



## ADMINISTRATIVE PROCESS TRAIL

# CORRECTIVE AND COMPLIANCE MEASURES WITHIN THE STRUCTURE OF THE DATA PROCESSING ENTITIES

 Guide 09

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# 1. INTRODUCTION

Following the detailed analysis of the enforcement phase and the review procedure presented in the [eighth Guide of the Administrative Process Trail](#), this final Guide in the series aims to conclude this compilation of studies on the administrative sanctioning process of the Brazilian Data Protection Authority (ANPD).

In this Guide, we will address the corrective and compliance measures within the structure of the data processing entities, including the ANPD's discretionary authority and case studies.

## 2. CORRECTIVE MEASURES

The corrective measures are provided for in the ANPD's Regulation on Dosimetry and Application of Administrative Sanctions<sup>1</sup>. According to the Regulation, a corrective measure is any measure determined by the ANPD with the purpose of correcting a violation and restoring the violator to full compliance with the LGPD and the regulations issued by the ANPD. Therefore, there is no restrictive list of corrective measures established by the Authority, leaving their application up to the ANPD's discretion based on the specifics of each case.

The ANPD reinforced the importance of corrective measures by including them in Article 7 of the Regulation on Dosimetry and Application of Administrative Sanctions, which outlines the parameters and criteria to be considered by the Authority when defining sanctions.

Corrective measures are also mentioned in the chapter related to the application of warnings. In this context, the ANPD makes it clear that when there is a need to impose corrective measures, they will be accompanied by a warning. Failure to comply with the corrective measures may lead to the application of a simple fine by the Authority, with an aggravating factor of 30% to 90% of the value for each instance of non-compliance.

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<sup>1</sup> BRAZIL. National Data Protection Authority. Regulation on Dosimetry and Application of Administrative Sanctions. Article 2, Item V. Available at: <https://www.in.gov.br/en/web/dou/-/resolucao-cd/anpd-n-4-de-24-de-fevereiro-de-2023-466146077>. Accessed on: December 19, 2024.



# 3. ANPD'S DISCRETIONARY POWERS

Given the absence of an exhaustive or illustrative list of corrective measures, as well as the recent activities of the Authority, the discretionary nature of selecting corrective measures to be imposed is evident.

As Celso Antônio Bandeira de Mello states<sup>2</sup>:

*[...] discretionary authority, therefore, is the margin of freedom granted to the administrator to select, based on consistent criteria of reasonableness, one among at least two viable courses of action in each specific case, in order to fulfill the duty of adopting the most appropriate solution to achieve the legal purpose, when, due to the fluidity of legal expressions or the freedom conferred by the mandate, it is not objectively possible to derive a single solution for the situation at hand.*

In this sense, discretion is essentially the freedom to choose between equally valid options, based on criteria not explicitly established by law – such as considerations of opportunity or economic factors – which depend on the administrator's subjective assessment. This administrative power, provided for in the Brazilian legal framework, grants the ANPD, as a special regulatory authority, the flexibility to establish regulations such as the rule enabling the imposition of corrective measures depending on the specific case.

However, this does not mean that the ANPD lacks standards or criteria when imposing corrective measures. This will be analyzed further through the case studies in which the ANPD imposed corrective measures, demonstrating its tendencies and preferences.

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<sup>2</sup> BANDEIRA DE MELLO, Celso Antônio. Discretion and Judicial Review. 1st ed. São Paulo: Malheiros Editores, 2007, p. 48.

It is important to emphasize that although the ANPD has the freedom to make decisions on this matter, its discretion is not unlimited.

As Íris Vânia Santos Rosa explains<sup>3</sup>:

*With regard to reality, the object must be possible, that is, lawful. It must fall within the legal framework and cannot violate any constitutional rule under penalty of being characterized as a deviation of purpose. The object must align with the intended goal. Decisions must effectively meet the purpose of the law, which is the public interest. The Administration is required to always choose the best means to satisfy the public interest and cannot take risks—it must opt for the best practices in performing such acts. Efficiency should be regarded as a limit to discretion.*

The author highlights that the discretionary powers of Public Administration are subject to clear limits, determined by legal frameworks and principles that govern administrative actions. While discretion allows the choice between legitimate alternatives, this prerogative is not absolute and must comply with the principles of legality, impersonality, morality, publicity, and efficiency, as well as other constitutional values.

