

AIC Decision on appeal #38

CASE NUMBER AI3613

DOCUMENTS OF THE TASK FORCE ON PRIVATE FOREIGN INVESTMENT OF THE JOINT DEVELOPMENT COMMITTEE OF THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND

(Decision dated May 21, 2015)

Summary of Decision

- The Access to Information Committee (“AIC”) found that the application, which asserts an appeal on both a violation of policy and public interest basis, is not properly before the AIC for consideration. The appeal, in this case, relates to certain nonpublic documents of the Development Committee, a joint committee of the World Bank (“Bank”) and the International Monetary Fund and part of the Bank’s records of the Board of Governors (“BoG”). Pursuant to the Access to Information Policy (“AI Policy”) interpretation “Application of the Access to Information Policy to the Records of the Board of Governors”, dated February 27, 2014, pending a decision on matters concerning BoG records, the declassification and disclosure process set out in the AI Policy cannot be applied to the nonpublic records of the BoG, as is the case under appeal. For this reason, and pursuant to paragraph 40 (c) of the AI Policy, the appeal is dismissed for appealing a matter that the AIC does not have authority to consider.

The Decision

Facts

1. On January 9, 2015, the requester submitted a request (“Request”) to access three documents of the Task Force on Private Foreign Investment of the Joint Development Committee (“DC”) of the World Bank (“Bank”) and the International Monetary Fund (“IMF”), namely: (i) M. Narasimham, “Performance Criteria Stipulated by Host Countries” DC/TF/PFI/80-1 (January 8, 1980); (ii) C. Fred Bergsten, “Host Country Policies: Performance Requirements” DC/TF/PFI/80-3 (January 25, 1980); and (iii) David Roberston, “Investment Incentives in Home and Host Countries” DC/TF/PFI/80-5 (January 25, 1980) (collectively, the “Documents”). On January 15, 2015, the Bank denied the Request on the basis that the Documents are restricted by the *Information Provided by Member Countries or Third Parties in Confidence* exception under the Bank’s Access to Information Policy (“AI Policy”). On January 16, 2015, the secretariat to the Access to Information Committee (“AIC”) received an application (“Application”) appealing the Bank’s decision to deny public access to the Documents.

2. The Application challenges the Bank's decision to deny public access to the Documents 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 Documents.

Findings and Related Decision

3. In reviewing the Application in accordance with the AI Policy, the AIC considered:

(a) the Request;

(b) the Bank's denial of access to the Documents;

(c) the Application;

(d) the type of the Documents and the IMF's views on making the Documents publicly available;

(e) the AI Policy interpretation concerning the application of the AI Policy to the records of the Board of Governors ("BoG"), dated February 27, 2014.

4. The AIC has previously considered the application of the AI Policy to nonpublic records of the BoG, including DC records. In considering this matter, the AIC took into account the governance structure of the Bank, the AI Policy, and the AI Policy's legislative history. In February 2014, the AIC issued an AI Policy interpretation recognizing that there is "no evidence in the [AI] Policy's legislative history to indicate that the BoG was asked to consider the application of the [AI] Policy to its records, or that the BoG had approved a policy for declassifying its nonpublic records"; AI Policy interpretations are publicly available online (see AI Policy interpretations at <http://go.worldbank.org/ZU1HZL0060>, namely, "Application of the Access to Information Policy to the Records of the Board of Governors", dated February 27, 2014). The AIC also found "no evidence that the Board [of Executive Directors ("Board")] considered the application of the [AI] Policy to BoG records or made any decision on behalf of the BoG in this respect. In terms of the actual language of the [AI] Policy, the AIC found that, while the [AI] Policy is explicitly detailed in terms of its application to Board records, including the declassification of restricted Board records, the [AI] Policy is wholly silent on its application to BoG records. For these reasons, notwithstanding the [AI] Policy's statement that it applies to any information in the Bank's possession, the [AI] Policy's legislative history and its terms support the conclusion that it has not been approved for BoG records. Pending a decision on matters concerning BoG records, the declassification and disclosure process set out in the [AI] Policy cannot be applied to the nonpublic records of the BoG" (see id.).

5. The AIC found that (a) the Documents are DC records of a task force established by the Joint Ministerial Committee of the Board of Governors of the Bank and the IMF and, thus, are

BoG records, (b) the Documents are nonpublic records of the BoG, and (c) a decision on matters concerning BoG records is pending.

6. In this case, because the Documents are nonpublic records of the BoG, the AI Policy cannot be applied. For this reason, the Application is dismissed for appealing a matter that the AIC does not have authority to consider (see AI Policy, at paragraph 40 (c)).

7. Notwithstanding the above:

(a) with respect to the Bank's assertion of the AI Policy's "Information provided by Member Countries or Third Parties in Confidence" exception as a basis for denying access, the AIC found that such attribution was in error because the AI Policy does not apply to the Documents. The AIC found the error to be harmless, as the Documents remain inaccessible to the public; and

(b) the AIC recognizes that (i) since the Documents belong to a joint body of the Bank and the IMF, disclosing the Documents would require the IMF's consent, and (ii) even in the absence of an applicable disclosure policy to the Documents, the Bank considered making the Documents public. The AIC found that (A) the Bank had no objection to disclosing the Documents, (B) the Bank consulted the IMF on the possibility of such disclosure, and (C) the IMF has not provided its consent to disclose the Documents.