

Access to Information Appeals Board Decision

Case Number AI7146-A

Audits and evaluations conducted by the World Bank on the Ebola response to the outbreak which took place in the Democratic Republic of Congo from August 2018 to June 2020

Decision dated December 10, 2021

Decision of the AI Appeals Board

1. The Access to Information Appeals Board (the AI Appeals Board or AIAB) has reviewed the application for appeal that was filed with the World Bank (hereafter WB or Bank) on February 3, 2021, and transmitted to the AIAB on February 17, 2021.
2. The AI Appeals Board has decided to admit the application in its entirety and to uphold in part the decision by the Access to Information Committee (the “AIC”) to deny some of the requested information in its entirety, while releasing the information specified and set out in the Appendix attached to this Decision.
3. The reasons for our decision are set out below.¹

Background of Initial Request and Appeal to AIC

4. The initial request was made by the requester to the Bank on August 22, 2020, and sought access to:

“All of the audits and evaluations conducted by the World Bank on the Ebola response to the outbreak which took place in the Democratic Republic of Congo from August 2018 to June 2020. As you know the funding for the Ebola outbreak came from several projects, including the PDSS and the PEF.”

¹ The AIAB regrets the long delay in issuing its decision in this case, due partly to the priority the Appeals Board gave earlier this year to another appeal already before the Board which involved the careful review of, and deliberation in relation to, a large number of documents, and due partly to the gravity of the issues involved in this appeal.

5. According to the subsequent [Access to Information Committee \(AIC\) decision](#), the Bank responded to the request on September 22, 2020, as follows:

“After discussing with the CMU, we would propose to share the attached ISRs of the DRC Ebola project together with the language below. The Bank has not conducted any full-scale evaluation of impact of the DRC Ebola Response. However, we can share the following Implementation Status and Results (ISR) reports, which provide relevant information from our regular project supervision.”

6. On September 25, 2020, the Bank informed the requester that “the Bank has not conducted any full-scale evaluation of impact of the DRC Ebola Response thus, the specific information you request does not exist and/or is not in the Bank’s possession”. However, the Bank provided access to 11 Implementation Status and Results reports (ISRs) related to the project of interest.
7. On October 4, 2020, the secretariat to the AIC received what the AIC chose to describe in its subsequent decision as an “application”, because the letter did not indicate explicitly whether it was challenging the Bank’s decision on the basis of a “violation of the AI Policy” and/or that there is a “public interest” case to override certain AI Policy exceptions that may restrict the Requested Information. But, the AIC decided to treat the “application” as an appeal, which it duly heard at its meeting on December 16, 2020, and decided a few weeks later.
8. According to the AIC, the “application” clarified the requester’s interest for “any evaluation, including: - Evaluations by the Independent Evaluation Group – Development Impact Evaluations – Internal review or evaluations – Mission Reports – any other document that constitutes an evaluation of the Ebola response”. Yet, according to the requester, in his appeal to the AIAB, this clarification had come earlier, on August 26th, 2020. He states as follows:

“the Bank asked me what an evaluation was, and I responded by email the following: "I mean any evaluation, including: - Evaluations by the Independent Evaluation Group – Development Impact Evaluations - Internal reviews or evaluations - Mission Reports - any other document that constitutes an evaluation of the Ebola response For reference, here is a definition of evaluation: <https://ieg.worldbank.org/what-monitoring-and-evaluation> Please don't hesitate to let me know if you have any further questions."

9. Regardless, the AIC, via its secretariat, then engaged the relevant business unit, seeking its views on the requested information. The AIC decision, dated January 27, 2021, and which can be found online [here](#), states that:

“As a result, the business unit located the following additional information in the Bank’s possession identified as responsive to the Request: Aide Memoires, Back to Office Reports (“BTORs”), one public available audit report covering 2018, and one report by Deloitte. The **Aide Memoires and BTORs were identified 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”). With respect to the Deloitte report, because such report was commissioned by the member country, the business unit sought the member country’s views on how it should be treated in light of the AI Policy.” [our emphasis].

