Response to Documentary Information Disclosure Policy Request

To: Edward Morris

Date: 14 August 2015

Re: Request No. 20150717-1

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Thank you for your Request for Information submitted on 17 July 2015 (the "Request"), seeking information under the Internet Corporation for Assigned Names and Numbers' (ICANN) Documentary Information Disclosure Policy (DIDP). As noted in conversation, though your Request is dated earlier, ICANN did not receive the Request until 17 July 2015. For reference, a copy of your Request is attached to the email forwarding this Response.

Items Requested

Your request seeks the following three categories of information:

1. A copy of the contract entered into between ICANN and Westlake Governance Limited retaining Westlake to conduct a review of the Generic Names Supporting Organization;

2. All documentation, reports, memos, analysis, correspondence, preparatory documents or any other information type not heretofore specified, both internal and external to ICANN and in it's possession, in any and all formats, form and media, regarding instructions by ICANN (staff, corporate and community) to Westlake, and responses received from and inquiries made to ICANN by Westlake, concerning the performance and duties of Westlake under the aforementioned contract. Included in this request are all representations made by ICANN (staff, corporate and community) to Westlake, outside of the normal public comment and working group processes that have already been made public, concerning the Review's scope and methodology, and Westlake Governance's responses thereof; and

3. All documentation, reports, memos, analysis, correspondence, preparatory documents or any other information type not heretofore specified, both internal and external to ICANN and in it's possession, in any and all formats, form and media, relating to remedies ICANN may have should the performance of Westlake Governance in performing the aforementioned independent review of the GNSO not be considered satisfactory.

Response

Under the ICANN Bylaws, the ICANN Board is obligated to cause a periodic review of the GNSO by an entity independent of the GNSO. After a detailed Request for Proposal (RFP) process https://www.icann.org/news/announcement-6b-2014-04-23-en), Westlake Governance was selected by ICANN to perform that review. The Project Overview

document provided in that RFP contains a description of the work expected to be performed during the review. There is a comprehensive wiki page on the GNSO Review, available at https://community.icann.org/display/GR2/GNSO+Review+2014+Home.

Before Westlake Governance was retained, a GNSO Review Working Party was formed to liaise between the GNSO, the independent examiner, and the Structural Improvements Committee (or SIC, now renamed the Organizational Effectiveness Committee), including providing inputs on the review criteria. Much of the work of the Working Party is accessible through the wiki, including meeting records and transcripts and an email archive (http://forum.icann.org/lists/gnso-review-dt/).

Items 1 and 3 of your Request seek the same documentation, as ICANN is not aware of any documentation outside of the contract that sets out or analyzes the "remedies ICANN may have should the performance of Westlake Governance in performing the aforementioned independent review of the GNSO not be considered satisfactory." Copied below is a portion of the statement of work to which Westlake Governance and ICANN mutually agreed in their contract:

1. The following shall be incorporated and added as additional Tasks and Requirements and/or Deliverables to be performed/provided by the Contractor:

   Contractor will conduct an examination of the GNSO's organizational effectiveness in accordance with the ICANN-provided objective and quantifiable criteria.

   ICANN will supply the criteria to be used in conducting the GNSO Review; these criteria include but are not limited to the following areas, to be applied to GNSO structure components (GNSO Council, GNSO Working Groups, GNSO Stakeholder Groups and Constituencies):

   - Achievement of mission, compliance with agreed upon rules and processes
   - Accountability and transparency to the public
   - Membership processes and participation
   - Structural support toward achievement of mission
   - Governance and management: effectiveness of execution
   - Quality and evaluation/measurement of outcomes
   - Communication
   - Effectiveness of implementation of prior review recommendations

2. Deliverables and milestones schedule should be revised accordingly as follows:

Activity	Dates
Start of engagement	23 June 2014
Working Text	9 February 2015
Draft Report v.1 Due	24 April 2015
Draft report posted for Public Comment	1 June – 20 July 2015
ICANN53 – discussion with Working Party and constituency groups	20 – 26 June 2015
Final Report Due	30 August 2015

ICANN and Westlake Governance's initial statement of work for the GNSO Review contained the exact same language defining the deliverables and criteria for the review, but contained a schedule for delivery in line with the initial schedule set out in the RFP. Because of a variety of factors, such as needing more time for the development and running of the 360 assessment and the interview process, the delivery schedule had to be refined.

Because ICANN is releasing the portion of the contract that pertain to the scoping of the GNSO Review and the work that Westlake Governance was contracted to perform in that regard, ICANN has determined that the public interest in disclosing the remainder of a commercial contract, containing commitments between two contracting entities, does not outweigh the harm that may be caused by such disclosure. As ICANN is responsible for monitoring the performance of its contracted parties for compliance with their agreements with ICANN, there is the potential for great harm to ICANN's vendor relationships in releasing contracts for public assessment of compliance and analysis of the detailed legal relationships. ICANN is, however, very interested in hearing from the community about specific concerns about vendor services that impact the community, so that ICANN can perform any investigation into allegations of non-compliance that may be warranted.

For item 2, ICANN is still reviewing internal documentation to determine if there are any non-public communications between ICANN and Westlake Governance about the Review's scope and methodology. ICANN will provide an update to this DIDP Response if documents are identified and are appropriate for disclosure under the DIDP. Because of the intense involvement of the Working Party in the conduct of the review, as suggested in your Request, there is already a significant amount of publicly available discussion on this topic, including within the Working Party archives, as well as within the transcripts of the numerous public sessions held on the GNSO Review. This information is all collected on the Review wiki section. For example, the 360 assessment methodology conversation occurred within the Working Party, after a proposed methodology was provided at http://forum.icann.org/lists/gnso-review-dt/pdfRju7fIJuHD.pdf. Records of Working Party meetings are available at https://community.icann.org/display/GR2/Working+Party+Meetings, and the community engagement sessions are collected at https://community.icann.org/display/GR2/Community+Engagement+Meetings.

Item 2, as written, is quite broad and could be seen to ask for all documents relating to communications between ICANN and Westlake Governance regarding the performance of the GNSO Review. In effect, this seeks nearly all documentation created by ICANN staff in support of the Review. As noted above, we are searching through our records to identify documents on scope and methodology, as we understand that to be the intent of the Request. If there are additional topics that are being sought through the Request, please provide an amended Request or clarification. While the public clearly has an interest in understanding the directed scope of the GNSO Review work (and we are still reviewing documents to identify those that might address that issue), that interest does not support or otherwise diminish the harm that requiring such a broad release could have on ICANN, its internal working processes and relationships with vendors.

The Request calls for documents that are 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 exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

- Confidential business information and/or internal policies and procedures.

- 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.

- Trade secrets and commercial and financial information not publicly disclosed by ICANN.

About DIDP

ICANN's DIDP is limited to requests for documentary 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 hope this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.