

Direct Actions of Unconstitutionality are proposed against a Provisional Measure that gives personal data to Brazilian Institute of Geography and Statistics (IBGE) #2

What you need to know...

- 5 Direct Actions of Unconstitutionality were filed against Provisional Measure 954/2020 (which requires telecommunications companies to share user registration data with the Brazilian Institute of Statistical Geography - IBGE)
- Justice Rosa Weber asked ANATEL and IBGE for clarification on the terms of data sharing
- Justice Rosa Weber decided on a preliminary injunction, on April 24, to suspend the effects of MP 954/2020
- 344 amendments were presented to MP 954/2020

On April 24, Justice Rosa Weber decided, in an [injunction](#), to suspend the effects of the Provisional Measure, emphasizing that the information dealt with in the MP is within the scope of constitutional protection that protects the right to privacy, honor and image. It further alleges that the MP does not provide for any requirement for mechanisms and procedures to ensure the confidentiality, healthiness and anonymity of the shared data, which does not meet the requirements established in the Constitution for the effective protection of fundamental rights of Brazilians. The Justice refers, in her vote, to the LGPD, using the concepts of privacy and informative self-determination to point out that the Provisional Measure went beyond these principles when making available all the registration data of consumers. She also cited the article "The Right to Privacy" by Warren and Brandeis, to conclude that there is a constant need for recognition of new fundamental rights, such as privacy. As of April 24, [344 proposals](#) to amend the Provisional Measure have been submitted to the National Congress. The amendments mainly touch on the principles of minimization, necessity and transparency, seeking to bring to the text of the Provisional Measure the need to carry out impact reports before the processing of personal data, in addition to bringing a more specific purpose to the text. Some of the amendments called for the complete suppression of the text of the Provisional Measure, such as those of number 1, by Senator Paulo Paim and 80, by Congressman Célio Moura.

The president's tests: clash between Estadão newspaper and the Office of the Attorney General of the Union (AGU)

What you need to know...

- The newspaper O Estado de São Paulo obtained, in Federal Justice, the right of access to the reports of the tests carried out by the President of the Republic, Jair Bolsonaro, to detect COVID-19;
- It is a dispute between arguments aimed at the principle of advertising and the right of access to information, by the newspaper, and defense of privacy and intimacy, by the AGU, which represents the Union;
- In the decision that determines the opening of the reports, the judge considers that there is no violation of the privacy and intimacy of the president, a public person with the highest position in the country.

On Monday, April 27, the Federal Court, in a decision by Judge Ana Lúcia Petri Betto of the 14th Federal Civil Court of São Paulo, answered the request of the newspaper O Estado de São Paulo for the Union to disclose, within 48 hours, all examination reports carried out by the President of the Republic, Jair Bolsonaro, to detect the presence of the new coronavirus and COVID-19. The president has been refusing to present the results of the tests since March and says only that he did not contract the disease. Before filing the lawsuit, the newspaper sought to obtain information via the Access to Information Law. The request was denied, alleging respect for "intimacy, privacy, honor and image, protected with restricted access". The newspaper argues, in the lawsuit, that the refusal constitutes "restricting the population from accessing information of public interest", which culminates in "censoring the full freedom of journalistic information". On the other hand, the Office of the Attorney General of the Union (AGU), which represents the Union, claims it is an issue of "intimacy and privacy". In the decision, the judge refutes the argument, stating that publicity, in the Democratic Rule of Law, is a general rule, and secrecy, an exception. With regard to exceptions to publicity - confidentiality essential to the security of society and protection of privacy - the judge considers that they do not apply. As for privacy, specifically, he states that this is not "an unjustifiable wanton in the president's private life, but only access to the reports of exams related to covid-19". After the deadline determined in the decision, the exams were not presented by AGU, which provided only medical reports that had previously been released and also required the extinction of the process.

Use of *Contact Tracing* tools

What you need to know...

