

AIC decision on appeal # 19

CASE NUMBER AI1362

TURKEY EMERGENCY FLOOD AND EARTHQUAKE RECOVERY PROJECT

(Decision dated July 12, 2012)

Summary of the Decision

- Following the World Bank’s receipt of a letter sent by the requester on October 19, 2011, the secretariat for the Access to Information Committee engaged in multiple communications with the requester to obtain clarification on the letter’s intent. It was subsequently determined that the requester wished to file an application for appeal against an alleged decision by the World Bank (“Bank”) to deny access to information that the requester had requested concerning the Turkey Emergency Flood and Earthquake Recovery (“TEFER”) Project.
- Under the AI Policy, the Bank allows access to any information in its possession that is not on a list of exceptions; and a requester – who is denied access to such information by the Bank – may file an appeal against the denial.
- In considering the requester’s application for appeal in accordance with the AI Policy, the AIC found that:
 - (a) in response to the requester’s initial request for information on the TEFER Project, the Bank provided to the requester relevant, publicly available information that was in the Bank’s possession regarding the TEFER Project;
 - (b) the requester subsequently requested from the Bank additional information specifically concerning investments in Bartın Municipality under the TEFER Project;
 - (c) the Bank conducted an extensive search of the records in its possession and did not locate information directly responsive to the requester’s subsequent request, and informed the requester of this;
 - (d) because this application for appeal does not involve information held in the Bank’s possession, the requested information is not covered by the AI Policy (which deals with information in the Bank’s possession), and the Bank’s response does not constitute a denial to information held by it. Therefore, (i) the application for appeal does not provide sufficient information to support an appeal under the AI Policy (i.e., an actual denial by the Bank for the public to access information in the Bank’s possession), and (ii) the matter being appealed (i.e., concerning information not in the Bank’s possession) is not a matter that the AIC has authority to consider under the AI Policy.

- For the above reasons, the AIC dismisses the requester’s application for appeal. In view of the determination that the detailed information, concerning Bartın Municipality under the TEFER Project, sought by the requester would more likely be found in the possession of the Borrower, i.e., the Republic of Turkey, the requester may wish to direct the request for information to the Borrower’s government in this case.

Findings and Decision of the Access to Information Committee

The Findings

1. On October 19, 2011, the World Bank (“Bank”) received a public access request for information concerning the Turkey Emergency Flood and Earthquake Recovery (“TEFER”) Project (“Request”). In response, on October 20, 2011, the Bank provided a link to publicly available information regarding the TEFER Project.
2. On October 24, 2011, the requester replied to the Bank indicating that the publicly available information was not responsive to the Request and clarified that he/she was looking for “information under the scope of TEFER project in particular to Bartın; how much money spent, to where? What is done and how much does it cost?” On November 7, 2011, the Bank provided the Implementation Completion Report (“ICR”) for the TEFER Project to the requester noting that the ICR was the document identified as holding the requested information.
3. On November 9, 2011, the requester wrote to the Bank Group's General Counsel requesting: information on “the engineering projects from Turkish Hydraulic Works, which is in charge for the Tefer projects in Turkish Republic”; a “face-to-face meeting” with Bank authorities; and “to examine the projects on-site one-by-one”.
4. On November 29, 2011, Bank officials in the Turkey Country Management Unit (“CMU”) met the requester at the Bank’s Ankara office and provided the requester with further information. Also at the November 29th meeting, the requester requested information additional to what he/she had originally asked for in the public access request. The requester sought to obtain information on the exact amount of money spent, where the money was spent, and the exact locations in respect of which money was spent, specifically on investments in Bartın Municipality, under the TEFER Project. With respect to this subsequent request for additional information, the Bank representatives agreed to try to identify the information in the Bank’s files.
5. On February 22, 2012, the requester sent a letter to the Bank (addressed to the Inspection Panel, but naming members of the Access to Information Appeals Board) indicating that the Bank had not provided the requested information and requesting support to access the information. The letter did not clearly indicate whether the requester intended the letter to be a formal application for appeal against a Bank decision to deny access to information. The letter was routed from the secretariat for the Inspection Panel to the secretariat for the Access to Information Committee (“AIC”).

