



ADMINISTRATIVE PROCESS TRAIL

# ANPD STRUCTURE

 Guide 01

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# INTRODUCTION

With the growing importance of the National Data Protection Authority (ANPD) in the regulatory landscape, it is essential for data processing agents to be well-informed and prepared to handle the demands and administrative procedures related to data protection. Effective action in this context requires not only knowledge about the structure and competencies of the ANPD, but also an understanding of the principles governing the administrative process.

In this first Guide, our focus will be to explore in detail the structure of the ANPD, its roles in the context of data protection, the competences it holds to conduct administrative processes, and especially, the principles that should guide its actions in this realm.

# ANPD STRUCTURE

The structure of the ANPD is organized as follows:

- i. a supreme governing body;
- ii. an advisory body;
- iii. direct and immediate support bodies to the Board of Directors;
- iv. sectional bodies; and
- v. specific single-purpose bodies.

Each body within the ANPD comprises one or more administrative units.

 Thus, the organizational chart is as follows:

## Board of Directors

### Direct and Immediate Support Bodies to the Board of Directors

General Secretariat

General Coordination of International and Institutional Relations

### Sectional Bodies

Internal Affairs Department

Ombudsman's Office

Specialized Federal Prosecutor's Office

General Coordination of Administration

General Coordination of Information Technology

### Specific Single-Purpose Bodies

General Coordination of Standardization

General Coordination of Supervision

General Coordination of Technology and Research

**National Council for Personal Data Protection and Privacy (CNPD)**

In summary, each administrative unit of the ANPD's bodies has the following characteristics, functions, and responsibilities:



## SUPREME GOVERNING BODY

### **Board of Directors:**

This is the supreme governing body of the Authority, consisting of five Directors, including the President-Director. The Board of Directors is responsible for, among other responsibilities, issuing regulations, approving management reports, issuing votes and decisions, and making administrative decisions, as well as recognizing good governance practices, including international transfers.



## ADVISORY BODY

### **National Council for Personal Data Protection and Privacy (CNPD):**

This advisory body is composed of twenty-three full and alternate members, appointed by the President of the Republic, to facilitate societal participation in the regulation of data protection. The CNPD is responsible for proposing strategic guidelines, preparing annual reports involving the National Policy of Personal Data Protection and Privacy, suggesting actions to be undertaken by the ANPD, conducting studies, debates, public hearings, and disseminating knowledge on the topic.



## DIRECT AND IMMEDIATE SUPPORT BODIES TO THE BOARD OF DIRECTORS

### **General Secretariat:**

fornece suporte administrativo ao Conselho Diretor e ao CNPD. Isso inclui, por exemplo, a organização de pautas, acompanhamento de reuniões, coordenação de atividades administrativas, elaboração de relatórios de gestão de atividades, entre outras.

### **General Coordination of International and Institutional Relations:**

Supports the ANPD mainly in international matters and in articulation with the private sector, civil society, academia, and consumer protection agencies and entities. These activities encompass participation in forums and discussions, promoting cooperation actions with foreign data protection authorities, and providing support on normative issues related to international transfers.



## SECTIONAL BODIES

### **Internal Affairs Department:**

Responsible for the correctional activities of the ANPD, requesting or initiating disciplinary procedures, submitting correctional procedures to the decision of the President-Director of the Board of Directors, and adopting preventive measures of guidance to the members of the Authority on disciplinary issues.

### **Ombudsman's Office:**

Organizes the ombudsman activities of the Authority, receiving, examining, and responding to announcements regarding the actions of agents and bodies of the ANPD. It also fulfills the role of responding to requests for access to information and producing data and information about received activities and manifestations, such as annual reports.

### **Specialized Federal Prosecutor's Office:**

The execution branch of the Federal Attorney General's Office responsible for judicially and extrajudicially representing the ANPD, guiding the execution of the Authority's judicial representation, and providing legal consultancy and advisory services.

### **General Coordination of Administration:**

Responsible for internal and administrative demands of the Authority, including employee training, knowledge management, registration and occupational health administration, issuance of payroll and benefits, financial coordination, among others.

### **General Coordination of Information Technology:**

Proposes and implements the information technology policy of the Authority, coordinates and evaluates plans, programs, projects and IT contracting, guides resource allocation, acquisitions, and contracting of specialized services, and advises on IT issues.



## **SPECIFIC SINGLE-PURPOSE BODIES**

### **General Coordination of Standardization:**

Serves as the unit assisting the Board of Directors in proposing and drafting essential norms and regulations for the implementation of the LGPD. It is responsible, in particular, for approving regulations, promoting consultations and public hearings, preparing guides, recommendations, and normative propositions, among others.

### **General Coordination of Supervision:**

Functions to verify compliance with norms and regulations related to the LGPD, as well as possible violations of personal data protection, by conducting inspections and applying sanctions, issuing decisions in the first instance in administrative processes, promoting supervision actions, among other administrative procedural activities.

### **General Coordination of Technology and Research:**

Acts as the unit for prospecting and mapping technologies and best practices for personal data protection, assisting in the implementation of the LGPD. It specializes in conducting studies and research, monitoring market and technological development, providing technical support in policy formulation, promoting events, disseminating informational materials, encouraging the adoption of technical standards, and evaluating the severity of security incidents.