10. The AIC also found that:

“The Bank’s initial response was solely based on the Bank’s possession of ISRs. However, the business unit identified a total of 18 additional documents during the appeal phase. Out of the 18 documents, two documents are not in the Bank’s possession (i.e., an audit for calendar year 2019, and Partner Evaluation Reports). Therefore, the Bank’s initial response failed to consider 16 documents later located in the Bank’s possession during the appeal phase.”

11. Based on this, and in accordance with precedent and established practice in the AIC, it rectified the Bank’s initial response to consider it as a denial of access to the 16 documents located by the business unit during the appeal phase, and then duly proceeded to consider whether the denial constituted a violation of the AI Policy.

12. The AIC found that: (a) the 11 ISRs were “already publicly available” (and as noted above, had been provided to the requester) and contain certain information on the evaluation of the project of interest; and (b) out of the 16 documents located in the Bank’s possession during the appeal phase: (i) two documents were already publicly available, namely an audit for calendar year 2018, and a report by Deloitte commissioned by the member country; and (ii) 14 documents consisting of Aide Memoires and BTORs were restricted by the Deliberative Information exception under the AI Policy, which are the subject of this appeal.

13. The AIC found as follows:

“With respect to the Aide Memoires and BTORs, the AIC found that these documents reflect the Bank’s deliberations with the member country and/or third parties that have been critically important to the Ebola response in DRC, as well as internal deliberations during project implementation. The AIC found that such information is deliberative in nature and disclosure of such deliberative information could jeopardize the Bank’s ability to continue working with the Bank’s partners in DRC. Finally, solely with respect to Aide Memoires, the AIC found that, given

the sensitivity of the deliberative information involved, the Bank did not seek the member country/borrower's views on the possible disclosure of the Aide Memoires. The Bank did not do so because even if the member country/borrower was to agree to disclose the Aide Memoires the Bank would not agree to disclose the Aide Memoires, rendering the option to disclose Aide Memoires pursuant to the Bank Directive/Procedure on Access to Information unenforceable as it requires both the Bank and the member country/borrower to agree."

14. Importantly for the present purposes of this appeal, the AIC relied on the provision in the Bank Directive/Procedure on Access to Information, at Section III.B.3.a, that states that Aide Memoires "are made publicly available if both the Bank and the member country/borrower agree".

Arguments on appeal to AIAB

15. In his appeal letter to the AIAB, the requester complains about a number of things, including: the initial 'narrowing down' of his appeal (see above); the handling of the appeal and communication of his right to appeal; the repeated use of the Bank's prerogative to restrict access, meaning that previous requests for information have been "killed off" and could not be appealed to the AIAB; the 'discovery' of additional documents during the appeal phase, which had not been identified by the business unit in response to his initial request for information; and claims that there are other relevant documents (that presumably in his view would fall under the ambit of his request), which he has in his possession, but whose existence has not been admitted.

Admission of the Appeal

16. The Bank's AI Policy, Sec. III.B.8(b) sets out a two-stage appeal process. At the second appeals stage, the AIAB must look at whether the appeal is timely; establishes 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 Policy" (i.e., that it provides sufficient information that would reasonably support the appeal that the Bank violated the Policy by improperly or unreasonably restricting access to information that it would normally disclose under the Policy); and involves a matter that the AIAB "has authority to consider." [See also AIAB Operating Procedures, Sec. III.A.2(a)-(c)].
17. The appeal is clearly timely: it was made around 17 days after the decision of the AIC was published and communicated to the requester. The AIC has made a decision to confirm a decision to deny access to 14 documents that fall within the ambit of the requested information on the basis that a denial does not constitute a violation of the AI Policy, and, moreover, that the justification for

denying access is the deliberative information exception. We do, therefore, have authority to hear the appeal.

