

AIC Decision on appeal #73

CASE NUMBER AI6479 TANZANIAN STATISTICS ACT (Decision dated July 29, 2020)

Summary of Decision

- The Access to Information Committee (“AIC”) considered 535 documents in this appeal, including multiple filings of same documents.
- **Violation of Policy.** The AIC found most of the information to be properly and reasonably restricted by the *Attorney-Client Privilege*, *Information Provided by Member Countries or Third Parties in Confidence*, and *Deliberative Information* exceptions. However, the AIC found that six documents were public through other sources shortly after their filing in the Bank’s official records management system. For these reasons, the AIC partially upholds the Bank’s decision to deny public access to 524 documents, and partially reverses the Bank’s decision to deny public access to six documents; three other documents were correctly filed as public.¹
- **Public interest.** The AIC found no compelling reason to override the *Deliberative Information* exception solely restricting a portion of the information. For this reason, the AIC upholds the Bank’s decision to deny access to the *Deliberative Information* under the public interest portion of the appeal. The AIC noted that the portion of the information restricted by the *Attorney-Client Privilege* and the *Information Provided by Member Countries or Third Parties in Confidence* exceptions are not subject to public interest appeals; this portion of the public interest appeal is dismissed.

The Decision

Facts

1. On July 9, 2019, the World Bank (“Bank”) received a public access request (“Request”) seeking to access

all World Bank documents concerning amendments to the Tanzanian Statistics Act between April 1, 2018, and July 8, 2019. This request should be interpreted broadly and should include communications to and from the country office in Tanzania to WB headquarters and all correspondence on this topic with the Tanzanian government (“Requested Information”).

¹ Out of the six documents made publicly available pursuant to this decision on appeal, one document was separately filed three times, and one other document was separately filed twice.

2. The Bank consulted the responsible business unit to locate the Requested Information. As a result, the responsible business unit located approximately 20 documents as responsive to the Request. All such documents were filed in the Bank's official records management system as restricted from public access either by the *Attorney-Client Privilege* or the *Deliberative Information* exception under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01 (["AI Policy"](#)).
3. On August 28, 2019, the Bank informed the requester that public access to the Requested Information was denied because the Requested Information is restricted either by the *Attorney-Client Privilege* or the *Deliberative Information* exception under the AI Policy.
4. On September 18, 2019, the secretariat to the Access to Information Committee ("AIC") received an application ("Application") appealing the Bank's initial decision to deny public access to the Requested Information. 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 exceptions that restrict the requested information. On the same day, the AIC, through its secretariat, consulted the responsible business unit to seek its views on the Requested Information in light of the appeal.
5. On October 18, 2019, the responsible business unit provided a detailed explanation (a) for restricting the Requested Information on the basis the *Deliberative, Attorney-Client Privilege, and Information Provided by Member Countries or Third Parties in Confidence* exceptions under the AI Policy, and (b) of the harm of disclosure if the information is made publicly available. The business unit also (c) identified and provided access to additional documents filed in the Bank's official records management system totaling 500 documents identified as responsive to the Request, out of which only three documents were identified as public, and (d) made its staff available to meet with the AIC to present the business unit's views and provide answers to any questions from the AIC.
6. On October 30, 2020, representatives from the relevant business units attended the AIC's regular meeting to explain the rationale behind the selected exceptions restricting the Requested Information. The business unit also noted that it had sought the member country's written consent to disclose the information that has been provided in confidence to the Bank. It had not received a reply from the relevant member country. Following such discussion, the AIC decided a more in-depth review was necessary to verify the propriety and reasonableness of the AI Policy exceptions restricting access to the Requested Information. The AIC agreed to (a) extract the metadata of the Requested Information from the Bank's official records management system to identify the Requested Information per AI Policy exception, and (b) summarize the statistics of such identification for the AIC's consideration at its next meeting.

