

AIC Decision on appeal #81

CASE NUMBER AI7128 SYSTEMATIC TRACKING OF EXCHANGES IN PROCUREMENT (STEP) (Decision dated April 28, 2021)

Summary of Decision

- The Access to Information Committee (“AIC”) found that the Request for consideration under appeal is for:
 - (a) certain publicly available information, i.e., rule governing the use of STEP;
 - (b) certain non-existent information, i.e., guidelines and rules on the creation of STEP, and guidelines on the use of STEP;
 - (c) certain information that is not readily available and would require the Bank to create or collate, which is refused as a request, i.e., a spreadsheet based on information in STEP;
 - (d) accessing a Bank owned information technology (IT) application, i.e., access to the “STEP database”, which is an internal state-of-the-art custom-developed IT application based on a web-faced system (or interface) that consolidates fragmented procurement processes and, thus, is actually a request to access an IT application and not a request to access *information*; and
 - (e) certain information that is properly and reasonably restricted by:
 - (i) the *Deliberative Information* exception, i.e., a part of the restricted portion of information contained in STEP; and
 - (ii) the Bank’s exercise of prerogative to restrict, i.e., the contracts of African COVID-19 Bank financed projects.
- **Violation of policy.** Pursuant to the AIC’s mandate under appeals, the AIC solely considered the portion of the Request regarding *information* in the Bank’s possession for which the Bank denied public access (i.e., subpara. (e) above). The AIC found that the Bank properly and reasonably restricted that part of the Requested Information from public access. For this reason, the AIC decided that there is no violation of policy. Based on the above, the AIC upholds the Bank’s decision to deny public access to that part of the Requested Information.
- The portions of the Request referred to in subparas. (a) through (d) above are dismissed for appealing matters that the AIC does not have authority to consider (*see* Bank Directive/Procedure: Access to Information Directive/Procedure, at Section III.D.1.a.(iii)).

The Decision

Facts

1. On August 11, 2020, the World Bank (“Bank”) received a public access request (“Request”) seeking access to the following, in relevant part (verbatim):

(...)

Representations made July 25 by World Bank officials indicate that it has "*records*" of more than 300 such *contracts*.

I request:

a. a description of the database about these *records*

b. the *information contained in the records*

The information on the website is clearly not the “*records*” referred to by Bank officials.

(...)

The World Bank has publicly disclosed *information about* only 14 percent of the *contracts* signed by African governments to fight Covid-19 with Bank funds, (...) the Bank’s website reports the existence of only 41 contracts by 26 African countries as of July 23.

However, there actually are “far more” *contract awards*, “over 300 as per our records,”

(...)

In this new request I am seeking the *records* the Bank clearly has, as evidenced by the reference to “over 300 as per our *records*.”

If these are contained in a database or spreadsheet, I request access to that spreadsheet.

I also request the name of the record system, which department is responsible for it, and the guidelines and rules governing its creation and use.

(...)

That the Bank is not obliged by its policies to publish *information about the contracts* does not mean they

(...)

(“Requested Information”, emphasis added).

2. On the same day, i.e., August 11, 2020, the Bank consulted the responsible business unit to identify and locate the Requested Information. The business unit completed its due diligence and offered its views on November 2, 2020.

3. On November 6, 2020, the Bank issued its decision which considered the Request fulfilled in part and denied in part by the *Deliberative Information and Corporate Administrative Matters* exceptions under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“AI Policy”). Specifically, the Bank’s decision:

- (a) referred the requester to publicly available information on contract awards with respect to the broad reference to “300 as per our records” (see [Projects and Operations](#));
- (b) provided the name of the record system used by the Bank to plan and track procurement activities under Bank financed projects, i.e., Systematic Tracking of Exchanges in Procurement (STEP), and noted which business unit is responsible for STEP, namely the Operations Policy and Country Services (OPCS) Vice Presidency;
- (c) briefly described STEP as a “system [that] helps the World Bank and Borrowers plan and track procurement activities under Bank-financed projects, generating data for the Bank’s oversight purposes, and supporting borrowers in implementing the [Procurement Regulations](#) that apply to Bank financed projects”;
- (d) noted that access to STEP is limited to the Bank and Borrowers and is restricted by the *Deliberative Information and Corporate Administrative Matters* exceptions under the AI Policy; and
- (e) noted that producing a spreadsheet would require the Bank to create, develop, or collate information or data. As such, this part of the Request was considered unreasonable and, thus, the Bank refused this portion of the Request.

