

Regarding Attorney-Client privilege:

Recommendation 15:

Where material subject to a DIDP request could potentially be withheld under attorney-client privilege, ICANN legal should review the material to determine whether its disclosure might be harmful, and should only invoke this privilege if the disclosure would be harmful to an ongoing or contemplated lawsuit or negotiation or similar process, or where its disclosure would reveal material provided in confidence by a third party, or would otherwise be subject to exceptions contained in the DIDP.

Regarding NDAs and open contracting:

Recommendation 16:

Wherever possible, ICANN's contracts should either be proactively disclosed or available for request under the DIDP. The DIDP should allow ICANN to withhold information subject to a non-disclosure agreement, however such agreements should only be entered into where the contracting party satisfies ICANN that it has a legitimate commercial reason for requesting the NDA, or where information contained therein would be subject to other exceptions within the DIDP (such as, for example, where the contract contains information whose disclosure would be harmful to the security and stability of the Internet).

Regarding the Duty to Document:

Recommendation 2:

The DIDP should include a documentation rule whereby, if significant elements of a decision-making process take place orally, or otherwise without a lasting paper-trail, the participants should be required to document the substance of the conversation, and include it alongside other documentation related to this decision-making process.