




TozziniFreire.
ADVOGADOS

Cybernews.

2nd Edition | 2024

This newsletter is an informative
of the area of **Cybersecurity e Data Privacy**
of TozziniFreire Advogados.

INDEX

Click on the news and
browse the document 

01 | Editorial

02 | General News

/ Challenges for companies in reconciling salary transparency and LGPD

/ Alleged illegal access to patient data at São Paulo hospital by municipal health department generates request for investigation

03 | Judicial Branch

/ Federal Supreme Court: preservation of personal data without court authorization is unconstitutional

/ Brazilian courts register more than 14 thousand decisions related to the LGPD

04 | ANPD

/ ANPD's new actions

EDITORIAL



In this edition of the CyberNews Bulletin, we highlight the main news that permeated the digital and data protection landscape in February 2024.

Companies face challenges in reconciling salary transparency with the Brazilian General Data Protection Law (LGPD), fearing to commit violations when disclosing reports as required by the Equal Pay Law, while the Department of Health highlights the importance of data protection and social participation in healthcare. In parallel, complaints of illegal access to sensitive patient data lead to requests for investigation, and Brazilian courts record a significant increase in LGPD-related decisions, which underscore the growing importance of this issue.

Furthermore, the Federal Supreme Court (STF) reinforces the need for court authorization to preserve personal data, strengthening citizens' control over their

information. From a litigation perspective, there has been a significant increase in decisions related to the LGPD issued by Brazilian courts, although the decisions that actually address data protection in a relevant way do not amount to a total of one thousand cases.

Finally, during the week of the International Data Protection Day, ANPD unveiled actions to strengthen the data protection regulatory framework in Brazil. Highlights include the publication of the Technology Radar on Smart Cities, the opening of a public inquiry on data anonymization, the launch of the Glossary of Personal Data Protection, a call for contributions on data subject rights and an informative guide to legitimate interest. These measures promote basic and fundamental data protection topics both for companies, in the position of processing agents, and for citizens, in the position of data subjects.

GENERAL NEWS

Challenges for companies in reconciling salary transparency and LGPD

Companies are concerned about disclosing salary transparency reports through social media and on the company's website, fearing violation of the LGPD (Brazilian Data Protection Law). The Equal Pay Law (Law No. 14,611/2023) aims to eliminate gender disparities in pay. Companies are required to disclose salary transparency reports, and failure to comply with this can result in fines.

If the required information is not disclosed, companies are subject to administrative fines that can reach up to 3% of the payroll, with a limit of 100 minimum wages, equivalent to R\$ 140 thousand currently. Moreover, non-compliance with the LGPD can lead to even more severe fines, reaching up to R\$ 50 million per violation.

Lawyers point out the contradiction between the obligation to comply with the LGPD and the requirement to disclose salaries, remuneration, and salary progression.

For supporters of the transparency report, the purpose is simply to prevent discrimination in pay based on gender, age, origin, ethnicity and

race, there being no violation of the LGPD as the report guarantees employee anonymity.

However, one of the concerns of some companies opposed to the report is that it will end up making it possible to identify individual salaries based on the positions held, i.e. data of employees who can be easily identified because the company only has one or two people holding that position. Making this information public would violate the LGPD.

To resolve any doubts about the transparency report, the Ministry of Labor and Employment (MTE) and the Ministry of Women (MMulheres) held a live session on February 7th, 2024. During the event, it was explained that the biannual transparency reports will use data on men's and women's salaries and positions already provided by companies through eSocial (Brazilian digital bookkeeping system). Although the live broadcast with representatives from the MTE has addressed some concerns about any possible disclosure of personal data and salary practices, it is essential that companies consider the impacts of disclosing the transparency report.