7. On November 26, 2019, the AIC held its regular meeting. The AIC discussed the findings from identifying the Requested Information per AI Policy exception, mainly, how to diligently consider the Requested Information in light of certain inaccuracies and discrepancies on the record, e.g., (a) some documents had been filed multiple times by different Staff which, if taken into account, may lead to a lower number of documents responsive to the Request; and (b) because some documents had been filed multiple times, some of the same documents are also restricted by different AI Policy exceptions. The AIC decided to request the business unit to review the filing of the Requested Information in the Bank's official records management system to eliminate such inconsistencies and discrepancies. The AIC acknowledged that the business unit informed the secretariat to the AIC that the member country had not responded to the Bank's request for consent to disclose information provided in confidence; thus, the Bank takes the lack of response as non-consent to disclose the information provided in confidence. The AIC agreed to consider the appeal on its merits once the business unit had had the chance to review its filings for accuracy.

8. On December 2, 2019, the secretariat to the AIC informed the responsible business unit of the AIC's decision to request the business unit to review its filings in the Bank's official records management system. Due to the high volume of documents, the business unit requested additional time to complete its review.

9. On March 15, 2020, the responsible business unit provided its review of the Requested Information filed in the Bank's official records management system.

10. On March 25, 2020, the AIC held its regular meeting. The secretariat to the AIC noted it was reviewing the information provided by the responsible business unit for accuracy and would report back to the AIC in due course.

11. On April 29, 2020, the AIC held its regular meeting. The AIC discussed the Requested Information reviewed by the responsible business unit noting:

- (a) 535 is the final total number of documents located and filed in response to the Request, out of which:
 - (i) 22 documents identified as restricted by the *Attorney-Client Privilege* exception were reviewed one by one;
 - (ii) 43 documents identified as restricted by the *Information Provided by Member Countries or Third Parties in Confidence* exception were reviewed one by one;
 - (iii) 467 documents were restricted by the *Deliberative Information* exception, out of which a sample of 30 random documents was reviewed one by one;
 - (iv) Three documents were originally filed as public;

- (b) Eight documents within the above restricted information were found to be potentially publicly available;
- (c) Some documents could also be restricted by additional AI Policy exceptions;
- (d) Some documents could be restricted by a different AI Policy exception than the one selected by the business unit;
- (e) Some documents still had been filed multiple times by different Staff.

12. The AIC considered the need for a one by one review of all the information marked as restricted by the *Deliberative Information* exception. Due to its volume, the AIC decided to assign a Bank staff to review all documents restricted by the *Deliberative Information* exception under the AI Policy before the AIC considers the entirety of the appeal on its merits.

13. On May 27, 2020, the AIC held its regular meeting. The AIC was informed that a Bank staff from the Archives Unit well versed with the AI Policy had been assigned with the review and was still reviewing the documents restricted by the *Deliberative Information* exception.

14. On July 1, 2020, the AIC held its regular meeting. The AIC was informed of the review of the documents restricted by the *Deliberative Information* exception, namely, that (a) some of the deliberative information has also been identified as restricted by the *Attorney-Client Privilege* exception, and (b) all deliberative information is restricted from public access by the *Deliberative Information* exception under the AI Policy, except for two attachments to one of the documents which were found to be publicly available.

Findings and Related Decisions

15. In reviewing the Application in accordance with the AI Policy, the AIC considered:
- (a) the Request;
 - (b) the Bank's initial denial of access to the Requested Information;
 - (c) the AI Policy's *Attorney-Client Privilege* and *Deliberative Information* exceptions that justified the Bank's initial decision to deny public access to the Requested Information;
 - (d) the Application;
 - (e) inputs from the relevant business units;
 - (f) the volume of the Requested Information;
 - (g) the AI Policy's *Information Provided by Member Countries or Third Parties in Confidence* exception restricting access to a portion of the Requested Information;

- (h) the reviews of the Requested Information by the AIC and by a consultant hired to review the documents restricted by the *Deliberative Information* exception;
- (i) the public interest nature of the appeal; and
- (j) whether there is a public interest to override the *Deliberative Information* exception under the AI Policy solely restricting a portion of the Requested Information from public access.

Preliminary Matters

Unreasonableness

16. In considering the appeal, the AIC took note of the Request's wording referring to "all World Bank documents", the need to interpret the Request "broadly", and that it should include "all correspondence" related to the Tanzania Amendment Act (*see* para. 1). The AIC found that while the Request was broadly formulated, the business unit had only identified 20 documents as responsive to the Request by the end of August 2019. Those 20 documents served as the basis for the Bank's initial denial of access.

