy First continuously pursues quiet

diplomacy towards relevant government authorities, politicians, industry and science. These meetings (often several per week) usually are of a confidential nature and have for years proven to be one of our most effective activities. Partly in parallel, Privacy First (Solutions) pursues a constant political lobby at the Dutch Senate and the House of Representatives with regard to our broad sphere of activity, which is supported by our own factual and legal research. Moreover, our public campaigns always feature a Solutions component, which is certainly the case for our influential and recently updated campaign [SpecifiekeToestemming.nl](#) in relation to medical confidentiality and informational self-determination.

Apart from these activities, on a daily basis, Privacy First receives calls and emails from citizens, consumers and students who have a wide range of questions and requests in the area of privacy. Privacy First always seeks to answer these questions as quickly and in the best way possible. In 2016 the following themes held sway:

- Number plate parking;
- Fingerprints in passports;
- Automatic Number Plate Recognition (ANPR) on highways;
- Protection of personal data by municipalities;
- Protection of personal data by the police;
- Camera surveillance;
- Medical confidentiality;
- Smart energy meters;
- Privacy in the workplace.

In almost all cases Privacy First was able to answer these questions satisfactorily, sometimes after consulting relevant experts in our network. However, these requests demand a great deal of our small organization. In case of an absence of knowledge or experience relating to the issue at hand, Privacy First redirects questioners to other NGOs or to specialized government bodies.

Furthermore, Privacy First is increasingly approached by foreign NGOs and institutions of the European Union and the Council of Europe. In exceptional cases Privacy First also tries to give legal advice to citizens or even 'adopts' their legal cases, trying also to raise media attention for them. A timely example is the local waste disposal pass (used to open garbage containers in the streets): individual cases about this issue supported by Privacy First are currently pending before the Dutch Data Protection Authority (DPA) and the district court of Arnhem (Michiel Jonker v. DPA & municipality of Arnhem). Thanks to the intervention of Privacy First, a similar individual case against the municipality of Bunschoten is currently being dealt with by ARAG Legal Insurance. Another case supported by Privacy First, this time about the Dutch public transport chipcard (Michiel Jonker v. DPA & Dutch Railways), is pending before the Dutch Council of State (*Raad van State*).



From left to right: Jelle Klaas (PILP, NJCM), Vincent Böhre (Privacy First), Quirine Eijkman (Hogeschool Utrecht) and Otto Volgenant (Boekx Attorneys) at the Pro Bono Forum conference, 18 November, 2016 © Mariusz Cieszewski, Flickr

#### 4. Political lobbying and diplomacy

##### 4.1 Medical confidentiality

On the initiative of Privacy First and the Platform for the Protection of Civil Rights (*Platform Bescherming Burgerrechten*), a large scale internet campaign revolving around the right to medical confidentiality has been running for several years: [www.SpecifiekeToestemming.nl](http://www.SpecifiekeToestemming.nl). Since then, this campaign has been supported by many civil society organizations, health care providers and scholars. The essence of the campaign is that specific consent should (again) become the leading principle when it comes to the exchange of medical data. In case of specific consent, prior to sharing medical data, clients have to be able to decide whether or not, and if so, which data to share with which healthcare providers and for which purposes. This minimizes risks and enables patients to control the exchange of their medical data. This is in contrast to the generic consent that applies to the private successor of the Dutch Electronic Health Record (*Elektronisch Patiëntendossier*, EPD); the National Switch Point (*Landelijk Schakelpunt*, LSP). In the case of generic consent, it is unforeseeable who can access, use and exchange someone's medical data. In this respect, generic consent is in contravention of two classic privacy principles: the purpose limitation principle and the right to free, prior and fully informed consent for the processing of personal data.

On 5 April, 2016, Privacy First took part in a critical hearing in the Dutch Senate (expert meeting) about the National Switch Point. Also due to pressure from Privacy First and others in our online campaign, the legislative proposal *Clients' Rights in*

*relation to the processing of data in healthcare* was adopted by the Senate in October 2016 alongside two crucial motions: 1) the Bredenoord motion (D66) about the further elaboration of data protection-by-design as the starting point for the electronic processing of medical data and 2) the Teunissen motion (Party for the Animals) related to keeping medical records accessible on a decentral (instead of a central) level.

