Privacy Series

8 RIGHTS OF THE DATA SUBJECT

VEIRANO ADVOGADOS



This is the eighth chapter of the Data Privacy Series. Click here to access the chap. 7.



In 2023, the Brazilian General Data Protection Law (Law No. 13,709/2018 or "LGPD") celebrates 5 years of its publication - now also including the possibility of the application of administrative sanctions by the ANPD since August 2021. The Brazilian National Data Protection Authority ("ANPD") has been active in fostering discussions and disseminating concepts, practices and principles of privacy and data protection, through the publication of several materials for awareness and regulation of the LGPD since its creation.

Veirano Advogados has been following and participating in discussions regarding these issues. For this reason, our Data Protection & Privacy team has prepared the Privacy Series, in which we will periodically publish on different topics related to privacy, bringing not only LGPD concepts, but also ANPD publications on the subject, relevant considerations, among other contents.



As discussed in Chapter 2, the Data Subject is the individual to whom the Personal Data refers to. For example, employees, volunteers, partners, sponsors, applicants, third-party employees, and others are considered Data Subjects.

It should be remembered that considering that the Personal Data refers solely to individuals, information on companies (for example the Brazilian Corporate Taxpayers' Registry "CPNJ") and deceased individuals are not included in the scope of the law.

The LGPD establishes a series of rights for the Data Subjects regarding their Personal Data, which must be guaranteed by the Processing Agents. In this regard, Processing Agents are responsible for keeping Data Subjects informed of their rights in a clear, objective, and accessible manner.

Among the rights guaranteed to the Data Subjects are:

1. Confirmation of the existence of a data processing and access to the personal data being processed.
2. Correction of incomplete, inaccurate, or outdated data.
3. Anonymization, blocking or deletion of unnecessary or excessive data or data processed in violation of the provisions of the LGPD.
4. Portability of data to other service or product providers upon express request.
5. Information about the public and private entities with which the controller shares personal data.
6. Deletion of data processed with the consent of the data subject, considering the exceptions in the law.
7. Withdrawal of consent.
8. Information about the possibility of not giving consent and its consequences.
9. Motion against the controller before the ANPD.
10. Review of automated decisions.

NOTE: Requests from data subjects must be answered by the Controller free of cost and the response must be submitted through secure electronic means or in printed form, subject to the deadlines established in the LGPD

For the Data Subjects to be able to exercise their rights, it is necessary for them to make a specific submission through the Controller's official communication channels.

> The contact information of the Data Protection Officer is usually available on the privacy policy pages of the Controllers on their web sites.

Recently, the ANPD released new information on the submission of requests (complaints and requests by holders of personal data against the Controller). Such requests must be sent by completing specific forms through the Electronic Petitioning of SUPER.BR (Single System of Electronic Process in Network), which facilitates the filling of information that is essential for the ANPD to analyze the cases. Unlike the cases sent via the ANPD Ombudsman, these requests must be identified. Anonymous complaints should only be sent via the Fala.br Platform.

The following is the main information about the requirements according to the ANDP guidelines:

Data Subject Request

If the requests made by the Data Subjects are not answered, and the Data Subjects are unable to exercise their rights before the Controller, they may file a request before ANPD. In this regard, it is worth noting that the rights of the Data Subject are not absolute, and therefore, requests may not always be



answered by the Controller, such as in cases where the Data Subjects request the deletion of their data, but the Controller has a legal obligation to keep it.

To present the request to the ANPD, Data Subjects must prove that they made an express request to the Controller but failed to exercise their rights, i.e. the exercise of rights must first be requested directly from the Controller, responsible for the Personal Data. Thus, it is recommended that Data Subjects keep proof of the request (such as, protocol number, messages, e-mails and instructions received) to present it to the ANPD.

In brief, the procedure will work according to the following steps:

1. Data Subjects must make an express request to the Controller demanding the exercise of their rights;
2. In case (i) Data Subjects' request is not answered by the Controller, or (ii) Data Subjects understand that the Controller's response is not satisfactory: Data Subjects may file a motion against the Controller before the ANPD;

3. The ANPD will analyze the subject's motion in an aggregate form and will use it to constitute important sources of information that will be considered to select the issues that will be subject to oversight by the ANPD.

Data Subject Complaint

Complaints consist of communications to the ANPD made by any person, whether natural or legal, aiming to report alleged breaches of the Brazilian personal data protection legislation. Therefore, complaints are not necessarily related to a specific situation of a Data Subject, but rather to a situation that affects a group of Data Subjects or that makes it impossible for them to exercise their rights.

Reportable situations include:

1. The discriminatory processing of Personal Data.
2. Excessive collection of Personal Data.
3. The absence of a Personal Data protection officer.
4. The non-existence of a communication channel to exercise Data Subjects' rights.
5. The absence of adequate security measures.
6. The absence of a privacy policy.

To ensure the handling of the complaint, it is necessary to identify the Processing Agent, through the official identity of the Controller, the name or corporate name of the company, the website and e-mail for contact.

