

press release

Use of Facebook pages by public bodies under data protection law scrutiny

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Can public bodies still have their own pages on Facebook and other social media channels? Serious data protection problems are associated with the operation of Facebook pages.

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This is about the way Facebook handles user data. From a data protection point of view, the processing of user data in the background is particularly problematic. Facebook uses cookies and similar technologies to collect data from visitors to Facebook pages - regardless of whether they have a Facebook account or not. Facebook creates extensive user profiles from the collected data and uses them profitably to market individualized advertising. Just visiting a few Facebook pages and websites linked to Facebook enables precise conclusions to be drawn about, for example, age, gender, origin, personal taste and possibly even sensitive information such as sexual orientation or political views of an individual user.

The Hessian Commissioner for Data Protection and Freedom of Information (HBDI) Professor Dr. Alexander Roßnagel says: "The legal situation was unclear for a long time, but now, at the latest with the judgment of the OVG Schleswig of November 25th, 2021, it has been legally established that the operation of a page on Facebook represents a 'serious violation of data protection law'".

This is also confirmed by a brief report by the Facebook Fan Pages Task Force of the Conference of Independent Federal and State Data Protection Authorities (DSK). This had examined which findings of the judgment correspond to the current practice of Facebook. The short report confirmed the findings of the Schleswig Higher Administrative Court and took into account newer legal regulations such as Section 25 of the Telecommunications Telemedia Data Protection Act (TTDSG). Among other things, it comes to the conclusion: "There are no effective legal bases for the storage of information in the terminal devices of the end users triggered when visiting a Facebook page (...) or for the processing of personal data for which the site operators are responsible. In addition, the information obligations from Art. 13 GDPR are not fulfilled".

At its 103rd conference, the DSK approved the short report on the question of the lack of conformity with data protection law and decided on further joint action by the data protection supervisory authorities in Germany in the decision of March 23, 2022.

The HBDI checks which state authorities operate Facebook pages. The HBDI works to ensure that the Facebook pages operated by state authorities are deactivated if those responsible cannot prove compliance with data protection law. This proof to be provided primarily includes the conclusion of an agreement in accordance with Art. 26 GDPR on joint responsibility for data processing, which Facebook has so far refused. In addition, the site operators must provide sufficient information to Facebook users in accordance with Art. 13 GDPR about which data about them is processed by them and Facebook and for what purposes. You must ensure that you and Facebook do not set and read cookies in the end devices of the users or track and evaluate their behavior in any other way without the consent required under Section 25 TTDSG. Finally, they have to ensure that no personal data is transferred to third countries and gets access by the authorities there.

Roßnagel recognizes "the task of the public authorities to inform the citizens and also recognizes the reach of these media. However, I also emphasize the special responsibility of public authorities to fulfill their information task without violating the fundamental rights of the citizens. I therefore expect that the public authorities in Hesse will not create any new Facebook pages and will make the move to switch from the Facebook pages they operate to data protection-safe alternatives for their public relations work. A well-maintained website can also form the basis of public relations work."

In the event of a change, the public authorities must ensure that the alternative chosen does not cause comparable data protection problems. Until this change has been completed, they may not offer any information exclusively on Facebook, but must always use at least one second communication channel for the publication of this information, which does not raise any data protection concerns and which must be expressly referred to.

The HBDI informs the public bodies under its supervision about the short report on the question of the conformity of the operation of Facebook fan pages with data protection law.

Left: Decision of the DSK v. March 23, 2022 Short report by the DSK Information from the HBDI on Facebook pages

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