Privacy First will continue to keep a close eye on and to try to adjust future developments in this field. Moreover, there are several ongoing market developments that indicate that specific consent is and remains the norm within new systems and that privacy-by-design is becoming the new standard. In light of this, the campaign by Privacy First *et al.* can already be called a huge success.



*Campaign banner SpecifiekeToestemming.nl*

#### **4.2 Anonymity in public space**

At the end of October 2016, Privacy First sent a letter to the Dutch House of Representatives about the legislative proposal concerning Automatic Number Plate Recognition (ANPR). This was followed by critical media attention. However, despite various motions and draft amendments, the House subsequently accepted the proposal unchanged in November 2016. Partly at the request of Privacy First, there was a critical hearing about this proposal in the Senate in June 2017. If the current proposal is adopted unchanged by the Senate as well, Privacy First will instantly initiate proceedings before a court of law (in coalition with other parties). This is what Privacy First has made clear (in personal meetings) to successive ministers of Security and Justice Ivo Opstelten and Ard van der Steur as well as to relevant MPs and Parliament as a whole ever since 2012.

#### **4.3 Access to justice for civil society organizations**

In November 2016, Privacy First was actively involved in the Dutch session of the United Nations Committee on the Elimination of Discrimination against Women

(CEDAW) in Geneva in order to put the difficulties regarding the admissibility of civil society organizations (foundations and associations) in civil lawsuits on the UN agenda. As a result of the input by Privacy First (through the Dutch Network of the UN Women Convention), Dutch minister for Education, Culture and Science Jet Bussemaker had to answer critical questions put to her by the CEDAW committee members about this issue. Privacy First used this diplomatic avenue in the interest of better admissibility in strategic litigation for all Dutch organizations with regard to cases that revolve around human rights, including the right to privacy. Incidentally, this matter has also been discussed by Privacy First with relevant public officials of the Dutch Ministry of the Interior and the Ministry of Security and Justice, where the issue is on the internal agenda.

#### **4.4 Police hacking**

Under the current legislative proposal *Computer criminality III* the Dutch police will be authorized to hack into all computers and online devices located both domestically and abroad. In order to reject this police hacking Act, Privacy First sent a critical letter to the House of Representatives in December 2016. Regrettably, the legislative proposal was subsequently adopted virtually unchanged. On 20 June, 2017, the Senate held a critical hearing about this proposal (and also about Automatic Number Plate Recognition), to which Privacy First provided critical input. In case the proposal is adopted unchanged by the Senate, Privacy First will consider starting legal proceedings (in coalition with other parties) against it.

#### **4.5 The powers of secret services**

In order to improve (or repeal) the current legislative proposal for a total review of the Dutch Intelligence and Security Services Act, in recent years Privacy First has sent various letters to the Ministry of the Interior and the House of Representatives and has had various confidential meetings with this same ministry, the Dessens Commission, the General Intelligence and Security Service (AIVD), the Military Intelligence and Security Service (MIVD), National Coordinator for Counterterrorism and Security (NCTV) and the Intelligence and Security Services Review Committee (CTIVD). However, so far these meetings have not had satisfactory results. Some of our previous input may have proven to be useful in some areas (among which future binding scrutiny and improved review of the services), but all in all the new Intelligence and Security Services Act still constitutes a massive privacy violation.

Therefore, Privacy First and others have recently informed the Senate that through a concept subpoena, a large scale court case against the new Act is in the making, see par. 2.4 above. Considering the current composition of the Senate however, Privacy First fears that parliamentary approval of the Act will soon be a fact.

## 4.6 Universal Periodic Review

In the context of the Universal Periodic Review (UPR), On 10 May, 2017, the human rights situation in the Netherlands was critically examined by the United Nations Human Rights Council in Geneva. Privacy First sent an extensive shadow report about current privacy issues in the Netherlands to the Human Rights Council as well as all embassies in The Hague. Subsequently, in the spring of 2017, Privacy First had extensive confidential meetings with the embassies of Bulgaria, Argentina, Australia, Greece, Germany, Chili and Tanzania. The positions of our interlocutors varied from senior diplomats to ambassadors. Furthermore, Privacy First received positive reactions to its report from the embassies of Mexico, Sweden and the United Kingdom. Moreover, several parts from our report were integrated in the UN summary of the overall human rights situation in the Netherlands.

