

AI Appeals Board Decision

Case Number AI4431

Certain information related to the Income Support Project for the Poorest

(Decision dated February 3, 2017)

Decision of the AI Appeals Board

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 (the “AIC”) to uphold the initial decision by the World Bank to deny the requested information in its entirety, for the following reasons:

Background

2. On August 1, 2016, the requester submitted a public access request (“Request”) for certain information related to the Income Support Project for the Poorest in Bangladesh (“Project”), as follows:

2.1 Detailed component wise month wise contract data and procurement plan specific to this project including even small purchases like furniture or vehicle etc as hardly any details is available in url

http://www.worldbank.org/projects/P146520/?lang=en&tab=procurement&subTab=notices

2.2 Date wise component wise procurement notices of even smaller amount specific to this project only. Please do not provide link of whole department of LGD rather specific to this project only.

2.3 Contact details like e mail id, specific name wise designation of persons involved in PMU of this project.

2.4 Name of specific 14 upzilas in 1st distinct phase as mentioned in ISR 20055. Please do not provide list of all the upzilas etc as it confuses as done in response of case no AI4301.

2.5 Copy of agreement with the Bangladesh Bureau of Statistics (BBS) as mentioned in | ISR24088

(An upazila is the second- lowest tier of regional administration in Bangladesh and forms a sub-unit of a district.)

3. On August 18, 2016, the World Bank (“Bank”) replied to the Request, by: (a) informing the requester that information sought at 2.1, 2.2, 2.5 is not in the Bank’s custody; (b) denying access to the information identified as responsive to the portion of the request at 2.4 above for “name[s] of specific 14 upzilas in 1st distinct phase as mentioned in ISR 20055” on the basis of the *Information Provided by Member Countries or Third Parties in Confidence* exception under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“AI Policy”); and (c) providing access to certain information identified as responsive to specific portions to the Request as shown at 2.3 above.
4. On August 24, 2016, the secretariat to the AIC received an application (“Application”) appealing the Bank’s decision to deny access to certain information.
5. On October 20, 2016 the AIC upheld the Bank’s decision to deny access to certain information related to the Income Support Project for the Poorest in Bangladesh, namely the “[n]ame[s] of specific 14 upzilas [sic] in 1st distinct phase as mentioned in ISR 20055”.

6. The information sought was documented in an Aide-Memoire for the project of May 2015. The AIC found that the Aide-Memoire constitutes deliberative information, and thus is restricted by the *Deliberative Information* exception under the AI Policy; and that the member country has not agreed to make the Aide- Memoire publicly available.
7. The AIC noted however that the Bank’s decision to specify the *Information Provided by Member Countries or Third Parties in Confidence* exception under the AI Policy as restricting the Aide-Memoire was made in error and that instead the *Deliberative Information* exception applied. The AIC considered this error to be harmless, as the Aide-Memoire was already restricted from public access.
8. On November 28, 2016, the requester filed an application for appeal to the AI Appeals Board, which sat on February 1-3, 2017, to consider it and two other related appeals.

Admission of the Appeal

9. The AI Appeals Board admitted the application for appeal on the following grounds:
 - In Time: the application was filed before the AIC and the AI Appeals Board within 60 days.
 - A *prima facie* case that the World Bank has violated the Policy by improperly or unreasonably restricting access to information that it would normally disclose under the policy has been established.
 - Authority: The AI Appeals Board has authority to consider the appeal as it follows an AIC decision to uphold a World Bank decision to deny access on the basis that the denial did not violate the Policy.

AI Appeals Board Reasoning:

10. The stated purpose of the Deliberative Information exemption set out in Section III. B.2(i) of the AI Policy is to permit the Bank “space to consider and debate issues away from public scrutiny”, and “to preserve the integrity of its deliberative processes by facilitating and safeguarding the free and candid exchange of ideas.”
11. Furthermore, the AIC which has the authority (under Section III. 8 of the AI Policy) to interpret the Bank’s Policy in line with its guiding principles, has made it clear that “the term ‘Deliberative Information’ under the AI policy is applied broadly to include any internal communications and communications with external parties.” (*Bank Directive/Procedure: Access to Information (Interpretation), July 1, 2015*)
12. Consequently, the AI Appeals Board must determine whether the information sought is that which is contained in the Aide- Memoire and whether it constitutes “Deliberative Information” when coming to a view as to whether the Bank has violated its Policy on access to information.
13. By way of context it is worth noting that certain related information is already in the public domain. The Bank has publicly disclosed the Project Appraisal Document (PAD 957) and Implementation Status and Result Reports. So the purpose of the program, its overall timescale, the intended phasing and upazilas to be targeted were known. In particular, at the point of request, the applicant was aware of the identity of the 42 (subsequently 43) upazilas which were to be the beneficiaries of the program and that it was intended that Phase 1 of the project would apply to 14 of these, with Phases 2 and 3 starting at 6 month intervals thereafter.

14. The information withheld and which is the subject of this appeal is the identity of each of the 14 upazilas chosen for inclusion of Phase 1 of the project.
15. The Bank has found that this information was contained, at the time of request, in an Aide-Memoire of May 2015. The AI Appeals Board has established that the Bank does not hold this information in any other form.
16. The Bank maintains that the information in the Aide-Memoire constitutes Deliberative Information. The AI Appeals Board has had access to the Aide-Memoire. It is clear that it forms a note arising from an exchange between Bank officials and relevant authorities in Bangladesh on the status of implementation of the project and records agreements arrived at. Included in the Aide- Memoire is the intended roll-out program, which shows the phasing of the project, and identifies the 14 upazilas which are proposed to be included in Phase 1.
17. Whilst it might be contended that the number and identity of the 14 upazilas is ‘purely’ factual and, therefore, does not constitute deliberative information, in the circumstances of this case this information relates to the deliberations over which upazilas should form part of Phase 1 and the attendant issues of roll-out, such as initiating local public information campaigns in the chosen areas. It was clear that the authorities in Bangladesh had understandable concerns about information on the Phase 1 upazilas being disclosed prematurely before local information about the income support project was available to the targeted beneficiaries.
18. It does appear therefore that the information was received as part of a deliberative exchange and can justifiably be withheld by the application of the Deliberative Information exception.

Public Interest

19. A decision to withhold information under the Deliberative Information exception can be appealed, to the AIC only, on public interest grounds.
20. The AIC considered a number of factors, not least that the information sought would in due course be publicly disclosed as part of the Project’s implementation, and concluded that there was no compelling ground to override the exception on a public interest basis.
21. The decision of the AIC is conclusive in this respect, as the AI Policy (Section III. B.8 (b) i) is that the AI Appeals Board “does not consider appeals concerning requests to override the Policy’s exceptions”.

AI Appeals Board Findings

22. Accordingly, we find that the Bank has not violated its Policy and so uphold the AIC’s decision.
23. The AI Appeals Board’s decision is final.