

AI Appeals Board

Note of Adjournment

Case No. AI1362

Certain information concerning the
Turkey Emergency Flood and Earthquake Recovery Project

(Note dated December 13, 2012)

On July 23, 2012, the Secretariat to the Access to Information Appeals Board received an application (“Application”) appealing the Bank’s alleged decision to deny access to certain information concerning the Turkey Emergency Flood and Earthquake Recovery Project. The Access to Information Appeals Board (“AI Appeals Board”) convened in December 2012 to review the Application in accordance with the World Bank Policy on Access to Information and issued the following note, dated December 13, 2012:

Note of Adjournment

The Access to Information Board has adjourned its consideration of the above appeal. We set out our reasons for doing so below, as there are some not insignificant procedural considerations that arise.

Background.

On October 19, 2011 the Bank received a public access request for certain information concerning the Turkey Emergency Flood and Earthquake Recovery (TEFER) Project. On October 20th the Archives Unit provided a link to publicly available information regarding TEFER.

There then followed a period of several months in which The World Bank sought to identify and provide information in response to the request, with the Requester making supplementary submissions which, in effect, served to illustrate or specify the nature of the information being sought. In particular the Bank officials in the Turkey Country Management Unit (Turkey CMU) met with the requester at the Bank’s Ankara office and also instigated an extensive review of the project files held in Turkey and the United States to identify information within the scope of the request. Certain further information was provided at that meeting.

On May 7, 2012, Mr Florian Fichtl, Lead Operations Officer formally replied to the Requester on the Turkey CMUs behalf, indicating which information had been provided and the extent of the search for additional information. This determined that no other information was held, save for two documents which had been provided by the Borrower, both of which were being withheld under the terms of the AI Policy.

The Requester’s appealed against this outcome and the appeal was heard by the Access to Information Appeals Committee on June 20 2012, which dismissed the appeal.

On July 23 2012, the requester filed an appeal before the AI Appeals Board.

The Board convened on December 12, 2012 to consider the appeal. We have had access to all of the correspondence between the Requester and World Bank officials including from the Archives Unit, Turkey CMU and the Secretariat. We also spoke with Mr Florian Fichtl by video link to clarify and confirm certain matters.

Access to Information Board Deliberation

In the view of the AI Appeals Board the Requester has appealed against the response to its request given by Mr Fichtl on May 7 in its entirety. The AIC considered the appeal under both available grounds – ‘violation of AI policy’ and ‘public interest’.

As indicated above the response raises two related but distinct matters which should be considered in the appeal process.

The first is whether the search for information is adequate and the extent to which it has identified information relevant to the request held by the World Bank.

In this case, the final response to the requester, including the results of the further research of electronic and archived paper documents in the World Bank’s archives, was protracted (It took more than 6 months from when the first public access request was received on October 19, 2011 to final response on May 7, 2012 from Bank’s Turkey CMU). According to the AI Policy (para. 25), the World Bank endeavors to provide a comprehensive response to public access requests within 20 working days, recognizing that additional time may be needed for special circumstances, such as complex requests or requests that require consultation with internal or external parties.

The World Bank Access to Information Annual report FY 2011 shows that 78 percent of the cases received comprehensive responses within 20 working days. The cases that required additional time to complete involved circumstances such as: requests revised by the requesters; complex and voluminous requests; requests that required extensive review, translations or consultations with internal and external parties; and cases held open until the requester could review the documents in person.

The AI Appeals Board’s view is that the delay was due to a process of engaging with the requesters to better understand the information being sought and the nature of the search which was required to seek to satisfy the requests. In the course of exchanges with the Requester it became clearer that the information sought was about investments broken down by specific location and in particular the Bartın Municipality. The World Bank, and the Turkey CMU in particular, made an extensive and purposeful search for information specifically sought by the Requester.

By their appeal it can be said that the Requester is challenging the World Bank’s assertion that it does not hold more information relevant to the request, and thereby that the World Bank is improperly withholding information which it would normally disclose.

