

Self-interest case regarding the municipality's processing of information about website visitors

Date: 17-11-2021

Decision

Public authorities

Criticism

Supervision / self-management case

Processed by the Data Council

Cookies / processing of personal data about website visitors

Basis of treatment

Basic principles

Næstved Municipality's processing of personal data about website visitors for statistical purposes could be done on the basis of the municipality's exercise of authority, reads the conclusion of a new decision from the Danish Data Protection Authority.

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Summary

In October 2020, the Danish Data Protection Authority launched an independent action against Næstved Municipality regarding the municipality's processing of personal data about website visitors. After the Norwegian Data Protection Authority started the investigation of Næstved Municipality, the municipality chose to change its procedure for processing personal data about visitors to the municipality's website. With this decision, the Data Protection Authority has not taken a position on the municipality's new approach.

The procedure for processing personal data about visitors, which Næstved Municipality used in October 2020, presented the website visitor with information that the website used cookies for e.g. to improve the user experience and to support the marketing of the municipality's services. Website visitors then had the option to choose "OK" or "Show details".

Næstved Municipality also stated in the case that information about website visitors was collected for statistical purposes in order to ensure a high level of citizen and user friendliness.

The Danish Data Protection Authority found - after the case had been dealt with at a meeting of the Data Council - reason to express criticism that Næstved Municipality, in connection with the processing of personal data about website visitors, did not

observe the basic processing principle that personal data must be processed legally, fairly and in a transparent manner manner.

The Data Protection Authority also found that Næstved Municipality's processing of personal data about website visitors for statistical purposes took place as part of the municipality's exercise of authority and thus within the framework of the data protection rules.

The Danish Data Protection Authority based its decision on the fact that there was no transfer of information to countries outside the EU.

Decision

The Danish Data Protection Authority hereby returns to the case which the Danish Data Protection Authority launched on its own initiative on 9 October 2020 regarding Næstved Municipality's processing of personal data about website visitors (in the form of cookies) on the municipality's website (www.naestved.dk).

The Norwegian Data Protection Authority notes that Næstved Municipality has chosen to change the municipality's procedure regarding the processing of personal data about visitors to the municipality's website after the authority launched the investigation. With this decision, the Data Protection Authority does not take a position on the new procedure at www.naestved.dk.

The Data Protection Authority's decision concerns only whether Næstved Municipality's processing of personal data in its previous approach at www.naestved.dk was in accordance with the data protection legal rules. In this connection, the Danish Data Protection Authority notes that the decision therefore does not deal with matters that fall within the scope of Executive Order No. 1148 of 9 December 2011 on requirements for information and consent when storing or accessing information in the end-user's terminal equipment (the Cookie Executive Order), which belongs under the Danish Business Authority's area of competence.

1. Decision

The Danish Data Protection Authority finds - after the case has been dealt with at a meeting of the Data Council - occasion to express criticism that Næstved Municipality, in connection with the processing of personal data about website visitors, has not observed the data protection regulation^[1] article 5, subsection 1, letter a, that personal data must be processed lawfully, fairly and in a transparent manner in relation to the data subject.

The Danish Data Protection Authority also finds that Næstved Municipality's processing of personal data about website visitors for statistical purposes has taken place within the framework of Article 6, paragraph 1 of the Data Protection Regulation. 1, letter e.

Below follows a closer review of the case and a rationale for the Data Protection Authority's decision.

2. Case presentation

In February 2020, the Danish Data Protection Authority published guidance on the processing of personal data about website visitors[2].

As a follow-up to this and to focus on whether the rules in this area are being complied with, the Data Protection Authority decided in October 2020 to examine the website www.naestved.dk more closely on its own initiative.

On the website, which belongs to and is administered by Næstved Municipality, the following text about visits to the website appeared at this time:

"The website uses cookies to improve your experience, assess the use of the individual elements on the website and to support the marketing of our services. By clicking on the website, you accept the website's use of cookies."

On the website, website visitors were then presented with a choice between pressing "OK" or "Show details". By clicking "Show details", the website visitor was taken to the following text:

"Cookies are small text files that can be used by websites to make a user's experience more efficient.

The law states that we can store cookies on your device if they are strictly necessary to ensure the provision of the service you have expressly requested to use. For all other types of cookies, we must obtain your consent.

This website uses different types of cookies. Some cookies are set by third-party services that appear on our pages."

In connection with the website visitor's acceptance or continued use of www.naestved.dk, in addition to some technically necessary cookies, three statistical cookies were placed.

