

Response to Documentary Information Disclosure Policy Request

To: Mike Rodenbaugh on behalf of GCCIX, WLL

Date: 8 June 2016

Re: Request No. 20160509-1

Thank you for your Request for Information dated 4 May 2016, which was submitted on 9 May 2016 (Request) through the Internet Corporation for Assigned Names and Numbers' (ICANN's) Documentary Information Disclosure Policy (DIDP), on behalf of GCCIX, WLL (GCCIX), and which was received by ICANN on 9 May 2016. We note that because your Request was not submitted through DIDP@icann.org as a standalone DIDP request, the Request will not be published separately. Rather, your Request is set forth verbatim below and this Response will be published as a Request and Response to DIDP Request No. 20160509-1.

Items Requested

Your Request seeks the following:

1. All documents relating or referring to the secret Beijing meetings between GAC and ICANN Board and Staff relating to the .GCC application.
2. All documents relating or referring to any discussion of, and/or showing any reason for, the GAC Advice in the Beijing Communiqué that the .GCC application be rejected.
3. All documents relating or referring to any discussion of, and/or showing any reason for, the Board's acceptance of the GAC Advice in the Beijing Communiqué that the .GCC application be rejected.
4. All documents relating or referring to any discussion of, and/or showing any reason for, the Board's decision to terminate the pending LRO which was fully briefed by the CCASG [Cooperation Council for Arab States of the Gulf] and Applicant.
5. All documents relating or referring to the GAC and/or Board's consideration of the briefing and/or evidence submitted by the CCASG and/or Applicant in the LRO brought by CCASG against Applicant.
6. All documents relating or referring to the Board's consideration of IGO name protection at the top level, including without limitation the purported CCASG acronym "GCC".
7. All documents relating or referring to the "small group" referenced in ICANN Staff's March 16, 2016 PDP Update, including without limitation documents identifying the members of the small group and all documents relating or referring to the mandate and/or meetings or deliberations of the small group.

8. All documents relating or referring to the Board's efforts to reconcile the bare GAC Advice to reject the .GCC application, and the GNSO's unanimous, thoroughly developed and reasoned advice that purported IGO acronyms should not be protected at the top level.

Response

A principal element of ICANN's approach to transparency and information disclosure is the commitment to make publicly available a comprehensive set of materials concerning ICANN's operational activities. In addition to ICANN's practice of making many documents public as a matter of course, the DIDP is "intended to ensure that information contained in 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." (See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.) A threshold consideration in responding to a DIDP request is whether the documents requested are in ICANN's possession, custody or control. Under the DIDP Policy, where the responsive document does not exist, ICANN shall not be required to create or compile summaries of any documented information. (See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.)

Item Nos. 1 through 3: Item No. 1 requests documents relating to "the secret Beijing meetings between GAC and ICANN Board and Staff relating to the .GCC application." It is unclear what "secret meetings" the Requester is referencing in Item No. 1. ICANN is not aware of any "secret meetings" between the GAC and the ICANN Board or staff relating to the .GCC application. The ICANN Board and the GAC conducted an open and public meeting at ICANN56 in Beijing. The transcript of that meeting as well as the entire schedule for ICANN56 is available on the ICANN meetings site, available here <http://archive.icann.org/en/meetings/beijing2013/>.

Item No. 2 requests documents relating to the "reason for" the GAC advice in the Beijing Communiqué. The GAC issues its advice through communiqués such as the Beijing Communiqué it issued on 11 April 2013, which states: "The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on [t]he application for .gcc (application number: 1-1936-2101)." (Beijing Communiqué, available at <https://www.icann.org/en/system/files/correspondence/gac-to-board-11apr13-en.pdf>.) Previously, the GAC had issued an Early Warning on 20 November 2012, stating that the governments of Bahrain, Oman, Qatar, and UAE, and the Gulf Cooperation Council expressed their "serious concerns toward '.GCC' new gTLD application made by GCCIX WLL specifically in two areas": (a) that the applied-for gTLD exactly matches a name of an Intergovernmental Organization; and (b) there is a lack of community involvement and support for the .GCC application. The Early Warning further stated that: "the governments of Bahrain, Oman, Qatar and the UAE and the Gulf Cooperation Council would like to **raise its disapproval and non-endorsement** to this application and request the ICANN and the new gTLD program evaluators to not approve this application." (See <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings> (emphasis in original).)

See the GAC Early Warning notice for the rationale for the stated concerns at <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings>.