4. On December 7, 2020, the AIC, through its secretariat (“AIC Secretariat”), received an application (“Application”) appealing the Bank’s decision on the Request by alleging that the Bank violated the AI Policy. The Application:

- (a) recognized that the Bank provided initial and basic information on the description of the database, as well as the name of the “record system” and which department is responsible for such system (see para. 3(b) and (c) above);
- (b) reiterated the portions of the Request seeking access to the:
 - (i) guidelines and rules governing the creation and use of STEP;
 - (ii) “STEP database”; and
 - (iii) contracts of African COVID-19 Bank financed projects; and
- (c) alternatively to accessing the “STEP database”, “if these are contained in a database or spreadsheet”, the requester sought access “to that spreadsheet” listing the contracts of African COVID-19 Bank financed projects.

5. On December 14, 2020, the AIC Secretariat consulted the responsible business unit to seek its views on the possible disclosure of the Requested Information in light of the Application.
6. On January 8, 2021, the responsible business unit offered its views on the possible disclosure of the Requested Information in light of the Application.
7. On January 27, 2021, and on February 24, 2021, the AIC held its regular meetings. Due to extensive discussions on other matters before the AIC, the AIC decided to consider the appeal at its next regular meeting.
8. On March 31, 2021, the AIC held its regular meeting and discussed the Application under this appeal.

Findings and Related Decisions

9. In reviewing the Application in accordance with the AI Policy, the AIC considered:
 - (a) the Request;
 - (b) the Bank's response to the Request and initial denial of access to part of the Requested Information;
 - (c) the Application and the grounds for appeal;
 - (d) input from the relevant business unit;
 - (e) the nature of the Requested Information;
 - (f) whether the *Deliberative Information* and the *Corporate Administrative Matters* exceptions and/or any other exception(s) under the AI Policy justifies the Bank's initial denial of access to part of the Requested Information and/or sufficiently protects the specific interests that could be harmed if part of the Requested Information is disclosed;
 - (g) the Bank's exercise of its prerogative to restrict access to part of the Requested Information; and
 - (h) the scope of the AI Policy and the AIC's mandate under appeals.

Preliminary Matters

Scope of the Request

10. Upon reviewing the documents of record, the AIC found that, in this case, the Request lacks sufficient clarity for the Bank to determine whether the terms “records” and “over 300 as per our records” used throughout the Request mean “contract awards”, the “contracts” themselves, or merely “information about the contracts”. Nevertheless, for the avoidance of doubt and in the spirit of the AI Policy, the AIC considered the information as referred to in the Application and summarized in paragraph 4 above as the most comprehensive manner in which to understand the Request.

Public and Non-Existent Information

11. The AIC considered the portion of the Request seeking access to “guidelines and rules governing” both the creation and use of STEP (see para. 4(b)(i) above). The AIC found that STEP was adopted on July 1, 2016, together with the Procurement Framework and Regulations as the Bank procurement planning and tracking tool described in and governed by paragraph 5.9 of the [World Bank Procurement Regulations for IPF Borrowers](#) (“Bank’s Procurement Regulations”) as follows:¹

Unless otherwise agreed with the Bank in the Legal Agreement, *the Borrower shall use the Bank’s online procurement planning and tracking tools to record all procurement actions under IPF operations, including preparing, updating and clearing its Procurement Plan, and seeking and receiving the Bank’s review and No-objection to procurement actions as required.* (emphasis added)

12. The AIC found that paragraph 5.9 of the [Bank’s Procurement Regulations](#) is the sole piece of information responsive to the portion of the Request seeking access to “the (...) rules governing” the use of STEP. The AIC recognizes that the specific provision of the Bank’s Procurement Regulations was not mentioned in the Bank’s response to the Request, although reference to such regulations was made. As the Bank’s Procurement Regulations is publicly available, the AIC finds that omitting the specific provision within the regulations that govern the use of STEP is harmless.

13. The AIC found that there are no *guidelines* governing the use of STEP, and no guidelines or rules governing the *creation* of STEP. Pursuant to the AI Policy, only information in the Bank’s possession is within the scope of the policy. For this reason, the AIC cannot consider non-existent information such as the information falling within this portion of the Request.

¹ See [Procurement Framework and Regulations for Projects After July 1, 2016](#)

Information to be collated

14. The AIC notes that both the Request and the Application state that “*If these [contracts] are contained in a database or spreadsheet, I request access to that spreadsheet*” (see para. 4(c) above). The information contained in STEP is solely available through the STEP IT application; access to the STEP IT application is addressed in paras. 18 through 20 below. That leaves the AIC to consider the request for a spreadsheet. The AIC found that the Bank does not produce any spreadsheets based on information contained in STEP, for either the public or restricted portion of the information contained in STEP. The AIC also found that the request for a spreadsheet is to list the contracts of African COVID-19 Bank financed projects. Any such list can be put together based on contract award information that is already publicly available. If the Bank was to create any such spreadsheet solely to list contracts related to specific projects, it would not only require significant resources but be redundant as contract award information is already publicly available.