18. Has the requester-appellant made out a *prima facie* case – i.e., does the appeal provide sufficient information that would reasonably support the case that the Bank violated the Policy by improperly or unreasonably restricting access to information that it would normally disclose under the Policy? His letter of appeal opens with the words “I would like to appeal the decision of the AIC on the following grounds.” But, in fact, none of the “grounds” that are set out by the requester makes reference to the deliberative exception or the specific reasons that the AIC based its decision on. As noted above, it is a litany of laments about the attitude and responsiveness of the Bank and the perceived weaknesses of the AI Policy and appeals’ process.
19. However, the principle of procedural fairness requires that a broad and purposive approach be taken to the right to appeal. It was not, surely, the intention of the drafters of the AI Policy to make it unduly burdensome for requesters to use the appeal process. It should not require legal representation or legal arguments. A lay-person should be able to say “I don’t like this decision and I want to use my right to appeal”, which is what we find was the requester’s intention in this case. It is for us to then determine whether there is a *prima facie* case .
20. The previous experience of the AIAB informs us that the question of whether a document contains deliberative information is both subtle and often difficult to determine. Since the AIAB operating procedures make it clear that it is our responsibility to hear appeals on a *de novo* basis, the appropriate decision is that the requester has made a *prima facie* case, sufficient to justify the admission of the appeal.

AI Appeals Board Reasoning

Interplay Between the AI Policy and the Bank Directive/Procedure on Access to Information

21. Having admitted the appeal, we have reviewed the 14 documents to determine whether they may be properly be withheld under the AI Policy. Eleven of the 14 documents that are the subject matter of this appeal are Aide Memoires (and three, therefore, are BTORs). In respect of those eleven documents, a great deal hinges on the meaning, scope and application of the provision of the Bank Directive/Procedure on Access to Information referred to above, in the context of the AI Policy itself and how the two should be read together.
22. The AIC found in effect that there is a blanket *exclusion* of all documents that are “Aide Memoires” unless both the Bank and/or country/borrower agree to their release. The AIC determined that the

Bank or the country/borrower would have a right to veto the disclosure of the information, regardless of the information contained within it. This interpretation would appear to carve out a class of information from the ambit of the AI Policy, since the provision – Section III.B.3(a) of the Directive/Procedure – makes no reference to any of the exceptions in the AI Policy itself.

23. Our mandate is limited to considering and deciding whether the Bank has violated the terms of the AI Policy by improperly or unreasonably restricting access to information that it would normally disclose under the AI Policy. In doing so, the AIAB “...reads and applies the [AI] Policy as it is written – using the ordinary meaning of the words, absent an express interpretation to the contrary issued by the AIC or the Board – or as the [AI] Policy has been amended by the Board, or interpreted by an express interpretation by the AIC or the Board, when relevant”. Hence, the AIAB has no authority to interpret the meaning of the AI Policy other than by interpreting the “ordinary meaning of the words [in the AI Policy]”.
24. The Directive/Procedure states that with regard to “Country-specific operational documents prepared by the Bank that are routinely discussed with the member country/ borrower ... the aide-mémoire of operational missions are made publicly available if both the Bank and the country/borrower agree.” The AIAB does not agree that the Directive/Procedure creates an additional exception beyond that which is already provided for in the Policy; nor can it be that the Directive/Procedure substantively over-rides the AI Policy itself². We can find no authority that would justify an alternative interpretation. If it was the intention of the Bank’s Board to exclude Aide Memoires from the ambit of the AI Policy, then the AI Policy would itself say so. But it does not. And so applying the “ordinary meaning” of the words of the AI Policy, there is no exception for Aide Memoires, other than if they fall into one of the specific exceptions, such as deliberative information.
25. In terms of the Directive/Procedure, the country/borrower can decide to come together with the Bank and agree to release an Aide Memoire. This provides *an option to disclose*. As the AIC decision itself finds: “...with respect to Aide Memoires, the AIC found that, given the sensitivity of the deliberative information involved, the Bank did not seek the member country/borrower’s views on the possible disclosure of the Aide Memoires. The Bank did not do so because even if the member country/borrower was to agree to disclose the Aide Memoires the Bank would not agree to disclose the Aide Memoires, rendering **the option to disclose Aide Memoires pursuant to the Bank**

² According to the Bank’s [Policy and Procedure Framework](#), at Section III.2, it is stated that: “A Policy is the highest level P&P Document. All other P&P Documents are subservient to a Policy, and may not contradict a Policy, or be waived or interpreted in a manner that would contradict a Policy.”

