



ANPD

guidebook

**Performance
of the person
responsible for
processing personal data**

Dec / 2024



guidebook

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Introduction



The person in charge of processing personal data emerged with the advent of Law No. 13,709 of August 14, 2018 (General Law on the Protection of Personal Data – LGPD). Article 5, item VIII, of the LGPD defined it as the “person appointed by the controller and operator to act as a communication channel between the controller, the data subjects and the National Data Protection Authority (ANPD)”.

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In addition to functioning as a communication channel, according to art. 41, item iii, of the LGPD, the person in charge is also responsible for “guiding the employees and contractors of the processing agent regarding the practices to be adopted in relation to the protection of personal data.”

In Brazil, the term “encarregado” (person in charge) is used in a similar way to that used in the official translation of the *General Data Protection Regulation* (GDPR) text into Portuguese, whose original name in English is *Data Protection Officer* (DPO). The term DPO has often been used to refer to the person in charge of processing personal data as provided for in the LGPD. Their activities and responsibilities, however, are not to be confused with those of the person in charge, even because the provisions originate from different legal systems. The LGPD dealt with the person in charge in three articles: art. 5, item viii; art. 23, item iii; and art. 41. The law provided, in

expressly, the possibility of the anpd to provide, by means of complementary rules, on the definition and attributions of the person in charge, including regarding the cases in which their indication may be waived, considering the nature and size of the entity or the volume of data processing operations.

In this context, the anpd published Resolution cd/anpd no. 18, of July 16, 2024[1], which approved the *Regulation on the performance of the person responsible for processing personal data*, in this Guide referred to as Regulation on the performance of the Person in Charge.

This Guide aims to provide guidance on the actions of the person in charge, with a more detailed approach than that provided by the *Guidance for Definitions of Personal Data Processing Agents*[2] and the Data Protection Officer, in order to assist society in interpreting the standard and in the adequate performance of the activities provided for in the LGPD, also serving as an indication of good practices for personal data processing agents. At the end of the document, in the annexes, suggestions for formal act models for the indication of the data protection officer are presented.

This version is subject to ongoing comments and contributions from society, and the Guide will be updated as necessary and at the discretion of the ANPD, as new regulations and understandings are published. Suggestions can be sent to the ANPD Ombudsman's Office through the Fala.BR Platform (<https://falabr.cgu.gov.br/>).

From the agents of treatment



Under the terms of Article 5, item IX, of the LGPD, controllers and operators are considered processing agents. For the purposes of applying the LGPD, it is essential to differentiate the position of each agent in the processing operation. This classification must be assessed in relation to each processing operation to be carried out. Based on this premise, the same processing agent may play the role of operator in relation to one processing operation and of controller for another.

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For more information on this subject, we recommend reading the *Guidance for Definitions of Personal Data Processing Agents and the Data Controller*.

From the indication of the person in charge

who should indicate

According to the LGPD (art. 41), the controller must indicate a person in charge of processing personal data. For the operator, this indication is optional and can be considered as a good practice policy (art. 6 of the Regulation on the role of the person in charge). This provision aims to encourage all organizations to indicate

in charge, even if they act as operators. It is important to emphasize that, in most cases, an organization plays the role of controller, with the possibility of only acting as operator being very residual.

In the case of depersonalized entities of the Public Administration, considering the context and specificities of the treatments carried out, the complexity of the organizational structure and the distribution of internal competences, and in view of administrative decentralization, it may be necessary to appoint a person in charge for each linked body.

example 1

A municipality in the state of ABC has several Municipal Secretariats, including Public Security, Education and Health. Considering that each of these Secretariats independently makes decisions regarding the processing of personal data they collect, each of them is a separate controller and, therefore, has appointed different managers, with an appropriate administrative governance structure for managing the protection of personal data, taking into account the context of the processing, the volume and the type of data processed by each body.

Analysis • Considering that the Secretariats, as bodies of the City Hall, make decisions regarding the processing of personal data, thus exercising typical functions of controllers, they must appoint those in charge and establish the necessary and appropriate governance for the management of personal data protection. It is worth noting that the City Hall could have appointed a single person in charge to act over its entire structure, including all of its secretariats. The appointment should fall, according to

preference, on civil servants or employees with an unblemished reputation, to be carried out by means of a formal act and published in the Official Gazette of the Municipality. The identity and contact information must be disclosed publicly, in a clear, objective manner and kept up to date. Such information must be published on the respective website, in a prominent and easily accessible location, unless the Secretariat or the Municipality does not have a website, in which case the disclosure must occur by other available means, in accordance with art. 9, § 3, of the Regulation on the performance of the person in charge.

hypotheses of exemption from indication

There is, exceptionally, a hypothesis of exemption from the indication for certain small-scale treatment agents[3], as a consequence of the flexibility provided for in Resolution cd/anpd no. 2, of January 27, 2022, in compliance with § 3 of art. 41 of the lgpd, in the following terms:



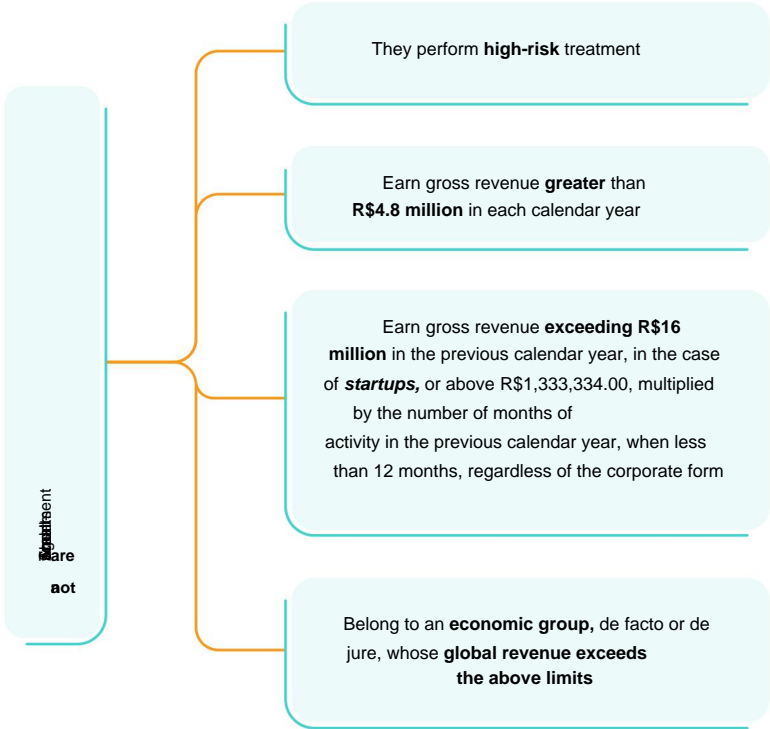
Art. 11. Small-scale data processing agents are not required to indicate the person responsible for processing personal data required by art. 41 of the LGPD.

It is worth noting that not every small-scale processing agent is exempt from appointing a manager, and this duty remains with those who:

- undergo high-risk treatment[4];
- earn, in each calendar year, gross revenue greater than R\$ 360,000.00 (three hundred and sixty thousand reais) and equal to or less than R\$ 4,800,000.00 (four million and eight hundred thousand reais)[5] or, in the case of *startups*, with gross revenue of up to R\$ 16,000,000.00

(sixteen million reais) in the previous calendar year or R\$1,333,334.00 (one million, three hundred and thirty-three thousand three hundred and thirty-four reais) multiplied by the number of months of activity in the previous calendar year, when less than 12 (twelve) months, regardless of the corporate form adopted[6]; or belong to an economic group, de facto or de jure, whose global revenue exceeds such limits.

Figure 1: Small-scale processing agents who are not exempt from appointing a manager



Source: anpd

It is important to emphasize that, even when exempted from appointing a data controller, the small-scale data processing agent must provide a communication channel with the data subject, through which they can accept complaints, communications and provide clarifications. Furthermore, for these agents, the appointment of a data controller is considered a good practice and governance policy[7].

Likewise, the indication of the person in charge by operators, although optional, will be considered a good governance practice policy[8].

example 2

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Company xyz has an annual turnover of R\$2,500,000.00 (two million and five hundred thousand reais), is not part of an economic group and operates in the segment of home medical care for the elderly. In order to perform its activities, the company registers the patient, collecting data such as name, telephone number, address and date of birth. In addition, health data is processed by company xyz in order to facilitate the provision of medical care to patients in their homes. Such data is shared with the company's unit responsible for preparing patient recovery monitoring reports. The company's legal representative did not appoint a person in charge because he understood that the company is classified as a small-scale treatment agent and, therefore, would be exempt from the duty to appoint a person.

Analysis • Xyz is classified as a small business, so it is considered a small processing agent, under the terms of art. 2, i of Resolution CD/ ANPD

No. 2, of January 27, 2022. However, the classification as a small-scale treatment agent does not in any way confer

the benefit of granting differentiated legal treatment is automatic, and an assessment is required regarding the requirements set forth in art. 3 of the aforementioned Resolution, including whether there is high-risk treatment for the data subjects (art. 4). It is mentioned that health data that enable home medical care for patients are processed and shared with the monitoring bulletin issuing center. Considering that these data are classified as sensitive and the context of vulnerability of the data subjects, the processing carried out may significantly affect the interests and fundamental rights of the data subjects, prevent the exercise of rights, cause moral damages, discrimination, among other situations. In addition, it is noted that there is a specific age range of data subjects served by the company, namely, people over 60 years of age. Once one of the general criteria and one specific criterion are met, high-risk treatment is characterized, which excludes the differentiated legal regime provided for in the aforementioned Resolution. Therefore, even if the controller is classified as a small-scale processing agent, he/she must appoint a manager.

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how to make the referral

The power to make appointments to public bodies and entities may be assigned to the highest authority of the institution or delegated in accordance with applicable administrative legislation, taking into account the internal structure and particularities of each organization. In the case of private processing agents, this power may be exercised by the competent manager, in accordance with the provisions of the company's o

The person in charge must be appointed by means of a formal act by the processing agent, which includes the forms of action and the activities to be performed, as provided for in art. 3 of the Regulation on the role of the person in charge.

See Annexes i and ii at the end of this Guide to view a suggested model of formal act for indicating the person in charge.

“Formal act”, according to § 1 of the same article, is “a written, dated and signed document, which clearly and unequivocally demonstrates the intention of the processing agent to designate a natural person or a legal entity as the data controller”. Thus, for example, the indication may occur through the issuance of an administrative act, such as an Ordinance, in the case of the public sector, or through the signing of a contract or a specific private instrument, in the case of an employee or legal entity that provides data controller services.

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It is not necessary to communicate the indication to the ANPD. However, such document must be kept by the data controller and presented to the Authority, upon request. Likewise, the formal act of indication does not need to be available on the data controller's website.

However, in the case of public sector bodies and entities, considering the constitutional principle of publicity as one of the guiding principles of administrative action, the indication must be published in the Official Gazette[9].