15. The AIC found that pursuant to the AI Policy, the Bank reserves its right to refuse any request (or a portion thereof) that would require the Bank to create, develop, or collate information or data.² Additionally, the AIC found that pursuant to the AIC’s prior decision in *Case No. AI6799, Historical Monthly Loan Disbursements*, dated July 10, 2020:

[w]hen the Bank exercises its right to refuse a request pursuant to the AI Policy, the Bank does so without even considering whether the information in question is public or restricted under the AI Policy. The refusal is to the request, not to the information being requested.

16. Based on the above, the AIC found that there is no denial of access to information but a refusal of a portion of the Request seeking the Bank to provide a spreadsheet to list information already publicly available (although in a format other than what the requester prefers).

Purpose and Application of the AI Policy

17. The purpose and application of the AI Policy is limited to governing “public accessibility of *information* in the Bank’s possession” (see AI Policy, at Section I.1). The AI Policy does not govern requests to access Bank IT systems and/or tools. Access to Bank IT systems and/or tools is governed by other internal Bank policies.

18. The AIC found that a portion of the Request seeks access to the “STEP database”, i.e., “I further requested access to the STEP database” and “[t]he Bank could meet the request by providing access to the complete STEP database”. The AIC found that prior to STEP, the Bank’s procurement processes were fragmented and executed by multiple systems across the Bank. This previous multitude of systems resulted in different standards of practice across regions and made it impossible for the Bank to collect, analyze, and report on procurement data. STEP is an internal state-of-the-art custom-developed information technology (IT) application based on a web-faced system (or interface) that consolidates such previously fragmented procurement processes and helps the Bank and Borrower countries design, plan, and track procurement performance in Bank financed projects (see publicly available video on [STEP: Helping Clients Procure Better and Faster](#)

² See Bank Directive/Procedure Access to Information Directive/Procedure, at Section III.C.3.

[to Achieve Results](#)).³ As a Bank owned IT application, STEP is a Bank asset built in house and supported by a mix of contractors pursuant to the Bank’s managed services model and following the Bank’s corporate procurement policies and procedures. STEP interfaces with several other major Bank internal systems used to carry out the Bank’s work. Its use is project-specific and controlled by designated system administrators with user access limited to Bank and Borrower country staff involved in Bank financed projects and to other specific Bank staff involved in the design, maintenance, and enhancements of STEP. Such access controls are common IT requirements to ensure proper security and protection to internal Bank systems.

19. The Bank developed certain learning materials consisting of presentations and/or templates to facilitate the use of STEP *by the Bank and Borrower country staff* working on Investment Project Financing (IPF).⁴ Such learning materials emphasize that STEP provides timely information *the Bank and Borrower countries* can use to improve procurement processing and help achieve value for money under IPF.

20. Based on the above, the AIC found that the portion of the Request seeking “access to the STEP database” is a request to access a Bank IT application. For this reason, this portion of the Request falls outside the scope of the AI Policy.

21. The AIC, however, has authority to consider the part of the Request seeking access to the “STEP database” as a request to access the information contained in STEP. The AIC found that STEP contains both public and restricted information. The public portion of the information in STEP is made publicly available as required by the Bank’s Procurement Regulations. In this respect, STEP facilitates publication of procurement plan and contract award information on the Bank’s external website, UNDB Online (notices), WB Procurement App (IOS), WB Finance App and Contract Awards Database. The AIC addresses the portion of the Request for restricted information contained in STEP in paras. 27 through 30 below.

22. For the reasons above, the AIC dismisses the above-mentioned portions of the Request for appealing matters that the AIC does not have authority to consider, i.e., (a) information that is already public, (b) information that is non-existent, (c) information that needs to be collated by the Bank, and (d) request to access a Bank IT application (*see Bank Directive/Procedure: Access to Information Directive/Procedure, at Section III.D.1.a.(iii)*). With respect to the portion seeking “access to the STEP database”, alternatively, and solely for the sake of argument, even if access to a Bank IT application was to be considered pursuant to the AI Policy, the STEP “database” would be properly and reasonably restricted by the *Corporate Administrative Matters and Security and Safety* exceptions under the AI Policy.⁵

³ As the title suggests, i.e., Systematic Tracking of *Exchanges in Procurement* (STEP), STEP offers a systematic means for the Bank and Borrower countries to exchange information on procurement under Bank financed projects.