6. In April 2012, the secretariat for the AIC wrote to the requester to seek the requester's clarification on: (a) whether the February 22, 2012, letter was intended to be a formal application for appeal; and (b) since the Bank had not yet responded to the requester's subsequent request (made at the meeting of November 29) for additional information, whether the requester would prefer to wait and receive a final decision from the Bank on the request – in which case, if the decision is a denial, the requester might then wish to consider filing an appeal with the AIC. The requester's reply was still unclear on whether the requester wished to wait to receive a Bank decision that denied access before filing an appeal, or whether the requester wished to proceed with an appeal.

7. On May 7, 2012, following the Bank's review of the project files located in Turkey and in the United States, the Bank's Turkey CMU replied to the requester and indicated, in relevant part, that:

In summary, we followed up on your additional request for information that you had made at our meeting of November 29, 2011. We did so by conducting an extensive search of our electronic and archived paper files for the Project. Despite our best efforts, we found no documents in the World Bank's custody that directly or clearly provides the information that you had requested.

8. On May 8, 2012, the requester wrote to the secretariat for the AIC indicating dissatisfaction with the Bank's response to his/her request for information, and requesting the Bank to “process our application and evaluate our request”. The requester did not indicate under which ground(s) he/she wished to file an appeal (i.e., “violation of the AI Policy” and/or “public interest”). In the absence of an indication by the requester of under which ground(s) he/she wished to file an appeal, the AIC proposed consideration of the application on both grounds, i.e., “violation of the AI Policy” and “public interest”. The communications from the requester were placed before the AIC, in full, and treated, in full, as an application for appeal.

9. On June 20, 2012, the AIC considered the requester's application for appeal in accordance with the AI Policy. The AIC reviewed the application and other documents of record, including the full communication, dated May 7, 2012, that the Bank's Turkey CMU had sent to the requester, explaining what the Bank had found in its records and the Bank's efforts to meet the requester's subsequent request for additional information on the TEFER Project. The AIC recognized that the requester – in forwarding the Turkey CMU's May 7, 2012, communication to the AIC – had deleted (from both the English and Turkish versions) the second portion of the May 7th communication, which set out what the Turkey CMU had found in its search through the Bank's files. Specifically, in the May 7th communication, the Bank's Turkey CMU informed the requester of the following:

- After going through the exhaustive search of the files described above, we did not locate in the World Bank's custody any documents that specify (a) the exact amount of money spent, (b) where the money was spent, and (c) the exact locations in respect of which money was spent specifically on investments in Bartın Municipality under the TEFER Project. All of the Project implementation information contained in the documents in the World Bank's files is summarized and organized by project component, and not by individual investment or by detailed location. As such, the request to provide you with information broken down by exact

location and formatted for one particular municipality, as you have requested, is not possible based on the Project records in the World Bank's possession.

- The reason that the World Bank's files contain only summarized information is primarily because the investments under the Project were small-scale infrastructure investments, which were procured through National Competitive Bidding (NCB) procedures. Under the World Bank guidelines for procurement, the Borrower is not required to give the World Bank detailed designs, maps, bidding or contract management documentation for NCB contracts. Under the procurement guidelines, this type of detailed documentation would be kept by the Borrower.
- Our search of the files did identify two reports that were provided by Borrower, the Republic of Turkey, in the course of Project preparation and implementation. These reports contain some limited information on investments in municipalities, but there is no comprehensive breakdown of the investments financed under the Project by location. Because these documents belong to the Borrower and to the World Bank's knowledge the Borrower has not made the documents available to the public, under the World Bank's Access to Information Policy, the documents are considered to be deliberative and are, therefore, restricted from disclosure, and the World Bank cannot release them unless the Borrower gives its written consent to disclose.

In summary, we followed up on your additional request for information that you had made at our meeting of November 29, 2011. We did so by conducting an extensive search of our electronic and archived paper files for the Project. Despite our best efforts, we found no documents in the World Bank's custody that directly or clearly provides the information that you had requested. We found two documents belonging to the Borrower that contain some information of limited relevance to your request. To our knowledge, the Borrower has not publicly released these documents. As a result, the World Bank is restricted from disclosing the two Borrower documents, pursuant to the Access to Information Policy's "Deliberative Information" exception, unless the Borrower gives its written consent to disclose.

