

Access to Information Appeals Board Decision

Case Number AI6479-A

Documents concerning amendments to the Tanzanian Statistics Act

Decision dated September 4, 2020

Decision of the AI Appeals Board

1. The Access to Information Appeals Board (the AI Appeals Board or AIAB) has reviewed the application for appeal that was filed with the World Bank on July 17, 2020. The Requester asked the AIAB to look into the “unreasonable delay” by the Bank’s Access to Information Committee (AIC) in making a decision on whether to release records that he had requested in July 2019. The AIC has now issued a decision on July 29 on the release of documents corresponding to the original request made, rendering the appeal substantively moot. However, in dismissing the appeal application on procedural grounds, we find the Bank fell short of what is required by its own policies and procedures in communicating with the Requester. The reasons for our decision are set out below, along with the AI Appeals Board’s observations about the case.

Background of Initial Request, Denial, and First Appeal

2. On July 9, 2019, the Access to Information (AI) team of the World Bank (WB or Bank) received a request for:

“... all World Bank documents concerning amendments to the Tanzanian Statistics Act between April 1, 2018, and July 8, 2019. This request should be interpreted broadly and should include communications to and from the country office in Tanzania to WB headquarters and all correspondence on this topic with the Tanzanian government.”
3. The Bank denied the request and the Requester timely appealed the denial to the Access to Information Committee (AIC) in September 2019. Having received no substantive response by February 2020, the Requester appealed to the AI Appeals Board on the basis that the AIC was “acting in contravention of the AI Policy by failing to respond in a timely manner to my appeal made five months ago.” He questioned whether the delay in response was justified. He asked the AIAB to “seek some quantitative definition of this supposed burden” and to find out “whether the Bank has allotted adequate resources to handle the request and the appeal.”
4. The [decision by the Board dated March 18, 2020](#), sets out the details of the initial request, the Bank’s actions, correspondence between the Bank and the Requester, and the Requester’s appeal to the AIAB.

5. The decision by the Board in March 2020 was that it could not admit that appeal on procedural grounds: the responsive documents were being processed for review by the Access to Information Committee. As the AIC had not yet made a substantive decision about what information would or would not be released, the AIAB determined that it did not have the authority under the Bank's Access of Information Policy (AI Policy) to hear the appeal.
6. The AIAB decision in March 2020 went on to state:

“We note that although the AIAB's quite narrow authority is contingent upon the AIC having made a decision about disclosure, the AIAB might properly intervene in a case where there has been both an unreasonable delay and the Bank has not demonstrated its due diligence in locating and reviewing a large number of documents. Here, however, the Bank has made good faith assurances to the AIAB that the business unit and the AIC Secretariat are actively working on the request.”

7. The AIAB ultimately concluded that it had concerns with how the request was handled and the minimal nature of communications to the Requester:

“The written communications with the Requester failed to provide even minimal information about the nature and volume of the responsive records. No one attempted to talk with the Requester at any point in the process. Better communications would go some way towards helping the Requester understand what the Bank is doing to comply with its AI Policy and why it will take more time still, especially given that the request was made in July 2019 and the appeal in September 2019.”

Arguments on second appeal to AIAB

8. By email dated July 17, 2020, the Requester appealed again to the AIAB, asking it to investigate the “unreasonable delay” in getting a reply to his pending request: “This far exceeds the recommended response times in the Access to Information Policy and constitutes a violation the Access to Information Policy.” He went on to state: “The Board should lay out own procedural guidelines for examining delays, including the relevant questions. The Board should set clear standards for when it will approve a delay and what constitutes an unreasonable delay.”

AIC's substantive response in July 2020

9. On [July 29, the AIC issued its decision](#) to uphold the Bank's denial of access to most of the responsive documents and to reverse the Bank's decision to deny public access to a few documents. On August 1, the Bank advised the AI Appeals Board of the Requester's July 17th appeal and the AIC's subsequent decision in relation to his original request. As the AIC decision states (p. 8, para. 26), the Requester now could appeal the AIC's decision to deny public access to information.

Admission of the appeal

10. The Bank's AI Policy, Sec. III B(8)(b) sets out a two-stage appeal process. The Requester in this case had appealed the initial denial of access to the AIC and then, having not yet received a substantive response from the AIC, appealed to the AIAB.
11. At the second appeals stage, the AIAB must look at whether the appeal is timely; establishes a *prima facie* case that the Bank has violated the AI Policy by "improperly or unreasonably restricting access to information that it would normally disclose under the Policy;" and involves a matter that the AIAB "has authority to consider." [See AIAB Operating Procedures, Sec. III A(2)(a)-(c)].
12. The AIAB finds the current appeal application to have made a *prima facie* case for a failure to comply with Bank Directive/Procedure, in light of the lack of sufficiently detailed communication in responding to his appeal. [See AI Policy, Sec. III B(8)(b)(i); AI Directive/Procedure, Sec. III D(1)(c): the AIC must make "its best efforts to reach a decision on appeals within 45 working days of receiving an appeal (delays are communicated in writing to the requester)".]
13. The AIAB's authority to hear the appeal in this case, however, is lacking in that at the time of the appeal the AIC had not yet made an initial decision to grant or deny access to documents. [See AI Policy, Sec. III B(8)(b)(ii); AIAB Operating Procedures, Sec. III A(2)(a)(c)(i)]. It is for that reason—that the AIC had not yet made a decision—that the AIAB concludes it cannot admit the application for appeal.

AI Appeals Board Further Deliberations and Observations

14. It seems to us that there is an unfortunate lacuna in the Bank's AI Policy and its accompanying, implementing procedures that could undermine the purpose and spirit of the Policy. See AI Policy, Sec. III A, Guiding Principles (including "[p]roviding clear procedures for making information available" and "[r]ecognizing requesters' right to an appeals process"). As things stand, if the AIC were to delay reaching a decision indefinitely, the Requester would be left without recourse: On the face of the AI Policy [Sec. III B(8)(b)(ii)] and the AIAB Operating Procedures [Sec. III A(1) and (2)(a)-(c)], the Requester would not be able to appeal to the AIAB because the AIAB would lack authority because the AIC had failed to take a decision. In other words, the requester perpetually encounters a "Catch-22" result.
15. The AIAB once again has concerns about how the request was handled and about the lack of meaningful, open and frank communication with the Requester during the months that the Bank was re-processing the responsive documents (i.e., in the four months from the date of our first decision in March 2020 until July 2020).

AI Appeals Board Findings

16. The AIAB does not have authority to determine this appeal. Hence, we find that the appeal should not be admitted.
17. In any case, we find that the Requester's appeal of July 17, 2020, has been overtaken by the substantive response of the AIC dated July 29, 2020. The AIAB has just learned that a new appeal has in fact been filed. That appeal application will be addressed in a separate decision once the AIAB has an opportunity to address it.
18. The AI Appeals Board's decision is final.