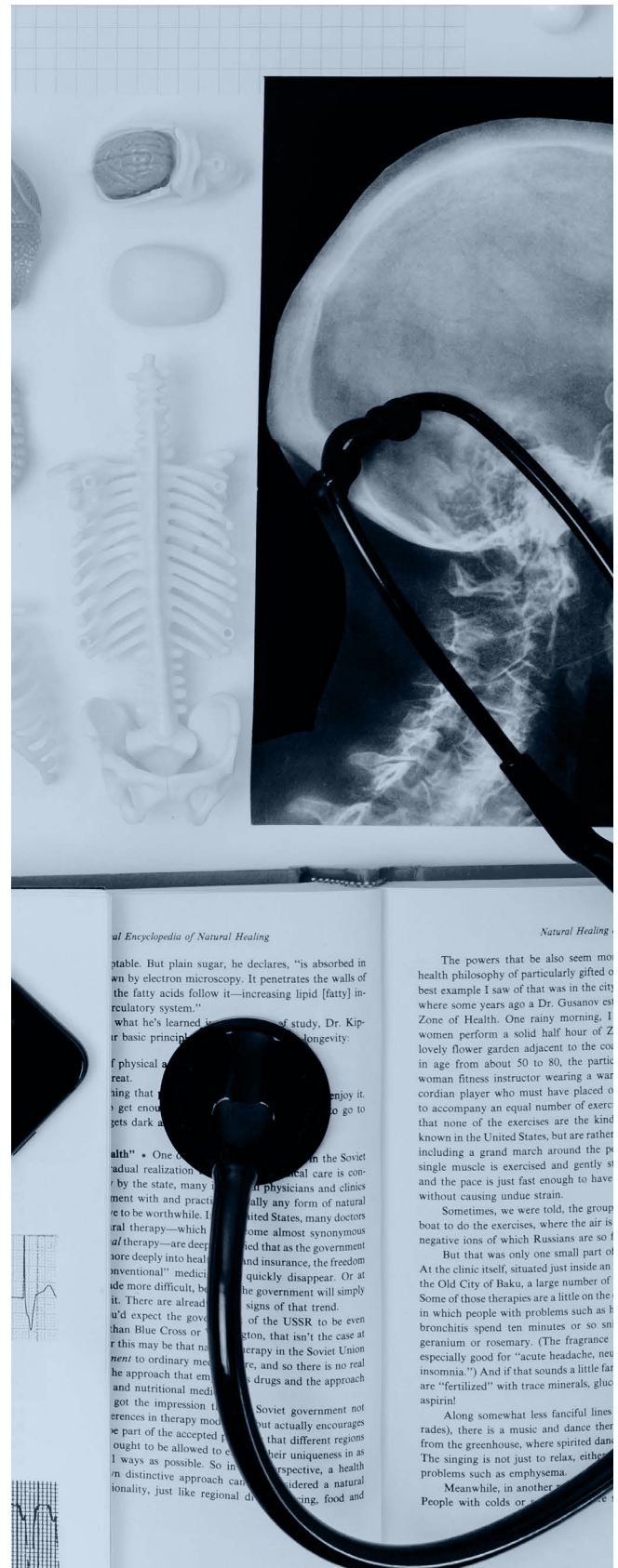
Alleged illegal access to patient data at São Paulo hospital by municipal health department generates request for investigation

On January 26, 2024, lawmakers from PSOL (Socialism and Freedom Party) requested Prosecution's Office of São Paulo to investigate the São Paulo City Hall for alleged illegal access to confidential data of patients who performed legal abortions.

Employees at the Vila Nova Cachoeirinha Maternity Hospital reported that the Municipal Health Department had requested records of all legal abortions performed between 2020 and 2023.

Patient records, containing sensitive information such as full name, date of treatment, and address, are protected by law with restricted access. According to legislation, medical records are confidential and can only be accessed with the patient's authorization, a court order, or for good cause shown.

The Municipal Health Department claims to be conducting an internal investigation into issues at the hospital but has not commented specifically on the allegations.



JUDICIAL BRANCH

Federal Supreme Court: preservation of personal data without court authorization is unconstitutional

The 2nd Panel of the Federal Supreme Court (STF) has ruled that the mere preservation of personal information, without court authorization, violates the right to privacy, removing citizens' control over their own data. The debate took place during the analysis of a case involving the lawfulness of preserving personal data, where there is no court order for such action.

The case in question involves a woman investigated for an alleged scheme of criminal organization and bid-rigging involving employees from Paraná Department of Motor Vehicles (Detran-PR), with the intention of directing the bidding process in favor of the company represented by her as commercial and technology director.

Subsequently, the Prosecution's Office of the State of Paraná (MP-PR), in the context of an investigation into such alleged criminal conducts by the investigated party, requested Apple and Google providers to preserve registration information, location and search history, email content, messages, photos, and contact names.

Paraná Prosecution's Office had obtained the preservation of the personal data of the investigated parties, based on the Brazilian

Civil Rights Framework for the Internet, which allows providers to be asked to preserve information without court authorization. However, the rapporteur of the matter, justice Ricardo Lewandowski, pointed out that this prerogative applies only to "connection records," and does not cover the content of emails, photos, contacts, and location history, which would require court authorization.

Both Lewandowski and justices Gilmar Mendes and Nunes Marques pointed out that preserving personal data without prior court authorization violates constitutional rights, stressing the importance of citizens' control over their information.