This aspect of the response and, by extension, of the appeal, was addressed by the AIC.

The second issue to be addressed concerns two reports provided by the Borrower which were found to “contain some limited information on investments in the municipalities, but there is no comprehensive breakdown of the investment financed under the Project by location.” In the letter of May 7 the Turkey CMU concluded these 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.”

The AI Appeals Board has not seen the documents but we confirmed with Mr Fichtl that the two reports did fall within the scope of the request by the requester, notwithstanding the view that he held, namely that they would not “provide the answer” [to the requester].

We are satisfied that the appeal against the May 7 refusal constituted an appeal of the whole of the refusal, encompassing, therefore, the refusal to provide access to the two reports. However, although the AIC’s written decision disposing of the appeal recorded the fact of the existence of the two reports

in almost identical terms to the refusal letter, the AIC did not address this in its decision or in its findings.

Instead, the AIC held that the appeal should be dismissed not only because it failed to provide sufficient information which would reasonably support the appeal, but also because it did not fall within the AIC's review authority, since the subsequent request does not concern information in the World Bank's possession.

AI Appeals Board Findings

We conclude, for the reasons set out earlier and in respect of anything other than the two reports, the World Bank made all reasonable efforts to locate any records of relevance to the requester, and none could be found.

In that respect, we are inclined to uphold the decision of the AIC and dismiss the appeal.

However, the view of the AI Appeals Board is that the AIC should have addressed the issue of the two reports, since they properly fell within the scope of the Requester's request, and since the Requester had been expressly refused access to the two reports pursuant to the provisions of the ATI policy in the refusal letter of 7 May, and because the appeal of May 9 by the requester was expressly treated by the AIC as an appeal against the whole of the refusal and on both possible grounds of appeal, namely a violation of the AI Policy and "public interest".

The Turkey CMU made a discerning search for information relevant to the particular request and concluded that the two reports were within the scope of the information being sought.

The question of whether or not they "provide the answer" to the requester is not germane. Rather, the question is whether, being held, they should be disclosed under the AI Policy or whether one of its provisions exempts the records from disclosure. The AIC did not appear to ask itself this question.

It would be inappropriate for the AI Appeals Board to do so in its stead, not least because the AIC has a wider jurisdiction. (Since the requester was in effect asserting a general public interest in knowing more details of the projects because of on-going concerns about the implementation, this is of great relevance to the current case, since the AIC has the authority to consider whether the public interest in disclosure should over-ride the exemption, whereas the AI Appeals Board does not.)

In our view, the sensible and reasonable thing to do would be to remit the matter back to the AIC, thereby inviting it to address the question. But it is unclear whether we have authority to do so, since both the AI Policy and its Operating Procedures are silent on the point. We submit that a purposive interpretation of that silence would conclude that since the purpose of the AI Policy is in general to assist a broad range of the World Bank's stakeholders to access information about the Bank's operations and to help the Bank respond to that legitimate interest, it would not be unreasonable to infer an authority to remit a case back to the AIC, with reasoning from the AI Appeals Board.

In the absence of such authority the AI Appeals Board would be unable to address or remedy procedural flaws or omissions, the consequence of which could be significant if the only options available to the AI Appeals Board were to uphold or reverse decisions of the AI Committee.

Accordingly, we have decided to adjourn the case to permit the AIC to consider these matters. If the AIC is inclined to accept our view that cases can be remitted back to address procedural failings or omission, then we invite the AIC to address the appeal regarding the two reports and the basis on which disclosure was refused by the Turkish CMU. (If the AIC finds this course of action acceptable then it would be helpful for the Operating Procedures to provide an express authority to remit, on such terms.)

If the AIC is not inclined to deal with the case as remitted then we will re-convene to reach a decision either to uphold the decision of the AIC, or else to reverse it and order release of the two reports.

Note: This appeal was filed in Turkish; this note of the AI Appeals Board was translated into, and conveyed to the requester in, Turkish.