In addition to the designation by formal act, the identity and contact information of the person in charge must be published, in a clear and objective manner, on the website of the data controller.

example 3

Arquimedes is an employee hired under the CLT regime in a chemical company with an annual turnover of R\$500 million. Considering that Arquimedes had knowledge of privacy and personal data protection issues, one of the company's directors decided to invite him to take on the role of manager. Once the nomination was accepted, the HR department issued an addendum to his employment contract, filed it in his employee file and then published the name and contact information of the new manager on the company's website, on a page dedicated to data protection.

Analysis • Considering that the person in charge already had a relationship with the company, as an employee, it is legitimate to make an addendum to the Arquimedes contract, in compliance with the Labor Legislation. This instrument should not be published or forwarded to the ANPD. However, it should be duly stored by the company, since it may be requested, at any time, by the ANPD, for example, during an inspection process, for the purpose of proving compliance with the obligation provided for in art. 41 of the LGPD.

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example 4

Xyz University, a state-owned agency, is made up of different departments such as superintendencies, vice-rectories, academic units, among others. The rector appointed the employee Sapiencia to act as the person in charge and published the order of her appointment in the University's internal bulletin.

Analysis • The University, as the controlling entity, has the duty to appoint a person in charge. Considering that there was no respon-

except as expressly stated in the act of designating the person in charge, it is presumed that - their performance in all bodies that make up the university. The publication of the act of appointment only in an internal personnel bulletin is not sufficient, considering that the autarchy, since it is part of the Public Power, must make such information public to the public outside the institution, through publication in the Official Gazette of the State, thus ensuring greater transparency in the performance of the public entity and allowing greater social control, without prejudice to the disclosure, in a clear and objective manner, in a prominent and easily accessible place, on the controller's website.



who can be appointed as person in charge

The person in charge may be a natural person, such as an employee of the organization, or a legal entity hired for this purpose.

When appointing a person in charge, the data controller must take into account the profile of the organization and its employees, as well as the benefits and limitations of choosing a natural or legal person, applicable in the specific case, so that they can choose the option that best fits their reality and the context of the data processing they carry out.

As provided for in Resolution CD/ANPD No. 18 of 2024, the appointment of the person in charge by legal entities under public law should preferably fall on public servants or employees with an unblemished reputation[10]. In any case, it is possible to appoint external persons, whether natural or legal. However, as for the latter hypothesis, we reinforce the signal already made by the Federal Court of Auditors (TCU), according to which the outsourcing of the activity to companies should be viewed with caution.

by the public authorities due to the strategic role assigned to the person in charge by legislation[11].

Furthermore, considering that the person in charge is the communication channel with the holder, the controller and the ANPD, it is essential that he is able to communicate in Portuguese, which is the official language of Brazil[12].

example 5

A federal public administration entity, when adopting measures for the purpose of adapting to the LGPD, published an ordinance in the Official Gazette of the Union, indicating an organizational unit as responsible for the processing of personal data.

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Analysis • Considering that the person in charge is the person appointed by the controller and the operator to act as a communication channel between the controller, the data subjects and the ANPD, the appointment cannot fall on an organizational unit without legal personality. In this line, art. 12 of the Regulation on the role of the person in charge establishes that the person in charge may be a natural person or a legal entity, which is why, in the case under analysis, the responsibility for acting as the person in charge should be assigned to one of the entity's employees, such as, for example, the head of one of the administrative units.

example 6

The company www has headquarters in Brazil and branches in other Latin American countries. Hernandez, a Puerto Rican lawyer, works at

Colombian subsidiary and has renowned knowledge in privacy and data protection, as well as in-depth knowledge of LGPD. In addition, he is fluent in Portuguese. The CEO of www.www.com.br has decided to appoint him to act as the person in charge for LGPD purposes.

Analysis • It is essential that the person in charge be able to communicate with the holders and with the ANPD in Portuguese, in an easy and timely manner. Therefore, considering that Hernandez meets these requirements, there is no impediment to his performance.



absence, impediment and vacancy

Absences, impediments and possible vacancies of the person in charge may not constitute obstacles to the exercise of the rights of personal data subjects or to responding to communications from the ANPD. In such cases, their duties must be exercised by a substitute formally designated by the data controller.

Considering the unpredictability of such events and in order to mitigate the risk of sudden interruption of the person in charge's activities, it is recommended that the designation of a substitute occurs together with the formal indication of the incumbent person in charge.

The appointment of the replacement must follow the same procedures and requirements followed when appointing the holder, including the disclosure of his/her identity and contact details.

When the person in charge is a legal entity, it is also necessary to indicate a substitute for the natural person indicated as responsible.

The identity and contact information of the person in charge

As the person in charge is the person responsible for acting as a communication channel between the controller, the data subjects and the ANPD, the LGPD requires that their identity and contact information be disclosed publicly, in a clear and objective manner:



lgpd

Art. 41 [...]

§ 1 The identity and contact information of the person in charge must be made publicly available, clearly and objectively, preferably on the controller's website.

Regarding the disclosure of the identity of the person in charge, Resolution cd/anpd, no. 18, of 2024, informs that it must include at least the full name, in the case of a natural person; or the business name or title of the establishment, in the case of a legal entity. In the latter case, the full name of the responsible natural person must also be informed[13].

	Natural person in charge	Legal entity manager
Disclosure of identity	• full name of the natural person.	• business name or title of the establishment; and • full name of the responsible natural person.

Public disclosure of identity allows the controller to demonstrate compliance with the legal requirement set forth in art. 41 of the LGPD. Contact information must include, at a minimum, data relating to the means of communication that enable the exercise of the rights of the holders with the controller and allow the receipt of communications from the ANPD[14].

