

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 July 2024

Public Authority: Northampton General Hospital Trust

Address: Cliftonville
Northampton
NN1 5BQ

Decision (including any steps ordered)

1. The complainant has requested information about the number of user sessions affected by the presence of a Meta Pixel application on Northampton General Hospital Trust's website. Northampton General Hospital Trust ('the Trust') has stated that it does not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the Trust does not hold the requested information under section 1(1)(a) FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 28 July 2023, the complainant wrote to the Trust and requested information in the following terms:

"Could you provide information on the total number of user sessions that may have been affected from the time the Facebook pixel was implemented to the moment it was deactivated?"

And, the total number of users sessions from period when I first brought the Facebook pixel issue to the hospitals attention, until its subsequent removal."

5. The Trust responded on 9 February 2024. It stated that it did not hold the requested information and advised that it had reported the use of Meta Pixel to the Information Commissioner's Office in 2023 and advised then that it did not know how many individual data subjects were affected.
6. Following an internal review, the Trust wrote to the complainant on 5 March 2024. It maintained its position that the requested information was not held.

Scope of the case

7. The complainant contacted the Commissioner on 5 March 2024 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether the Trust holds the requested information under section 1(1)(a) of FOIA.

Reasons for decision

Section 1 – general right of access to information

9. Section 1 (1) FOIA states that:

“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.”
10. Section 1(1) requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.
11. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.

12. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.
13. The Commissioner has therefore sought to determine whether, on the balance of probabilities, the Trust holds the requested information.

Background

14. Meta Pixel is a piece of code that can be placed on a website to collect data that helps the website owner track conversions from Facebook (Meta) adverts, optimize adverts, build targeted audiences for future adverts and re-market to people who have already taken some kind of action on the website. Meta Pixel works by placing and triggering cookies to track users as they interact with the organisation both on and off Facebook and Instagram.
15. Google Analytics is a free tracking tool offered by Google, and it shows how visitors use a website in a similar way to Meta Pixel. Newer versions of Google Analytics offer increased security and greater control over data collection settings.

The complainant's position

16. The complainant has explained that they alerted the Trust to a potential data protection issue concerning the presence of a Meta Pixel plug-in on its website and the Trust did not acknowledge this until a newspaper article was published concerning the issue.
17. The complainant does not accept the Trust's response that the requested information is not held as they argue that information on user sessions could still be accessed from Google Analytics.
18. The complainant has stated that the Trust is trying to down-play the severity of the personal data breach and block them from accessing the requested information.

The Trust's position

19. The Trust has explained that it reported the use of Meta Pixel to the Information Commissioner's Office (ICO) in 2023. As part of their information gathering, the ICO requested information on the number of data subjects that were affected by the incident. The Trust responded as follows:

- “The Trust does not know how many individual data subjects were affected. However, when viewed in the Facebook business page, prior to the connection being disabled, the resultant dataset included circa 204,000 rows of data. It is important to note that whilst the Trust have inadvertently enabled the data to be collected by Meta Pixel, the Trust had not accessed the data within the Meta Business Suite, where Meta is a (joint) controller.”
20. In its response to the Commissioner’s previous investigation into the potential personal data breach the Trust explained:
- “Like a number of other NHS Trusts, the Trust installed Meta Pixel onto its website (in July 2019) ultimately with the aim of enabling the Trust to measure, optimise and build audiences for messaging about its services, and other campaigns (for instance, recruitment). Following an email the Trust received from the Observer in May of this year, it became apparent to the Trust that Meta Pixel may also collect information from website users’ Facebook accounts. The Trust removed Meta Pixel from its website immediately upon learning this information.”
21. The Trust explained that the requested information should be available in the Facebook application for business administration account holders. However, when the Trust was alerted to the issue, it took immediate steps to investigate what data was being held in Facebook’s system. The Trust explained that it deactivated the links and the additional permissions account immediately. It was able to see that there had been multiple rows of data collected, but it did not take a copy of that data at that moment. The Trust stated that, in hindsight, it should have taken a screenshot or copy of the data prior to that closing the account, because when the account functionality had been switched off, the data was no longer accessible. The Trust added that it has contacted Meta Pixel on multiple occasions but it has not responded to the Trust’s requests to have access to the data.
22. The Trust added that it is important to note that 204,000 rows of data may not equate to 204,000 data subjects affected and, as it did not have access to the dataset, it could not determine an accurate response to the questions, therefore it considers the response given was as open and transparent as possible.
23. In its submission to the Commissioner, the Trust explained that, as the data was not stored by the Trust, searches of paper or electronic records would not be an appropriate course of action. A thorough investigation into the Facebook Meta Pixel incident was carried to better understand the data breach, therefore the search was aimed at the Meta Pixel data within the Facebook Business Account. It added that a second search

was carried out by logging into the account again and trying to access the data, and asking the Meta Pixel help team for advice, but it did not respond.

24. The Trust has stated that Google Analytics data is not linked to the Facebook Meta Pixel data in this FOI request, but the Trust can confirm that Google Analytics was switched off on 25 May 2023. The Trust advised that it is currently completing a Data Protection Impact Assessment (DPIA) process before switching it on, and as a result there is no Google Analytics data to access.
25. The Commissioner notes that in its response to his previous investigation the Trust stated:

“The Trust has the ability to utilise the newest version of Google Analytics (GA4), however at the present time, this is not active and the ID code is not linked on the site to enable data to be recorded. Whilst the previous version of Google Analytics (UA, Universal Analytics) has been live in the past, it is not possible to identify exactly when this was unlinked however the last recorded entry was made in March 2021. This version recorded the following:

- Language
- Location (based on IP address)
- New or returning
- Engagement - page views
- Browser and network
- Device used.

This information was used to establish whether the site was running efficiently and to provide the Trust with insight on elements of the website that could be improved. The Trust cookies policy did reference the use of Google Analytics (UA) at the time at which this was active but has now been removed as this is not currently switched on.”

The Commissioner’s view

26. The Commissioner acknowledges the complainant’s frustration that they had tried to warn the Trust about its use of Meta Pixel before it was contacted by a newspaper. He also acknowledges that it is reasonable to expect an organisation that has an application like Meta Pixel on its website to have access to the information collected.
27. The Commissioner accepts the Trust’s explanation of why it no longer has access to the information collected by the Meta Pixel. He recognises that the Trust wanted to remove the risk of further personal information being share as soon as possible and did not foresee that this would

mean it would lose access to previously gathered information as a result.

28. The Commissioner notes that the Trust contacted him in 2023 to report the potential personal data breach and at that time advised that it no longer had access to the information gathered by the Meta Pixel and had also deactivated Google Analytics on its website. Through his own research the Commissioner has found that information from deactivated Google Analytics accounts is deleted after 35 days. The Commissioner also notes that these explanations were accepted as part of his previous investigation and that no further action was required by the Trust as a result of that investigation.
29. The Commissioner's decision therefore is that on the balance of probabilities, the Trust does not hold information within the scope of the request.

Other Matters

30. As part of the supporting information for their complaint, the complainant provided the Commissioner with correspondence they had had with the Trust about the inaccurate recording of their complaints on its DATIX system and concerns about the Trust's handling of personal data. The Commissioner has advised the complainant that these concerns are most appropriately handled as data protection complaints and cannot be addressed as part of this notice, which concerns FOIA only.

Right of appeal

31. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Keeley Christine
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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