

Confidentiality of Medical Records and Data Protection in Brazil: Publicity vs. Privacy.

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Abstract. This study aims to analyze the conflict between the principle of publicity in administrative law and the protection of sensitive data under the General Data Protection Law (LGPD). It explores the legal basis and interpretation of rules and case law regarding the request for medical records by public authorities, such as the Public Prosecutor's Office and the police, without the need for a court order. The methodology includes a comparative analysis of norms, judicial decisions, and data processing hypotheses based on legitimate interest, with a focus on opinions from the National Data Protection Authority (ANPD) and other relevant entities. The study is grounded in descriptive and comparative analysis, employing deductive, historical, and hermeneutic methods to examine the evolution of data protection and administrative transparency. The conclusions highlight the legal implications of this conflict within the Brazilian legal system.

Keywords. Privacy, Sensitive Data Protection, Medical Records.

1. Introduction

The conflict between the principle of publicity in administrative law and the protection of sensitive data has gained increasing relevance, especially with the enactment of the General Data Protection Law (LGPD) in Brazil. Historically, the principle of publicity was established to ensure transparency and social oversight of public administration actions. However, this transparency, particularly in the context of public health institutions, raises significant concerns about the privacy and confidentiality of sensitive data, such as medical records. The need to ensure that personal data, especially those related to health, are handled securely and with respect for human dignity, as outlined in the Federal Constitution, has become one of the major challenges in the fields of administrative law and public health.

In light of this, the present study aims to analyze the legal framework and interpretation of regulations and case law concerning the request for medical records by public authorities without the need for a court order. Through a comparative analysis of regulations, judicial decisions, and legitimate interest, the study seeks to demonstrate how the

LGPD impacts the operations of bodies such as the Public Prosecutor's Office and the police, highlighting the limits imposed by the law to protect individual privacy. The research also considers the significance of Constitutional Amendment 115/2022, which included data protection as a fundamental right, and explores how this new legal framework requires a reassessment of the balance between transparency and privacy in public administration, particularly in the health sector.

2. Research Methods Formatting the title

The investigation aims to analyze the conflict between the principle of publicity in administrative law and the protection of sensitive data under the General Data Protection Law (LGPD). The study will explore the legal foundation and interpretation of regulations and case law related to the request for medical records by public authorities, such as the Public Prosecutor's Office and the police, without the need for a court order.

To achieve this, the methodology will include a comparative analysis of regulations, judicial

decisions, and data processing hypotheses based on legitimate interest, with emphasis on rulings and opinions from the National Data Protection Authority (ANPD) and other relevant entities. The methodological approach will be supported by descriptive and comparative analysis of constitutional regulations, such as Constitutional Amendment 115/2022, which recognized data protection as a fundamental right.

The study will utilize sources such as academic texts, case law from higher courts, extraordinary appeals, and technical opinions from public health entities. Deductive, historical, and hermeneutic methods will be applied to analyze the legal and jurisprudential evolution of data protection and the publicity of administrative acts. The monographic method will allow generalizing the conclusions, highlighting the implications of this conflict in the Brazilian legal system.

3. Results and Discussion

The principle of publicity, established as one of the pillars of public administration, was created to ensure transparency and social control over governmental actions. Its historical evolution demonstrates a growing need to make public acts accessible to society, allowing for democratic oversight of public management.

In the context of public health institutions, this principle plays a fundamental role, particularly regarding access to information and accountability. However, the principle of publicity can conflict with the protection of sensitive personal data, such as medical records, requiring careful balance between transparency and privacy (Sarlet, 2021) [1]. In public health institutions, this conflict becomes especially evident when it comes to protecting health-related information, which by nature requires confidentiality, as outlined by the General Data Protection Law (LGPD). The LGPD, enacted in 2018, represents a landmark in the Brazilian legal framework, regulating the processing of personal data and ensuring that fundamental rights to privacy and data protection are preserved. With Constitutional Amendment 115/2022, data protection was included as a fundamental right, further reinforcing its importance in the national legal system.

The LGPD introduces essential principles for public administration, such as the need for explicit consent to process sensitive data, a central pillar for the legitimacy of administrative actions related to healthcare (Sarlet, 2021)[1]. Additionally, the law imposes strict limits on the use of personal data, protecting the data subject from potential abuse and ensuring informational self-determination. The LGPD defines sensitive data as those that, by their nature, could lead to discrimination or harm if mishandled. This includes health information, racial

origin, religious beliefs, and other elements that require enhanced protection.