Our efforts proved to be effective: during the UPR session in Geneva, the Dutch government delegation (headed by minister of the Interior Ronald Plasterk) received critical recommendations with regard to human rights and privacy in relation to counter terrorism by Canada, Germany, Spain, Hungary, Mexico and Russia. In September 2017, it will be announced which recommendations the Dutch government will accept and implement.

In December 2016, Privacy First submitted a similar shadow report to the Human Rights Committee in Geneva. This Committee periodically reviews the compliance of the Netherlands with the International Covenant on Civil and Political Rights (ICCPR). Partly as a result of our report, the Committee put the Intelligence and Security Services Act, camera system @MIGO-BORAS and the Data Retention Act on the agenda for the upcoming Dutch session in 2018.



## 5. Communication

### 5.1 Mass media

In 2016, the national media outreach of Privacy First has grown once again and has become more diverse relating to its content. Apart from requests for interviews, Privacy First is often called upon by journalists – and increasingly also by foreign media – for background information and research suggestions. Below is a selection of our appearances in the Dutch media in 2016:

- BNR Nieuwsradio, 6 January, 2016: “Nederlands privacyprotest naar Europees Hof” (“Dutch privacy protest to European Court”)

- Security.nl, 8 January, 2016: “Privacy in 2016: van wetgeving tot bewustzijn” (“Privacy in 2016: from legislation to conscience”)
- De Correspondent, 11 January, 2016: “Wat zijn de wensen van dit kabinet voor de geheime diensten?” (“What wishes does this cabinet have for the secret services?”)
- Algemeen Nederlands Persbureau ANP, 19 January, 2016: “Artsen: patiëntendossier is nog niet haalbaar” (“Doctors: electronic health record not yet feasible”)
- Security.nl, 22 January, 2016: “Den Haag gaat kentekenparkeren invoeren” (“The Hague introduces number plate parking”)
- Tweakers.net, 8 February, 2016: “Burgercoalitie: 'AIVD heeft van rechtbank carte blanche voor dataverzameling’” (“AIVD receives carte blanche from judge to collect data”)
- Telegraaf, 11 February, 2016: “Vrees voor hacken auto op snelweg” (“Fear of hacking cars on highway”)
- Security.nl, 11 February, 2016: “Zorgen over hacken auto's en pacemakers door politie” (“Fear of hacking cars and pacemakers by the police”)
- Telegraaf, 26 February, 2016: “Privacy First blij met uitspraak Hoge Raad” (“Privacy First welcomes Supreme Court decision”)
- NOS, 26 February, 2016: “Kenteken invoeren voor parkeerkaartje niet verplicht” (“Entering number plate code for parking ticket not compulsory”)
- AT5, 26 February, 2016: “Hoge Raad zet kentekenparkeren onder druk” (“Supreme Court puts number plate parking under pressure”)
- RTL Nieuws, 26 February, 2016: “Verkeerd kenteken bij betaald parkeren geen reden voor boete” (“Paid parking: entering wrong number plate code no reason for a fine”)
- Algemeen Nederlands Persbureau ANP, 26 February, 2016: “Kentekenparkeren krijgt knauw van Hoge Raad” (“Number plate parking diluted by Supreme Court decision”)
- Volkskrant, 9 March, 2016: “Met je burens op straatpatrouille” (“Going on patrol with the neighbours”)
- VICE, 11 March, 2016: “Deze Arnhemmer probeert te voorkomen dat je privacy bij het afval komt te liggen” (“This Arnhem resident tries to prevent privacy from ending up in waste containers”)
- BNR Nieuwsradio, 6 April, 2016: “Privacy First: maak namen Panama Papers niet openbaar” (“Privacy First: Do not reveal names in Panama Papers.”)
- AT5, 10 April, 2016: “Taxipassagiers preventief op de foto” (“Taxi passengers taken pictures of as precautionary measure”)
- Security.nl, 14 April, 2016: “Europees Parlement akkoord met uitwisselen passagiersdata” (“European Parliament agrees on exchanging passenger data”)



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*Interview with Vincent Böhre (Privacy First) about EU Passenger Name Records, 14 April, 2016*