The principle of legality in Public Administration establishes that discretionary authority:

- i** can only be exercised within the **limits** previously defined by law;
- ii** must observe the principle of **purpose**, ensuring that decisions align with the public interest and the objectives of the law that underpins the action;
- iii** must respect **reasonableness** and proportionality, requiring administrative decisions to be appropriate, necessary, and balanced in relation to the objective to be achieved; and
- iv** is distinct from **arbitrariness**, which disregards objective and transparent criteria.

Therefore, the ANPD cannot impose measures that exceed its legally defined powers, ensuring that its decisions are legitimate and legally defensible. Finally, it is worth noting that the ANPD's measures are subject to judicial review, ensuring that even when exercising discretion, the Authority's decisions remain subject to oversight, preventing abuses and ensuring compliance with constitutional and legal principles.

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<sup>3</sup> ROSA, Íris Vânia Santos. Discretionary Power. In: PUC-SP Legal Encyclopedia. Celso Fernandes Campilongo, Alvaro de Azevedo Gonzaga, and André Luiz Freire (coords.). Volume: Tax Law. Paulo de Barros Carvalho, Maria Leonor Leite Vieira, Robson Maia Lins (volume coords.). 1st ed. São Paulo: Pontifícia Universidade Católica de São Paulo, 2017. Available at: <https://enciclopediajuridica.pucsp.br/verbete/282/edicao-1/poder-discrecional>. Accessed on: December 6, 2024.

## 4. CASE STUDY

After clarifying the definitions of corrective measures and the discretion of the Public Administration, this Guide aims to briefly analyze the impositions on the most recent and relevant cases in which the ANPD has acted in Brazil. The purpose of this analysis is to describe the steps taken by the ANPD so far regarding this topic and to assess how the Authority's discretion has been exercised in practice.

### Institute of Medical Assistance to Public State Servers of São Paulo

The Institute of Medical Assistance to Public State Servers of São Paulo (IAMSPE) was sanctioned by the ANPD for failing to comply with specific determinations, particularly regarding the obligation to notify affected data subjects about security incidents. The ANPD concluded that IAMSPE<sup>4</sup>:



failed to **maintain secure systems for storing and processing personal data** of millions of public servants and their dependents (art. 49 of the LGPD); and



experienced a **security incident and did not notify data subjects clearly, adequately, and promptly** about which of their personal data may have been affected by the incident (art. 48 of the LGPD).

As a result, the ANPD decided to apply two warnings to IAMSPE for the violations committed, as well as corrective measures to mitigate the effects of the violations and prevent their recurrence. These measures were<sup>5</sup>:

4 BRAZIL. National Data Protection Authority. ANPD concludes sanctioning process against a public agency. Available at: <https://www.gov.br/anpd/pt-br/assuntos/noticias/anpd-conclui-processo-sancionador-contr-orgao-publico>. Accessed on: Dec 19, 2024.

5 BRAZIL. Decision Dispatch. Official Gazette of the Union, Ed. 192, Section 1, p. 77, Brasília, 2023. Available at: <https://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?data=06/10/2023&jornal=515&pagina=77>. Accessed on: Dec 19, 2024.

Article Violated	Infraction	Sanction	Corrective Measure
art. 49 of the LGPD	Failure to maintain <b>secure systems for storing and processing personal data.</b>	Warning	<ol style="list-style-type: none"> <li>1. Adjust the security incident notification on the IAMSPE website within 10 business days;</li> <li>2. Keep the notification available for at least 90 calendar days from the publication date.</li> </ol>
art. 48 of the LGPD	Failure to <b>notify data subjects about the incident.</b>	Warning	<ol style="list-style-type: none"> <li>1. Report the results of the developed and implemented compliance programs;</li> <li>2. Provide the status and timeline for implementing specific measures in the plan developed jointly with the ANPD.</li> </ol>

