

□ Procedure No.: PS/00152/2020

938-300320

## RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and

### BACKGROUND

FIRST: The inspection actions are initiated by the receipt of a letter of

security bankruptcy notification sent by FUNDACION SINDROME 5P

LESS THAN CV in which they inform the AEPD that the previous managerial positions

of the Vice Presidency and Secretariat, which in turn performed the functions of

responsible for the management and security of the information, have not returned the

documents and devices

SECOND: In view of the aforementioned data security breach notification

data, the Subdirector General for Data Inspection proceeded to carry out

of previous investigation actions, having knowledge of the following

ends:

### BACKGROUND

Security breach notification date: October 10, 2019

### INVESTIGATED ENTITY

SYNDROME FOUNDATION 5 P LESS THAN C.V. (hereinafter Foundation) with NIF

G54272836, and with address at Calle Calitxe nº 6, 03690 San Vicente del Raspeig,

Alicante.

### RESULT OF THE INVESTIGATION ACTIONS

1. On October 31, 2019, information is requested from the Foundation and from the

response received on November 14, 2019 shows:

Regarding the Foundation.

As stated on the website [www.fundaciónsindrome5p.org](http://www.fundaciónsindrome5p.org), the

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Foundation is a non-profit organization under the tutelage of the Protectorate exercised by the Generalitat Valenciana, which allocates all its heritage in helping and informing families with members affected by a rare syndrome.

On December 13, 2018, the management positions of Secretary

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and Vice President resigned from the Foundation before a notary public.

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The Foundation has provided a copy of the modifications of the

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Statutes where it is stated -in article 16- that the custody of the documentation are functions of the Secretary.

Regarding the facts and causes of the incident. Measures to minimize incidence

The security breach has been caused because the above

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Secretary and Vice President of the Foundation have not returned the files computer systems, supports, documents, account control, etc., after his resignation as trustees of the Foundation on 12/13/2018.

The facts have been denounced before the Court of Instruction of San

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Vicente del Raspeig on July 16, 2019 and the documentation and personal data to those denounced on several occasions, without receive reply.

The Foundation has provided a copy of the complaint before the aforementioned Court where it is revealed, among other aspects, that the defendants have not delivered all the documentation missing the children's medical records, among other documents.

Regarding the affected data.

The Foundation states that the number of affected is

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approximately 220 people and the documents contain data personal information of those affected (many of them minors) and relatives, diagnosis clinic, degree of dependency, level, family economic situation, numbers of account, information of parents, siblings and affected.

The Foundation is aware of and has provided an email to the

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respect, that the email data has been used to send emails to the associates of the Foundation after the resignation of the aforementioned management positions. The aforementioned e-mail provided is dated December 14, 2018. The following appears as the header of the email:

----- Forwarded message -----

From: A.A.A. <\*\*\*EMAIL.1>

Date: Fri, Dec 14 2018 12:45

Subject: IRREVOCABLE RESIGNATION A.A.A. and B.B.B. OF FOUNDATION  
5P SYNDROME

To: A.A.A. <\*\*\*EMAIL.1>, AA B.B.B. \*\*\*EMAIL.2

The Foundation has provided a letter addressed to the members of the

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Foundation, dated October 15, 2019, informing them that it has been

occurred an incidence of violation of data security such as

consequence of the fact that the previous trustees of the Foundation -with positions of

Vice President and Secretary - have not delivered the documents that

guarded after his resignation.

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Regarding the actions taken for the final resolution of the incident or for

minimize its impact.

On October 23, 2019, a burofax has been sent to the

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former management positions urging them to return the documentation

leveraging the response to a data deletion request.

In said burofax, provided by the Foundation, it appears that the data of those affected have

been blocked in accordance with Organic Law 3/2018, of December 5, except

of those treatments to comply with a legal obligation and for the formulation,

exercise or defense of claims.

Likewise, it appears that the deletion of data of the Foundation contained in the

YouTube and Instagram platforms could not be done since they were

published by themselves when they held the positions of Vice President and

Secretary, so the Foundation does not have the keys to manage these

platforms, although they have asked them to control the profiles and be able to delete the requested personal data.

Finally, in the burofax sent figure. "I take this opportunity to urge you to deliver any documentation, supports and equipment that they still have from the Foundation and I remind you that any data processing you do with them, even its mere conservation lacks any legal basis that legitimizes it".

The Foundation states that no calls and burofaxes have been collected and Provides a Certificate from the Postal Service of the attempts to deliver the burofax of date October 23, 2019.