- De Gelderlander, 26 April, 2016: “RvS oordeelt niet in ‘Kafkaëske uitspraak’ over Arnheems afvalpasje” (“Council of State does not rule in ‘Kafkaesque ruling’ on waste disposal pass in Arnhem”)
- RTL Z, 26 April, 2016: “Gemeente mag burgers volgen bij weggooien afval” (“Municipalities may track citizens when disposing waste”)
- Security.nl, 27 April, 2016: “Vanaf 2018 verplicht pinnen in bussen Arriva” (“Compulsory payment by card in Arriva busses as of 2018”)
- Binnenlands Bestuur, 29 April, 2016: “RvS keurt adres-gekoppelde afvalpas Arnhem goed” (“Council of State approves waste disposal pass linked to address in Arnhem”)
- Privacynieuws.nl, 3 May, 2016: “Nationale Privacy Innovatie Awards 2016” (“National Privacy Innovation Awards 2016”)
- Volkskrant, 19 May, 2016: “Digitaal gesnuffel in de vuilnisbak” (“Digital snooping on dustbins”)
- RTL Nieuws, 25 May, 2016: “Als je een paspoort wilt, moet je verplicht je vingerafdruk afstaan” (“If you want to have a passport, it is compulsory to have your fingerprint taken”)
- Telegraaf, 8 June, 2016: “Hoe blijf je veilig op internet?” (“How to stay secure on the internet?”)
- Skipr, 9 June, 2016: “VPHuisartsen in cassatie bij Hoge Raad voor LSP-zaak” (“Association of Practicing General Practitioners appeals before Supreme Court in National Switch Point case”)
- Computable.nl, 16 June, 2016: “D66 organiseert debat over privacy en ICT” (“D66 organizes debate about privacy and IT”)

- Nederlands Dagblad, 2 July, 2016: “Rechtszaak om 'schending privacy' met OV-chipkaart” (“Court case about ‘privacy violation’ with public transport chip card”)
- Telegraaf, 8 July, 2016: “Gedoe om anoniem voordelig reizen met NS” (“Fuss about travelling by train anonymously and at reduced fares”)
- Tweakers.net, 14 July, 2016: “NXP: RFID-nummerplaten met versleutelde authenticatie klaar voor uitrol in EU” (“NXP: RFID number plates with encrypted authentication ready for roll-out in the EU”)
- Haagsche Courant, 9 August, 2016: “Politie wil digitaal in uw auto kunnen wroeten” (“Police want to be able to digitally pry into your car”)
- Algemeen Dagblad, 9 August, 2016: “Digitaal remspoor beter dan verbrand rubber op de weg” (“Digital skid marks better than burned rubber on the road”)
- RTL Nieuws, 10 August, 2016: “Politie wil zwarte doos in auto's kunnen uitlezen” (“Police want to be able to read out the black boxes of cars”)
- Reformatorisch Dagblad, 13 August, 2016: “De auto kan straks zomaar een spion zijn” (“A car may easily become a spy in the future”)
- Numrush, 22 August, 2016: “Het encryptiedebat in Nederland: Openbaar Ministerie wil end-to-end-encryptie kunnen omzeilen” (“The encryption debate in the Netherlands: the public prosecutor wants to be able to bypass end-to-end encryption”)
- Security.nl, 29 August, 2016: “Privacy-organisaties bezorgd over inzet big data overheid” (“Privacy organizations worried about use of big data by public authorities”)
- Telegraaf, 7 September, 2016: “Privacyclub eist andere tekst op parkeerautomaat bij de rechter” (“Privacy advocacy group demands in court a different text on ticket machines”)
- Security.nl, 7 September, 2016: “Minister wil kentekenfoto's 4 weken lang blijven opslaan” (“Minister wants to store pictures of number plates for four weeks”)
- AT5, 7 September, 2016: “Gemeente voor rechter gesleept om tekst op parkeerautomaat” (“Municipality taken to court for text on ticket machine”)
- Security.nl, 12 September, 2016: “Toezichthouder gaat optreden tegen afvalpasjes Arnhem” (“Watchdog to take action against waste disposal passes in Arnhem”)
- Digitalezorg-magazine.nl, 22 September, 2016: “ZIVVER wint Nationale Privacy Innovatie Awards 2016” (“ZIVVER wins National Privacy Innovation Awards 2016”)
- Geenstijl, 22 September, 2016: “Kentekenparkeren maakt privacy kapot” (“Number plate parking ruins privacy”)
- D66-magazine *Idee*, September, 2016: “Nederland moet een privacy-gidsland worden” (“The Netherlands ought to become a guiding nation in the field of privacy”)