(Email of May 17, 2012, titled "Turkey: Closed Emergency Flood and Earthquake Recovery Project (P058877) – World Bank response to enquiry on investments carried out in Bartın Municipality" from the World Bank to the requester.)

10. Separately, the AIC also asked the Bank's Turkey CMU for an explanation on why the additional information sought by the requester could not be found in the Bank's possession, and received an explanation consistent with what was stated in the May 7th communication to the requester. The AIC found that the Bank's Turkey CMU made significant efforts to meet the requester's request for the additional information. It also found the Turkey CMU's explanation on why the requested information would not be in the Bank's possession to be credible.

11. On the basis of the information summarized above, the AIC determined the following:

- (a) the Bank provided information in its possession that was responsive to the requester's initial request for information regarding the TEFER Project;
- (b) the requester requested additional information on specific Bartin Municipality level information under the TEFER Project;
- (c) the Bank searched records in its possession and did not find in the Bank's possession information directly relevant to the requester's request for the specific Bartin Municipality level information under the TEFER Project; and
- (d) because the investments under the Project were small-scale infrastructure investments, procured through National Competitive Bidding procedures, the Borrower, i.e., the Republic of Turkey, would not have provided the Bank with the detailed information that the requester now seeks.

The AI Policy

12. 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 paragraph 6). A requester who is denied access to information by the Bank may file an appeal if the requester is able (a) 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, or (b) to make a public interest case to override the AI Policy exceptions that restrict the information requested (limited to those exceptions set out in paragraph 15 (Corporate Administrative Matters), paragraph 16 (Deliberative Information), and paragraph 17 (a), (b), and (c) (relating to certain Financial Information) of [the AI Policy] statement.)” (see AI Policy at paragraph 36.) The AI Policy also states, in relevant part, that appeals may be dismissed for failure to provide sufficient information that would reasonably support the appeal, or for appealing a matter that the AIC does not have authority to consider (see AI Policy at paragraph 40).

Decision

13. In this case, the record shows that the Bank provided the requester access to information in the Bank's possession regarding the TEFER Project, and in response to the requester's subsequent request for additional information specifically concerning investments in Bartin Municipality under the TEFER Project, the Bank found that it did not possess information directly relevant to the subsequent request; the Bank provided the requester with an explanation as to the reasons for this. In view of the above, the AIC concluded that the Bank provided the requester access to all information in its possession that is responsive to the requester's requests and, thus, the Bank did not deny access to any relevant information held by it.

14. In accordance with the AI Policy, the AIC has authority to consider appeals that challenge the Bank's decisions to deny access to information in its possession (see AI Policy at paragraphs 6 and 36). Because the AIC found that the Bank does not possess information relevant to the requester's subsequent request, the Bank did not, in fact, deny the requester access to information covered by the AI Policy.

Since this application for appeal does not involve information that is held in the Bank's possession and covered by the AI Policy, the application for appeal is not properly before the AIC.

15. The AIC, therefore, dismisses the requester's application for appeal because (a) it fails to provide sufficient information that would reasonably support the appeal, since there was no denial by the Bank to access information in its possession; and (b) it fails to appeal a matter within the AIC's authority to consider, since the subsequent request does not concern information in the Bank's possession.

16. In view of the determination that the specific information concerning investments in Bartın Municipality under the TEFER Project, which the requester now seeks, would more likely be found in the possession of the Borrower, i.e., the Republic of Turkey, the requester may wish to direct the request for information to the Borrower's government in this case.

17. Under the AI Policy, if the AIC upholds the initial decision to deny access to information in appeals alleging "violation of the AI Policy", the requester can appeal to the Access to Information Appeals Board (the "AI Appeals Board") as the second and final stage of appeals (*see* paragraph 38 of the AI Policy). If you wish to file an appeal to the AI Appeals Board, [click here](#).

[URL provided in original decision sent to the requester.]

(NOTE: This appeal was filed in Turkish; the decision of the AI Committee was translated into, and conveyed to the requester in, Turkish.)