Regarding the security measures implemented prior to the incident

The Foundation states that all employees sign a clause

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confidentiality and provide a model in this regard, indicating that they do not have signed documents as they have not been returned to the Foundation.

Likewise, they provide the confidentiality clauses attached to the employment contracts adapted to the RGPD.

The Foundation has provided a copy of the Security Document, where

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the functions and obligations of the users are indicated, among others.

Regarding the measures implemented after the incident.

The Foundation states that new measures have been adopted by not

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have the documents:

Appointment of a Data Protection Officer.

Renewal of confidentiality and privacy policy documents

either

either

information security in accordance with the RGPD and LOPDGDD.

either

of the data.

Making backup copies that guarantee the disposition

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either

security.

either

Review of procedures for action before bankruptcies of

Implementation of periodic security reviews.

THIRD: On June 17, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the FOUNDATION

SYNDROME 5P LESS THAN C.V. for the alleged infringement of article 33 of the RGPD,

typified in accordance with the provisions of article 83.4 of the aforementioned RGPD, qualified as

minor for purposes of prescription in article 74.m) of the LOPDGDD.

FOURTH: On 06/16/2020, the initiation agreement was notified to the FOUNDATION

SYNDROME 5P LESS THAN C.V., which did not present allegations.

PROVEN FACTS

FIRST: After the resignation of the Secretary and Vice President of the Foundation on the date

12/13/2018, they have not returned the computer media that contained personal data

object of treatment by the Foundation as the person in charge.

SECOND: The facts were denounced before the Court of Instruction of San Vicente del Raspeig on 07/16/2019 claiming the documentation and data in the possession of the Secretary and Vice President of the Foundation since its resignation.

THIRD: On 10/10/2019, the Foundation notified the AEPD of the breach of security:

#### FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

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Foundations are governed by Law 50/2002 and establishes, in terms of their creation, that can be created both privately or by public initiative.

II

In the present case, the Foundation appears as a foundation subject to private law according to the founding statutes themselves.

Article 58 of the RGPD, Powers, states:

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"two. Each supervisory authority will have all of the following corrective powers listed below:

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b) sanction any person responsible or in charge of the treatment with a warning

when the treatment operations have violated the provisions of this

Regulation;

Recital 148 of the RGPD states the following:

“In the event of a minor offence, or if the fine likely to be imposed

would constitute a disproportionate burden for a natural person, rather than

sanction by means of a fine, a warning may be imposed. must however

Special attention should be paid to the nature, seriousness and duration of the infringement, its

intentional nature, to the measures taken to alleviate the damages suffered,

the degree of liability or any relevant prior violation, the manner in which

that the control authority has been aware of the infraction, compliance

of measures ordered against the person responsible or in charge, adherence to codes of

conduct and any other aggravating or mitigating circumstance.”

GDPR Article 33, Notification of a Data Security Breach

to the supervisory authority, establishes that:

"1. In case of violation of the security of personal data, the person in charge of the

treatment will notify the competent control authority in accordance with the

article 55 without undue delay and, if possible, no later than 72 hours after

who was aware of it, unless it is unlikely that such violation

constitutes a risk to the rights and freedoms of individuals

physical. If the notification to the supervisory authority does not take place within the period of 72

hours, must be accompanied by an indication of the reasons for the delay.

2. The person in charge of the treatment will notify without undue delay the person in charge of the

treatment the violations of the security of the personal data of which it has

knowledge.

3. The notification referred to in section 1 must, at a minimum:



- a) describe the nature of the personal data security breach,  
including, where possible, the categories and approximate number of stakeholders  
affected, and the categories and approximate number of personal data records  
affected;
- b) communicate the name and contact details of the data protection delegate or  
another point of contact where further information can be obtained;
- c) describe the possible consequences of the data security breach  
personal;
- d) describe the measures adopted or proposed by the data controller  
to remedy the breach of personal data security, including,  
if applicable, the measures taken to mitigate possible negative effects.

4. If it is not possible to provide the information simultaneously, and to the extent that  
is not, the information will be provided gradually without undue delay.

5. The data controller will document any breach of data security.  
personal data, including the facts related to it, its effects and the

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corrective measures taken. Said documentation will allow the authority of  
control verify compliance with the provisions of this article.

For its part, the LOPDGDD in its article 71, Violations, states that: "They constitute  
infractions the acts and behaviors referred to in sections 4, 5 and 6 of the  
Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the  
present organic law".

And in article 73 of the LOPDGDD, for prescription purposes, it qualifies as “Infringements considered serious”:

“Based on the provisions of article 83.4 of Regulation (EU) 2016/679, considered serious and will prescribe after two years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

r) Failure to comply with the duty to notify the data protection authority of a breach of security of personal data in accordance with the provisions of Article 33 of Regulation (EU) 2016/679.

