

## AIC Decision on appeal #80

### CASE NUMBER AI7146 DRC EBOLA AUDIT AND EVALUATION DOCUMENTS (Decision dated January 27, 2021)

#### Summary of Decision

- The Access to Information Committee (“AIC”) notes that 11 ISRs (as defined below) and two additional documents responsive to the request are publicly available. The AIC confirms the Bank’s decision to deny public access to the remaining part of the information found as responsive to the request, namely Aide Memoires and Back to Office Reports (“BTORs”).
- **Violation of Policy.** The information contained in Aide Memoires and BTORs reflect the Bank’s deliberations with the member country and/or third parties that have been critically important to the Ebola response in the Democratic Republic of Congo, as well as internal deliberations during project implementation. Thus, Aide Memoires and BTORs are of deliberative nature. For this reason, the AIC found that access to the Aide Memoires and BTORs is properly and reasonably restricted by the *Deliberative Information* exception under the AI Policy and there is no violation of policy. Based on the above, the AIC upholds the Bank’s decision to deny public access to part of the requested information.
- **Public Interest.** The AIC dismisses the public interest portion of the appeal because the Application fails to provide sufficient information that would reasonably support the appeal on public interest ground.

#### The Decision

##### *Facts*

1. On August 22, 2020, the World Bank (“Bank”) received a public access request (“Request”) seeking access to:

All of the audits and evaluations conducted by the World Bank on the Ebola response to the outbreak which took place in the Democratic Republic of Congo from August 2018 to June 2020. (“Requested Information”)

2. The Bank consulted the responsible business unit to locate the Requested Information. As a result, the business unit located 11 Implementation Status and Results reports (ISRs) as responsive to the Request. The business unit also noted that the Bank had not conducted any full-scale evaluation of the impact of the Ebola response in the Democratic Republic of Congo (“DRC”).

3. On September 25, 2020, the Bank replied to the Request. The Bank provided access to the 11 ISRs and informed the requester that the Bank had “not conducted any full-scale evaluation of

[the] impact of the DRC Ebola response” and thus, the Requested Information did not exist and/or was not in the Bank’s possession.

4. On October 4, 2020, the secretariat to the AIC received an application (“Application”) appealing the Bank’s decision on the Request. The Application did not indicate whether it was challenging the Bank’s decision on the basis of a “violation of the AI Policy” and/or that there is a “public interest” case to override certain AI Policy exceptions that may restrict the Requested Information. The Application clarified the requester’s interest for “any evaluation, including: - Evaluations by the Independent Evaluation Group – Development Impact Evaluations – Internal review or evaluations – Mission Reports – any other document that constitutes an evaluation of the Ebola response”.

5. On October 6, 2020, the AIC, through its secretariat (“AIC Secretariat”), consulted the responsible business unit to seek its views on the Requested Information in light of the appeal. As a result, the business unit located the following additional information in the Bank’s possession identified as responsive to the Request: Aide Memoires, Back to Office Reports (“BTORs”), one public available audit report covering 2018, and one report by Deloitte. The Aide Memoires and BTORs were identified as restricted by the *Deliberative Information* exception under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“[AI Policy](#)”). With respect to the Deloitte report, because such report was commissioned by the member country, the business unit sought the member country’s views on how it should be treated in light of the AI Policy.

6. On December 16, 2020, the AIC discussed the Application at its regular meeting.

### ***Findings and Related Decisions***

7. In reviewing the Application in accordance with the AI Policy, the AIC considered:
- (a) the Request;
  - (b) the Bank’s initial response to the Request;
  - (c) publicly available information responsive to the Request;
  - (d) the Application;
  - (e) inputs from the relevant business unit; and
  - (f) the AI Policy’s *Deliberative Information* exception that restricts part of the Requested Information.

## ***Preliminary Matters***

### *Overcoming the Bank's lack of initial denial of access*

8. In *Case No. AI6479, Tanzanian Statistics Act*, dated July 29, 2020, and in *Case No. AI6359, Lithuania Lease Tender*, dated November 18, 2020, the AIC decided it may rectify the Bank's initial denial of access to consider it as including additional documents restricted from public access that were located by the business unit during the appeal phase. Such decision by the AIC is for the sake of economy and efficiency, despite a technical finding that there was no Bank denial of access to documents located by the business unit during an appeal.

9. The same applies in this case. The Bank's initial response was solely based on the Bank's possession of ISRs. However, the business unit identified a total of 18 additional documents during the appeal phase. Out of the 18 documents, two documents are not in the Bank's possession (i.e., an audit for calendar year 2019, and Partner Evaluation Reports). Therefore, the Bank's initial response failed to consider 16 documents later located in the Bank's possession during the appeal phase.

10. Based on the above, the AIC hereby rectifies the Bank's initial response to consider it as a denial of access to the 16 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 the AI Policy”***

11. 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).

12. 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.(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 guiding principles (*see* AI Policy, at Section III.A.1). With respect to Aide

Memoires, such documents “are made publicly available if *both* the Bank and the member country/borrower agree” (*see* Bank Directive/Procedure on Access to Information, at Section III.B.3.a, emphasis added).

13. In this case, the AIC found that:

(a) the 11 ISRs already publicly available provide certain information on the evaluation of the project of interest; and

(b) out of the 16 documents located in the Bank’s possession during the appeal phase:

(i) two documents are publicly available, namely an [audit for calendar year 2018](#), and a [report by Deloitte](#) commissioned by the member country (both accessible through the hot links provided herewith)<sup>1</sup>; and

(ii) 14 documents consisting of Aide Memoires and BTORs are restricted by the *Deliberative Information* exception under the AI Policy.

14. With respect to the Aide Memoires and BTORs, the AIC found that these documents reflect the Bank’s deliberations with the member country and/or third parties that have been critically important to the Ebola response in DRC, as well as internal deliberations during project implementation. The AIC found that such information is deliberative in nature and disclosure of such deliberative information could jeopardize the Bank’s ability to continue working with the Bank’s partners in DRC. Finally, solely with respect to Aide Memoires, the AIC found that, given the sensitivity of the deliberative information involved, the Bank did not seek the member country/borrower’s views on the possible disclosure of the Aide Memoires. The Bank did not do so because even if the member country/borrower was to agree to disclose the Aide Memoires the Bank would not agree to disclose the Aide Memoires, rendering the option to disclose Aide Memoires pursuant to the Bank Directive/Procedure on Access to Information unenforceable as it requires *both* the Bank and the member country/borrower to agree.

15. Based on the above, because the information in Aide Memoires and BTORs is deliberative, the AIC decided that the Bank properly and reasonably restricted access to part of the Requested Information on the basis of the *Deliberative Information* exception under the AI Policy. For this reason, the AIC upholds the Bank’s decision to deny public access to part of the Requested Information.

16. 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

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<sup>1</sup> As a result of the business unit’s consultation with the member country with respect to the report by Deloitte, the member country provided one additional publicly available document, namely a [report dated November 2019](#).

(see AI Policy, at Section III.B.8.(b).ii). The link to appeal this portion of the decision is sent separately to the requester.

***“Public Interest” case***

17. 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.*).

18. In this case, the AIC found no argument supporting a public interest appeal in the Application. For this reason, the AIC dismisses the public interest portion of the Application because it fails to provide sufficient information that would reasonably support the appeal on public interest ground (see AI Directive/Procedure, at Section III.D.1.a.(ii)).

19. 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.).