Directive/Procedure on Access to Information unenforceable as it requires both the Bank and the member country/borrower to agree.” [our emphasis] (paragraph 14 of the AIC Decision).

26. For the document not to be disclosed it has to fall within an exception for the non- disclosure not to constitute a violation of the AI Policy. Hence, the issue for us turns on whether or not the 14 documents were deliberative and so fall within the Deliberative information exception in the AI Policy [see Sec. III.B.2(i)].

Deliberative Information Exception (Section III.B.2(i) of the AI Policy)

27. Section III.B.2(i) of the AI Policy, in part, provides that “*The Bank . . . needs space to consider and debate, away from public scrutiny. . . it does not provide access to the following information (including e-mail, notes, letters, memoranda, draft reports, or other documents) prepared for, or exchanged during the course of, its deliberations with member countries or other entities which the Bank cooperates*”.
28. The Deliberative exception was addressed in an [Interpretative Note issued by the Bank on March 16, 2011](#), which stated that the term “Deliberative Information” is applied broadly to include any internal communications and communications with external parties. This interpretative guidance is now repeated in the AI Directive/Procedure, Section III.B.4(c): “The term *Deliberative Information* under the Policy applies broadly to include any internal communications and communications with external parties.”
29. On the ordinary meaning of the wording of the exception in the AI Policy itself, the information that is excepted from disclosure is information that needs to be withheld in order to preserve the decision-making integrity of the Bank, including the candour and freedom of any exchange of ideas during the period of time of the deliberation.
30. In this context, the AIAB has in a previous case wrestled with the scope and content of the exception ([the “Nepal Case”](#)), which decision found that for the exception to apply properly, the document withheld has to contain deliberative information: “[a]s defined in the AI Policy, deliberative information must facilitate: debate, away from public scrutiny; room to develop consensus; and the safeguarding of the free and candid exchange of ideas. Information that is not prepared for or exchanged for these purposes fails to meet the threshold of deliberative information.” (Paragraph 17 of the AIAB Decision, Case No. AI5197, CBI Report, October 17, 2018).
31. Further, for the information to be ‘deliberative’ it has to be connected to a specific decision-making process: “[a]s the document was never intended to be used to inform a decision-making process

there was no requirement to come to a consensus or safeguard the information from the public. The potential future use of the document for a deliberative purpose does not support a current finding that the document is deliberative information and covered under the exception.” (Paragraph 18 of the AIAB decision in the Nepal Case). The wording of the exception itself refers to the “decisions, results, and agreements” that come from the relevant deliberative process.

32. Hence, our responsibility is to examine the facts of the case in order to not only determine if there was real deliberation sufficient to bring the withheld information within the scope of the deliberative information exception, but also that the deliberation was linked to a “decision, result, or agreement”, and that this was a deliberation in which the free and candid exchange of views would be inhibited or undermined by the disclosure of the information – in this case, the Aide Memoires or BTORs.

