

Response to Documentary Information Disclosure Policy Request

To: Lakshmi Venkataraman

Date: 27 January 2015

Re: Request No. 20141228-1-Ombudsman

Thank you for your Request for Information dated 26 December 2014 (the “Request”), which was submitted through the Internet Corporation for Assigned Names and Numbers’ (ICANN) Documentary Information Disclosure Policy (DIDP) on behalf of The Centre for Internet & Society (CIS) on 28 December 2014. For reference, a copy of your Request is attached to the email forwarding this Response.

Items Requested

Your Request seeks the disclosure of the following information:

- (i) A compilation of all the cases that have been decided by ICANN ombudsmen in the history of the organization.
- (ii) The details of the parties that are involved in the cases that have been decided by the ombudsmen.
- (iii) A description of the proceedings of the case, along with the party that won in each instance.

You also requested an explanation as to why there have been no Ombudsman reports since 2010 on the ICANN website.

Response

The Office of the ICANN Ombudsman and the Ombudsman’s scope of responsibility are established by Article V of the ICANN Bylaws. (*See* Bylaws, Art. V, at <https://www.icann.org/resources/pages/governance/bylaws-en#V>.) The Ombudsman is an independent and impartial neutral whose function is to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or an ICANN constituent body has treated them unfairly for matters which have not otherwise become the subject of the Reconsideration process or the Independent Review process. (*See id.*; *see also*, ICANN Ombudsman Framework at <https://www.icann.org/en/system/files/files/ombudsman-framework-26mar09-en.pdf>.) The purpose of the Ombudsman is to serve as an objective advocate for fairness, and ensure that the members of the ICANN community have been treated fairly by using conflict resolution tools such as negotiation, facilitation, and “shuttle diplomacy” to achieve these results. (*See* ICANN Ombudsman Framework at <https://www.icann.org/en/system/files/files/ombudsman-framework-26mar09-en.pdf>.)

The ICANN Ombudsman will receive and have jurisdiction over complaints of unfairness concerning:

- Decisions, actions, or inactions by one or more members of ICANN staff
- Decisions, actions, or inactions by the Board of Directors that may be inconsistent with the Articles of Incorporation or the Bylaws.
- Decisions, actions, or inactions by constituent bodies.

The Ombudsman does not have jurisdiction over complaints concerning:

- Internal administrative matters
- Personnel issues
- Issues relating to membership on the Board; or
- Issues relating to vendor/supplier relationships.

(See id.)

The Ombudsman reports only to ICANN's Board of Directors. Due to the very nature of the work of the Office of the Ombudsman, all matters brought before the Ombudsman shall be treated as confidential. The Ombudsman shall also take all reasonable steps necessary to preserve the privacy of, and to avoid harm to, those parties not involved in the complaint being investigated by the Ombudsman. *(See id.)*

As part of its commitment to transparency and confidentiality, ICANN makes available on its website information about its accountability mechanisms, including the Ombudsman process. The following information about the Ombudsman can be accessed through the Accountability Mechanisms page at

<https://www.icann.org/resources/pages/mechanisms-2014-03-20-en> and the Ombudsman page at <https://www.icann.org/resources/pages/accountability/ombudsman-en>.

- General information about the Ombudsman and the Ombudsman process (<https://www.icann.org/resources/pages/about-2012-02-25-en>; <https://www.icann.org/resources/pages/contact-2012-02-25-en>)
- The Ombudsman Framework (<https://www.icann.org/resources/pages/framework-2012-02-25-en>)
- Standards of Practice (<https://www.icann.org/resources/pages/odr-standards-of-practice-2012-02-25-en>)
- Ombudsman Annual Reports and Publications (<https://www.icann.org/resources/pages/reports-96-2012-02-25-en>)
- Speeches and Presentations (<https://www.icann.org/resources/pages/speeches-2012-02-25-en>)
- FAQs (<https://www.icann.org/resources/pages/questions-2012-02-25-en>)

Your Request seeks the disclosure of the following information:

- (i) A compilation of all the cases that have been decided by ICANN

- ombudsmen in the history of the organization.
- (ii) The details of the parties that are involved in the cases that have been decided by the ombudsmen.
 - (iii) A description of the proceedings of the case, along with the party that won in each instance.

As noted in the DIDP Guidelines available at <https://www.icann.org/resources/pages/didp-2012-02-25-en>, ICANN’s DIDP is intended to ensure that documents concerning ICANN’s operational activities, and within ICANN’s possession, custody, or control, are made available to the public unless there is a compelling reason for confidentiality. Your Request cuts against the confidentiality safeguards of the Ombudsman office. Indeed, ICANN Bylaws and the Ombudsman Framework obligates the Ombudsman to treat all matters brought before him as confidential and “to take reasonable steps necessary to preserve the privacy of, and to avoid harm to, those parties not involved in the complaint being investigated by the Ombudsman.” (See ICANN Ombudsman Framework at <https://www.icann.org/en/system/files/files/ombudsman-framework-26mar09-en.pdf>; see also, ICANN Bylaws at <https://www.icann.org/resources/pages/governance/bylaws-en#V>.) Disclosing details about the parties involved and the nature of the cases that have been decided by the Ombudsmen would not only compromise the confidentiality of the Ombudsman process but would also violate the ICANN Bylaws and the Ombudsman Framework. Thus, while ICANN does not maintain in the normal course of business documents containing a compilation of the information specified in Items (i) through (iii), to the extent that any documents responsive to your Request exists, such documents would not be appropriate for disclosure because the harm in disclosing the information outweighs the public interest in disclosing the information.

In accordance with the Bylaws and the Ombudsman Framework, the Ombudsman prepares an annual report to the Board of Directors. The Bylaws specify that the annual report must “appropriately deal[] with confidentiality obligations and concerns [and]...should include a description of any trends or common elements of complaints received during the period in question, as well as recommendations for steps that could be taken to minimize future complaints.” (Bylaws, Art. V, Sec. 5 at <https://www.icann.org/resources/pages/governance/bylaws-en#V>.) The Ombudsman’s Annual Reports for the fiscal years 2005 to 2014 are available through the Ombudsman Reports page at <https://www.icann.org/resources/pages/reports-96-2012-02-25-en>. These Reports contain information relevant to your Request.

Subject to the publicly available documents relevant to your Request, your Request is subject to the following DIDP Defined Conditions of Nondisclosure:

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors'

Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.

- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.
- Information requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; and (iii) complying with which is not feasible.

About DIDP

ICANN’s DIDP is limited to requests for information already in existence within ICANN that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, which is contained within the ICANN Accountability & Transparency: Framework and Principles please see <http://www.icann.org/en/about/transparency/didp>. ICANN makes every effort to be as responsive as possible to the entirety of your Request. As part of its accountability and transparency commitments, ICANN continually strives to provide as much information to the community as is reasonable. We encourage you to sign up for an account at MyICANN.org, through which you can receive daily updates regarding postings to the portions of ICANN's website that are of interest because as we continue to enhance our reporting mechanisms, reports will be posted for public access. We hope this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.