Although email addresses or telephone numbers are frequently used as contact information, this does not prevent other forms from being used, as long as they ensure effective communication.

According to art. 9 of the Regulation on the performance of the data controller, the disclosure must be made on the controller's website. However, if the data controller does not have this resource, it may do so by any other available means of communication, especially those usually used to contact the data subjects.

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Therefore, in addition to digital means, such as applications, dissemination can also be carried out through other means, according to the context of the treatment, such as physical notices on the premises of the treatment agent, including signs, *displays* or even leaflets.

In any case, it is imperative that such information be kept up to date and placed in a prominent and easily accessible location[15]. This measure is essential for data subjects to be able to communicate with the person in charge in order to seek their rights under the LGPD. In addition, the ANPD needs to have easy access to this information in order to support its inspection activities.

The expressions “prominent location” and “easy access” can be understood from the perspective of Information Architecture, as to how information is presented, in order to allow better use and, consequently, provide a better experience.

to the user, in this case including data holders and the anpd itself.

example 7

The Alpha startup performs credit analysis for young entrepreneurs, using a system equipped with Artificial Intelligence (AI), and currently serves more than 2 million customers in the country. In the process of adapting to the LGPD, after proceeding with the indication of Galatika as the person in charge, it only included the email encarregada@alpha.com.br on the page dedicated to the subject of personal data protection.

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Analysis • Although classified as a small-scale processing agent, the startup performs high-risk processing, considering the general criterion of large-scale processing and the specific criterion of using emerging technologies, that is, AI for processing the data of young entrepreneurs. Therefore, Alpha must indicate a person in charge. Resolution CD/ANPD No. 18, of July 16, 2024 clarified that the identity is the full name of the person in charge, if a natural person, or the business name or title of the establishment, if a legal entity. Therefore, there is a discrepancy in the disclosure, considering that the identity is not included, according to the Resolution. The email encarregada@alpha.com.br is contact information and does not constitute an element that identifies the person in charge.

In addition to disclosing the identity and contact information of the person in charge to external audiences, it is recommended that this information also be shared with the processing agent's employees.

Duties of processing agents

The Regulation on the performance of the data controller, in its art. 10, states that the duties of the data controller are:

- provide the necessary means to carry out the duties of the person in charge, including, among others, human, technical and administrative resources;
- request assistance and guidance from the person in charge when carrying out activities and making strategic decisions regarding the processing of personal data;
- guarantee the person in charge the technical autonomy necessary to carry out their activities, free from undue interference, especially in providing guidance on the practices to be adopted in relation to the protection of personal data;
- ensure that data subjects have fast, effective and appropriate means to enable communication with the person in charge and the exercise of rights;
- guarantee the person in charge direct access to people at a higher hierarchical level within the organization, to those responsible for making strategic decisions that affect or involve the processing of personal data, as well as to other areas of the organization.

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As previously stated, the indication of the person in charge is the controller's obligation and optional for the operator, except for the cases of exemption provided for in Resolution No. 2 of the ANPD, of January 27, 2022. However, it is not enough for the data controller to indicate the person in charge; it is necessary to adopt effective measures so that he has the technical and administrative conditions for the best performance of his activities.

Depending on the activities, the size of the organization, the number of employees involved in the personal data processing operations and the duties assigned to them, the person in charge needs to

will have a team that will provide support in these activities. In this sense, the data controller may establish a support team or committee to assist the person in charge in carrying out their activities.

In addition to human, technical and administrative resources, as already indicated by the anpd, it is recommended that other aspects also be considered, such as time (appropriate deadlines), finances and infrastructure.

Furthermore, pursuant to art. 16 of the Regulation, the person in charge has an advisory and guidance role in various activities. In this sense, it is reinforced, according to art. 17, that he is not responsible, before the ANPD, for the compliance of the processing of personal data carried out by the controller.

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In order to ensure adequate conditions for the performance of the duties of the data controller, it is essential that data processing agents guarantee technical autonomy, especially in providing guidance on the practices adopted by the organization in relation to the protection of personal data. This implies, for example, being able to perform their duties without undue interference in the definition of the scope, the execution of procedures, professional judgment and communication of results.

Another obligation of data processing agents is to ensure fast, effective and appropriate means to enable the exercise of data subjects' rights. In this sense, the adoption of new technologies can speed up and facilitate data subject service, such as chatbots, Voice Response Units and virtual assistants.

Finally, it is important that the person in charge has access to those responsible for making strategic decisions that affect or involve

the processing of personal data, as well as other areas of the organization, to better assist them in the process of adapting to the LGPD. In this way, the organization's senior management can remain aware of the risks to privacy and data protection involved in the processing processes it carries out, familiar with the data protection culture and aware of its importance.

From the person in charge for the treatment of personal data



Characteristics and forms of action

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desirable knowledge

As highlighted, the person in charge does not have decision-making power regarding the processing of personal data, but is responsible for providing assistance in typically multidisciplinary activities to preserve the privacy and personal data of the data subjects. For this reason, defining their professional qualifications is very important.

The LGPD did not provide for the profile, knowledge and skills required to perform the role of data controller, thus granting greater freedom of choice to data processing agents. In turn, Article 7 of the Regulation grants the data processing agent the authority to establish the professional qualifications required to perform the duties of the data controller, considering their knowledge of personal data protection legislation, as well as the context, volume and risk of the processing operations carried out.