Assessment of the facts and application of the exception

33. In order to properly assess the facts and understand the context in which the Aide Memoires and BTORs were written, we requested a meeting with relevant Bank staff. This was ably facilitated by the Secretariat to the AIAB, and on June 18, 2021 the AIAB met with three Bank staff members, who provided valuable perspective on the form and purpose of Aide Memoires and BTORs.
34. Further valuable exchanges and discussion with the Bank and the secretariat to the AIAB revealed that ever since the Bank adopted the first Access to Information Policy in 2010 (subsequently reviewed and revised), it has held the view that Aide Memoires constitute deliberative information because of their importance in building trust between the Bank and its member countries/borrowers, and in facilitating the free and candid exchange of ideas, and this was communicated to staff³. We fully appreciate why this stance might have been adopted. However, our difficulty is that this is not what the AI Policy says and since we are constrained by our duty to interpret the AI Policy only according to the “ordinary meaning” of the words of the Policy, we can find no justification for finding that the AI Policy itself provides for an across-the-board exception for all Aide Memoires on the basis that they are deliberative. Just because the Bank says that Aide

³ In its [Guidance for Communicating the Bank’s Access to Information Policy to Clients and Partners](#) (to which we have been referred, and which does not appear on the Bank’s AI Policy website page, but is still available online), it is stated that: “Aide-mémoire are considered as deliberative information and as such are restricted. However, an aide-mémoire may be disclosed if both the Bank and client agree. The TTL should seek guidance from the Country Management Unit and/or the Region on the decision to disclose. If the Bank agrees, the task team would also need to obtain written confirmation from the client and any other signatories to the aide-mémoire. If the client also agrees, such agreement should be reflected in the body of the aide-mémoire.” The document notes, in footnote 1, that: “The Bank’s Policy on Access to Information governs disclosure of Bank information. The purpose of this Attachment is only to provide guidance to staff, outlining generally expected work flow processes in preparing and making information routinely available on the Bank’s external website.”

Memoires are deliberative and treats them as such (as per the [guidance to staff and countries](#)), does not mean that they are deliberative – unless the AI Policy states that this is so. It does not.

35. What our decision does is this:

- 35.1 Recognize that the AI Policy is sovereign and cannot be over-ridden by the Directive/Procedure; and
- 35.2 Apply the ordinary meaning of the words in the AI Policy: Aide Memoires are not excepted per se; the deliberative information exception does not make any specific reference to Aide Memoires (other than the reference in footnote 9 of the AI Policy, which is to aide-memoires “following Bank-Fund financial sector assessments under the Financial Sector Assessment Program (FSAP)...”).

36. Hence, the ‘requirement’ imposed by the Directive/Procedure to confirm that both the Bank and the country consent to the disclosure of an Aide Memoire is subserviant to the AI Policy. In other words, as noted above, an Aide Memoire would still need to fall under one of the exceptions in the AI Policy to be properly withheld. If, however, both the Bank and the country agreed to release such an Aide Memoire, then the procedure in the Directive/Procedure would need to be followed: namely, to secure the consent of both the Bank and the country for the proactive disclosure (regardless of whether the Aide Memoire was ‘deliberative’ or not). This is our interpretation based on the ordinary meaning of the words used in both the AI Policy and the Directive/Procedure.

37. So, back to the question that the AIAB must ask itself in any admissible appeal: has the Bank violated the terms of the AI Policy by improperly or unreasonably restricting access to information that it would normally disclose under the AI Policy? In this case, the AIC found that the Aide Memoires constituted deliberative information. Ultimately then, the issue for us to consider and decide must be: do the documents contain deliberative information or not? Accordingly, we have carefully reviewed each of the 14 documents. A small number of them (four) do contain deliberative information and were therefore properly withheld. They contain recommendations that required further consideration and so were ‘pre-decisional’; and/or they contained opinions or reported on consultees’ positions in such a way that disclosure might undermine the decision-making integrity of the Bank, including the candour and freedom of any exchange of ideas during the period of time of the deliberation.

38. When a document such as the Aide Memoires or BTORs that are the subject matter of this appeal contain deliberative information, then the whole document will be covered by the AI Policy exception. As the AIAB has noted in previous decisions, the AIAB has no jurisdiction to require information to be redacted and disclosed under the AI Policy.