On 9 October 2020, 10 December 2020, 22 February 2021, 21 May 2021 and 21 September 2021, the Danish Data Protection Authority respectively requested Næstved Municipality for opinions on the matter.

Næstved Municipality made statements on the matter on 17 November 2020, 15 January 2021, 9 March 2021, 26 May 2021 and 12 October 2021.

2.1. Næstved Municipality's comments

Næstved Municipality has generally stated in the municipality's statement of 6 November 2020 that the municipality processes information about website visitors that is covered by the scope of the data protection regulation. Næstved Municipality has also stated that the processing takes place on the basis of the data protection regulation, article 6, subsection 1, letter e, for the purpose of carrying out a task in the interest of society or which falls under the exercise of public authority, including for the purpose of providing information about the municipality's solution to municipal tasks.

In the statement of 13 January 2021, Næstved Municipality stated that at the time of the Danish Data Protection Authority's hearing on 9 October 2020, the municipality used 11 cookies on the website, of which three cookies were used for statistical purposes.

As regards Næstved Municipality's processing of information about website visitors for statistical purposes, the municipality has claimed that the processing helps to ensure a high level of citizen and user friendliness at www.naestved.dk, including by: to optimize the citizens' user journey to relevant public information on the basis of statistical data on the use of the website in order to trace interrupted user journeys,

to maintain general security on the website, e.g. by identifying illegal and malicious traffic,

to measure the effect of the communication effort based on data on which pages and links citizens use,

to optimize appointment booking systems and physical contact points using statistics to see how large a proportion of the inquiries are made via physical self-service screens or through links from the website, and

to help find the balance point in personal inquiries and self-service solutions, which is a wish from politicians.

In relation to the legality of the processing, Næstved Municipality has stated that the municipality has emphasized that the use of cookies is set up in such a way that the data set from the individual cookies is collected by a supplier who generates irreversible anonymised statistics for Næstved Municipality. Information that is collected through the use of cookies is thus processed to the extent possible and solely for the purpose of providing statistics that can ensure the municipality's knowledge of the user journey.

In its statement of 12 October 2021, Næstved Municipality clarified that the information collected in this connection are the users' IP addresses. The collection does not take place via the cookie itself, which is placed, but from a script which is triggered in the visitor's browser and which sends statistical data to Siteimprove after the visitor has accepted Siteimprove's cookie. However, this does not change either the legality or the processing basis in that connection.

Næstved Municipality has also stated that digital communication with citizens is a prerequisite for the municipality's resolution of municipal tasks, and that as part of its task resolution, the municipality thus depends on having effective, up-to-date and citizen-friendly communication channels for citizens. In this connection, the municipality must use information about how the website is used, and this information is provided through statistical cookies.

As examples of what information Næstved Municipality has available on its website, the municipality has pointed to information about contacts and opening hours, corona information, health services, city council meetings, policies and strategies as well as hearings. Næstved Municipality has claimed that the municipality thus solves some of its tasks through www.naestved.dk, just as the municipality communicates with citizens via the website.

The information that Næstved Municipality collects through the use of statistical cookies contributes to ensuring that the relevant information is in the right places on the website and that the municipality has current and concrete information about the use of the website. At the same time, the use of cookies means that it is not necessary to carry out user surveys of the website, which saves time and costs for the municipality and time for the citizen. In addition, the data base from the placed statistical cookies is considered to contribute with more current and concrete knowledge about citizens' use of the website than user surveys could produce.

Furthermore, Næstved Municipality has stated that statistical cookies contribute to monitoring whether unintended files and/or files with unintended content are posted on Næstved Municipality's website.

Næstved Municipality has stated in the municipality's statement of 9 March 2021 that the personal data that Næstved Municipality processes when using the analysis tool Siteimprove Analytics will not be passed on to third parties. Siteimprove Analytics is part of a data processing agreement with Næstved Municipality, and as a result is obliged to exclusively process personal data according to documented instructions from the municipality. The municipality has also stated in its statement of 12 October 2021 that the municipality has obtained a detailed explanation from Siteimprove on how personal data is processed in connection with the resolution of tasks for the municipality.

In this connection, Næstved Municipality has added that Amazon Web Service (AWS) Frankfurt is a sub-data processor for Siteimprove, which is also evident from the data processing agreement between Næstved Municipality and Siteimprove. The agreement ensures that personal data is only stored in the EU. In this connection, AWS Frankfurt has in the agreements and publicly given guarantees that this restriction will be maintained and that no transfer will take place to countries outside the EU

– including the USA. It is Næstved Municipality's opinion that there is no real risk of information being transferred to the USA in violation of these guarantees in connection with online support or the like.

