

Building Block b) (Purposes¹)

Staff support team comment:

Based on EPDP Team's categorization of use cases – will need to be reviewed. For example, for e, if RNH has provided consent there may not be a need to go through SSD?

EPDP Team noted that rec 1, purpose 2 was a placeholder and should be further reviewed in the context of phase 2 deliberations. Also consider the European Commission on this topic, in its 17 April 2019 letter submitted during the public comment period and the clarifying letter sent to ICANN org on 3 May 2019.

The EPDP Team recommends that requestors must be able to identify at a minimum from the following legitimate interests to request disclosure / access:

- a) Criminal Law enforcement/national or public security
- b) Non-LE investigations and civil claims
- c) Need for redacted data for a third party to contact registrant
- d) Consumer protection, abuse prevention, digital service provider (DSP) and network security
- e) Registered Name Holder consent or contract

With respect to the ICANN purpose for this disclosure, the EPDP Team recommends that: [TBD]

Comments / concerns / questions to be considered in relation to building block b):

- *Consider that legitimate interests cannot be based on the requestor but instead are based on the individual request. Consider replacing with the following instead: "The EPDP Team recommends that all requests must be sufficiently established, to the satisfaction of the controller, on a case by case basis, as having a valid legal basis".*
- *Need to clarify the underlying rationale for providing requestors with categories of legitimate interests from which to pick. Requestors should determine their own legitimate interests, and be allowed to submit them in their own words.*
- *Further consideration of the question of accreditation may clarify this issue. The enumerated list in Building Block b) will be required in order to implement an SSAD using existing web service technologies (e.g RDAP and the technologies suggested by the TSG).*
- *Consider referring to lawful basis instead of legitimate interest - Legitimate interest is one of several possible lawful bases for disclosure of personal data.*
- *Rec 1, purpose 2: If this is an ICANN purpose, why should EPDP Team consider this further? It presupposes that ICANN is the controller. Need to avoid conflating 3rd party purposes with ICANN's – disclosure does not need to be linked to ICANN's purposes but upon the establishment of a legitimate interest by the 3rd party.*

¹ Charter question a1