

CONFIDENTIAL DISCLOSURE FRAMEWORK(pursuant to ICANN Bylaws - Section 4.6 (a)(vi)(A) Confidential Disclosure to Review Teams)

1. The purpose of this Confidential Disclosure Framework is to identify the expected practices and processes for Review Teams convened under Section 4.6 of the Bylaws to request documentation from ICANN, including how ICANN is expected to respond to those requests, as well as appeals processes to challenge ICANN's actions in identifying materials as not appropriate for disclosure or not appropriate for inclusion within a Review Team's Report.
2. The Review Team may submit requests for information reasonably related to the scope of its mandate in order to inform the conduct of a Specific Review. Such requests may be submitted to ICANN by the leadership of the Review Team along with an identification of how the request is within the scope of the Review Team's mandate.
3. In response to a request for documentation, ICANN may:
  - (1) provide (or identify a reasonable timeframe for disclosure of) all documents and information that is appropriate for release;
  - (2) identify the/those portion(s) of the request for which information can be disclosed to part or all of the Review Team pursuant to an NDA; or
  - (3) identify the/those portion(s) of the request for which it would be inappropriate for ICANN to release information to part or all of the Review Team, even with an NDA in place.

If ICANN identifies any information falling into category (2) or (3) above, ICANN must provide a justification for such identification. ICANN shall be guided by the conditions set out in the then-applicable Documentary Information Disclosure Policy in making its determinations and shall in no case be more restrictive than the DIDP would allow in making determinations as to the documents that are appropriate for release in full or in part. ICANN shall also be guided by a goal of facilitating the work of the Review Team and encouraging access to information. For example, the application of the DIDP Defined Conditions for Nondisclosure would help guide a determination of whether a document, while not appropriate for public disclosure under the DIDP, could be shared under appropriate confidentiality designation and treatment in order to facilitate the work of the Review Team.

4. The Review Team is encouraged to notify the Board-appointed member of the Review Team about any issues or concerns regarding the classification of documents in advance of any escalation to the Ombudsman and/or the Reconsideration Process in order to assist in identifying a resolution in a timely manner. In the event that the Review Team believes that ICANN's classification of information into category (2) or (3) above is unfair, the Review Team may take that issue to the ICANN Ombudsman. In the event that the Review Team believes that ICANN's classification of information into category (2) or (3) above is in contradiction of ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies), or meets another ground for Reconsideration as set out at Section 4.2 of the ICANN Bylaws, the Review Team may file a Request for Reconsideration. Prior to initiating either the Ombudsman or Reconsideration Process, the Review Team is encouraged, but not required, to enter into a dialogue with ICANN to see if any issues or concerns can be resolved informally, including through agreement on disclosure of alternative information or documents.

5. In the event that ICANN identifies that there is information that could be released pursuant to an NDA, ICANN will maintain a publicly-available template of an NDA for this purpose at [INSERT]. While no person shall be required to enter into an NDA in order to serve on a Review Team, if any member of the Review Team chooses not to enter into an NDA, that member will be restricted from access that confidential material. Only Review Team members and Independent Experts shall be eligible to receive the requested information pursuant to an NDA. There may be situations where, due to information disclosed on a member's Disclosure of Interest form, such member may not be eligible to receive the confidential information. For example, if the information at issue is competitively sensitive information from a contracted party that ICANN is able to disclose under an NDA, it may not be appropriate to allow a Review Team member that has a relationship with a competitor to have access to that information.
6. To facilitate a Review Team's access to information, ICANN agrees to adhere to the following principles in identifying the manner of disclosure and the subsequent restrictions to apply to the confidential information. ICANN will uphold the following principles in identifying and maintaining the confidential information requested for the purpose of aiding in a Specific Review:
  - i. To the extent that sensitive portions of a document can be redacted, ICANN shall provide the document in redacted form instead of withholding the entirety of the document. The redacted information shall then be classified into Category (2) or (3) as set out in Clause 3 above;
  - ii. If the requested information is required to be withheld pursuant to an agreement with an external entity, ICANN will cooperate with that external entity to ascertain whether a limited release pursuant to an NDA can be negotiated and/or a summarized version of the requested information can be provided to the Review Team. External considerations may require modifications to the template NDA;
  - iii. If not all members of a Review Team elect to sign an NDA, ICANN will maintain a list of all persons eligible to receive confidential information;
  - iv. ICANN may work to identify technologies and mechanisms to make compliance with any confidentiality obligations easier, such as through controlled access electronic data sites.

ICANN may require any or all of the below:

- a. Confidential information is not to be distributed by email or stored electronically by Review Team members;
- b. Confidential information may be distributed by email or stored electronically by Review Team members that have signed an NDA, provided that such emails and/or documents carry "CONFIDENTIAL" markings and are not shared with anyone other Review Team members that are also subject to the NDA;
- c. Confidential information may only be shared in face-to-face meetings with those who have signed the NDA, in non-recorded circumstances, or in non-recorded Adobe Connect Room sessions;
- d. Confidential information may only be shared and/or discussed in closed Review Team member meetings among those who executed the NDA;
- e. High level summaries may be shared with broader Review Team members only if the content has been authorized by ICANN and such content is anonymized or sanitized to protect the confidentiality concerns;
- f. Any reference of confidential information in the Review Team Report or public mention (such as in the Review Team's public mailing list) must be approved by ICANN;

- g. Any other restriction or disclosure methods identified by ICANN.
- 7. For any information provided to a Review Team under Category (3) as set out in Clause 3 above, ICANN is also obligated to identify to the Review Team if the information is not for disclosure by the Review Team, either in its report or otherwise. For any information so designated, ICANN is committed to work with the Review Team to identify the appropriate public statements which can be made about the contents of those documents. If the Review Team is not satisfied with the resolution, then resort to the Ombudsman or the Reconsideration Process, as described in Section 4 above, is the appropriate next step. Prior to initiating either the Ombudsman or Reconsideration Process, the Review Team is encouraged, but not required, to enter into a dialogue with ICANN to see if any issues or concerns can be resolved informally.
- 8. REVIEW:
  - a. Upon the conclusion of a Specific Review, the Review Team shall provide inputs to ICANN Organization on the operation of the Confidential Disclosure Framework, including providing recommendations on process improvements and to promote iterative best practices.
  - b. The Confidential Disclosure Framework shall be jointly reviewed by the Review Teams and ICANN after being in operation for the initial twelve (12) months, and thereafter, shall be reviewed at least every fifth (5<sup>th</sup>) year, to align with the cycle of Specific Reviews. The purpose of the review is to confirm that the Confidential Disclosure Framework continues to meet the needs of Review Teams and ICANN in accordance with the Bylaws.
  - c. In the event that the Confidential Disclosure Framework is proposed to be modified during the conduct of any Specific Review in which a Review Team is still seeking information from ICANN Organization, the members of that Review Team must have an opportunity to review any proposed modifications and provide inputs prior to the revisions going into effect.