

AIC Decision on appeal #78

CASE NUMBER AI7183 WEST AND CENTRAL AFRICA AIR TRANSPORT SAFETY AND SECURITY PROJECT FOR BURKINA FASO, CAMEROON, GUINEA, AND MALI (P083751) PROCUREMENT CONTRACTS

(Decision dated November 24, 2020)

Summary of Decision

- The Access to Information Committee (“AIC”) found that all the information identified as responsive to the request is restricted from public access because the Bank exercised its prerogative to restrict. The AIC considered the appeal on both violation of policy and public interest grounds. The AIC decision on appeals challenging a Bank denial of access on the basis of the Bank’s exercise of prerogative to restrict is final.
- **Violation of Policy.** The AIC found that the information is restricted from public access because there is more harm in disclosing the information than benefit. Despite the error in denying access to the information based on the *Deliberative Information* exception under the AI Policy, the information remains restricted so the error is harmless. For this reason, the AIC found that the Bank properly and reasonably restricted the information from public access and there is no violation of policy. Based on the above, the AIC upholds the Bank’s decision to deny public access to the information.
- **Public Interest.** The AIC dismisses the public interest portion of the appeal because the information is restricted by the Bank’s exercise of prerogative, which is not subject to a public interest appeal.

The Decision

Facts

1. On September 16, 2020, the World Bank (“Bank”) received a public access request (“Request”) seeking access to:

(...) all of the contracts mentioned in these two documents:
<http://documents1.worldbank.org/curated/en/449651468008748922/pdf/622120v10PROP00E020100DEF0OLOA2sur3.pdf>

<http://documents1.worldbank.org/curated/en/732721468203358860/pdf/622120v20PROP00E020100DEF0OLOA3sur3.pdf>

Including:

- Travaux de construction d'un bâtiment devant servir de centre directeur des opérations d'urgence à l'aéroport de Douala
- Fourniture et pose des supports de sensibilisation à la sûreté de l'Aviation Civile aux aéroports Internationaux de Douala et de Yaoundé Nsimalen
- Acquisition du mobilier pour le CDOU de Douala (centre de formation)
- Fourniture, installation et mise en service des équipements de Vidéo Surveillance
- Fourniture, installation et mise en service des équipements de Fabrication de Badges d'Identification et des consommables des systèmes de confection des badges en deux lots,
- Acquisition d'un logiciel d'archivage pour la Bibliothèque
- Acquisition du matériel Informatique pour les Centres de Formation à la sûreté et la sécurité de l'aviation
- Acquisition de quatre (06) motos avec huit (08) casques (“Requested Information”).

2. On September 17, 2020, the Bank asked the responsible business unit to locate the Requested Information.

3. On October 9, 2020, the responsible business unit identified the Requested Information. Such information was marked as restricted by the *Deliberative Information* exception under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“[AI Policy](#)”).

4. On October 14, 2020, the Bank denied access to the Requested Information on the basis the information is restricted by the *Deliberative Information* exception under the AI Policy.

5. On October 15, 2020, the AIC, through its secretariat (“AIC Secretariat”), received an application (“Application”) appealing the Bank’s decision to deny public access to the Requested Information. The Application challenges the Bank’s decision to deny public access to the Requested Information on the basis that the denial “violates the AI Policy” and that there is a “public interest” case to override the AI Policy exception that restricts the Requested Information.

6. On October 16, 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.

7. On November 10, 2020, the responsible business unit informed the AIC Secretariat that the Requested Information is restricted from public access by the Bank’s prerogative to restrict

access under the AI Policy. The responsible business unit also noted, in relevant part, that certain information on the contract awards are publicly available.¹

Findings and Related Decisions

8. In reviewing the Application in accordance with the AI Policy, the AIC considered:
- (a) the Request;
 - (b) the Bank’s initial denial of access;
 - (c) the AI Policy’s *Deliberative Information* exception that justified the Bank’s initial decision to deny public access to part of the Requested Information;
 - (d) the Application;
 - (e) input from the relevant business unit;
 - (f) the nature of the Requested Information;
 - (g) whether the *Deliberative Information* exception and/or any other exception(s) under the AI Policy sufficiently protects the specific interests that could be harmed if the Requested Information is disclosed;
 - (h) the specific interests that could be harmed if the Requested Information is disclosed;
 - (i) the Bank’s exercise of its prerogative to restrict access to the Requested Information.

“Violation of the AI Policy”

9. Under the AI Policy, the Bank allows access to any information in its possession that is not on a list of exceptions (*see* AI Policy, at Section III.B.1). Notwithstanding the broad intent of the AI Policy, 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

¹ The following are the publicly available resources:

- (a) The World Bank [project procurement app](#) is an IOS version (for apple phones). Once the app is installed, user can write the project number (P#) in the search string. Any interested party will have access to prior review contract awards published. Each contract award details have the names of contractors and suppliers; and
- (b) [WBG Finances Data](#) (*updated as of October 22, 2020*). Users have the option to export data, for example, as csv for MS Excel and have a list of all awarded contracts published by the Bank. Users are then able to filter the information according to fields such as country, project number, year of award, and other field values.

harm that outweighs the benefits of disclosure (*see* AI Policy, at Section III.B.1 and Section IV.2). 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).

10. The AIC found that, in this case, the Requested Information consists of contracts resulting from procurement processes under one project financed by the Bank. Similar to the AIC’s decision in *Case No. AI6359, Lithuania Lease Tender*, dated November 18, 2020, such contractual information contains 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. Thus, 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, with due attention to considerations of economy and efficiency (*see* [Articles of Agreement](#), at Article III, Section 5(b)).

11. Because (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.

12. For the avoidance of doubt, the AIC recognizes that the *Deliberative Information* exception was erroneously applied. Nevertheless, the error in denying access to the information based on such exception is harmless because the information remains restricted from public access by the Bank’s exercise of prerogative to restrict.

13. Based on the above, the AIC decided that the Bank properly and reasonably exercised its prerogative to restrict access to the Requested Information. For this reason, the AIC upholds the Bank’s decision to deny public access to the Requested Information. The AIC decision on this appeal is final (*see* Bank Directive/Procedure on Access to Information Policy, at Section III.B.5.b.ii).

“Public Interest” case

14. Pursuant to the AI Policy, a requester who is denied public access to information by the Bank may file an appeal on a “public interest” basis if the requester is able to make a public interest case to override certain AI Policy exceptions that restrict the information (*see* AI Policy, at

Section III.B.8.(a).ii). Public interest appeals are limited to information restricted by the *Corporate Administrative Matters, Deliberative Information, and/or Financial Information* (other than banking and billing information) exceptions (*see id.*).

15. In this case, the Requested Information is restricted by the Bank's exercise of prerogative to restrict access (*see AI Policy, at Section IV.2*). Information restricted by the Bank's exercise of prerogative to restrict is not eligible for public interest appeals. For this reason, the AIC dismisses the public interest portion of the Application because it appeals a matter that the AIC does not have authority to consider (*see AI Directive/Procedure, at Section III.D.1.a.(iii)*).

16. Under the AI Policy, for appeals that assert a public interest case to override an AI Policy exception, the decision of the AIC is final (*see AI Policy, at Section III.B.8.(b).i.*).