

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 March 2016

Public Authority: Northampton Borough Council
Address: The Guildhall
St Giles Square
Northampton
NN1 1DE

Decision (including any steps ordered)

1. The complainant has made a request to Northampton Borough Council ("the council") for information relating to website usage data. The council confirmed that whilst relevant information was collated and held by a third party, it was not held by the council. This was subsequently contested by the complainant.
2. The Commissioner's decision is that the relevant information is held by the third party on behalf of the council.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the Freedom of Information Act ("the FOIA").
 - Access and consider the relevant information in relation to the complainant's request, and provide the complainant with a fresh response that complies with section 1(1), or else issue a valid refusal notice under section 17.
4. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court

Request and response

5. On 14 August 2015 the complainant requested information of the following description:

"Please could you provide the following information about the usage of your website:

The total number of sessions (visits) made to your website. The overall "bounce rate" that is the proportion of sessions which involved only 1 pageview. The proportion of sessions on your website made on desktop devices, mobile devices and tablet devices respectively.

Please confirm what system you use to measure site usage (such as Google Analytics).

Please provide these figures for the 12 months ending 31 July 2015 unless only a shorter timeframe is possible. If you filter some sessions from your website (such as visits from IP addresses used by your employees), please provide the figures for both the filtered and unfiltered data (what Google Analytics calls "views"). If you have multiple websites please provide these figures for each site.

My intention is to use this data for benchmarking purposes so any additional explanation of the source of the data that will assist in benchmarking would be appreciated."

6. On 14 September 2015 the council responded. It stated that the information requested was not held by the council.
7. On 5 October 2015 the complainant requested an internal review, and contested that the information was held.
8. On 9 October 2015 the council provided the outcome of its internal review. It maintained its original response, and clarified that whilst relevant information (the website usage data) was collated and held by Google Analytics, it was not held by the council.

Scope of the case

9. The complainant contacted the Commissioner on 21 October 2015 to contest the council's response to his request.

10. The request concerns usage data relating to the council's website pages, which both the complainant and council acknowledge is collated by Google Analytics. Whilst the complainant considers that the usage data is held by the council, the council's position is that it is not. The council has also raised the argument that if it chose to access and run a report on the usage data, this would represent the creation of new information by the council.
11. The Commissioner considers the scope of this case to be the determination of whether the council has dealt with the request in accordance with section 1(1). To do this, the Commissioner will address whether the usage data is held by Google Analytics on behalf of the council. In respect of whether running a report on this usage data through Google Analytics would represent the creation of new information by the council, the Commissioner will consider this in 'Other matters', and would advise the council to carefully refer to this section for advice before issuing a fresh response to the complainant.

Reasons for decision

Section 1(1) – Whether information is held

12. Section 1(1) provides that, subject to any exemptions or exclusions:

"Any person making a request for information to a public authority is entitled –

- a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- b) if that is the case, to have that information communicated to him."*

The complainant's position

13. In the circumstances of this case the Commissioner understands (from the content of the complainant's request for an internal review) that a 'tracking script' for Google Analytics is contained on the webpages served from northampton.gov.uk, and that this means that data about the website's usage is collated by Google Analytics.

The council's position

14. The council has explained to the Commissioner that a previous employee, in their role of web designer, installed Google Analytics as a tool to access website usage data with (due to this being a matter of interest to the council at that time). Google Analytics is no longer used, but the council has confirmed it retains access to it, and that it has

officers who are able to run a report through it which may retrieve information relevant to the request. However, the council considers that the raw usage data itself is not held by the council.

The Commissioner's analysis

15. Section 3(2) provides that:

"For the purposes of this Act, information is held by a public authority if –

[...]

a) it is held by another person on behalf of the authority."

16. In the circumstances of this case, the Commissioner is aware that a piece of code (the 'tracking script') has been incorporated by the council into its webpages, and that this code places a 'cookie' in any browser that accesses these webpages. This cookie then sends raw usage data to Google Analytics.

17. Having considered the above, it is evident that Google Analytics holds the usage data because the council has previously instructed it to do so (i.e. by actively placing a tracking script within the code of its webpages). Whilst the council has explained that it no longer needs this usage data for any business reason, it is clear that Google Analytics continues to collate and store the usage data because it has not received instruction from the council not to (i.e. through the removal of the tracking script). On this basis, the Commissioner has concluded that the raw usage data is held on behalf of the council by Google Analytics.

Other matters

18. The council has advised the Commissioner that it considers the running of a report on the raw usage data would represent the creation of 'new information' on the part of the council. The Commissioner has considered this point, and would advise the council to refer to the following information before issuing a fresh response to the complainant.

19. The terms of the FOIA do not require a public authority to create new information in order to comply with a request. However, section 11 does provide that a requester may seek information in the form of a digest or summary:

"Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely –

[...]

b) The provision to the applicant of a digest of summary of the information in permanent form or in another form acceptable to the applicant,

The public authority shall so far as reasonably practicable give effect to that preference."

20. The Commissioner understands that Google Analytics is designed to function as a reporting tool that provides a statistical summary of the raw usage data in the form of a report. This report can be accessed by a website owner when they log into their Google Analytics account and access the user dashboard. Whilst the dashboard provides a standard report that is created automatically by Google Analytics, the report can also be customised by the website owner to summarise specific information.
21. The Commissioner's guidance on 'Determining whether information is held'¹ details that when information is held electronically, the use of query tools or languages to retrieve specific information does not represent the creation of new information (paragraph 19). Furthermore, paragraph 23 clarifies that in scenarios where a public authority holds source data, and this source data can be manipulated with only a reasonable level of skill to provide statistics, then such statistics are held by the public authority even if there is no business reason to otherwise produce them.
22. Having considered the above, it would appear to the Commissioner that running a report on the electronically held raw usage data would result in a statistical summary. It would also appear that it may be reasonably practicable for the council to provide such a summary, due to it having both the Google Analytics tool and council officers with the necessary skill to use it. On this basis the Commissioner would be likely to conclude that the provision of a summary based on the raw usage data would not represent the creation of new information.

¹ https://ico.org.uk/media/for-organisations/documents/1169/determining_whether_information_is_held_foi_eir.pdf

Right of appeal

23. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
Group Manager
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