Regarding the technical capacity required to perform the duties of the data protection officer, in addition to knowledge of personal data protection legislation and the standards and other publications of the ANPD, multidisciplinary knowledge of risk management, data management and governance, compliance and auditing, and information security can be of great value in the exercise of their activities. In addition, knowledge of the main activities developed in the organization (*core business*) may prove important so that the data protection officer can better guide the data processing agent regarding the practices necessary to protect personal data, aiming at its compliance with the LGPD and the ANPD guidelines.

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The exercise of the role of manager does not depend on registration with the ANPD or private associations. Nor is it necessary to have specific professional training or obtain specific certifications.

Activities and duties

The LGPD defined, in § 2 of art. 41, the activities of the person responsible for processing personal data:



lgpd

Art. 41 [...]

§ 2º The activities of the person in charge consist of:

- I. accept complaints and communications from data subjects, provide clarifications and adopt appropriate measures;
- II. receive communications from the ANPD and take action;
- III. guide the processing agent's employees and contractors regarding the practices to be adopted in relation to the protection of personal data; and
- IV. perform other tasks determined by the controller or established in complementary standards.

Regardless of the sphere of activity, the person in charge must guide and advise the controller regarding the protection of personal data, as well as in the internal referral of issues related to the rights of data subjects. Therefore, the person in charge is not responsible for making decisions regarding the processing of personal data, because these decisions are the responsibility of the controller.

In this sense, the first three activities defined by the LGPD make it clear that the person in charge will not be required to act in cases where he or she is required to make any decision regarding data processing. Clause IV, in turn, authorized the controller to assign other activities to the person in charge, as well as for the ANPD to establish them in regulations.

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In view of this, the anpd established, through Resolution cd/anpd No. 18, of 2024, other activities in which the person in charge must be involved.

Initially, strengthening its role as a communication channel between the controller and the ANPD, the Regulation determined the measures that the person in charge must adopt in responding to requests from the Authority and in providing information, namely:



CD/ANPD Resolution No. 18, of 2024

Art. 15 [...]

Sole paragraph. Upon receiving communications from the ANPD, the person in charge must take the necessary measures to meet the request and provide the relevant information, adopting, among others, the following measures:

- I. forward the demand internally to the units
competent;
- II. provide the necessary guidance and assistance to the treatment agent.
ment; and

- III. expressly indicate the representative of the data controller before the ANPD for the purposes of acting in administrative proceedings, when this function is not exercised by the person in charge.

The first two are linked to internal processing within the scope of the processing agent and the specialized advisory function that the person in charge must perform.

The third makes it clear that, if the data controller wishes to be represented before the ANPD by third parties other than the person in charge, it is up to the latter to indicate to the ANPD the representative chosen or hired by the data controller.

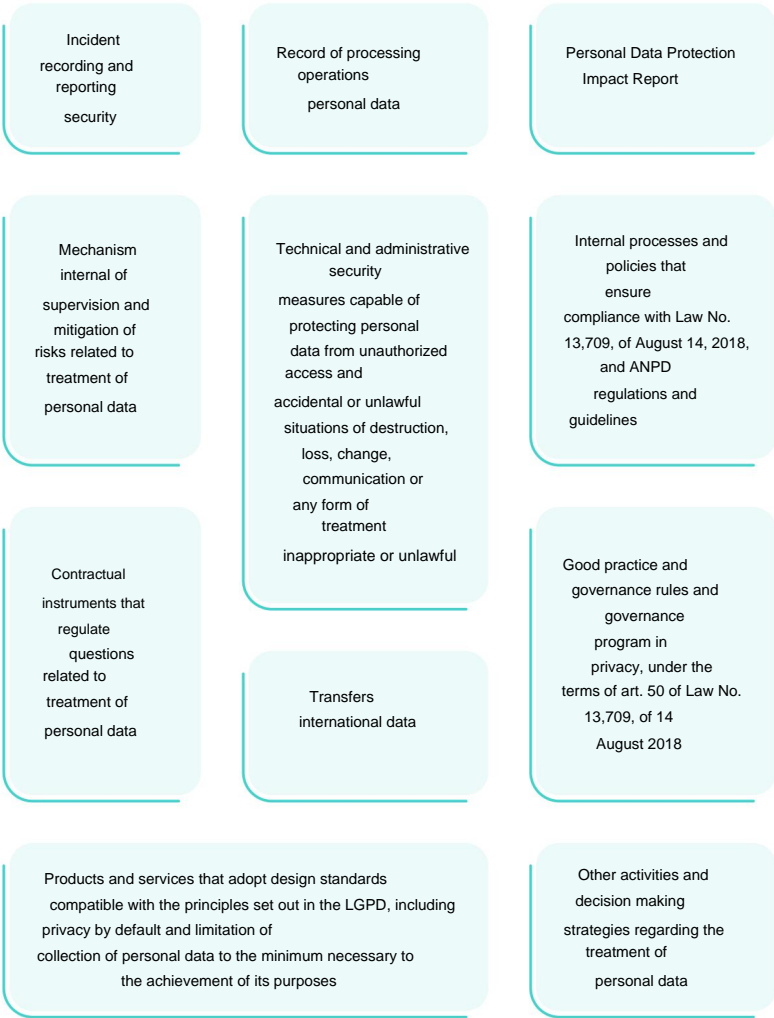
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In addition to the duties provided for in art. 41, §2, of the LGPD, the Regulation on the role of the person in charge provided that the person in charge is responsible for providing assistance and guidance to the processing agent in the preparation, definition and implementation, as applicable (figure 2).

Regarding issues related to security incidents, the person in charge may be part of specialized teams, such as Information Security Incident Response and Treatment Groups, and may also, in this case, guide and assist these teams regarding the registration and communication of a security incident involving personal data[16].

