

AIC Decision on appeal #64

CASE NUMBER AI5197 CBI REPORT

(Decision dated April 6, 2018)

Summary of Decision

- The Access to Information Committee (“AIC”) upholds the World Bank’s decision to deny access to the report prepared by the Consensus Building Institute (“CBI”) on energy projects in Nepal (“CBI Report”). The AIC considered the appeal on both violation of policy and public interest grounds.
- ***Violation of Policy***. The AIC found that the CBI Report is deliberative in nature and that the World Bank (“Bank”) had properly and reasonably denied access to the requested information based on the *Deliberative Information* exception under the World Bank’s Policy on Access to Information, dated July 1, 2010, as amended (“AI Policy”).
- ***Public Interest***. The AIC found no compelling public interest reason to override the *Deliberative Information* exception that restricts the requested information.

The Decision

Facts

1. On August 28, 2017, the requester submitted a request (“Request”) seeking to access “the Consensus Building Institute’s (CBI) report on “Conflict Management and Mitigation for Energy Projects in Nepal” (the CBI Report) which was finalized in September 2016. (...)” (“CBI Report”).
2. On December 18, 2017, the World Bank (“Bank”) informed the requester that public access to the CBI Report was denied because the report is restricted by the *Deliberative Information* exception under the Bank’s Policy on Access to Information, dated July 1, 2010, as amended (“[AI Policy](#)”).
3. On January 18, 2018, the secretariat to the Access to Information Committee (“AIC”) received an application (“Application”) appealing the Bank’s decision to deny public access to the requested information.

4. The Application challenges the Bank's decision to deny public access to the requested information 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 requested information.

Findings and Related Decision

5. 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 requested information;
 - (c) the Application;
 - (d) the nature of the requested information identified as responsive to the Request;
 - (e) the AI Policy's *Deliberative Information* exception that justified the Bank's decision to deny public access to the requested information;
 - (f) the information provided by the relevant business units concerning the requested information;
 - (g) Management's report and recommendation in response to the Inspection Panel Investigation Report, Nepal, Power Development Project (Loan No. P043311), March 30, 2015, INSP/93722-NP ("[Management Report](#)");
 - (h) the First Progress Report on the implementation of Management's Action Plan in Response to the Inspection Panel Investigation Report (INSP/93722-NP) on the Nepal, Power Development Project, P043311, August 5, 2016 ("[First Progress Report](#)");
 - (i) the Second Progress Report on the implementation of Management's Action Plan in Response to the Inspection Panel Investigation Report (INSP/93722-NP) on the Nepal, Power Development Project, P043311, August 29, 2017 ("[Second Progress Report](#)"); and
 - (j) the terms of reference and the contract engaging CBI to produce the CBI Report.

"Violation of the AI Policy"

6. Pursuant to 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 Section III.B.1). A requester who is denied public access to information by the Bank may file an appeal if the requester is able 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 (*see* AI Policy, at Section III.B.8.(a).i).

7. The AI Policy states that the Bank “does not provide access to documents that contain or refer to information listed in subparagraphs (a) through (j)” of Section III.B.2 of the AI Policy, which sets out the AI Policy’s list of exceptions (*see* AI Policy, at Section III.B.2). Section III.B.2.(i) of the AI Policy, under the *Deliberative Information* exception, recognizes that, to facilitate and safeguard the free and candid exchange of ideas for the purpose of preserving the integrity of the deliberative processes, while the Bank makes publicly available the decisions, results, and agreement that result from its deliberative process, the Bank does not provide access to information prepared for, or exchanged during the course of, (a) its deliberations with member countries or other entities with which the Bank cooperates, and/or (b) its own internal deliberations (*see* AI Policy, at Section III.B.2.(i).i and ii). The importance of safeguarding the deliberative process has also been codified in the AI Policy as one of its guiding principles (*see* AI Policy, at Section III.A.1).