However, there was a dissent from justice André Mendonça, who, while agreeing with the need for court authorization, considered that part of the frozen data was preserved after a court decision authorizing the breach of telematics secrecy, and that there was no causal link between the prosecutorial activity and the introduction of the probative material into the case file.

Although justice André Mendonça dissented, Lewandowski's opinion was followed by the majority of the Court's 2nd Panel.

Brazilian courts register more than 14 thousand decisions related to the LGPD

A survey carried out by the jurimetrics platform JUIT revealed that the Superior Court of Justice (STJ), the Court of Justice of São Paulo (TJSP), the Court of Justice of Rio de Janeiro (TJRJ) and the Court of Justice of Minas Gerais (TJMG) - in addition to the first instance of the TJSP - have already accumulated more than 14 thousand decisions related to LGPD.

From September 18, 2020, to December 31, 2023, 14,605 decisions that mentioned the LGPD were identified. Of these, 10,573 are decisions from the first instance of the TJSP, and 4,032 are judgments from the STJ, TJSP, TJRJ and TJMG. The STJ, for example, issued 8 decisions to this effect.

However, detailed analyses of the data indicate that in the TJSP the number of appeals granted is relatively low: 2,086 were not granted, 1,199 were partially granted and only 36 were fully granted. This trend is also reflected in specific cases, such as in the case of compensation for moral damages after data leakage based on the LGPD: among the judgments handed down in São Paulo Court involving the matter, 170 were not granted, 72 were partially granted, and only 3 were fully granted.

Despite the large number of cases identified as mentioning the LGPD, not all of them have an effective discussion on the application of data protection rules. According to a study conducted by the Center for Law, Internet, and Society of the Brazilian Institute of

Education, Development and Research (CEDIS-IDP), in 2022, only 629 decisions were classified as having a relevant and effective debate on personal data protection.

In turn, within the scope of administrative proceedings, ANPD has 3 monitoring proceedings, 13 inspection proceedings and 9 administrative sanctioning proceedings in progress. With the Dosimetry Regulation, ANPD has already imposed 3 fines.

As noted, the decisions that effectively debate the matter in a relevant way in courts do not amount to a thousand. It can be seen that the predictions that the LGPD would bring a tsunami of lawsuits to courts have not yet materialized. However, it is possible that this will still come to fruition, as the number of claims in the courts has been growing and, at the administrative level, although so far only 5 decisions have been issued by ANPD in sanctioning administrative proceedings, ANPD has already imposed 3 fines in a short period of time, since the publication of the Dosimetry Regulation in February 2023.

Undoubtedly, the topic will gain more and more space in the scope of administrative and judicial proceedings, and the fine that can be imposed by ANPD can reach the level of 50 million Brazilian *reais*, while judgments against involved parties entered by the courts have no limitation.

ANPD



ANPD's new actions

During the week of the International Data Protection Day, January 28th, the Brazilian Data Protection Authority (ANPD) published several materials and institutional initiatives to strengthen the data protection regulatory environment in Brazil. The deliveries made by ANPD include:

- Publication of the First Edition of the [Technology Radar on Smart Cities and their Implications on Personal Data Protection](#). The connection between smart cities and data protection arises precisely because of the overt collection of personal data from data subjects who inhabit these spaces. The impacts of this practice on data

subjects were discussed by ANPD in this first paperwork.