⁴ Such learning materials are available through the World Bank’s Open Learning Campus (OLC) to targeted audiences; while courses are predominantly meant for Bank staff, some may be publicly available. Learning materials are not listed or referred to neither in the Request or the Application and, thus, were not considered for disclosure pursuant to the AI Policy.

⁵ The AI Policy states, in relevant part, that under the:

(a) *Security and Safety* exception, the Bank does not provide access to *information* whose disclosure would compromise the security of *Bank assets* (see AI Policy, at Section III.B.2.(e), emphasis added);

23. Finally, the AIC proceeded to consider whether the Bank violated the AI Policy with respect to the portion of the appeal for which the Bank denied access to information, i.e., (a) the restricted portion of the information contained in STEP, and (b) the contracts of African COVID-19 Bank financed projects.

“Violation of the AI Policy”

24. Under the AI Policy, the Bank allows access to any *information* in its possession that is not on a list of exceptions set forth in subparagraphs (a) through (j) of the AI Policy (*see* AI Policy, at Section I.1., Section III.B.1, and at Section III.B.2). The AI Policy states, in relevant part, that under the *Deliberative Information* exception, to facilitate and safeguard the free and candid exchange of ideas for the purpose of preserving the integrity of the deliberative processes, while the Bank makes publicly available the decisions, results, and agreements that result from its deliberative process, the Bank does not provide access to information prepared for, or exchanged during the course of, (a) its deliberations with member countries or other entities with which the Bank cooperates, and/or (b) its own internal deliberations (*see* AI Policy, at Section III.B.2.(i).i and ii).

25. Pursuant to the AI Policy, safeguarding the deliberative process is also one of the AI Policy’s five principles (*see* AI Policy, at Section III.A.1). Notwithstanding the broad intent of the AI Policy in maximizing access to information, under exceptional circumstances, the Bank reserves its right to restrict access to information that it would normally disclose if it determines that such disclosure is likely to cause harm that outweighs the benefits of disclosure (*see* AI Policy, at Section III.B.1 and Section IV.2).

26. A requester who is denied public access to information by the Bank may file an appeal if the requester is able to establish 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 AI Policy (*see* AI Policy, at Section III.B.8.(a).i.). Appeals challenging the Bank’s exercise of prerogative to restrict are considered by the AIC, whose decisions in the cases are final (*see* [Bank Directive/Procedure on Access to Information Policy](#), at Section III.B.5.b.ii).

Systematic Tracking of Exchanges in Procurement (STEP)

27. The AIC found that STEP contains information on procurement carried out by Borrower countries in Bank financed projects. Borrower countries use STEP to plan, record, and track their procurements under Bank financed projects. The Bank uses the information in STEP to inform its own decision-making process on operational procurement matters and on its oversight function that enables the Bank to fulfill its fiduciary responsibilities required by the Bank’s Articles of Agreement, i.e., ensure that Bank funds are used only for the purposes for which the Bank financing is granted.⁶ It is based on information contained in STEP that the Bank makes decisions

(b) *Corporate Administrative Matters* exception, the Bank does not provide access to *information* relating to the Bank’s corporate administrative matters, including, but not limited to, corporate expenses, procurement, real estate, and other activities (*see* AI Policy, at Section III.B.2(h), emphasis added).

⁶ *See* [World Bank Procurement Regulations for IPF Borrowers](#), at Section I, para. 1.2, and at Annex II, para. 1.

related to its procurement functions, including implementation support, monitoring and procurement oversight, such as:⁷

- (a) carrying out prior and post review of procurement activities to determine whether the procurement is carried out in compliance with the requirements of the legal agreement entered into between the Bank and the Borrower country;
- (b) assessing eligibility of firms and individuals for Bank financed projects, noncompliance with the terms of legal agreements between the Bank and the Borrower country, and risks that help the Bank decide whether to carry out independent procurement reviews, i.e., procurement audits performed by independent third parties appointed by the Bank;
- (c) whether the Bank will finance additional expenditures; and
- (d) enforcing debarment or disqualification of firms or individuals.

28. Based on the above, the AIC found that this restricted portion of the information contained in STEP serves the Bank’s deliberative process both internally and externally with Borrower countries and is properly and reasonably restricted by the *Deliberative Information* exception under the AI Policy. For this reason, the AIC upholds the Bank’s denial of access to this portion of the restricted information contained in STEP.

