

Let's Talk **Privacy** IN BRAZIL



PERSONAL DATA BREACH

Keeping up with Brazil's most relevant privacy and data protection news.

With our regular updates on Brazilian Privacy and Data Protection issues, our objective is to keep you informed on the latest developments in these areas, as well as to provide recent examples demonstrating how companies are already being affected by the new legislation in practice.

ANPD – Brazilian DPA begins regulatory process for personal data breaches

In February, The Brazilian National Data Protection Authority (ANPD) took significant first steps to implement its regulatory agenda for 2021-2022.

The authority has announced it will employ a public consultation process to get inputs from society on the first draft of its new regulations regarding the Notification of Personal Data Breaches under the LGPD (Brazil's Data Protection Law).

Pending further legislative activity, the authority published some initial guidelines on how to handle such incidents.

We have provided a quick summary of the notification requirements below.

What is a Personal Data Breach?

This is defined broadly as any adverse event, confirmed or suspected, related to a breach in the security of personal data (e.g., unauthorized, accidental or unlawful access that results in destruction, loss, alteration, leakage or otherwise inadequate or unlawful data processing).

DPOs must adopt measures capable of protecting personal data from such unauthorized access.

What must be done in the event of a Personal Data Breach?

Companies should carry out an internal assessment on the nature, category and quantity of data subjects affected, the category and quantity of data affected, and concrete and probable consequences.

The internal assessment should be documented, including any measures taken and risk analysis, in order to comply with the principles of responsibility and accountability under the LGPD.

Notice of the incident must be given to:

- (1)** A supervisor at the office;
- (2)** The controller (if you are the operator, under the terms of the LGPD); and
- (3)** The ANPD and data subject (in the case of risk or material damage to the data subject).

What should be included in the Notice to the ANPD?

The information provided to the ANPD must be clear and concise.

It is recommended that the communication contain the identification and contact details of the entity or person responsible for processing, the relevant data supervisor or other contact person.

The notice should indicate whether the information provided is complete or partial (if partial, it should state whether it is preliminary or complementary in nature).

The notice should also provide significant detail regarding the incident, including detection details, time and duration, surrounding circumstances, the nature of personal data affected, the possible consequences, and any remedial measures implemented to date (more details of notice requirements can be provided on request).

The ANPD may request additional information at any time.

What should be communicated to the data subject, and when?

This is required whenever a personal data breach related to personal data has occurred that may pose a relevant risk or damage to the individual rights and freedoms of the affected holders (more objective criteria will follow in the anticipated ANPD regulations).

From the law it is clear that the probability of significant risk or damage will be greater in certain types of cases (e.g. cases involving children, adolescents or vulnerable people - more details can be provided on request).

What is the deadline for reporting a Personal Data Breach to the ANPD?

Brazil's national data protection law (LGPD) determines that the communication of the personal data breach must be made within a reasonable time (standard to be defined by the ANPD).

Under the law, the communication must demonstrate transparency and good faith and this will be considered in any inspection.

After becoming aware of an adverse event, and in the event of a relevant risk, the ANPD should be notified as soon as possible (standard to be defined by the ANPD).

How can I report a Personal Data Breach to the National Data Protection Authority?

An electronic form is available on the ANPD website and can be submitted by online petition.

What possible Sanctions could I face in the event of a Personal Data Breach?

Given the significant overlap between data protection and privacy issues with consumer protection and employment law, as well as other issues considered to be in the public interest, the Brazilian Courts and public institutions are already actively enforcing the LGPD and issuing sanctions for non-compliance regardless of the fact that administrative penalties are not yet available.

In addition, from August 1, 2021 onwards, the ANPD will have the following powers to sanction companies for non-compliance:

- (1) Issue a warning;
- (2) Issue a fine of up to two percent (2%) of revenues, up to a total maximum of fifty million Reals (R\$ 50,000,000.00) per infraction;
- (3) Disclosure and publication of the infraction;
- (4) Blocking, deletion or suspension of the personal data use.

What's next?

The above measures by the ANPD provide much needed guidance for companies dealing with Personal Data Breach under the LGPD.

While a clearer position through regulation is awaited, we recommend maintaining a cautious approach in respect of such incidents and to report cases even where there is a doubt regarding the risk and damages involved. A misclassification of such risk may be considered as non-compliance under the law.

Finally, the authority's call for a public consultation process is an important step towards producing clear regulatory standards in the area. In this sense, please let us know if you would like to participate or be represented in the public consultation process which is open till March 24th, 2021.



Please get in touch with our Technology, Cyber security, and Data Protection Team if you would like to discuss any matter further.

OUR TEAM



THAMILLA TALARICO
thamilla.talarico@daniel-ip.com



NURIA LÓPEZ
nuria.lopez@daniel-ip.com



ANDRÉ OLIVEIRA
andre.oliveira@daniel-ip.com



RENATO MALAFAIA
renato.malafaia@daniel-ip.com



SOFIA MANDELERT
sofia.mandelert@daniel-ip.com



VITOR SALDANHA
vitor.saldanha@daniel-ip.com

DANIEL

www.daniel-ip.com