The person in charge will also be responsible for providing assistance and guidance to the processing agent regarding the recording of personal data processing operations. The controller, as well as the operator, are responsible for maintaining a record of the data processing activities carried out.

Figure 2: Activities described in art. 16 of Resolution cd/anpd no. 18, of July 16, 2024



Source: anpd

This record must cover all processing operations, in accordance with Article 37 of the LGPD [17]. It is recommended that the area directly involved in the process provide information about the processing. This information may be collected through interviews with employees, or by filling out forms or spreadsheets, for example. The person in charge will be responsible for providing guidance on how to fill out the forms and remaining available to clarify any doubts.

In order to assist in the preparation of this document, the anpd published a simplified registration model for personal data processing operations for Small Data Processing Agents [18]. This is a simplified model, aimed at Small Data Processing Agents (atpp) atpps, which can be adapted to the reality of other treatment agents, by adding more information.

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Another activity in which the data controller may assist the data controller is in preparing the Personal Data Protection Impact Report (PPR), which consists of the controller's documentation and contains a description of the personal data processing processes that may pose risks to civil liberties and fundamental rights, as well as safeguards and risk mitigation mechanisms. The PPR must contain at least:

- a description of the types of personal data collected or processed in any way;
- the methodology used to process and guarantee the security of information; and
- the controller's analysis of measures, safeguards and risk mitigation mechanisms adopted.

The person in charge may collaborate in the preparation of the report, as well as the Information Security Manager and the Security Committee.

Information System or equivalent structure to ensure that all data necessary to identify and mitigate risks has been collected. For more information, the anpd has prepared a set of *Questions and Answers* about the Report.

As mentioned in Article 16, item IV, of the Regulation, the person in charge may guide the processing agent in defining internal mechanisms for monitoring and mitigating risks related to the processing of personal data. Thus, it is possible for the person in charge to act in the identification of potential threats and vulnerabilities that may represent risks to the protection of personal data processed by the organization, based on the assessment of the probability and impact of these risks on data security and protection.

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Furthermore, the person in charge may suggest mitigation measures, such as the application of security controls and the adoption of policies or procedures, aimed at reducing the possibility of risk events occurring in the processing of such data.

These and other measures may be part of the set of technical and administrative security measures that must be drawn up by the data controller, pursuant to art. 46 of the LGPD[19], with the aim of protecting personal data from unauthorized access and accidental or unlawful destruction, loss, alteration, communication or any form of inappropriate or unlawful processing. The person in charge may guide the data controller in implementing such measures.

Regarding administrative measures, the anpd highlighted in the *Guide Guidance on Information Security for Data Processing Agents Small Size* the need to establish a Policy of Information Security (psi), conducting training and awareness campaigns for employees, and managing

contracts regarding the non-disclosure of confidential information involving personal data.

Regarding possible technical measures, the implementation of an access control system for the internal computer network was highlighted, as well as the adoption of solutions that make it difficult to identify the holder – such as pseudonymization and encryption techniques – the regular creation of backup copies, the use of encrypted connections or applications with end-to-end encryption, the installation of a *firewall* system and antivirus *software* .

In addition to the aforementioned Guide, the Authority has published a *Checklist of Safety Measures for Small- Scale Processing Agents*. Regarding this point, a possible action by the person in charge could involve preparing a checklist or other similar instrument, for monitoring and indicating the need for action by the controller.

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Furthermore, another relevant instrument is the privacy policy, a document for internal use that informs how the processing of personal data should be carried out by the processing agent, covering the entire data life cycle.

It is also important to highlight the role of the person in charge in creating the privacy notice, a document aimed at the public outside the processing agent, which aims to clarify and inform data subjects about how their personal data is processed, especially about the collection, use, storage and sharing of such data, thus ensuring the principle of transparency. In this sense, the person in charge may assist in the preparation of such documents, in addition to transmitting them to all other employees of the processing agent.

According to art. 16, vii, of the Regulation, the person in charge may also assist in the analysis of contractual aspects and clauses related to the processing and protection of personal data, ensuring compliance with the LGPD. Considering that the person in charge acts in guiding employees and contractors regarding the practices to be adopted in relation to the protection of personal data, it is pertinent for him/her to act in the analysis of the concrete impacts of contracts for the protection of personal data, even if in a complementary manner, without prejudice to due guidance of a legal nature.

The person in charge is also responsible for advising the processing agent on compliance with the procedures and rules applicable to international data transfer operations, a matter regulated by Resolution CD/ANPD No. 19 of August 23, 2024[20].

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In this sense, the person in charge can advise the controller on compliance with data protection legislation on the subject, in order to help him identify an international data transfer, choose a mechanism to carry it out, as well as other rules and procedures that must be observed regarding said processing operation.

Other activities in which the data controller may assist the data controller include drafting good practice and governance rules and developing a privacy governance program. Thus, the data controller may act in the coordination of this Program, for example by drafting a document that allows monitoring, or even indicators for auditing.

Regarding the implementation of the privacy governance program, the LGPD provides that at least the following requirements must be observed[21]:

- demonstration of commitment to adopting comprehensive internal data protection processes and policies;
- applicability to the entire set of personal data under control, regardless of the method of collection;
- adaptation to the structure, scale, volume of its operations and sensitivity of the data processed;
- establishing policies and safeguards based on systematic privacy impact assessment;
- objective of establishing a relationship of trust with the holder, through transparency and participation mechanisms;
- integration into the general governance structure and application of internal and external supervision mechanisms;
- inclusion of incident response and remediation plans;
- constant updating based on continuous monitoring and periodic assessments.