In the public health context, safeguarding sensitive data, such as medical records and patient information, is crucial for ensuring individual privacy and maintaining the confidentiality of health conditions (Schiavon, 2020)[2]. The improper collection and processing of such data can result in severe consequences, including violations of human dignity, as outlined in Article 5 of the Federal Constitution. Medical records, considered sensitive data under the LGPD, are protected by professional confidentiality, an ethical and legal duty for healthcare professionals. These documents contain detailed information about a patient's health and are therefore highly confidential. Public health institutions are responsible for ensuring that these data are handled securely and in accordance with the law, avoiding any leaks or misuse (Parecer SMS, 2024)[3]. Additionally, the patient's informed consent is crucial for any data processing, except in the exceptions provided by the LGPD, such as the need to protect life or physical integrity.

The conflict between publicity and data protection arises when the principle of transparency, fundamental in administrative law, clashes with the right to privacy and personal data protection, especially in sensitive sectors like healthcare. While the publicity of administrative acts is essential for transparency and social control, it must face clear limits when it comes to protecting sensitive data, such as medical records (Brant, 2024)[4]. Balancing these rights is one of the major challenges facing public administration and requires strict application of the LGPD principles, such as data minimization and the need for explicit consent from the data subject.

The General Data Protection Law (LGPD) establishes that the processing of personal data must always respect the fundamental rights of data subjects, especially when dealing with sensitive data. Among the legal bases for data processing, legitimate interest stands out, allowing data to be used without the subject's consent, provided certain conditions are met. The ANPD states that the processing of personal data based on legitimate interest requires the identification and mitigation of risks to the fundamental rights and freedoms of data subjects (ANPD, 2024)[5]. Thus, legitimate interest must be invoked cautiously, especially in sectors like healthcare, where data misuse can have serious consequences for individuals. Additionally, for processing based on legitimate interest to be valid, it must meet three fundamental requirements: compatibility with legal norms, grounding in concrete situations, and linkage to legitimate, specific, and explicit purposes (ANPD, 2024)[5].

As such, the use of medical records and other sensitive data by public authorities, such as the Public Prosecutor's Office or the police, must be strictly justified, particularly in situations where explicit consent from the data subject is absent. The ANPD emphasizes that the legitimate expectations of the data subject must be considered, ensuring that any processing respects their fundamental rights and guarantees (ANPD, 2024)[5]. The Public Prosecutor's Office and law enforcement authorities play a key role in accessing sensitive data, particularly in criminal investigations. However, access to such data, including medical records, must strictly adhere to the LGPD principles and be judicially authorized, ensuring that the data subject's right to privacy is not unduly violated. Requests for sensitive data without judicial authorization can constitute a severe breach of fundamental rights, as decided in several judicial instances (STF, 2022)[6].

Therefore, the actions of these entities must always align with the legal limits imposed by the LGPD. The principle of judicial reservation is a legal concept that establishes the need for judicial authorization to access certain information protected by confidentiality, such as medical records. This principle aims to protect the rights to privacy and dignity of the data subjects, ensuring that access to sensitive information is controlled and only permitted when absolutely necessary (STF, 2022) [6]. Brazilian jurisprudence reinforces the need for prior judicial authorization to access medical records, highlighting that although the right to publicity is important, it must be limited in favor of protecting privacy and sensitive data.

4. Conclusions

The study on the conflict between the principle of publicity in administrative law and the protection of sensitive data, particularly in the healthcare context, highlights the importance of the General Data Protection Law (LGPD) as an essential tool to ensure privacy and informational self-determination. The analysis revealed that while transparency is fundamental for social oversight, the protection of sensitive data, such as medical records, must prevail to safeguard fundamental rights to privacy and human dignity. Balancing publicity and data protection requires the careful application of LGPD principles, such as data minimization and explicit consent from the data subject. This study contributes by providing a legal framework for discussing this conflict, drawing on opinions from the National Data Protection Authority (ANPD) and rulings from the Federal Supreme Court (STF). For future research, it is suggested to explore the impact of artificial intelligence on the management of sensitive data in healthcare systems, as well as the development of public policies that reconcile data protection with the need for administrative transparency.

5. References

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