Cases of crimes involving Personal Data (e.g., fraud with the purpose of harming the Holders or obtaining undue resources or advantages with the use of their Personal Data) must be reported to the competent police authorities, since the ANPD, in accordance with its legal attributions, cannot specifically conduct investigation of crimes, but, of administrative infractions.

Complaints not related to the LGPD or made in a generic way will not be accepted. That said, it is necessary that the situation presented to the ANPD be:

- Clearly written;
- Related to a specific situation involving personal data; and
- Related to a non-compliance with LGPD.

The forms for sending the requirements (request or complaint) to the ANPD are available on the ANPD website. When submitting an application, the personal information of the Data Subjects and the attached documents may be shared with the Data Protection Officer or legal representative of the Processing Agent about whom the request or complaint is being submitted.



The Veirano Experience has a holistic, multidisciplinary, and business-oriented approach. In order to cover all the needs related to Compliance with LGPD, our Data Protection & Privacy team have developed several project formats, which comprise different scopes of work and meet specific demands of each client, whether national or international:

1. Full Compliance

With the performance of a multidisciplinary team, this project is aimed for clients whose goal is to identify and assess all ongoing processing activities within the company and based on that, identify vulnerabilities and structure an action plan for the creation of an effective privacy and data protection program based on legal, procedural, information security, and corporate governance pillars.

2. DPO as a Service

In this model, we take on the role of Data Protection Officer (DPO) on behalf of the client. To this end, we allocate a professional to perform the activities of managing and monitoring the client's data protection and privacy program.

3. M&A Legal Assistance

Designed to assist clients in the legal due diligence of merger and acquisition transactions, in order to identify relevant legal issues (red flags) and mitigate potential risks related to data protection and personal data security issues of the target company.

4. LGPD Pocket

A “pocket” advisory service for the adequacy of the activities and/or products developed by the company, regardless of its size or field of business, considering a reduced number of deliverables.

5. LGPD on Demand

LGPD On Demand is aimed at organizations that wish to have multidisciplinary advisory service on legal, information security, and corporate governance issues, with specific and timely action related to the protection of personal data.

6. LGPD Legal Helpdesk

The Helpdesk is designed to assist clients with LGPD legal consultations and demands within a monthly package of hours, either before, during, or after the initial compliance process.

7. Task Force For Security Incident Assessment And Reporting (VA Cybersecurity)

Specific and multidisciplinary legal advice in aspects related to the suspicion or occurrence of a security incident, in accordance with the most updated instructions from the ANPD and other applicable laws and regulations.

8. Representation in Administrative and Judicial Actions Involving Data Protection

Representation of clients in any administrative and/or judicial actions or potential actions involving data protection.

9. Analysis of Administrative and Judicial Decisions on Data Protection Matters

Periodic monitoring of decisions rendered in judicial and administrative proceedings involving the company or not, in order to present the authorities’ understanding and the impacts for the company or economic sector to the client in a summarized format.

10. Development and Updating of a Data Protection Impact Report

The ANPD may request from the controller to prepare a personal data protection impact report ("RIPD" or DPIA). Our team has expertise on the subject and can assist the company with the preparation and updating of the RIPD.

11. Development of Workshops

Development and application of training about the main concepts related to privacy and data protection to train its employees.

12. Playbook for Negotiating Commercial Contracts

Creation of playbooks for the negotiation of commercial contracts, to facilitate and speed up internal processes of commercial, technical, and legal teams.

13. Handbook to Reply the Data Subjetcs

Development of materials to assist the companies in prompt answering the data subjects' requests, as well as in the procedure to be followed by the company when answering the data subject, according to the business model developed by the company.

14. International Data Transfer

We help clients to understand the context of the international transfer, adapt it to the applicable legal basis, assess data localization requirements, add contracts, draft and review intra-group data sharing agreements, and generally respond to queries related to the harmonization of foreign with Brazilian regulations.

15. Privacy and Data Protection Auditing

We conduct audits to evaluate the company's level of maturity, presenting recommendations for risk mitigation.

16. Development and Review of Documents Pursuant to the Financial Sector

Our team has expertise in drafting security policies in accordance with the Central Bank's specific information security regulations, and in answering questions on the subject.

We are at your disposal in case of any questions or in the need of any additional information.



FÁBIO PEREIRA
+55 11 2313 5906
fabio.pereira@veirano.com.br



CINTIA ANDRADE
+55 21 3824 4655
cintia.andrade@veirano.com.br



DENISE LOUZANO
+55 11 2313 5912
denise.louzano@veirano.com.br



ISABEL HERING
+55 11 2313 5726
isabel.hering@veirano.com.br



PAOLA LORENZETTI
+55 11 99976 8480
paola.lorenzetti@veirano.com.br



LUIZA GOMES
+55 21 3824-4855
luiza.gomes@veirano.com.br

This material was last updated on May __, 2023 and published on May __, 2023.
For more updated information please contact us.