The facts revealed in the notification of the security breach in the information systems of the Foundation and the research carried out by the AEPD, violate the aforementioned article 33 of the RGPD.

The GDPR defines personal data security breaches as “all those breaches of security that cause the destruction, loss or accidental or unlawful alteration of personal data transmitted, stored or processed otherwise, or unauthorized communication or access to such data”.

#### IV

It should be noted that the RGPD does not establish a list of security measures that are applicable according to the data being processed, but which establishes that the data controller will apply technical measures and organizations that are appropriate to the risk involved in the treatment, taking into account account the state of the art, the application costs, the nature, scope, context and purposes of the treatment, the risks of probability and seriousness for the rights and freedoms of the persons concerned. In this regard, the Foundation has provided an updated security document to the RGPD and LOPDGDD where

The technical and organizational measures adopted include, among others,

others, the confidentiality clause signed at the time by the previous managers.

In this sense, it should be noted that the documentation in the file the authorship of the alleged theft of computer equipment is not proven, supports with personal data nor that the former directors denounced have made use of the personal data that they contained since the header of the e-mail provided these circumstances are not inferred. Specifically, it is of an email <forwarded> (Forwarded message), with origin <From:

A.A.A. <\*\*\*EMAIL.1>

A.A.A. <\*\*\*EMAIL.1>, AA B.B.B.

\*\*\*EMAIL.2>, that although the content refers to the reasons for the resignation, in and recipient <To:

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At no time is there any accredited treatment of data of associates or affected by the Foundation or origin or destination to other people outside of themselves.

The aforementioned article also regulates that security violations that may pose a risk to the rights and freedoms of natural persons must be notified to the competent control authority, a circumstance that would be fulfilled in this case whenever the allegedly stolen data belongs to the category of data regulated in article 9.1 of the aforementioned RGPD (Treatment of categories special personal data).

Article 33 of the GDPR explicitly establishes that security breaches,

whenever personal data is affected and implies a high risk

for the rights and freedoms of natural persons, they must be notified by the responsible for the treatment within 72 hours after you have had proof of it to the Control Authority (AEPD).

In the present case, it is clear that the Foundation was aware of the incident of security breach in December 2018, reported the events before the Court in dated July 16, 2019 and did not notify the security breach until October 10 of 2019.

In accordance with the foregoing, the Foundation is responsible for the infringement of the article 33 of the RGPD, typified in article 83.4 of the RGPD, qualified as mild to effects of prescription in article 74.m) of the LOPDGDD and punishable with warning for not appreciating intentionality, being a non-profit foundation and do not record the existence of a previous infraction

Article 74.m) of the LOPDGDD states:

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“They are considered minor and the remaining infractions of a legal nature will prescribe after a year.

merely formal of the articles mentioned in paragraphs 4 and 5 of article 83

of Regulation (EU) 2016/679 and, in particular, the following:

(...)

m) Incomplete, late or faulty notification to the data protection authority

information data related to a data security breach

in accordance with the provisions of article 33 of the Regulation (EU)

2016/679”.

Article 70.1 of the LOPDGDD indicates the responsible subjects.

"1. They are subject to the sanctioning regime established in Regulation (EU) 2016/679

and in this organic law:

a) Those responsible for the treatments”.

In the present case, given that the Foundation is a non-profit organization

profit under the tutelage of the Protectorate exercised by the Generalitat Valenciana, which allocates

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the entirety of its assets in helping and informing families with affected members

due to a rare syndrome, no intentionality or recidivism is observed, it is considered

in accordance with the law, not to impose a sanction consisting of an administrative fine and

replace it with the penalty of warning in accordance with article 76.3 of the

LOPDGDD in relation to article 58.2 b) of the RGPD.

Therefore, in accordance with the applicable legislation, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: IMPOSE FUNDACIÓN SÍNDROME 5 P LESS THAN C.V., with NIF

G54272836, for an infringement of Article 33 of the RGPD, typified in Article 83.4

of the RGPD, qualified as mild for prescription purposes in article 74.m) of the

LOPDGDD, a sanction of warning.

SECOND: NOTIFY this resolution to FUNDACIÓN SÍNDROME 5 P

LESS THAN CV with NIF G54272836, and with address at Calle Calitxe nº 6, 03690 San

Vicente del Raspeig, Alicante.

In accordance with the provisions of article 50 of the LOPDGDD, the

This Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art.

48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a period of month from the day following the notification of this resolution or directly contentious-administrative appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of  
through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

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