

EXECUTIVE SUMMARY

Environmental policies, public transparency and data: the legal feasibility of personal data sharing in the scope of the Rural Environmental Registry

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About us

Data Privacy Brasil Research Association is a civil society organization, non-profit, that promotes personal data protection and other fundamental rights in face of the arising of new technologies, social inequalities and power asymmetries. It has a multidisciplinary team composed by researchers from different regions of Brazil who develop researches of public interests, policy papers, analysis reports on emerging topics, training for decision making actors and for society in general.

The Association believes that personal data protection is one of the foundations of democracy and needs to be seen from the perspective of social justice and power asymmetries. Therefore, the Association works to the public in order to promote a data protection culture and to assure that digital rights become fundamental rights for all. This work is made through research that is open to the public and guided by a strong sense of social responsibility and ethical financing.

For more information on the organization, project impact and how research is supported, check www.dataprivacybr.org.

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Executive Summary

The present report is a result of the project “[Nature and information: contesting political instrumentalization of the Brazilian General Data Protection Law in environmental regulation](#)” (on the original: “Ambiente e informação: contestando a instrumentalização política da LGPD na regulação ambiental”). The project was executed between November, 2022, and May, 2023 and financed by Instituto Clima e Sociedade.

The research team searched for public bodies’ decisions in which they denied access to environmental information using the Brazilian General Data Protection Law (LGPD) as a central argument. In other words, the analysis focused on how the LGPD and other legal norms on privacy were wrongfully used to obstruct access to public interest information regarding environmental regulation.

The main purpose of the report is to propose juridical interpretation models that combine the freedom of information and data protection in environmental policies. The study specifically focuses on access to information requests made during 2021 that were denied, resulting in decisions expressing arguments for not sharing personal data contained in the Rural Environmental Registry (CAR - Cadastro Ambiental Rural).

The work presents an assessment of CAR’s compliance with the norms in the LGPD, followed by criticism of the arguments mobilized by the public authorities to obstruct the publication of full names, taxpayer numbers and other information related to the rural landowners in areas with significant evidence of deforestation. Through a systemic interpretation, it can be demonstrated that active and passive transparency of CAR data is legally feasible, also including examples of existing practices.

Additionally, the research showed asymmetries in the personal data processing regarding some individuals and groups related to land: while confidentiality is maintained for landowners, beneficiaries of land reform have their full names exposed by the administration.

The imposition of confidentiality in the data processing of CAR goes against its purpose and legality, highlighting non-compliance with national legislation and international agreements Brazil has signed. Data Privacy Brasil Research Association aims to demonstrate that data protection can serve as a tool in the fight against climate changes.

Bellow the main findings of this study are presented:

- The insufficient disclosure of data on land properties has been a topic highlighted by civil society organizations and public bodies such as the Prosecutor's Office for many years. Recently, a new argument to avoid sharing and disclosing environmental databases by public bodies has appeared since the LGPD came into force.
- The analysis focused on the process of information solicitations that required access to personal data of landowners with properties flagged for deforestation, which are stored in the Rural Environmental Registry system. The requests went up to the highest instance in the administrative process, the Comptroller General's Office (CGU). The CGU presented a decision that maintained the obstruction of access to that data. Through the decision document and attachments (particularly opinions from public bodies), it was possible to identify that the argument to block access to landowners data has been presented in various forms along the years, always based on the risk to the honor and image of those landowners.
- This raises the question of what is the interest behind the withholding of data. Protecting the right of landowners from potential risks has a tangible impact on the diffuse and collective rights of the Brazilian population. The right to environment, indigenous rights to their land, consumer rights, the rights of local workers, the right of landowners that comply with environmental laws, and the right of the population to inform and be informed, and to exercise their citizenship, are violated when there is no public transparency on this matter.
- The idea of maintaining information confidential is recurrent and stems from a wrongful interpretation of Brazilian legislation. The LGPD and Brazilian Freedom of Information Act (LAI) allow the disclosure of personal data and provide legal protection for such data when it is made public.
- It is always necessary to highlight the importance of the data protection principles when processing data. In this case, since the disclosure to the public with the purpose of enabling social control would be a secondary use, the prin-

principle of legitimate purpose gains relevance in the analysis. A compatibility test was made considering the criteria presented by the Brazilian Data Protection Authority (ANPD) in order to identify if the secondary use would be allowed in this scenario. The conclusion reached was that the secondary processing is indeed compatible with the original purpose and it is lawful - falling under the processing that is necessary due to a legitimate interest by a third party. In other words, the controller (public entity) acts on behalf of the interest of the public, specifically the Brazilian population (third party).

- The regulation regarding CARs data transparency urgently needs to be renewed. The closure of the data perpetuates a power structure that has historically oppressed indigenous, quilombola and local communities. This information is extremely important to protect those groups and give them a voice. It is also essential for the general population as it enables them to exercise social control and advocate for compliance with the Environmental Code and their fundamental rights.

Taking into account the information provided and the details outlined in this report, the following recommendations need to be highlighted for all public entities that have access to data within the CAR system, as well as for future entities responsible for handling and deciding on matters concerning this information:

- The disclosure of the CARs database should be carried out with the objective of enabling the identification of landowners associated with deforestation alerts;
- The responsibilities of each public body as processing agents of CARs data shall be defined and disclosed to the public for easy access and identification of the processing chain, as well as their roles (controller or operator) and specific functions within the chain;
- When making decisions regarding access to CARs data, the entire context should be taken into consideration to ensure fair and equitable outcomes while minimizing the impact on fundamental and other constitutional rights;
- The Ministry of Environment should revise the Normative Rulings nº 2 and 3 of 2014 to expand the list of data that must be disclosed, including the personal data of landowners and set aside the logic of fiscal confidentiality or any other type of confidentiality over landowners data. Similarly, other public entities should also abandon this confidentiality logic when responding to information requests;

- Training programs should be organized for public officials involved in the analysis of information requests related to environmental matters. These programs should aim to institutionalize the possibility of accessing personal data and create a secure environment for public officials to appropriately handle data processing and ensure the safe disclosure of information.