

EPDP Phase 2 Preliminary Recommendation #11: Disclosure Requirement

The EPDP Team recommends that the following requirements are applicable to Contracted Parties and subject to ICANN Compliance enforcement, as well as any automated responses provided by SSAD. For the avoidance of doubt, every response does not have to go through an enforcement procedure; the enforcement mechanism may, however, be triggered in the event of apparent misuse.

Contracted Parties and SSAD:

- a) MUST only disclose the data requested by the requestor;
- b) MUST return current data or a subset thereof in response to a request (no historic data);
- c) MUST process data in compliance with applicable law;
- d) MUST log requests;
- e) Where required by applicable law, MUST perform a balancing test before processing the data;
- f) MUST disclose to the Registered Name Holder (data subject), on reasonable request, confirmation of the processing of personal data relating to them, per applicable law;
- g) Where required by applicable law, MUST provide mechanism under which the data subject may exercise its right to erasure and any other applicable rights;
- h) MUST, in a concise, transparent, intelligible and easily accessible form, using clear and plain language, provide notice to data subjects of the types of entities/third parties which may process their data. Notwithstanding obligations on the Contracted Parties under applicable law, ICANN and the Contracted Parties will draft and agree upon a privacy policy for the SSAD and standard language (relating to the SSAD) to inform data subjects according to Art. 13 and 14 GDPR (or any other relevant obligations), to be presented to data subjects by the Registrars. This will contain information on potential recipients of non-public registration data including, but not limited to the recipients listed in Preliminary Recommendation #4 Third Party Purposes / Justifications, as legally permissible. Information duties according to applicable laws may apply additionally, but the information referenced above must be contained as a minimum.
- i) Confidentiality of disclosure requests – Upon a request from a data subject the exact processing activities of their data within the SSAD, SHOULD be disclosed as soon as reasonably feasible. However the nature of legal investigations or procedures MAY require SSAD and/or the disclosing entity keep the nature or existence of these requests confidential from the data subject. Confidential requests can be disclosed to data subjects in cooperation with the requesting authority, [and] [or] in accordance with the data subject's rights under applicable law.^[1]

[1] The EPDP Team may reconsider this requirement once there is clarity on who will be the entity disclosing the data.