

AI Appeals Board Decision

Case No. AI3634

World Bank's review of the procurement process
for the dewatering of the Tamnava West Field mine in Serbia

(Decision dated December 3, 2015)

1. Reference is made to the above mentioned case number. The Access to Information Appeals Board (the AI Appeals Board) has reviewed the application for appeal regarding the above case number and decided to admit the application in its entirety and affirm the decision by the Access to Information Committee (AIC) to uphold the initial decision by the World Bank to deny the requested information.
2. The AI Appeals Board's decision above is final.
3. In coming to its decision the AI Appeals Board:
 - Considered the terms of the initial decision and the AIC decision to deny the request
 - Established that there is no single report or review document which can be said to constitute a bank review of the procurement process
 - Had access to and reviewed over 100 documents and attachments which the Bank has determined to be within the scope of the request
 - Conducted interviews with relevant Bank staff based in Serbia and Washington so as to better understand the context in which they reviewed the procurement process carried out by the Serbian government and the deliberations that occurred as a result, as well as their not inconsiderable efforts to identify the relevant documents in response to the request.
4. The AI Appeals Board is satisfied that the Bank has not violated the Access to Information policy (AI Policy) by improperly or unreasonably restricting access to information that it would normally disclose. The information contained within the documents and attachments that has been denied is information that is covered by three exceptions set out in the AI Policy, namely: Information provided by Member Countries or Third Parties in confidence (largely, tender documents, bid evaluations and contracts); Deliberative Information (largely, emails between Bank staff and/or external parties, which do contain free and candid exchanges) and information which is protected by Attorney-Client Privilege (and we can confirm that it is legal opinion exchanged between outside legal advisors and the Bank's in house counsel).
5. We note the points made by the appellant in its submission to the AI Appeals Board concerning (a) the wide scope of the exception for Deliberative Information; (b) the possibility of redaction; and (c) the public interest in disclosure. However, for the following reasons, these are outside the scope of the AI Appeals Board to take into account when making its decision.

6. The nature and breadth of the Bank's AI Policy is such that the exceptions can be said to be *class based*; thus as long as any information in a document is subject to an exception such as Deliberative Information, the full document is properly restricted since as noted below the AIC has determined that there is no obligation or duty to redact. The AI Appeals Board need only satisfy itself that the excepted information is properly designated as being within the class. We are satisfied that it does for the relevant documents in this case.
7. Regarding redaction, it is the role of the AIC to issue AI Policy interpretation, and it has done so regarding redaction, making clear that the Bank is under no obligation or duty to consider redaction. The AI Appeals Board cannot require information to be redacted and disclosed.
8. Finally, only the AIC can consider appeals which assert the public interest case to override the AI Policy exception and its decision is final. In this case we have established that the AIC has considered the public interest, and whilst the public interest considerations for and against overriding the Deliberative Information exception could have been set out more fully, nevertheless the AIC has concluded that they do not favour disclosure. The AIC decision on public interest is final and cannot be reviewed by the AI Appeals Board.