- Google and Apple have announced a new partnership to develop a tracking technology that uses Bluetooth
- Specialists criticized the lack of transparency in the methodology to use the Bluetooth system for tracking

On April 10, Google and Apple [announced](#) a partnership to create a new contact tracing tool. The [technology](#) that has been developed uses the Bluetooth system in a two-phase process. At first, data will be collected by an app installed in the device, next a beacon will be transmitted. The beacon will be received by other devices and vice versa. Daily, a list provided by the health authority that contains the beacons verified as originated from devices of users who tested positive to Covid-19 will be downloaded by the system. When the register of received beacons in the device matches with one or more beacons in the list, the user might be notified and receive instructions on how to proceed. The second phase it's a similar process, but there will be no need to install an application, the mechanism will be inserted in the operational system. Specialists questioned the partnership and identify [problems with the technology](#). On the technology, there is a great concern about the efficiency of the contact tracing system since there is no standard to the quality of the Bluetooth transmission system and that those beacons might suffer interferences and get less clear. Regarding the partnership, the specialists apprehension is related to the fact that two of the greater technology

companies which already collect a lot of data are creating a tool that amplifies their capacity to monitor the users. The concern with transparency in the implementation process of the system is evident.

LGPD postponement: bills in the National Congress and Government Provisional Measure

What you need to know...

- Since before the COVID-19 pandemic, projects have emerged with the objective of extending the term for the LGPD to come into force, with arguments such as companies' lack of adequacy and the absence of the National Data Protection Authority;
- With the pandemic, this process has intensified and there are at least 4 new bills in this regard;
- Bill 1179/2020 was approved by the Senate with the following rule: the sanctions go into force in August 2021 and the rest of the law in January 2021;
- On April 29, the government issued MP 959, which, among other things, postpones the LGPD as a whole until May 3, 2021.

The coronavirus crisis has been a catalyst for different proposals in the houses of the National Congress. Among the various issues affected, the organization Coding Rights [gathered](#) projects dealing with technology, in general, with a focus on internet access, misinformation, transparency and privacy. Regarding the last issue, it is not surprising that most of the projects found deal with the postponement of the General Data Protection Law (LGPD). In a relatively short period, Coding Rights identified at least 4 projects with this theme. The projects are divided between those that change the deadline for the effectiveness of the law's sanctions and those that provide for the extension of the deadline for the effectiveness of the law as a whole. [Bill 1164/2020](#), by Senator Alvaro Dias, belongs to the first category and adds a new item to article 65 of the LGPD, providing for the postponement of part of the administrative sanctions for 12 months after the law comes into force. Similarly, [Bill 1198/2020](#), also authored by the Senator, provides for the inclusion of a single paragraph also in article 65 of the LGPD to determine that, after the new term established in bill 1164, non-compliance with the law will subject the violator to the sanctions of the article 52.

The second category of projects includes [Bill 1027/2020](#), by Senator Otto Alencar, who intends to extend the entry into force of the General Data Protection Law to February 16, 2022, one and a half years after the date originally planned. Finally, we highlight [Bill 1179/2020](#), by Senator Antonio Anastasia, which deals with the Emergency and Transitional Legal Regime for Private Law legal relations (RJET) in the period of the Coronavirus (Covid-19) pandemic and provides, in the Article 25, for the postponement of the LGPD for a period of 1 year. Bill 1179/2020 was passed by the Senate with a change, proposed by Senator Simone Tebet: the law as a whole comes into force in January 1, 2021 and the sanctions, in August of the same year. Now, the project must be analyzed by the House of the Representatives. To complete the list of proposals and measures for postponing the entry into force of the LGPD, on April 29, [Provisional Measure No. 959](#) was issued, which deals with the operationalization of the emergency benefits created due to the pandemic, but included, in the last article, a change in article 65 of the LGPD, changing its effective date to May 3, 2021. The MP has immediate validity and effectiveness and must be evaluated by Congress within a maximum period of 120 days. It so happens that, at the end of that period, the original date of the General Data Protection Law will have passed, so that, if the MP is revoked by Congress, returning to the original



LGPD term, a logical and legal controversy will be generated .