## State Department of Health of Santa Catarina

The State Department of Health of Santa Catarina (SES/SC) was sanctioned for violating several provisions of the LGPD and the ANPD's Regulatory Process for Supervision and Administrative Sanctioning. The Authority concluded that SES/SC<sup>6</sup>:



neglected the **security of personal data storage and processing systems** of millions of citizens in the state's public healthcare system (art. 49 of the LGPD);



experienced a security incident and **did not notify which personal data may have been involved in the incident** clearly, adequately, and promptly (art. 48 of the LGPD);



**failed to submit the Data Protection Impact Assessment (DPIA)** requested by the Authority (art. 38 of the LGPD); and



**failed to provide other information requested** by the Authority (art. 5 of the Regulatory Process for Supervision and Administrative Sanctioning of the ANPD).

<sup>6</sup> BRAZIL. National Data Protection Authority. ANPD sanctions another public agency. Available at: <https://www.gov.br/anpd/pt-br/assuntos/noticias/anpd-sanciona-mais-um-orgao-publico>. Accessed on: Dec 19, 2024.



Given the violations, the Authority applied four sanctions in the Decision, as follows<sup>7</sup>:

Article Violated	Article Violated	Sanction	Corrective Measure
art. 49 of the LGPD	Negligence in <b>securing personal data storage and processing systems.</b>	Warning	Not imposed, as the DPIA was presented in defense.
art. 38 of the LGPD	Failure to submit the <b>Data Protection Impact Assessment (DPIA).</b>	Warning	Not imposed, as the DPIA was presented in defense.
art. 48 of the LGPD	Failure to <b>notify data subjects</b> about what personal data may have been involved in the incident.	Warning	<ol style="list-style-type: none"> <li><b>1. Keep the Security Incident Notification on the official website</b> of SES;</li> <li><b>2. Send the Security Incident Notification individually</b> to the data subjects.</li> </ol>
<p>The notice should have been kept for 90 days from the date of the decision that imposed the corrective measures, and evidence of the compliance with these measures should have been submitted through the presentation of 9 (nine) screenshots from the SES/SC website, with a minimum interval of 9 (nine) days between each, showing the notice with a clear view of the capture date.</p>			
art. 5 of the Regulatory Process for Supervision and Administrative Sanctioning of the ANPD	<b>Failure to provide other information requested</b> by the Authority.	Warning	Not imposed, as the DPIA was presented in defense.

<sup>7</sup> BRAZIL. National Data Protection Authority. ANPD sanctions another public agency. Available at: <https://www.gov.br/anpd/pt-br/assuntos/noticias/anpd-sanciona-mais-um-orgao-publico>. Accessed on: Dec 19, 2024.

## Secretariat of Education of the Federal District

The Secretariat of Education of the Federal District (SEDF) was also sanctioned for violating several provisions of the LGPD and the ANPD's Regulatory Process for Supervision and Administrative Sanctioning. The Authority concluded that the Secretariat failed to<sup>8</sup>:

-  maintain **records of personal data operations** (art. 37 of the LGPD);
-  prepare a **Data Protection Impact Assessment** after ANPD's request (art. 38 of the LGPD);
-  **notify data subjects about a security incident** that posed a relevant risk or damage (art. 48 of the LGPD); and
-  use **systems that comply with security requirements, best practices, and the principles** of the LGPD (art. 5 of the Regulatory Process for Supervision and Administrative Sanctioning of the ANPD).

As a result of the violations, the Authority applied four warnings in the Decision, without imposing any corrective measures<sup>9</sup>:

Article Violated	Infraction	Sanction	Corrective Measure
art. 37 of the LGPD	Failure to maintain <b>records of operations</b> .	Warning	Not imposed.
art. 38 of the LGPD	Failure to prepare a <b>Data Protection Impact Assessment (DPIA)</b> after ANPD's request.	Warning	Not imposed.

