

## AI Appeals Board Decision

Case No. AI1473

Implementation Status and Results Reports of the India: Mumbai Urban Transport Project  
prepared between 2005 and 2010

(Decision dated December 13, 2012)

On July 23, 2102, the Secretariat to the Access to Information Appeals Board received an application (“Application”) appealing the Bank’s decision to deny access to the following information: “11 Implementation Status and Results Reports of the India - Mumbai Urban Transport Project (ID P050668) prepared between May, 24, 2005 and April 15, 2010.” The Access to Information Appeals Board (“AI Appeals Board”) reviewed the Application in accordance with the World Bank Policy on Access to Information and issued the following decision, dated December 13, 2012:

### Decision of the AI Appeals Board

1. The AI Appeals Board affirms the decision of the AI Committee in its entirety. The reasons for our decision are set out below.

### Background

2. On November 29, 2011, the Bank received a public access request for all (English) Implementation Status and Results Reports of the India: Mumbai Urban Transport Project (ID P050668) prepared between 2005 and 2010 (“the project”).

3. Implementation Status and Results Reports (ISRs) are, as their name suggests, important documents within the Bank’s general project operating procedures, as they contain information and analysis relating to the progress of a particular project.

4. Shortly after the request for information was received, the Archives Unit approached the relevant business unit to assist in locating any documents that would fall within the scope of the request and eleven ISRs for the period sought (2005-10) were duly identified.

5. The eleven ISRs were then filed as covered by the “Deliberative Information” exemption contained within paragraph 16 of the Bank’s Policy on Access to Information (AI Policy).

6. The acting country director was invited to comment on whether this exemption, or any other, was applicable. It was acknowledged that the requested ISRs pertained to a closed project and could therefore be subject to the Bank’s prerogative to release documents covered by the deliberative information exemption where the benefits of such disclosure outweighed the potential harm that would be caused (paragraph 18 of the AI Policy). However, the acting

country director's view was that given "the deliberative and sensitive nature of these documents prepared for the Bank's internal use, we would recommend declassifying these ISRs only after the due date of 20 years".

7. On February 22, 2012, the Access to Information Committee (AIC) considered the question of whether the prerogative should be applied and concluded that it should not. The requester was informed that the request for information had been denied.

8. On March 21, 2012, the requester challenged the decision on the basis that the ISRs "are not covered by the Deliberative Information section" and that, therefore, the denial was a violation of the AI Policy.

9. On April 18, 2012, the AIC considered the appeal and found that the ISRs were prepared to facilitate the Bank's own internal deliberations during the implementation of the project and were, therefore, covered by the Deliberative Information exemption. On that basis the AIC found that the Bank's decision to deny access on that basis did not violate the AI Policy, and the Bank's decision to deny public access to the ISRs was upheld. This decision was transmitted to the requester on May 24, 2012.

10. On July 23, 2012, the requester filed an application for appeal to the AI Appeals Board, which sat on December 13, 2012, to consider it.

#### Admission of the Appeal

11. The AI Appeals Board admitted the application for appeal on the following grounds:

- In Time: the application was filed before the AIC and the AI Appeals Board within 60 days. (For the avoidance of doubt the AI Appeals Board regards an application made on the 60<sup>th</sup> calendar day, taken from the day after notification of AIC decision, as being timely.)

- A *prima facie* case that the World Bank has violated the Policy by improperly or unreasonably restricting access to information that it would normally disclose under the policy has been established.

- Authority: The AI Appeals Board has authority to consider the appeal as it follows an AIC decision to uphold a World Bank decision to deny access on the basis that the denial did not violate the Policy.

#### AI Board Deliberations

12. The stated purpose of the Deliberative Information exemption set out in Paragraph 16 of the AI Policy is to permit the Bank "space to consider and debate issues away from public scrutiny", and "to preserve the integrity of its deliberative processes by facilitating and safeguarding the free and candid exchange of ideas." The Policy states that as a result the Bank

“does not provide access to information prepared for, or exchanged during the course of its own internal deliberations.”

13. Furthermore, the AI Committee, which has the authority (under paragraph 35 of the Policy) to interpret the Bank’s Policy in line with its guiding principles, has made it clear that “the term ‘Deliberative Information’ under the AI policy is applied broadly to include any internal communications and communications with external parties.” (*AI Policy Interpretation issued on March 13, 2011*)

14. Consequently the AI Appeals Board must determine whether the ISRs constitute “Deliberative Information” in coming to a view whether the Bank has violated its Policy on access to information.

15. These ISRs concerned a project which had been subject to major project restructuring, an Inspection Panel review, the suspension of funds at one time, and repeated extensions. We have had access to the content of ISRs. They comprise of information which may be regarded as factual or objective evaluations, and other information which may be regarded as more subjective such as expressing a candid opinion or offering a view on options.

16. Taken as a whole we accept that the ISRs in question constitute Deliberative Information that falls within the wide ambit of paragraph 16 of the Policy.

17. We note that the Bank has decided that in the case of ISRs prepared after the coming into effect of the AI Policy in 2010, such future documents will distinguish between deliberative and non-deliberative information, contained within them, in a way that the ISRs that are the subject of the current case did not.

18. In that respect these eleven ISRs may contain information of a type which, in equivalent documents drawn up post - 2010 could be capable of being separated between deliberative and non-deliberative information. However, as constituted they are undifferentiated and under the AI Policy and its Interpretation by the AIC, remain to be regarded as Deliberative Information.

#### AI Appeals Board Findings

19. Accordingly, we must find that the Bank has not violated its Policy and so uphold the AIC’s decision. The AI Appeals Board’s decision is final.