8. In this case, the AIC found that Bank management committed to “further analyze lessons learnt from the Project to ensure application of such lessons to future operations, specifically in the power sector in Nepal” as part of its response to the Inspection Panel investigation related to the Power Development Project in Nepal (*see* Management Report, at para. 67). The AIC found that Bank management hired CBI “to draw experiences/lessons *for Bank management* learned from this and other infrastructure projects and to develop recommendations for conflict prevention and management for Nepal energy sector projects” (*see* First Progress Report, at Executive Summary, paragraph viii, and at Part III, paragraph 9(i), emphasis added). The AIC also found that:

- (a) the CBI Report continues to inform the Bank’s (i) capacity to help design future projects in the energy sector in Nepal, and (ii) support to Nepal’s ongoing negotiations on compensation with adversely affected communities in a disputed area under the Power Development Project in Nepal (*see* Second Progress Report, at Executive Summary, paragraph vii, and at Part III, paragraph 10) and, as such, serves for the Bank’s deliberations with a member country;
- (b) Bank management continues to consult and refer to the CBI Report to inform the Bank’s own views and considerations for policy dialogue in energy projects in Nepal and, as such, the report serves as a tool for the Bank’s own internal discussions; and
- (c) the Bank’s intention in commissioning the CBI Report was exclusively for the Bank’s own internal consumption. At no time the Bank, who owns the CBI Report, had any intention or expectation to make the report publicly available, neither to share the CBI Report with Nepal, as the Bank’s member country, or any of its agencies (e.g., National Electricity Authority). Neither had the Bank expressed any intention or expectation otherwise.

9. Based on the above findings, the AIC concluded that the Bank properly and reasonably restricted public access to the CBI Report based on the “Deliberative Information” exception under the AI Policy and, therefore, did not violate the AI Policy. For this reason, the AIC upholds the Bank’s decision to deny public access to the requested information.

10. Under the AI Policy, if the AIC upholds the initial decision to deny public access to information in appeals alleging a violation of the AI Policy, the requester may file an appeal to the Access to Information Appeals Board (“AI Appeals Board”), as the second and final stage of appeals (*see* AI Policy, at Section III.B.8.(b).ii). If you wish to file an appeal to the AI Appeals Board, you can do so by replying to this message with your new appeal, or by sending a separate email with your new appeal to [email address provided to the requester] noting the case number on the subject line (Case No. AI5197).

“Public Interest” case

11. Pursuant to the AI Policy, a requester who is denied public access to information by the Bank may file an appeal on a “public interest” basis ***if the requester is able to make a public interest case*** to override certain AI Policy exceptions that restrict the information (*see* AI Policy, at Section III.B.8.(a).ii). Public interest appeals are limited to information restricted by the *Corporate Administrative Matters, Deliberative Information, and/or Financial Information* (other than banking and billing information) exceptions (*see id.*). Under the AI Policy, for appeals that assert a public interest case to override an AI Policy exception, the decision of the AIC is final (*see* AI Policy, at Section III.B.8.(b).i).

12. The AIC considered whether the public interest assertion in the Application merited overriding the *Deliberative Information* exception restricting the requested information. Under the AI Policy, the Bank makes publicly available the decisions, results, and agreements that result from its deliberative process, while preserving the integrity of its deliberative process by facilitating and safeguarding the free and candid exchange of ideas (*see* paragraph 7 above). The AIC considered the context in which the CBI Report was commissioned and its purpose, the business unit’s views on the possible disclosure of the CBI Report, and the impact of such disclosure to the integrity of the deliberative process and to the free and candid exchange of ideas, all vis-à-vis the alleged public interest in the Application. The AIC found no compelling ground to support the appeal on a public interest basis and to override the *Deliberative Information* exception restricting the requested information.

13. For the reasons discussed above, in response to the public interest assertion in the Application, the AIC upholds the Bank’s decision to deny access to the requested information restricted by the *Deliberative Information* exception. The AIC decision on this portion of the appeal is final.