- Parool, 22 September, 2016: “Invoeren kenteken bij parkeren blijft” (“Entering number plate code when parking here to stay”)
- Ravage Webzine, 26 September, 2016: “Boodschap aan senaat: EPD, weg ermee!” (“Message to the Senate: Get rid of the Electronic Health Record!”)
- Security.nl, 26 September, 2016: “Senaat gewaarschuwd voor privacygevolgen nieuwe EPD-wet” (“Senate warned about the consequences of new Electronic Health Record Act”)
- Nu.nl, 29 October, 2016: “Wat staat er eigenlijk in de nieuwe aftapwet?” (“What does the new Interception Act actually entail?”)
- Security.nl, 31 October, 2016: “Privacy First dreigt met rechtszaak wegens ANPR-wetsvoorstel” (“Privacy First threatens legal action on account of legislative proposal regarding Automatic Number Plate Recognition”)
- Utrechts Nieuwsblad, 1 November, 2016: “Jeugd vaak zonder ID in het verkeer” (“Youths often participate in traffic without an ID”)
- NPO Radio 1, 2 November, 2016: “Privacy First wil staat dagen voor kentekenregistratie” (“Privacy First wants to take State to court for number plate registration”)
- Nieuwsuur, 5 November, 2016: “Contant geld verdwijnt uit de samenleving” (“Cash money disappears from society”)
- RTL Nieuws, 8 November, 2016: “Tweede Kamer stemt in met wet om kentekens te verzamelen” (“House of Representatives agrees on collecting number plate codes”)
- Nu.nl, 8 November, 2016: “Tweede Kamer akkoord met wetsvoorstel kentekenregistratie” (“House of Representatives agrees on legislative proposal to collect number plate codes”)
- BNR Nieuwsradio, 10 November, 2016: “Medische gegevens en privacy” (“Medical data and privacy”)
- NRC Handelsblad & NRC Next, 16 November, 2016: “De geheime dienst is een gemakkelijke zondebok” (“The secret service is an easy scapegoat”)
- Algemeen Dagblad, 1 December, 2016: “ID-scanner supermarkt in strijd met wet” (“ID scanners in supermarkets in violation of the law”)
- NRC Handelsblad, 22 December, 2016: “EU-Hof beperkt opslag van data, tegenslag voor terreurbestrijders” (“EU court limits the storage of data, setback for those fighting terrorism”)
- Security.nl, 26 December, 2016: “Kamer wil reactie minister op bewaarplicht-uitspraak EU-hof” (“House of Representatives wants minister to react to EU court decision on data retention”)
- Executive-people.nl, 26 December, 2016: “Privacy First: ‘Uitspraak van Europees Hof maakt algemene telecom-bewaarplicht onrechtmatig’” (“Privacy First: ‘EU court decision makes general requirement to retain data unlawful’”).



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Cartoon by Kamagurka, front page of NRC Handelsblad, 22 December, 2016

## 5.2 Internet

The Privacy First website is our primary way to share news and voice opinions. Alongside the Dutch website [www.privacyfirst.nl](http://www.privacyfirst.nl), there is also an English one: [www.privacyfirst.eu](http://www.privacyfirst.eu). Since the end of 2013, both websites are sponsored by the privacy-friendly Dutch internet services provider Greenhost. In 2016, the number of visitors to our website has again increased: by now there are over 40,000 visitors each month. Privacy First is particularly active on Twitter and has its own LinkedIn group for professionals. Furthermore, Privacy First is active on Facebook and will continue to reserve space for (possibly anonymous) guest columns and articles on our websites. Would you like to stay up-to-date on the latest developments around Privacy First? Then sign up to our digital newsletter by sending an email to [info@privacyfirst.nl](mailto:info@privacyfirst.nl)!

## 6. Organization

Privacy First is an independent ANBI (Institution for General Benefit) certified foundation that largely consists of professional volunteers. In 2016, the core of our organization consisted of the following persons:

- Mr. Bas Filippini (founder and chairman)
- Mr. Vincent Böhre (director of operations)
- Mr. Martijn van der Veen (coordinator Privacy First Solutions)
- Ms. Shay Danon (advisor Privacy First)
- Ms. Eva de Leede (advisor Privacy First Solutions).

