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# Guidance for Definitions of Personal Data Processing Agents and Data Protection Officers

VERSION 2.0





Published by the Brazilian Data Protection Authority (ANPD) on April 26, 2022, the new version of the guidance brought subtle, yet important, changes and clarifications.

### NEW WORDING

70. In the exercise of their duties, the Data Protection Officer **CAN** play an important role in promoting and disseminating a culture of personal data protection in the organization.

- In the previous version of the guidance (which we did a legal update on, which can be accessed [here](#)), ANPD defined the Data Protection Officer as "the individual responsible for ensuring the compliance of an organization, public or private, with the LGPD."

This definition ended up creating serious **conceptual problems**:

→ It ended up creating an obligation that is not foreseen on anywhere in the LGPD.

→ It implied that the Data Protection Officer was personally responsible, which is also not mentioned in the LGPD.



## RESPONSIBILITY

In the new version of the guidance, the suggestion was removed that the Data Protection Officer is personally responsible for the organization's compliance with the LGPD. And, thus, it follows that **the civil and administrative responsibility for the collection and processing of personal data lies with the processing agent itself**, not personally with the Data Protection Officer.



## DATA PROTECTION OFFICER IN SMALL BUSINESS DATA PROCESSING AGENTS

- “Small business agents” include micro-enterprises, small businesses, start-ups and non-profit legal entities, natural persons and depersonalized entities, which assume typical controller or processor obligations.
- The new version of the guidance references Resolution nº 02/2022 (on which we published a Legal Update, which can be accessed [here](#)), which approves the Regulation for the Applicability of the LGPD for small business data processing agents, **exempting them from having to name a Data Protection Officer**.

↳ This was already expected based on the wording of the first version, which said that “future ANPD regulations may waive the need to appoint a Data Protection Officer, according to the nature and size of the entity or the size of its data processing operations.



## COMMUNICATION OR REGISTRATION OF IDENTITY OF AND CONTACT INFORMATION FOR THE DATA PROTECTION OFFICER BEFORE THE ANPD

As with the previous version of the guidance, the new version does not require that the organization communicate to or register with the ANPD the identity of and contact information for the Data Protection Officer due to the absence of legal or regulatory provisions for this. However, the guidance emphasizes that this is the scenario at the moment, **which may change with future ANPD regulations.**



## FUTURE REGULATION OF THE DATA PROTECTION OFFICER

The new version of the guidance reminds us that the subject of the Data Protection Officer is in the **ANPD's 2021-2022 Regulatory Agenda** and matters related to the role are still to be analyzed and better defined.



## APPENDIX OF CONTROLLER AND PROCESSOR CONCEPTS

A new feature in the new version of the guidance is a graphic to help identify the processing agent profiles—whether, in a specific case, the agent is a controller (joint or singular controllership) or a processor.



YES



NO

Is there other **person** involved in the personal data processing under analysis?



You're the only **Controller**, and therefore, responsible for making the relevant decisions about the processing of personal data and for defining the purpose of this process.



Are you the one who defines the **essential elements** for processing the personal data? For example:

- the **purpose** that justifies the data processing and its legal basis;
- the **nature** of the personal data processed;
- the **period** in which the operation will happen, including the establishment of term to data erasure

You're a **Controller** on this process.



Do you act according to the interests and purposes **defined by other person** and make decisions about elements that aren't essential to the process, as technical measures?



You're the **Processor** of this process.



Do you act as a **subordinate professional** or as a **member of the organization** responsible for the main decision making related to the personal data processing?



You're not a person involved in the personal data processing.

What's the relation between you (X) and the other person (Y) involved in the personal data processing?

You decide alongside Y about the purposes and the essential elements of this data process.

You and Y are **joint controllers**.

You decide alongside Y about some essential elements of this data process, while others are defined separately.

You and Y are joint controllers for some steps of the data process.

You and Y decide separately about the purposes and the essential elements of the data process.

You and Y are **independent controllers**.

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