

Proposed Revisions to the ICANN Documentary Information Disclosure Policy

Affiliation

ICANN Business Constituency (BC)

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1. Please provide your input on the proposed updates to the Documentary Information Disclosure Policy (DIDP) to incorporate the Cross-Community Working Group on Enhancing ICANN Accountability Work Stream 2 (WS2) recommendations.

This document represents the point-of-view of the Commercial and Business Users constituency with regard to the proposed updates to ICANN's Documentary Information Disclosure Process (DIDP) to incorporate recommendations made in the [Final Report](#) of the Cross-Community Working Group on Enhancing ICANN Accountability Work Stream 2 (WS2).

The proposed updates continue to reflect a legacy, prescriptive approach to requirements that do not reflect the dynamic nature of ICANN. The expansion of ICANN's activities in support of its mission, the growth of its community and the increasing demands that this community, whether for-profit companies or non-profit organizations or individuals, guarantee three things:

1. Any list of eligible documents, no matter how specific, that can be requested, will be out-of-date in weeks if not days.
2. Any list of exceptions, similarly, will neither withstand market developments nor be guaranteed to remain valid in a quickly evolving regulatory environment. Consider how the GDPR has changed the landscape. There are GDPR-type regulations being considered worldwide (for privacy, yes, but also for intellectual property, finance, and workers rights) that will continue to affect the definition of transparency.
3. Any process to request, receive and, if necessary, review each decision must be done in a more streamlined fashion than is now proposed. In our view, data withheld without reason is a decision denied.

Rather than the proposed prescriptive approach, we recommend an outcomes-based regime.

In such an approach, the goal is transparency. Simply put, any document held by ICANN Org can be requested. Anyone requesting document access should receive a written response within 30 days. And the response should take the form of one of two responses.

1. Either the documents are made available, or
2. Give a clear and specific reason they cannot be made.

If the decision and reason for denial of disclosure is not acceptable to the requesting party, they may request a review within 30 days of receiving notice.

The review request can be based upon either showing how the initial decision was non-responsive, or present additional facts and arguments that were not conveyed in the initial request, and which directly respond to the reasons given for the denial of the disclosure.

The ICANN Ombudsman should assess the review request and additional facts and arguments within 30 days of receiving the review request.

Results of these reviews should be published. Recommendations in the Ombudsman's review would be advisory to ICANN Org. If the Ombudsman Review recommends disclosure be made, ICANN Org will have 14 days to either make the requested disclosure or to explain its rationale to deny the Ombudsman recommendations. These explanations should also be published.

2. In light of the WS2 request for a specific analysis of the expansion of the Ombuds' role into the DIDP process, as it would represent a new non-complaints responsibility, please provide your inputs on some or all of the five criteria identified in WS2 Recommendation 5.11.

3. Given that the ICANN Complaints Officer does not currently have a process or mandate to initiate their own appeals or reviews of ICANN org action, please provide any inputs for ICANN to consider on the proposed expansion of the role for the Complaints Office.

Summary of Submission

Please provide a summary of your Public Comment Submission. This summary should include a statement that reflects the overall position of your Submission and other high-level observations or recommendations. This summary is public and published on the Public Comment Submission page along with a link to your Submission (max. of 2,000 characters).

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