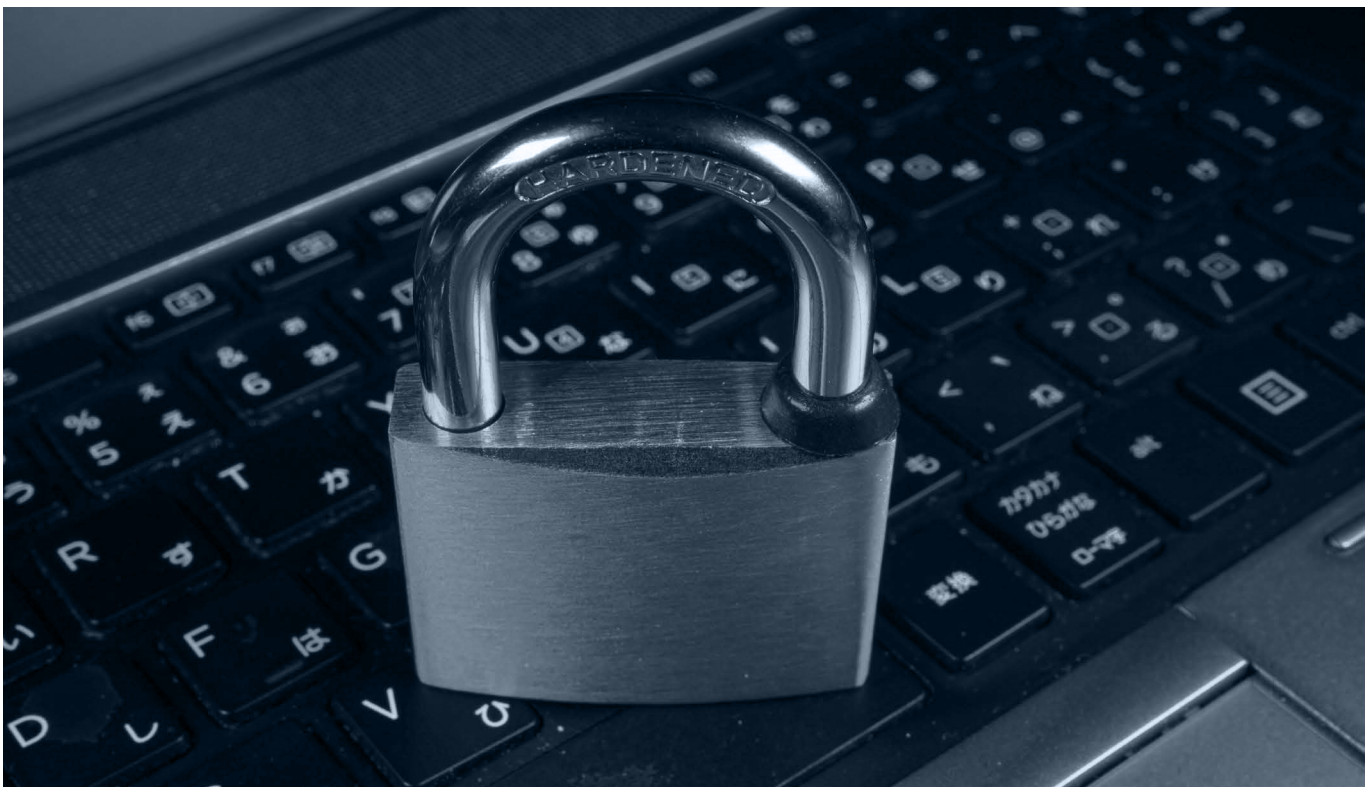
- Opening of a [Public Inquiry on the Anonymization and Pseudonymization Guide](#), involving the analysis and discussion of three materials published by ANPD - Technical Study on Data Anonymization in LGPD: A Risk-Based Process View and Computational Techniques; Technical Study on Data Anonymization in LGPD: Legal Analysis; and Case Studies on Data Anonymization in LGPD.
- Publication of the [Glossary of Personal Data Protection](#), with ANPD's position on the main

concepts of data protection, to facilitate the understanding of terms and expressions, as well as standardize their use.

- Opening of a [Call for Contributions on the Data Subjects' Rights Regulation](#), including questions on the essential characteristics of a service channel to ensure effective communication between the data subject and the processing agent, the responsibility of data processors in enforcing data subjects' rights, the information required by data subjects to identify controllers, among other discussions on portability, data correction, anonymization, blocking and automated processing; and
- Publication of a [Guide on Legitimate](#)

[Interest](#), focusing on the application of legitimate interest of data controllers or third parties according to the nature of the personal data, the involvement of children and adolescents, and the legitimate expectation of data subjects.

With the definition of data protection basic issues, such as the data subjects' rights and the application of legitimate interest, the expectation for 2024 is that other regulations concerning complex matters will be published, such as international transfer regulation. Moreover, initiatives linked to new technologies, as the regulatory sandbox for artificial intelligence, are expected to be effectively implemented this year.





Partners responsible for the newsletter

- ⑧ Patrícia Helena Marta Martins
- ⑧ Marcela Waksman Ejnisman
- ⑧ Carla do Couto Hellu Battilana
- ⑧ Luiza Sato
- ⑧ Bruna Borghi Tomé
- ⑧ Sofia Kilmar
- ⑧ Stephanie Consonni de Schryver

Also contributed to this newsletter:

- Caroline Cristina Malheiros
- Carolina Vargas Pegas Bonfante
- Igor Baden Powell
- Isabella de Freitas Moraes Sampaio Pereira
- Jessica Luz de Souza
- Julia Parizotto Menzel
- Julie Lissa Kagawa
- Luciana Pinto de Azevedo
- Maria Eugênia Geve de Moraes Lacerda
- Mariana Costa Alvarenga
- Miguel Lima Carneiro
- Steffani da Silva Nepomuceno
- Tatiane Robles Martins
- Valentina Garcia de Victor