Item No. 3 requests documents relating to the Board's acceptance of the GAC advice. Upon receipt of the Beijing Communiqué, ICANN published it, thereby triggering the response period (<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>). The Requester responded to the GAC advice. (See Summary and Analysis of Applicant Responses to GAC Advice available at <https://www.icann.org/en/groups/board/documents/briefing-materials-3-04jun13-en.pdf>.) On 4 June 2013, the NGPC adopted the NGPC Scorecard, which contained the NGPC's response to the GAC advice found in the Beijing Communiqué. With respect to the .GCC string, the NGPC Scorecard stated in pertinent part:

The NGPC accepts [the GAC] advice. The [Guidebook] provides that if “GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.”

The NGPC's 4 June 2013 resolution (Resolution 2013.06.04.NG01) contains a lengthy rationale stating, among other things, why (and under what authority) the NGPC was addressing the GAC advice, which stakeholders were consulted, what concern or issues were raised by the community, what significant materials the Board reviewed as part of its deliberations, what factors the Board found to be significant, and whether there were positive or negative community impacts. (See Resolution 2013.06.04.NG01 at <https://www.icann.org/resources/board-material/resolutions-new-gtld-2013-06-04-en>.)

The NGPC meeting minutes for the 4 June 2013 meeting are available at <https://www.icann.org/resources/board-material/minutes-2013-05-18-en>; and the NGPC briefing materials for the 4 June 2013 meeting are available at <https://www.icann.org/resources/pages/2013-51-2012-02-25-en>.

To the extent there are other documents that may be responsive to Item Nos. 1 through 3, they are subject to the following DIDP Defined Conditions for Nondisclosure:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.
- 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.

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

Item Nos. 4 through 5 request documents relating to the termination of the Legal Rights Objection (LRO) that the Cooperation Council for the Arab States of the Gulf (CCASG) filed against the .GCC application, and “the GAC and/or Board’s consideration” of the briefing and/or evidence supporting or opposing the LRO. As was explained in the BGC Recommendation on Reconsideration Request 13-17 and the NGPC’s adoption of the BGC Recommendation (see <https://www.icann.org/resources/pages/13-17-2014-02-13-en>), the CCASG filed an LRO against the .GCC application on 13 March 2013 with the WIPO Arbitration and Mediation Center (WIPO), the third-party provider selected to handle legal rights objections under ICANN’s New gTLD Program. The Requester responded on 15 May 2013. While the LRO was pending, the GAC issued the Beijing Communiqué (explained in detail above), with consensus GAC advice that ICANN not proceed with the application for the .GCC string. As Christine Willett (then-Vice President, gTLD Operations) explained in her letter to the Requester on 5 September 2013 (which the Requester attached as an exhibit to its Reconsideration Request 13-17 regarding this same topic, available at <https://www.icann.org/resources/pages/13-17-2014-02-13-en>):

Module 3 of the AGB provides the objection procedures for applications, and provides for two types of mechanisms that may affect an application’s ability to continue to move forward: (1) GAC advice, and (2) the dispute resolution procedure. Applicants are on notice that the GAC may provide advice directly to the ICANN Board on any application as provided in the AGB. The GAC’s objection to your application is separate and distinct from the Legal Rights Objection filed by CCASG. While I acknowledge your concern about the Legal Rights Objection to your application, the NGPC had an obligation to consider the GAC’s advice and decided not to act inconsistently with the advice. Please be advised that the WIPO proceeding for the Legal Rights Objection is not moving forward based on the NGPC’s action on 4 June 2013.

The termination of the CCASG’s LRO against the .GCC application is noted on the WIPO webpage, under the heading Legal Rights Objection Cases, available here <http://www.wipo.int/amc/en/domains/lro/>; and is noted on the new gTLD microsite, available here <https://newgtlds.icann.org/en/program-status/odr/determination>. Any correspondence between WIPO and the parties to the LRO that may relate to the termination of the LRO is: (a) confidential as between WIPO and the relevant parties; and (b) already available to the Requester since the Requester was a party to the LRO.

With respect to Item No. 5, to the extent that the Requester included any documents relevant to the LRO as exhibits to its Reconsideration Request 13-17, the BGC and the NGPC reviewed such documents in the course of making their recommendation and determination on Reconsideration Request 13-17. As noted above, Reconsideration Request 13-17 and its exhibits, a letter from WIPO to the BGC, the BGC's Recommendation on Request 13-17, and the NGPC's adoption of the BGC's Recommendation are available at <https://www.icann.org/resources/pages/13-17-2014-02-13-en>. ICANN makes no representations regarding what the GAC did or did not review with respect to the briefing and/or evidence supporting or opposing the LRO.

To the extent there are other documents that may be responsive to Item Nos. 4 through 5, they are subject to the following DIDP Defined Conditions for 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.
- Confidential business information and/or internal policies and procedures.