17. The AIC found that it was only when the business unit was again consulted during the appeal phase that the business unit carried out a more thorough filing effort that resulted in 500 documents being identified as responsive to the Request, later revised to total 535 documents. The AIC found that the volume of documents identified in the appeal phase could amount to an unreasonable request had those documents been identified at the request phase, i.e., by August 2019. Nevertheless, as such consideration of unreasonableness may fall outside the AIC's mandate on appeal, the AIC carried out its due diligence with respect to all 535 documents located in response to the Request acknowledging the additional time and resources needed to fulfill the AIC's mandate under the AI Policy.

Overcoming the Bank's lack of initial denial of access

18. The AIC has authority to consider appeals after the Bank has denied access to information (*see* AI Policy, at Section III.B.8.(a) and (b).i). The Bank's initial decision to deny public access to the Requested Information was solely based on the 20 documents initially located by the business unit during the request phase. The business unit's finding of an additional and final total of 535 documents during the appeal phase means that the Bank's initial denial of access failed to consider 515 documents. Despite the technical finding that there was no Bank denial of access to the majority of the documents located by the business unit during the appeal, the business unit's views clearly indicated that the outcome would have been the same (i.e., denial) had those documents been remitted back to the request phase for consideration and been actually considered then. Based on the above, and for the sake of economy and efficiency, the AIC decided to rectify the Bank's initial denial of access to consider it as including the additional 515 documents located

by the business unit during the appeal phase. For this reason, the AIC has authority over the entirety of the Application.

Violation of Policy

19. 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).

20. 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 the AI Policy, which set out the AI Policy’s list of exceptions (*see* AI Policy, at Section III.B.2). Section III.B.2.(d) of the AI Policy states that, under the *Attorney-Client Privilege* exception, the Bank does not provide access to information subject to attorney-client privilege, including, among other things, communications provided and/or received by the General Counsel, in-house Bank counsel, and other legal advisors. Section III.B.2.(g) of the AI Policy provides, under the *Information Provided by Member Countries or Third Parties in Confidence* exception, that the Bank has an obligation to protect information that it receives in confidence and, thus, does not provide access to information provided to it by a member country or a third party on the understanding of confidentiality, without the express permission of that member country or third party. 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). Safeguarding the deliberative process is also one of the AI Policy’s five principles (*see* AI Policy, at Section III.A.1).

21. The AIC held extensive deliberations concerning the appeal and numerous consultations with the responsible business units. The Bank conducted an extensive search of the records in its possession in response to the appeal. The AIC carried out an exhaustive review of the Requested Information to ensure full and detailed review of all 535 documents responsive to the Request. Such voluminous nature of the Requested Information required an extended period to enable the AIC to accurately consider the appeal.

22. In this case, the AIC found that:

- (a) the Requested Information includes communications and legal opinions provided by in-house Bank counsel, information provided to the Bank in confidence, and/or candid exchanges among many stakeholders both internally and externally;
- (b) in some instances, more than one AI Policy exception restricted part of the Requested Information although only one AI Policy exception had been selected by the responsible business unit;
- (c) a small portion of the Requested Information has been restricted by the wrong AI Policy exception, i.e., 20 documents initially restricted by the *Information Provided by Member Countries or Third Parties in Confidence* exception were found to be restricted by the *Deliberative Information* exception. In such cases, the AIC found the error to be harmless, as the information remains restricted from public access although by another AI Policy exception;
- (d) five documents were found to be publicly available through other sources shortly after their filing in the Bank's official records management system.² Such documents consist of legislative acts, government regulations, and talking points prepared by the Bank for a public parliamentary hearing;
- (e) one document attached to an email filed as restricted by the *Deliberative Information* exception is publicly available through other sources (*see* para. 14(b)). One out of the two documents attached to the email in question is a duplicate filing of one of the five documents referred to in subparagraph (e) above; and
- (f) three documents originally filed as "public" were appropriately published.