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Another relevant activity in which the person in charge may assist the processing agent, according to the Regulation, refers to the adoption of design standards compatible with the principles set out in the LGPD, including privacy by default and limiting the collection of personal data to the minimum necessary to achieve its purposes when developing products and services.

This is a measure that seeks to ensure that privacy settings are activated automatically by default, without any intervention or action by the user to protect their personal data, that is, the holder does not need to act to adopt more restrictive privacy settings, as they are already incorporated by default in the product, technology or service.

As can be seen in this topic, the person in charge has an advisory and guidance role in various activities.

Conflict of Interest

concept

According to art. 2, ii, of the Regulation on the performance of the person in charge, the conflict of interest is the situation that may compromise, influence or affect, in an improper manner, the objectivity and technical judgment in the performance of the person in charge's duties.

Given the duties of the person in charge, this regulatory provision aims to establish parameters and conditions that ensure performance that is always guided by ethics, integrity and technical autonomy, preventing undue interference in the exercise of their function.

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Ultimately, the duty to avoid situations that may generate conflicts of interest is an essential element for effectively ensuring the data controller's compliance with data protection legislation.

It is important to mention that the conflict of interest must be verified in the specific case and, if proven, may lead to the application of a sanction to the processing agent.

The conflict of interest may arise between the duties performed internally within the same processing agent or in the exercise of the activity of a data controller in different processing agents.

conflict of interest within the same organization

The person in charge must perform his/her functions autonomously. To this end, he/she must not be responsible for functions, within the same processing agent, that may result in a conflict of interest, such as carrying out activities that involve strategic decision-making.

cases related to the processing of personal data by the controller. It should be noted that decision-making related to the processing of personal data inherent to the exercise of the person in charge's duties does not constitute a conflict of interest.

In general, conflicting positions are observed when the person in charge accumulates leadership, management or directorship positions, responsible for determining the means and objectives of the processing of personal data, such as sectors responsible for human resources management, information technology, finance or health.

The cumulative exercise of these functions, by its nature, may interfere with the objectivity and technical autonomy necessary for the exercise of the duties of the person in charge, requiring a careful analysis of the specific case, always considering the context and specific circumstances, to avoid conflicts of interest. For these same reasons, keeping the person in charge's activities separate from other areas of the business may offer advantages for the performance of his/her duties with greater autonomy.

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acting in more than one organization

There is no impediment for the same person in charge to accumulate functions and perform their activities for more than one organization. However, it is important that the data controller assesses whether the person in charge will be able to perform their duties related to each data controller and whether there is no conflict of interest.

Therefore, it is also necessary to assess which processing agent the prospective data processor already provides services to. This is because, depending, for example, on the economic sector involved, the type of processing carried out or the nature of the organizations served, the activities

concomitant factors may affect the objectivity and technical judgment of the person in charge, in the face of potential conflicting decisions, exchange of privileged or strategic information, among other situations.

assessment of possible conflict of interest

The absence of conflict of interest in the actions of the person in charge is essential to ensure that data protection practices are conducted autonomously, ethically and with integrity in relation to other interests, which are not related to compliance with the provisions of the LGPD to guarantee the protection of personal data and the privacy of individuals.

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In this sense, it is up to the person in charge to declare to the data processing agent any situation that may constitute a conflict of interest, taking responsibility for the veracity of the information provided. Likewise, the substitute person in charge must not engage in activities that may reveal a conflict of interest, and also has the duty to inform the data processing agent if he or she identifies a situation of conflict of interest in his or her performance.

In addition to the obligation of the person in charge to declare possible conflicts of interest, it is up to the processing agent, when making the appointment, to analyze the possibility of conflict internally or externally to the entity, as mentioned previously.

Once the possibility of a conflict of interest has been identified, the processing agent must adopt the following measures, as applicable:

- not indicating the person to perform the role of manager;
- implement measures to avoid the risk of conflict of interest interest; or

ÿ replace the person designated to perform the function of
watered.

A good practice to mitigate the possibility of conflict of interest is to create a separate organizational unit, separate from any other that makes strategic decisions related to the processing of personal data within the organization. This division allows the person in charge to act more distantly from the areas that directly deal with the processing of personal data. Consequently, this measure can encourage the person in charge's technical opinion on the matter submitted for analysis to reflect an objective value judgment issued with technical autonomy.

Notes

Introduction ¶ p. 05–06

- [1] BRAZIL. NATIONAL DATA PROTECTION AUTHORITY. Resolution cd/anpd no. 18, of July 16, 2024. Approves the Regulation on the performance of the person responsible for processing personal data. Official Gazette of the Union: section 1, Brasília, DF, p. 42. Available at: <https://www.in.gov.br/en/web/dou/-/resolucao-cd/anpd-n-18-de-july-16-2024-572632074>. ¶ p. 06
- [2] BRAZIL. NATIONAL DATA PROTECTION AUTHORITY. Guidance Guide for Definitions of Personal Data Processing Agents and the Data Controller, version 2.0, April 2022. p. 22. Available at: <https://www.gov.br/anpd/pt-br/documentos-e-publicacoes/guidance-for-definitions-of-personal-data-processing-agents-and-the-person-in-charge>. ¶ p. 06

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From treatment agents ¶ p. 07–23

