

AIC decision on appeal #61

CASE NUMBER AI4813

CERTAIN INFORMATION RELATED TO THE STREAMLINING OF THE PROCEDURES FOR THE DISCLOSURE OF BOARD RECORDS

(Decision dated May 31, 2017)

Summary of Decision

- The Access to Information Committee (“AIC”) found that the application, which asserts an appeal on violation of policy basis, is not properly before the AIC for consideration.
- The World Bank (“Bank”) denied access to the “*Access to Information Policy Streamlining Procedures for Disclosure of Board Records*” (R2016-0213[IDA/R2016- 0256], dated November 2, 2016), based on the *Corporate Administrative* and the *Deliberative Information* exceptions under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“AI Policy”), pursuant to a decision made by the Bank’s Board of Executive Directors (“Board”). Under the AI Policy, the AIC does not have authority over decisions by the Board, and thus appeals of Board decisions are automatically dismissed (*see* AI Policy, at footnote 24). For this reason, the appeal is dismissed for appealing a matter that the AIC does not have authority to consider.

The Decision

Facts

1. On February 13, 2017, the requester submitted a request (“Request”) for the document titled “*Access to Information Policy Streamlining Procedures for Disclosure of Board Records*” (R2016-0213[IDA/R2016- 0256]), dated November 2, 2016.
2. On March 22, 2017, the World Bank (“Bank”) denied access to the requested document, based on the *Corporate Administrative Matters* and the *Deliberative Information* exceptions under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“AI Policy”), indicating further that this decision was the result of a decision by the World Bank’s Board of Executive Directors (“Board”). On March 27, 2017, the secretariat to the Access to Information Committee received an application (“Application”) appealing the Bank’s decision.
3. The Application challenges the Bank’s decision on violation of policy grounds. The Application states, in relevant part, the following:

[...] *Pursuant to the Bank Access to Information Policy, I appeal the March 22, 2017, denial of my Feb. 1 request (case number AI4813) for the document entitled “Access to Information Policy Streamlining Procedures for Disclosure of Board Records” (R2016-0213[IDA/R2016- 0256], dated November 2, 2016). This document is referenced in the minutes for Nov. 19, 2016, meeting of the World Bank Board of Executive Directors: The*

Executive Directors recorded their approval on November 10, 2016 of the recommendation contained in paragraph 6 of the document entitled “Access to Information Policy Streamlining Procedures for Disclosure of Board Records” (R2016-0213[IDA/R2016- 0256], dated November 2, 2016).

[...]

I appeal on six grounds:

i. The Bank has failed to exercise its discretion to release information. The AI Policy (II B 18) states:

The Bank reserves the right to disclose, under exceptional circumstances, certain corporate administrative information (paragraph 15), deliberative information (paragraph 16), and financial information (paragraph 17 (a), (b), and (c)) that is restricted under the exceptions, if the Bank determines that the overall benefits of such disclosure outweigh the potential harm to the interest(s) protected by the exception(s).

This request qualifies for such consideration. [...]

ii. Blanket denial of the whole document contravenes the underlying tenet of the Bank policy, a commitment to “maximizing access to information.” The Bank has failed to release portions of the document on the basis that doing so would undermine the deliberative process. The goal of protecting the deliberative process is common in the FOI world, but is typically interpreted to protect sensitive opinions given by staff members, not factual information contained in the same document or policy proposals that are being put forward to a decision-maker for approval. Releasing the factual information and policy proposals, at least, would provide a foundation for public understanding of the issues at stake. In this instance, there is no indication that a partial release was considered as is optional under Bank policy.

iii. The redaction guidance policy, adopted by Bank staff administratively shortly after the approval of the AI policy by the Bank Board, violates the AI policy. The breadth of the redaction guidance stands in contradiction to the fundamental premise of AI policy: the “presumption of disclosure.” By making redaction totally optional, the guidance empowers Bank staff to undercut the most important openness commitment promised in the Board’s AI policy and is inconsistent with its core underlying principles. As such, this obligation should be read into the Policy so as to render it internally consistent and functionally effective. Otherwise, the presence of one name in a large document could render the whole document secret, which highlights the untenable nature of the current approach.

[...]

iv. Since the recommendation was accepted, the document embodies a Board decision and hence is no longer a deliberative document.

v. *The Bank has erred in construing the Corporate Administrative exemption:*

[...]

The exemption is clearly not intended to apply to discussion of the Bank Access to Information Policy. The examples given all relate to the Bank's financial affairs. Its use here stretches the exemption in directions which were clearly never contemplated and hence represents an abuse of the Policy.

vi. [...] *In this case, the Board's decision is unintelligible, masked in a reference to a paragraph in a report that it did not disclose.*

The Executive Directors recorded their approval on November 10, 2016 of the recommendation contained in paragraph 6 of the document entitled "Access to Information Policy Streamlining Procedures for Disclosure of Board Records" (R2016-0213[IDA/R2016- 0256], dated November 2, 2016). [...]

Findings and Related Decision

4. 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 document;
- (c) the Application; and
- (d) the AI Policy's *Corporate Administrative* and the *Deliberative Information* exceptions that justified the Bank's decision to deny public access the requested document, and the basis for such determination.

5. The Access to Information Committee ("AIC") considered the Application in accordance with the AI Policy. Under the AI Policy, a requester who is denied access to information by the Bank may file an appeal if the requester is able to establish *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). The AI Policy also states that because the AIC has no authority over decisions by the Board, appeals of Board decisions are automatically dismissed (*see* AI Policy at footnote 24).

6. In this case, the AIC found the requested document is a Board paper classified as "Confidential". The Board paper is covered by the *Corporate Administrative Matters* and the *Deliberative Information* exception. Board papers classified as Confidential are eligible for declassification only after 20 years old (*see* AI Policy, at Section III.B.6 (b) iii); whereas the information covered by the *Corporate Administrative Matters* exception is not subject to declassification (*see* AI Policy, at Section III.B.6 (a)). The AIC noted, that, while such Board

paper may be made publicly available by the exercise of the Bank's prerogative to disclose, only the Board has the authority to exercise this prerogative in the case of Board papers (restricted by these exceptions) that are classified as "Confidential" (see AI Policy, at Section IV.1 (a)). The AIC found that the Board did consider this matter and decided not to exercise the Bank's prerogative to disclose this Board paper (*see* [Minutes of Meeting of the Executive Directors of the Bank and IDA and the Board of Directors of IFC and MIGA held on March 28, 2017 and record of approvals March 17 through 28](#)). The AIC found that the Board, in deciding to not exercise the Bank's prerogative to disclose this Board paper, affirmed both its security classification and the applicable AI Policy exceptions. Because the denial resulted from a Board decision, which the AIC does not have authority to consider, the Application must be dismissed in accordance with the AI Policy (*see* AI Policy, at footnote 24).

7. For the above reasons, and pursuant to Section III.D.1 a (iii) of the Bank Directive/Procedure: Access to Information, July 1, 2015, Catalogue No. ECR4.01-DIR.01, the Application is dismissed for appealing a matter that the AIC does not have authority to consider.

8. Notwithstanding the above, the AIC recognized that there is a legitimate interest for requesters of certain Board papers and Board records to understand the process by which Board decides on the disclosure of these documents. To this effect, the AIC noted that the Bank has: (a) provided a brief overview of the streamlining procedures for disclosure of Board records (available [here](#)); and (b) intends to make publicly available a document that will comprehensively lay out all the procedures for the Board to review and decide on certain public access requests for certain Board papers and Board records.