8 NATIONAL DATA PROTECTION AUTHORITY. ANPD sanctions INSS and the Secretariat of Education of the DF for violations of the LGPD. Brasília: ANPD, 2023. Available at: <https://www.gov.br/anpd/pt-br/assuntos/noticias/anpd-sanciona-inss-e-secretaria-de-educacao-do-df-por-violacoes-a-lgpd>. Accessed on: Dec 6, 2024.

9 BRAZIL. Decision Dispatch No. 3/2024/FIS/CGF. Official Gazette of the Union, Ed. 22, Section 1, p. 59, Brasília, 2024. Available at: <https://www.in.gov.br/web/dou/-/despacho-decisorio-n-3/2024/fis/cgf-540566212>. Accessed on: Dec 6, 2024.

Article Violated	Infraction	Sanction	Corrective Measure
<b>art. 48 of the LGPD</b>	Failure to <b>notify data subjects</b> about a security incident that posed a relevant risk or damage.	Warning	Not imposed.
<b>art. 5 of the Regulatory Process for Supervision and Administrative Sanctioning of the ANPD</b>	Failure to <b>notify data subjects</b> about a security incident that posed a relevant risk or damage.	Warning	Not imposed.

It is noted that here, for the listed non-compliance issues, no corrective measures were imposed, with the ANPD opting to only issue a warning. In Instruction Report No. 2/2024/FIS/CGF/ANPD, which summarizes the process related to this topic, the General Coordination of Inspection clarified that<sup>10</sup>:

*Due to the measures that have been implemented by the regulated entity to align the processing of personal data with the LGPD, as reported in the defense and final statements, and as can be observed, for example, in documents 0049070, 0049071, 0049072, 0049073, and 0049075, it is considered that there is no convenience or opportunity to send a notification to the internal control body of the Federal District for the investigation of potential functional misconduct, under Article 55-J, XXII.*

Thus, the ANPD did not impose corrective measures on the SEDF, understanding that the measures adopted, but still in the process of implementation by the state agency, would be sufficient. However, analyzing the measures outlined by the Secretariat is a strong indication of the corrective measures that the ANPD would have imposed if they had not been already presented in defense by the Secretariat. These are:

<sup>10</sup> NATIONAL DATA PROTECTION AUTHORITY. Instruction Report No. 2/2024 - Secretariat of Education of the GDF. Brasília: ANPD, 2024. Available at: [https://www.gov.br/anpd/pt-br/documentos-e-publicacoes/relatorio-instrucao-2-2024\\_sec-educacao-gdf.pdf](https://www.gov.br/anpd/pt-br/documentos-e-publicacoes/relatorio-instrucao-2-2024_sec-educacao-gdf.pdf). Accessed on: Dec 6, 2024.

i

internal evaluation with the technical areas involved, to gather the necessary information to address the security incident and take measures to minimize damage to the affected citizens, such as blocking access to the data involved in the incident;

ii

efforts to improve the implementation and structuring of the department responsible for the LGPD, including actions related to information and the assessment of data privacy maturity and security maturity, personal data inventories, as well as the preparation of a Data Protection Impact Assessment (DPIA); and

iii

the development of a data security incident management and personal data privacy plan, to be widely disseminated within the SEDF.

## Ministry of Health

In 2024, ANPD also sanctioned the Ministry of Health for<sup>11</sup>:



failing to **notify data subjects about a security incident** (art. 48 of the LGPD); and



not adopting **security measures for personal data protection** (art. 49 of the LGPD).

As a result, the Authority applied two sanctions accompanied by corrective measures in the Decision, within a deadline of 10 business days for compliance. These measures were<sup>12</sup>:

11 NATIONAL DATA PROTECTION AUTHORITY. External consultation: SEI document. Brasília: ANPD, 2024. Available at: [https://anpd-super.mj.gov.br/sei/modulos/pesquisa/md\\_pesq\\_documento\\_consulta\\_externa.php?yPDszXhdoNcWQHJaQIHJmJlqCNXRK\\_Sh2SMdnIU-t-zOh8pAPpRUiYiW\\_V8fAxS-60lv\\_pDZXcpXicN8TYBDoalVRwH3belXoifsqOVteqp2Mqi7DJS4Q2vU6eR3vG6Cq](https://anpd-super.mj.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.php?yPDszXhdoNcWQHJaQIHJmJlqCNXRK_Sh2SMdnIU-t-zOh8pAPpRUiYiW_V8fAxS-60lv_pDZXcpXicN8TYBDoalVRwH3belXoifsqOVteqp2Mqi7DJS4Q2vU6eR3vG6Cq). Accessed on: Dec 6, 2024.