Item Nos. 6 through 8: Item Nos. 6-7 request documents relating to “the Board’s consideration of IGO name protection at the top level,” and the members and deliberations of the IGO “small group.” Item No. 8, as written, requests documents relating to the Board’s efforts to reconcile “the bare GAC Advice to reject the .GCC application,” and the GNSO policy recommendations regarding IGO protections. This request seems to conflate two separate issuances of GAC advice—one being the GAC consensus advice (provided in the Beijing Communiqué) that the .GCC application should not proceed; and the other being GAC advice relating to IGO protections in general at the top and second level. As such, the response provided herein to Item No. 8 relates to the Board’s efforts to reconcile the inconsistencies between the GAC advice and the GNSO policy recommendations regarding IGO protections.

Issues related to whether certain international organizations such as International Governmental Organizations (IGOs), including the Red Cross/Red Crescent Movement (RCRC) and the International Olympic Committee (IOC), should receive special protection for their names at the top level and second level in new gTLDs have been raised throughout the development of the New gTLD Program. In order to explore the issue in detail, the ICANN Board requested policy advice from the GNSO Council. The

scope of organizations was expanded to also generally consider all International Non-Governmental Organizations (INGOs). Advice or other commentary issued by the GAC relating to IGO and INGO names is available on the GAC's website at <https://gacweb.icann.org/display/GACADV/IGO+and+INGO+Names>. The Board's consideration of GAC advice relating to IGO protections is available through the Board and NGPC resolutions relating to each such instance of GAC advice; relevant meeting minutes, and applicable Board briefing materials for these meetings are publicly available at <https://www.icann.org/resources/pages/2016-board-meetings>. In addition, the NGPC posted a GAC Advice Scorecard at <https://www.icann.org/en/system/files/files/gac-advice-scorecard-07oct15-en.pdf>, which is a compilation of all GAC advice issued between April 2013 and June 2015 along with related actions taken by the NGPC.

Contemporaneously, the GNSO initiated a Policy Development Process (PDP), in October 2012, to evaluate whether there is a need for special protections at the top level and second level in all gTLDs for the names and acronyms of IGOs and INGOs; and, if so, to develop policy recommendations for such protections (PDP Working Group). The PDP Working Group issued its Final Report in November 2013, following which the GNSO Council adopted all the consensus recommendations from its PDP Working Group regarding protections at the top and second level in all gTLDs for the names and acronyms of certain IGOs and INGOs. The development of the PDP Working Group, the Final Report, the GNSO's resolution adopting the recommendations, and additional relevant information are publicly available on the GNSO webpage at <http://gnso.icann.org/en/group-activities/active/igo-ingo>.

On 30 April 2014, the Board adopted the GNSO's recommendations that are not inconsistent with GAC advice received on the topic and requested additional time to consider the remaining recommendations (which include those relating to IGO acronym protections). The Board also resolved to facilitate dialogue between the GAC, GNSO, and other affected parties to resolve the remaining differences. The Board's 30 April 2014 resolution, meeting minutes, and briefing materials are available online at <https://www.icann.org/resources/pages/2014-2015-01-28-en>. In June 2014, the NGPC requested that the GNSO Council consider amending its remaining policy recommendations with respect to the nature and duration of protection for IGO acronyms, the full names of the entities making up the international Red Cross movement, and the names of 189 national Red Cross societies. (See <http://gnso.icann.org/en/correspondence/chalaby-to-robinson-16jun14-en.pdf>.) The GNSO Council responded to the NGPC's request in October 2014 seeking further clarification (see <http://gnso.icann.org/en/correspondence/robinson-to-chalaby-disspain-07oct14-en.pdf>), and in January 2015, the NGPC replied and indicated that discussions remain ongoing (see <http://gnso.icann.org/en/correspondence/chalaby-to-robinson-15jan15-en.pdf>).

In the meantime, at the ICANN meeting in Los Angeles in October 2014, the NGPC resolved to provide temporary protections for the names of the entities of the Red Cross and the 189 national societies on an interim basis "while the GAC, GNSO, Board, and ICANN community continue to actively work on resolving the differences in the

advice from the GAC and the GNSO policy recommendations on the scope of protections for the RCRC names.” (See <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.d>). In addition, the IGO “small group” was formed as a result of discussions between the NGPC and the GAC at the Los Angeles meeting, where representatives of various IGOs were observers. The informal “small group” serves as a forum for discussions regarding the protection of IGO identifiers in an effort to resolve the conflicts between the GNSO policy recommendations and the GAC advice, and consists of volunteer representatives of various IGOs, representatives of the ICANN Board, and representatives of the GAC. Once the GNSO Council receives further information from the Board and delivery of the IGO small group final proposal, the GNSO Council will begin to consider whether or not to proceed with possible amendments to its adopted policy recommendations, pursuant to the GNSO Operating Procedures. Information regarding the progress of the IGO small group and the Board’s efforts to reconcile the inconsistencies between the GAC advice and the GNSO policy recommendations regarding IGO protections is publicly available at the following links:

- GAC Buenos Aires Communiqué (June 2015):
<https://gacweb.icann.org/download/attachments/39059707/GAC%20Buenos%20Aires%2053%20Communique.pdf?version=1&modificationDate=1436283677000&api=v2>
- GAC Dublin Communiqué (October 2015):
<https://gacweb.icann.org/download/attachments/40632516/GAC%20Dublin%2054%20Communique.pdf?version=1&modificationDate=1445598555000&api=v2>
- April 2016 GNSO PDP Update – Protection of Certain International Organization Names in all gTLDs:
<https://gacweb.icann.org/display/gacweb/Early+Engagement+Policy+Document+-+IGO+INGO>
- Prior GNSO PDP Updates - Protection of Certain International Organization Names in all gTLDs, available by month at:
<https://gacweb.icann.org/display/gacweb/Archives+-+Early+GAC+engagement+in+GNSO+and+ccNSO+PDPs>
- Correspondence regarding the IGO small group and the Board’s efforts to reconcile the GAC advice and the GNSO policy recommendations:
 - 20 March 2014 email from the NGPC to the GNSO enclosing a proposal for dealing with GAC advice on IGO acronyms:
<http://gns0.icann.org/mailling-lists/archives/council/msg15906.html>
 - 20 March 2014 letter from the NGPC to the GNSO:
<http://gns0.icann.org/en/correspondence/chalaby-to-robinson-20mar14-en.pdf>
 - 6 March 2014 letter from the GAC to the NGPC:
https://gacweb.icann.org/download/attachments/27492514/Letter%20from%20Heather%20Dryden%20to%20Cherine%20Chalaby%20re%20IGO%20Protection_20140306%20%281%29.pdf?version=1&modificationDate=1441637008000&api=v2

- 16 June 2014 letter from the NGPC to the GNSO:
<http://gnso.icann.org/en/correspondence/chalaby-to-robinson-16jun14-en.pdf>
- 25 June 2014 letter from the GNSO to the GAC:
<http://gnso.icann.org/en/correspondence/robinson-to-dryden-25jun14-en.pdf>
- 24 July 2014 letter from the NGPC to the GNSO:
<http://gnso.icann.org/en/correspondence/chalaby-to-robinson-24jul14-en.pdf>
- 7 October 2014 letter from the GNSO to the NGPC:
<http://gnso.icann.org/en/correspondence/robinson-to-chalaby-disspain-07oct14-en.pdf>
- 12 December 2014 email from GNSO-GAC Liaison to the IGO-INGO Curative Rights Working Group regarding questions to be addressed by the IGO small group: <http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2014-December/000223.html>
- 15 January 2015 letter from the NGPC to the GNSO:
<http://gnso.icann.org/en/correspondence/chalaby-to-robinson-15jan15-en.pdf>
- 16 January 2015 IGO small group response to the GNSO PDP Working Group questions:
<https://gacweb.icann.org/download/attachments/27492514/IGO%20small%20group%20response%20-%202019%20Jan%20%285%29.pdf?version=1&modificationDate=1425940694000&api=v2>
- 19 January 2015 email enclosing the IGO small group's response to the IGO-INGO Curative Rights Working Group's list of questions:
<http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2015-January/000245.html>
- 22 January 2015 letter from the NGPC to the GAC Chair:
<https://gacweb.icann.org/download/attachments/27492514/chalaby-to-schneider-22jan15-en.pdf?version=1&modificationDate=1425597236000&api=v2>
- 3 February 2015 letter from the IGO group to the GAC Chair:
<https://gacweb.icann.org/download/attachments/27492514/Letter%20to%20Thomas%20Schneider-OECD.pdf?version=1&modificationDate=1425581746000&api=v2>
- 20 July 2015 letter from OECD Secretary General to then-ICANN CEO Fadi Chehade:
<https://www.icann.org/en/system/files/correspondence/gurria-to-chehade-20jul15-en.pdf>

To the extent there are other documents that may be responsive to Item Nos. 6 through 8, they are subject to the following DIDP Defined Conditions for Nondisclosure:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will

be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.

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

Notwithstanding the applicable Defined Conditions of Nondisclosure identified in this Response, ICANN also evaluated the documents subject to these conditions to determine if the public interest in disclosing them outweighs the harm that may be caused by such disclosure. ICANN has determined that there are no particular circumstances for which the public interest in disclosing the information outweighs the harm that may be caused by the requested disclosure.

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, 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.