

AIC Decision on appeal #25

CASE NUMBER AI2732 STUDY DONE BY MOTT MACDONALD ON CUMULATIVE IMPACTS OF HYDROPOWER PROJECTS ON GANGA RIVER

(Decision dated July 24, 2013)

Summary of Decision

- The requester filed an appeal against the World Bank’s decision to deny access to “a copy of [the] study done by Mott MacDonald on Cumulative Impacts of Hydropower Projects on Ganga River.”
- Under its Policy on Access to Information (“AI Policy”), the World Bank does not provide access to information prepared for or exchanged in the course of its own internal deliberations. Such information is restricted by the AI Policy’s “Deliberative Information” exception.
- The Access to Information Committee (“AIC”) found that the requested information was commissioned by the World Bank for its own deliberations and is, thus, restricted from disclosure by the “Deliberative Information” exception.
- Based on the statements set forth in the appeal, the AIC did not find adequate information to determine a clearly compelling basis for overriding the “Deliberative Information” exception.
- Notwithstanding the above, the AIC additionally considered whether to exercise the World Bank’s prerogative to disclose the requested information based on a determination that the benefit of disclosure outweighs the potential harm. Based on the available information, the AIC did not find compelling grounds to make such a determination. For this reason, the AIC decided not to exercise the World Bank’s prerogative to disclose the requested information.
- In view of the above considerations, the AIC upholds the decision to deny public access to the requested information.

Decision

1. On May 13, 2013, the World Bank (“Bank”) denied a public access request for “a copy of [the] study done by Mott MacDonald on Cumulative Impacts of Hydropower Projects on Ganga River” (“Request”). The Request was denied on the basis that the requested information is restricted by the “Deliberative Information” exception under the Bank’s Policy on Access to Information (“AI Policy”). On May 19, 2013, the secretariat to the Access to Information Committee (“AIC”) received the attached application (“Application”) appealing the Bank’s decision to deny public access to the requested information.

2. The Application challenges the decision to deny public access on the ground that there is a “public interest” case to override the AI Policy exception that restricts the requested

information. The Application asserts that the Government of India's "plan to harness River Ganga for the production of hydropower by making back-to-back dams on nearly 200 km of its flow in the Himalayas ... is destructive of both environment and culture of the people. Especially the impacts due to (1) damage to spiritual value of the river waters; (2) obstruction of migratory paths of fish[;] and (3) creation of beneficent sediments [which] have not been taken into account by the Government of India." The appeal further asserts that the study commissioned by the Government of India "on Cumulative Impacts of Hydropower Dams on Ganga" ... is "unscientific and weak" and for this reason the requester wants the Bank "to provide [him/her] with the study by Mott MacDonald so that the people can get an alternative view of the Cumulative Impacts of these projects." The Application also mentions that the requester has filed a "Request for Inspection of the WB loan to THDC for Vishnugad-Pipalkoti project [*sic*]."

Findings and Decision of the Access to Information Committee

3. The AIC considered the Application on the basis of whether the requester was able to make a public interest case that would justify overriding the "Deliberative Information" exception, which restricts the requested information from public access. In reviewing the Application in accordance with the AI Policy, the AIC considered:

- (a) the Request;
- (b) the Application;
- (c) the nature of the requested information;
- (d) the "Deliberative Information" exception under the AI Policy that justified the Bank's initial decision to deny public access; and
- (e) the information provided by the relevant business units concerning the requested information.

The AIC recognized the Application's indication that the requester had filed a Request for Inspection for the Vishnugad Pipalkoti Hydro Electric Project. In this context, the AIC further recognized that, pursuant to its authority under the AI Policy, the AIC's review of this case should be conducted in accordance with the terms of the AI Policy, independent of, and without prejudice to, the requestor's Request for Inspection.

"Public Interest" case

4. Pursuant to the AI Policy, a requester 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 requested information. Public interest appeals are limited to information restricted under the "Corporate Administrative Matters," "Deliberative Information" and "Financial Information (other than banking and billing information)" exceptions (*see* paragraph 36 (b) of the AI Policy). The "Deliberative Information" exception restricts from disclosure

“[i]nformation . . . prepared for, or exchanged during the course of, its internal deliberations” for the purpose of facilitating and safeguarding the free and candid exchange of ideas and ultimately preserving the integrity of the deliberative processes (paragraph 16 of the AI Policy).

5. The AIC found that the requested document had been commissioned by the Bank for the limited purpose of informing for the Bank’s own internal deliberations and, thus, the information is properly restricted by the “Deliberative Information” exception under the AI Policy (*see* paragraph 16 (b) of the AI Policy). The AIC considered the relevant business unit’s explanation regarding the limited purpose and scope of the document, as well as the benefits and potential harm related to disclosure, and whether the public interest assertion in the Application merits overriding the “Deliberative Information” exception that restricts the requested information. The AIC did not find adequate information to determine a clearly compelling ground to override the “Deliberative Information” exception.

6. Notwithstanding the AIC’s determination with respect to the public interest appeal, the AIC took the decision to also consider whether the available facts would support an exercise of the Bank’s prerogative to disclose the restricted information; for information restricted by the “Deliberative Information” exception, the AIC has the authority to exercise this prerogative under the AI Policy (*see* paragraph 18 (c) of the AI Policy). The AIC took into account the available information before it, including the statements made by the requester in the Application and the views of the relevant business unit, and after weighing these considerations, the AIC decided not to exercise the Bank’s prerogative to disclose the requested information in this case.

7. For the reasons discussed above, the AIC upholds the Bank’s decision to deny public access to the requested information. 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* paragraph 37 of the AI Policy).