12 BRAZIL. Decision Dispatch No. 3/2024/FIS/CGF. Official Gazette of the Union: section 1, Brasília, no. 540566212, 2024. Available at: <https://www.in.gov.br/web/dou/-/despacho-decisorio-n-3/2024/fis/cgf-540566212>. Accessed on: Dec 6, 2024.

Article Violated	Infraction	Sanction	Corrective Measure
<p><b>art. 48 of the LGPD</b></p>	<p>Failure to <b>notify data subjects about a security incident.</b></p>	<p>Warning</p>	<p>Adjust the existing communication on the Ministry of Health website, making the following alterations or additions:</p> <ol style="list-style-type: none"> <li><b>1. Description of the categories</b> of personal data available for consultation during the vulnerability;</li> <li><b>2. Add a column for “Nature of potentially exposed data”;</b></li> <li><b>3. Include details about technical and security measures</b> for data protection, including improvements being implemented or ongoing;</li> <li><b>4. Identify risks related to the incident and impacts</b> on data subjects;</li> <li><b>5. Explain the delay in communicating</b> the incident to data subjects.</li> </ol>
<p>The notice should have been kept for 90 more days from the date of the notification of the decision that imposed the measures, and proof that the corrective measures were fulfilled should have been submitted through the presentation of 9 (nine) screenshots of the Ministry of Health website, with a minimum interval of 9 (nine) days between each, containing the notice and a clear view of the capture date.</p>			
<p><b>art. 49 of the LGPD</b></p>	<p>Failure to adopt <b>security measures</b> for the protection of personal data.</p>	<p>Warning</p>	<ol style="list-style-type: none"> <li><b>1. Send information on the progress of technical measures being implemented</b> in the SCPA system;</li> <li><b>2. Provide proof of implemented technical (and administrative, if applicable) measures</b> within the systems.</li> </ol>
<p>The Ministry of Health should have submitted to the case file, within 20 (twenty) business days from the date of notification, a document (e.g., spreadsheet, digitally written document, slide presentation, etc.) that includes: <b>i)</b> the forecast of the stages of the schedule; and <b>ii)</b> the method by which the completion of each stage will be verified.</p>			

## 5. CONCLUSION

Throughout this Administrative Process Trail, we have studied in detail the phases of the sanctioning procedure conducted by ANPD, culminating in this analysis of corrective measures and the scope of discretion granted to the Authority. We observed how the ANPD guides its actions toward compliance, not only through punitive sanctions but also by correcting behaviors and promoting a culture of personal data protection.

The imposition of corrective measures is ultimately a tool for protecting the legal right to personal data, aiming to ensure that data controllers not only comply with the LGPD in a formal sense but also adopt best practices and security routines, minimizing risks and vulnerabilities. By analyzing real cases, we have seen the importance of dialogue between ANPD and data controllers, ensuring that the Authority, although discretionary, does not act arbitrarily or disproportionately, adhering to the principles governing Public Administration.

This ninth Guide concludes the proposed study series, providing a comprehensive and systematic view of ANPD's sanctioning administrative process. From this framework, it is expected that readers were able to gather enough insight to understand legal duties, the consequences of non-compliance with the LGPD, and the possible institutional responses from the Authority. More than understanding the process, the key message is one of continuous responsibility regarding data protection, the need for diligence and transparency, and a permanent commitment to ensuring the fundamental rights of data subjects.

Thus, this Guide concludes, inviting professionals and interested parties to stay updated, continue discussing and improving practices, and above all, to understand that data protection is a collective and dynamic duty, supported by the firm and balanced actions of ANPD. Should you wish to revisit any of the previous Guides, you can access them through this [link](#).

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