23. The AIC found that the business unit pursued the member country's express permission to disclose the portion of the Requested Information restricted by the *Information Provided by Member Countries or Third Parties in Confidence*. However, no response has been received from the member country. The Bank takes the lack of response as non-consent to disclose the portion of the Requested Information restricted by the *Information Provided by Member Countries or Third Parties in Confidence* exception.

² The five documents resulted from a careful review of the eight documents found to be potentially publicly available (*see* para. 11(b)). Three of those eight documents were separately filed three times, bringing the total number of publicly available documents down to five.

24. Based on the above findings, the AIC concluded that the Bank:

- (a) properly and reasonably denied public access to most of the Requested Information, i.e., 524 documents, and, therefore, did not violate the AI Policy regarding those documents; and
- (b) improperly and unreasonably denied public access to a small number of the Requested Information, i.e., six documents, and, therefore, violated the AI Policy regarding these documents.

For this reason, the AIC decided to partially uphold and partially reverse the Bank's decision to deny public access to the Requested Information.

25. With respect to the portion of the appeal the AIC decided to reverse, the publicly available documents are provided below for ease of reference. The list below includes the three documents originally filed as public, the five documents found to be public during the AIC's review, and the one attachment found to be public during the review of the documents restricted by the *Deliberative Information* exception (*see* paras. 11(a)(iv), 11(b), 14(b), and 22(e), (f) and (g)).

- (a) [Statistics Act 2015, Act Supplement](#), May 22, 2015;
- (b) [Miscellaneous Amendments Bill, Bill Supplement](#), June 8, 2018;
- (c) [Miscellaneous Amendments Act, Act Supplement](#), June 30, 2019;
- (d) [Talking Points for the World Bank Oral Comments, Parliamentary Public Hearing on the Draft Amendments to the Statistics Act \(CAP 351\)](#), June 21-22, 2019 Dodoma;
- (e) [Statistics Regulations 2017, Subsidiary Legislation](#), February 24, 2017;
- (f) [Miscellaneous Amendments Act September 2018, Act Supplement](#), September 25, 2018;
- (g) [Miscellaneous Amendments Bill June 2019, Special Bill Supplement](#), May 30, 2019;
- (h) [Signed Amendment Act, The Written Laws \(Miscellaneous Amendments\)](#), Act, 2019; and
- (i) [Taarifa June 2019 \(in Swahili\)](#), June 19, 2019.

26. Under the AI Policy, if the AIC upholds the initial decision to deny public access to information in appeals alleging "violation of 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* AI Policy, at Section III.B.8.(b).ii).

“Public Interest” case

27. 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).

28. The AIC considered whether the public interest assertion in the Application merited overriding the *Deliberative Information* exception solely restricting a portion of 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. The AIC acknowledged the sensitivity and importance of statistical information the Bank receives to carry out its own work as a development organization. The AIC considered the business unit’s views on the possible disclosure of the Bank’s deliberations on the Tanzania Statistical Act and the impact of such disclosure to the integrity of the deliberative process and to the free and candid exchange of ideas, vis-à-vis the alleged public interest in the Application.

29. Based on the above considerations, with respect to the portion of the Requested Information solely restricted from public access by the *Deliberative Information* exception under the AI Policy, the AIC found no compelling ground to support the appeal on a public interest basis and to override the *Deliberative Information* exception. For this reason, in response to the public interest assertion in the Application, the AIC decided to uphold the Bank’s decision to deny access to the Requested Information solely restricted by the *Deliberative Information* exception.

30. The AI Policy does not allow the restriction of information pursuant to the *Attorney-Client Privilege* or the *Information Provided by Member Countries or Third Parties in Confidence* exceptions to be appealed on public interest grounds (*see* AI Policy, at Section III.B.8.(a).ii). Accordingly, the portion of the Application that appeals the Bank’s denial of information restricted by the *Attorney-Client Privilege* and the *Information Provided by Member Countries or Third Parties in Confidence* exceptions on public interest grounds is hereby dismissed as it is not properly before the AIC for consideration (*see* AI Policy, at Section III.B.8.(a).ii, and AI Policy Directive/Procedure, at Section III.D.1.a.iii).

31. 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).