39. The other ten (10) documents, however, do not contain deliberative information: they contain analysis, make findings or record points of agreement reached with various stakeholders or partners of the Bank, but are all in essence either ‘factual’ and/or ‘decisional’ rather than ‘deliberative’. In a previous case (“[Tanzanian Statistics Act](#)”), the AIAB held that: “Information that is factual and/or purely transactional, and that does not reveal the substance of the deliberation ... is not exempt. ... Information that is actually a reflection of the decision or outcome of the deliberation (which is ‘decisional’ rather than ‘deliberative’) and therefore not exempt.” (paragraph 43 of the AIAB Decision, Case No. AI6479-A, All documents concerning amendments to the Tanzanian Statistics Act, May 4, 2021).
40. Some of the information in these documents may be considered to be “sensitive” by the Bank. We note that the Bank in some cases cited the reason for withholding the information as: “Deliberative, official use only as it includes sensitive information”. While this description no doubt constitutes a brief summation rather than the full reasoning of the AIC, it does imply a misunderstanding or misapplication of the AI Policy: just because information may be “sensitive” does not mean that it necessarily falls within the ‘deliberative’ exception; there is no exception for information on the basis that it is “sensitive”.
41. In any event, these ten documents do not meet the standard of “deliberative” as set out above and so do not fall within the scope of the exception in the AI Policy. The decision of the Bank, affirmed by the AIC, to withhold those documents constitutes a violation of the AI Policy.

Findings of the AIAB

42. Accordingly, we find that the Bank has violated the AI Policy in part. Hence, the information specified and set out in the Appendix attached to this Decision should be disclosed.
43. The AI Appeals Board’s decision is final.

APPENDIX:
SUMMARY OF AIAB DECISION FOR EACH DOCUMENT

Document Name		AI Policy Exception applied by Bank	AIAB DECISION
1.	HNP Aide Memoire PDSS juin 2018	Deliberative, official use only as it includes sensitive information	Violation of AI Policy - Release.
2.	HNP Aide Memoire PDSS June-Sept 2018	Deliberative, official use only as it includes sensitive information	Deliberative exception properly applied.
3.	HNP Aide memoire PDSS january to March 2019	Deliberative, official use only as it includes sensitive information	Deliberative exception properly applied.
4.	HNP Aide Memoire SPN Procedure RH Ebola 21 april to 11 May 2019	Deliberative, official use only as it includes sensitive information	Violation of AI Policy - Release.
5.	HNP Aide memoire PDSS July 2019 MTR	Deliberative, official use only as it includes sensitive information	Deliberative exception properly applied.
6.	HNP Aide memoire PDSS November December 2019	Deliberative, official use only as it includes sensitive information	Violation of AI Policy - Release.
7.	HNP Aide Memoire PDSS February 2020	Deliberative, official use only as it includes sensitive information	Violation of AI Policy - Release.
8.	HNP Aide memoire PDSS August September 2020	Deliberative, official use only as it includes sensitive information	Violation of AI Policy - Release.
9.	SPJ Aide-Memoire de la Mission du 5-12 Nov 2019	Deliberative, official use only as it includes sensitive information	Violation of AI Policy - Release.

10.	SPJ Aide-Memoire de la Mission du 3-18 Dec 2019	Deliberative, official use only as it includes sensitive information	Violation of AI Policy - Release.
11.	SPJ Aide-Memoire de la Mission du 30 Jan – 8 Fev 2020	Deliberative, official use only as it includes sensitive information	Violation of AI Policy - Release.
12.	BTOR Ebola Fiduciary Mission to GOMA Beni and Butembo September 25-29	Deliberative, official use only as it includes sensitive information	Violation of AI Policy - Release.
13.	BTOR Ebola Mission to DRC June 10 to 21 2018	Deliberative, official use only as it includes sensitive information	Violation of AI Policy - Release.
14.	BTOR Mission on FM and HR management	Deliberative, official use only as it includes sensitive information	Deliberative exception properly applied.