

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^[A1] whether any parts of the information are appropriate for release, including the scope of a potential waiver of the attorney-client privilege. 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. ^[A2]The DIDP should allow ICANN to withhold information it holds subject to ~~a~~ non-disclosure agreements, however such agreements should only be entered into where the contracting party presents 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^[A3] take place orally, or otherwise without being recorded in documentation, a lasting paper-trail, the

participants to that element of the decision-making process should be required to record in a document the substance of thate conversation, and maintain the documentation of that element as a part of the fuller record of that ~~include it alongside other documentation related to this~~ decision-making process.