Procurement contracts related to COVID-19 Bank financed project

29. With respect to the portion of the Request seeking access to “contracts of African COVID-19 Bank financed projects”, the AIC found that, (a) such contracts are also stored in STEP, and (b) as in previous cases decided by the AIC involving similar information, procurement contracts under Bank financed projects contain details whose disclosure could negatively impact competition under projects financed by the Bank, increase costs, and prevent the Bank from ensuring the economy and efficiency necessary in the use of its funds.⁸ Procurement contracts issued under Bank financed projects are documents owned by Borrower countries and reflect the agreements between Borrower countries and their respective contracting parties; the Bank is not a party nor a signatory of such contracts. Nevertheless, and as previously decided by the AIC in *Case No. AI6359, Lithuania Lease Tender*, dated November 18, 2020, *Case No. AI6929, Kenya Supplier Contracts*, dated November 24, 2020, *Case No. AI7183, West and Central Africa Air Transport Safety and Security Project for Burkina Faso, Cameroon, Guinea, And Mali (P083751)*, dated November 24, 2020, and *Case No. AI7157, Cameroon Transport Project*, dated December 3, 2020, the Bank has an interest in restricting public access to contractual information resulting from procurement processes carried out in Bank-financed projects. Such interest is to enable the Bank to fulfill its mandate under its Articles of Agreement, i.e., make arrangements to ensure the proceeds of any loan are used only for the purposes for which the loan was granted,

⁷ See [World Bank Procurement Regulations for IPF Borrowers](#)

⁸ See AIC’s decisions in *Case No. AI6359, Lithuania Lease Tender*, dated November 18, 2020, *Case No. AI6929, Kenya Supplier Contracts*, dated November 24, 2020, and *Case No. AI7183, West and Central Africa Air Transport Safety and Security Project for Burkina Faso, Cameroon, Guinea, And Mali (P083751)*, dated November 24, 2020.

with due attention to considerations of economy and efficiency (*see* [Articles of Agreement](#), at Article III, Section 5(b)).⁹ As in such precedents decided by the AIC:

(...) [b]ecause (a) the AI Policy exceptions are insufficient to ensure the protection of the Bank’s interests in procurement processes carried out under Bank financed projects, and (b) disclosing the Requested Information is likely to cause harm to the Bank’s interests in the procurement process that outweighs the benefits of disclosure, as well as to the interests of contractors who are parties to those contracts, *there are exceptional circumstances that justify the business unit’s decision to exercise the Bank’s prerogative to restrict access to the Requested Information.* (emphasis added).¹⁰

30. Based on the above, the AIC found that all procurement contracts of African COVID-19 Bank financed projects are properly and reasonably restricted from public access by the Bank’s exercise of prerogative to restrict. The AIC also found that, notwithstanding this restriction to the contracts themselves, contract award information is public.

Decision

31. Part of the Request considered under appeal is for:

- (a) certain publicly available information, i.e., the rule governing the use of STEP;
- (b) certain non-existent information, i.e., guidelines and rules on the creation of STEP, and guidelines for the use of STEP;
- (c) certain information that is not readily available and would require the Bank to create or collate, thus, is refused as a request, i.e., a spreadsheet based on information in STEP; and
- (d) accessing a Bank owned IT application (i.e., “access to the STEP database”) which is a request to access an IT application, i.e., not a request to access *information*, and falls outside the scope of the AI Policy;

and, thus, these parts are dismissed by the AIC for appealing matters that the AIC does not have authority to consider.

32. As to the remaining portions of the Request, the AIC finds that the Bank properly and reasonably restricted access to part of the Requested Information and, thus, did not violate the AI Policy, for the following reasons:

- (a) the restricted portion of the information contained in the “STEP database” is properly and reasonably restricted by the *Deliberative Information* exception under the AI Policy; and

⁹ See also [World Bank Procurement Regulations for IPF Borrowers](#), at Section I, para. 1.2, and at Annex II, para. 1.

¹⁰ See AIC’s decisions in *Case No. AI6359, Lithuania Lease Tender*, dated November 18, 2020, at para. 30.

(b) the contracts of African COVID-19 Bank financed projects are properly and reasonably restricted by the Bank's exercise of prerogative to restrict under the AI Policy.

33. Lastly, as noted in paragraph 26 above, the AIC decision on appeals challenging the Bank's exercise of prerogative to restrict is final. With respect to the portion of the Requested Information restricted from public access based on an AI Policy exception, i.e., access to the restricted portion of the information contained in STEP that is restricted by the *Deliberative Information* exception under the AI Policy, the requester can appeal to the Access to Information Appeals Board. The link to appeal such portion of the Requested Information is sent to requesters by separate communication.