# PRINCIPLES OF THE ADMINISTRATIVE PROCESS

In this chapter, we delve into the principles governing the administrative process of the ANPD, understanding their importance, applicability, and how they are interpreted and utilized to ensure efficiency and fairness at each stage of the procedure.

Firstly, it is necessary to conceptualize the administrative process. The administrative process is a formal instrument established by Public Law to regulate interactions between parties involved in public administration activities. It is characterized by an ordered sequence of acts and activities aimed at achieving a specific end, previously identified by the public administration.

According to Celso Antônio Bandeira de Mello<sup>1</sup>, this branch of Public Law is responsible for regulating the exercise of administrative functions, as well as the bodies that perform them. This means that Administrative Law establishes the norms and principles that guide the actions and decisions of public bodies in the exercise of their administrative activities.

Since the activities of the state often result in unilateral acts that affect the rights of citizens, the administrative process is significant as a means and guarantee for the control of these actions by the regulated entities. Through the administrative process, the governed have the opportunity to participate, express their opinions, present arguments, and contest the decisions of the public administration, thus ensuring legality, transparency, and justice in the State's actions.

In this context, it is fundamental that the administrative process is based on principles established by law, which represent the guidelines governing the actions of the Public Administration. The principles of the administrative process are the fundamental values, essential guidelines, and broader mandates that guide the drafting of administrative laws, direct the actions of the Public Administration, and condition the validity of all administrative acts.

The guiding principles of the administrative process are outlined in Federal Law 9.784/99 and within the constitutional scope, specifically in Article 37<sup>2</sup> and Article 5, LV<sup>3</sup>, thus providing the necessary legal and constitutional basis for an appropriate and just conduct of administrative processes.

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<sup>1</sup> MELLO, Celso Antônio Bandeira de. Course of Administrative Law. São Paulo: Malheiros, 2004, p.27.

<sup>2</sup> BRASIL. Constitution (1988). Constitution of the Federative Republic of Brazil. Brasília, DF: Federal Senate, 1988. Art. 37. The direct and indirect public administration of any of the Powers of the Union, the States, the Federal District, and the Municipalities shall obey the principles of legality, impersonality, morality, publicity, and efficiency.

<sup>3</sup> BRASIL. Constitution (1988). Constitution of the Federative Republic of Brazil. Brasília, DF: Federal Senate, 1988. Art. 5º, LV. Liti-gants in judicial or administrative proceedings, and the accused in general are assured the right to contradiction and ample defense, with the means and resources inherent to it.

Below we outline **the main principles of administrative law:**



### **Principle of legality:**

The principle of legality mandates that the public administration must act strictly within the limits established by current legislation. This means that administrators must observe not only formal legality but also morality and purpose in their actions. In other words, they are bound by the norms established by the legal system, including internal normative acts of the administration, created to ensure the faithful compliance with laws.



### **Principle of officiality:**

The principle of officiality establishes that the initiative for administrative acts must originate from the public administration itself. This means that it is up to the competent public body or agent to initiate and promote the administrative procedures necessary for fulfilling legal obligations and public purposes. In other words, officiality implies that the public administration has the power and duty to act on its initiative, without the need for external provocation, whenever the law requires or authorizes its intervention.



### **Principle of motivation:**

The principle of motivation imposes on the Administration the duty to explain its actions, presenting the legal and factual foundations that underpinned these acts, as well as the logical relationship between the considered events and situations and the measures taken. This clarification is especially important in cases where it is necessary to evaluate whether the administrative conduct complies with the law that underpins it<sup>4</sup>.



### **Principle of publicity:**

The principle of publicity, a fundamental pillar of Administrative Law, establishes the obligation of transparency and disclosure of acts and information produced by the public administration. It mandates that administrative acts, documents, processes, and other public interest information must be accessible and disseminated in a clear and comprehensible manner to society.



### **Principle of reasonableness:**

The principle of reasonableness in Administrative Law requires that the public administrator act rationally and within acceptable criteria from a logical and coherent viewpoint. This means that reasonableness demands that the decisions and actions of the public administration be based on plausible reasons, considering all relevant aspects and maintaining an appropriate relationship between the means employed and the objectives to be achieved by the law or administrative act in question.

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<sup>4</sup> MELLO, Celso Antônio Bandeira de. Course of Administrative Law. 17th ed. São Paulo: Malheiros Editors, 2004, pp. 841-842.





### **Adversary system and full defense:**

The principle of adversary system and full defense in the administrative process guarantees the parties the right to actively participate, present arguments, produce evidence, and contradict. This implies informing the parties about the charges, respecting the timelines and phases of the procedure, allowing access to the records, and ensuring the right to technical defense, including the assistance of a lawyer.



### **Principle of legal certainty:**

This principle implies that legal acts and situations in Administrative Law cannot be arbitrarily disregarded. This means that any act of invalidation must be thoroughly grounded and motivated, respecting the right of defense of the involved parties. This principle aims to ensure stability and confidence in legal-administrative relationships. Furthermore, the principle of legal certainty also imposes on the administration the duty to validate acts whenever possible, i.e., to correct any irregularities without prejudicing the security of established legal relationships.



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