Næstved Municipality has also stated that the wording "By clicking on the website you accept the website's use of cookies" was not intended to provide a processing basis in the data protection regulation, but was only presented to website visitors to obtain consent to place the relevant cookies as prescribed in the cookie order. Næstved Municipality has stated that the municipality has subsequently changed the text on the website.

Finally, Næstved Municipality has stated that it was an error that it appeared from the text that the municipality processed the information for marketing purposes. The error occurred because the default text that came with the cookie pop-up was not adapted before it was used.

3. Reason for the Data Protection Authority's decision

3.1.

The basic principles for processing personal data, which appear in Article 5 of the Data Protection Regulation, must in all cases be observed when processing personal data. This means, among other things, that personal data must be processed legally, fairly and in a transparent manner in relation to the data subject, cf. the data protection regulation, article 5, subsection 1, letter a.

Næstved Municipality presented website visitors with the following text in connection with a visit to www.naestved.dk:

"The website uses cookies to improve your experience, assess the use of the individual elements on the website and to support the marketing of our services. By clicking on the website, you accept the website's use of cookies."

In addition, the website stated the following:

"Cookies are small text files that can be used by websites to make a user's experience more efficient.

The law states that we can store cookies on your device if they are strictly necessary to ensure the provision of the service you have expressly requested to use. For all other types of cookies, we must obtain your consent.

This website uses different types of cookies. Some cookies are set by third-party services that appear on our pages."

The Data Protection Authority finds that Næstved Municipality has not observed the basic principle of legality, reasonableness and transparency in the Data Protection Regulation, Article 5, subsection 1, letter a.

In the assessment, the Danish Data Protection Authority emphasized that the texts on the website led visitors to believe that

the municipality processed personal data for marketing purposes, even though this was not the case.

Against this background, the Data Protection Authority finds grounds to express criticism that Næstved Municipality has not observed the data protection regulation's article 5, subsection 1, letter a, in connection with the municipality's processing of personal data about website visitors at www.naestved.dk.

3.2.

The Danish Data Protection Authority finds that Næstved Municipality's processing of personal data about website visitors for statistical purposes must be assessed according to whether the processing can be accommodated within the municipality's exercise of authority in accordance with Article 6, subsection of the Data Protection Regulation. 1, letter e.

It follows from the regulation's article 6, subsection 1, letter e, that the processing of personal data is lawful if the processing is necessary for the performance of a task in the interest of society or which falls under the exercise of public authority that the data controller has been tasked with.

After a review of the case, the Danish Data Protection Authority finds that Næstved Municipality's processing of personal data for statistical purposes has taken place within the framework of Article 6, paragraph 1 of the Data Protection Regulation. 1, letter e.

The Data Protection Authority has emphasized that Næstved Municipality, as a public authority, has a duty to guide and help citizens, which i.a. can be done by using www.naestved.dk. In this connection, Næstved Municipality has a legitimate reason to collect and process information with a view to providing statistics on the behavior of website visitors, which enables Næstved Municipality to optimize efficiency and user-friendliness in connection with citizens' visits to www.naestved.dk.

The Danish Data Protection Authority has also emphasized what Næstved Municipality stated that digital communication with citizens is a prerequisite for the municipality's solution of municipal tasks, as the municipality's website contains important information for citizens, which citizens must be able to access effectively.

In the assessment, the Danish Data Protection Authority has also assumed that the municipality's processing is set up in such a way that the data set from the individual cookies is collected by a supplier who generates irreversible anonymised statistics for the municipality. The Danish Data Protection Authority notes that the Danish Data Protection Authority has not checked whether the anonymisation carried out is irreversible.

Finally, the Danish Data Protection Authority has emphasized that AWS, which is used as a sub-data processor for the

processing of personal data for statistical purposes, has by agreement and publicly given a guarantee that no transfer of information takes place to countries outside the EU, and that the processing therefore takes place under Siteimprove's controlled framework.

Against this background, the Data Protection Authority assesses that Næstved Municipality's processing of personal data about website visitors to www.naestved.dk has taken place as part of the municipality's exercise of authority and thus within the framework of Article 6, paragraph 1 of the Data Protection Regulation. 1, letter e.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in connection with the processing of personal data and on the free exchange of such data and on the repeal of Directive 95/46/EC (general regulation on data protection).

[2] The Danish Data Protection Authority's guidance on the processing of personal data on website visits from February 2020