- [3] Microenterprises, small businesses, *startups*, legal entities under private law, including non-profit entities, under current legislation, as well as natural persons and depersonalized private entities, which process personal data, assuming typical obligations of a controller or operator. Art. 2, i of Resolution cd/anpd no. 2, of January 27, 2022. ¶ p. 09
- [4] See art. 4 of Resolution cd/anpd no. 2, of January 27, 2022. For more information on the definition of high risk, we recommend reading the Preliminary Study on the Processing of High-Risk Personal Data. Available at: <https://www.gov.br/participamaisbrasil/estudopreliminar-altorisco>. ¶ p. 09
- [5] Limit established in art. 3, ii, of Complementary Law No. 123, of 2006. ¶ p. 09
- [6] According to art. 4, § 1, i, of Complementary Law No. 182, of 2021. ¶ p. 10
- [7] See art. 11, §2 of Resolution cd/anpd no. 2, of January 27, 2022. ¶ p. 11
- [8] This is for the purposes of the provisions of art. 52, § 1, item ix, of Law No. 13,709, of August 14, 2018, and in art. 13, item ii, of the annex to Resolution cd/anpd No. 4, of February 24, 2023, provided that the rules of this Regulation are observed. ¶ p. 11
- [9] See art. 5, § 1, of the Regulation on the Role of the Person in Charge. ¶ p. 13
- [10] Art. 5 of Resolution cd/anpd no. 18, of July 16, 2024. "Legal entities of

public law referred to in art. 1, sole paragraph, of Law No. 12,527, of November 18, 2011, must indicate a person in charge when carrying out personal data processing operations, with the indication being given, preferably, to public servants or employees with an unblemished reputation." [§ p. 15](#)

[11] BRAZIL. FEDERAL COURT OF AUDIT. Report TC039.606/2020-1. Available at: https://portal.tcu.gov.br/data/files/B4/25/78/27/D9C818102DFE0F-F7F18818A8/038.172-2019-4-AN%20-%20auditoria_Lei%20Geral%20de%20Data%20Protection.pdf. [§ p. 16](#)

[12] See art. 13 of the Federal Constitution of the Federative Republic of Brazil of 1988. Requirement provided for in art. 13 of Resolution cd/anpd, no. 18, of 2024. [§ p. 16](#)

[13] See art. 9, § 1 of the Regulation on the Role of the Person in Charge. [§ p. 18](#)

[14] See art. 9, § 2 of the Regulation on the Role of the Person in Charge. [§ p. 19](#)

[15] See Article 8 of the Regulation on the Role of the Person in Charge. [§ p. 19](#)

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From the person responsible for processing personal data [§ p. 25–37](#)

[16] See art. 16, i of the Regulation on the Role of the Person in Charge. [§ p. 27](#)

[17] LGPD, Art. 37. The controller and the operator must keep a record of the personal data processing operations they carry out, especially when based on legitimate interest. [§ p. 29](#)

[18] BRAZIL. NATIONAL DATA PROTECTION AUTHORITY. Model for the Registration of Personal Data Processing Operations for atpp. Available at: https://www.gov.br/anpd/pt-br/documentos-e-publicacoes/modelo_de_ropa_para_atpp.pdf. [§ p. 29](#)

[19] LGPD, Art. 46. Data controllers must adopt technical and administrative security measures capable of protecting personal data from unauthorized access and accidental or unlawful destruction, loss, alteration, communication or any form of inappropriate or unlawful processing. [§ p. 30](#)

[20] BRAZIL. NATIONAL DATA PROTECTION AUTHORITY. Resolution cd/anpd no. 19, of August 23, 2024. Approves the Regulation for International Data Transfer and the content of the standard contractual clauses. Official Gazette of the Union, section 1, Brasília, DF, August 23, 2024, p. 123. Available at: <https://www.in.gov.br/en/web/dou/-/resolucao-cd/anpd-n-19-de-23-de-agosto-de-2024-580095396>. [§ p. 32](#)

[21] See art. 50, § 2, item i of the LGPD. [§ p. 32](#)

Annex I

Formal Act Model for Indication of Natural Person in Charge

[*name of controller*] appointed, on [*day, month and year*], [*full name*], as the person responsible for processing personal data, in compliance with art. 41 of Law No. 13,709, of August 14, 2018 (General Law on the Protection of Personal Data – LGPD).

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As such, the person in charge will be responsible for: (i) accepting complaints and communications from data subjects, providing clarifications and adopting appropriate measures; (ii) receiving communications from the ANP. and adopt measures; (iii) guide the employees and contractors of the processing agent regarding the practices to be adopted in relation to the protection of personal data; and (iv) perform other duties determined by the controller or established in anpd standards, in particular the activities described in art. 16 of the Regulation approved by Resolution cd/anpd no. 18, of July 16, 2024.

Please be advised that in the absence, impediment or vacancy of the person in charge, the role will be performed by his/her substitute, [*full name of substitute*].

Annex II

Formal Act Model for Indication of Legal Entity Manager

[*name of controller*] appointed, on [*day, month and year*], [*company name or title of establishment*], as the person in charge of processing personal data, in compliance with art. 41 of Law No. 13,709, of August 14, 2018 (General Law on the Protection of Personal Data – LGPD). [*full name of the natural person responsible*] will represent [*business name or establishment title*] in interactions with the anpd and the holders.

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As such, the person in charge will be responsible for: (i) accepting complaints and communications from data subjects, providing clarifications and adopting appropriate measures; (ii) receiving communications from the ANP. and adopt measures; (iii) guide the employees and contractors of the processing agent regarding the practices to be adopted in relation to the protection of personal data; and (iv) perform other duties determined by the controller or established in anpd standards, in particular the activities described in art. 16 of the Regulation approved by Resolution cd/anpd no. 18, of July 16, 2024.

Please be advised that in the absence, impediment or vacancy of the person in charge, the role will be performed by his/her substitute, [*full name of substitute*].



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