Privacy First is currently working on extending its management: it is expected that in the summer of 2017 a board of three will be installed.

In 2016, the group of Privacy First volunteers has grown once again and is made up largely of professionals who structurally support the foundation, not only as far as the actual work at hand is concerned (various privacy themes and translation services) but also in terms of organization (IT, fundraising, PR and photography) and legal matters (internal privacy compliance). Since the end of 2016, interns (law students) are increasingly active in the organization. Apart from that, Privacy First can rely on a large network of experts from all corners of society, varying from scientists and legal experts and people working in IT to journalists, politicians and public officials.

As of 2017, both our payroll as well as our financial administration are outsourced to an external trust office, which offers these services pro bono. Moreover, the banking structure of Privacy First has been professionalized at the end 2016.

Privacy First staff members get invited on a regular basis to public events organized by public authorities and the business and scientific communities. In this context Privacy First collaborates with speakers bureau Athenas since the end of 2016.

## **7. Finances**

To carry out its activities, the Privacy First Foundation largely depends on individual donations and sponsorship by funds and law firms. In recent years the number of Privacy First's donors has grown rapidly and in 2016 Privacy First's incomes have increased once more. Since the start of 2015, Privacy First receives financial support from the Democracy and Media Foundation for the benefit of its multiannual project Privacy First Solutions. Since the start of 2017 Privacy First (Solutions) is also supported by the Adessium Foundation for the benefit of its overall activities and the Dutch Privacy Awards. In 2017, Privacy First expects to be able to attract other domestic and foreign funds in order to contribute to the strength and sustainability of our organization in the Netherlands and (in the long term) in order to become operational abroad.

Apart from financial support from individual donors and funds, Privacy First welcomes corporate donations, provided that our freedom and independence are not compromised. Since the end of 2016, Privacy First is materially supported by Dutch IT company Detron through the distribution of computers and printers in our office. Since the beginning of 2011, Privacy First's office is based in the rear wing of the Volkshotel in Amsterdam, with all the related facilities and advantages, including a social housing rental fee. Privacy First's websites are partly sponsored by internet services provider Greenhost and thanks to TechSoup Netherlands our foundation can buy software (from Microsoft and others) at cheap prices. Kaspersky sponsors our anti-virus software.

It is Privacy First's constant policy to spend as much of its income on content related issues and to keep the operational costs as low as possible. In principle, travel and lunch expenses are to be paid for on one's own account, communication (also by telephone) is done mostly on the internet, while expensive parties and other luxuries are out of the question. Our campaigns and support activities are largely carried out by professional volunteers. Events by Privacy First are organized preferably in the same location our office is situated, or in sponsored external locations. Procedural documents in our court cases are partly self-written or supported through our own factual and legal research. Moreover, in order to spread the costs and financial risks and to improve the odds of winning in court, it is Privacy First's established policy to enter large-scale litigation only in coalition with the Public Interest Litigation Project (PILP) and Pro Bono Connect of the Dutch section of the International Commission of Jurists (NJCM). In this way every euro is spent as effectively as possible for the benefit of the privacy of every Dutch citizen.

Below you find our 2016 financial overview. The sponsorship of lawsuits by law firms is not included.

<b>Annual overview</b>	<b>2016</b>	<b>2015 (euro)</b>
<b>Revenues:</b>		
Donations	77,281	76,758
Sublease	3,200	3,500
Miscellaneous	116	114
<b>Expenditures:</b>		
Personnel costs	46,458	49,602
Legal costs	8,677	15,910
Housing	5,350	4,830
Websites	1,090	1,930
Travel expenses	3,720	1,439
Events	2,211	807
Training costs	707	-
Banking and insurance	808	792
Office costs	1,136	548
PO box and postage	335	362
Communications	713	177
Campaigns	-	131
Promotion material	378	100
Miscellaneous	185	97

Would you like to support Privacy First? Then please donate on account number NL95ABNA0495527521 (BIC: ABNANL2A) in the name of *Stichting Privacy First* in Amsterdam, the Netherlands. The Privacy First Foundation is recognized by the Dutch Tax and Customs Administration as an Institution for General Benefit (ANBI). Therefore your donations are tax-deductible.





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