

AIC decision on appeal #54

CASE NUMBER AI4523 CERTAIN INFORMATION RELATED TO THE BANGLADESH SECOND REACHING OUT OF SCHOOL CHILDREN PROJECT (Decision dated January 12, 2017)

Summary of Decision

- The Access to Information Committee (“AIC”): (a) reverses the World Bank’s decision to deny access to the requested procurement plan; and (b) upholds the World Bank’s decision to deny access to the requested “list and details of targeted rural upazilas (sub-districts) and selected urban slums” and the “list and details of Learning Centers (LCs)”. The AIC considered the appeal on both violation of policy and public interest grounds.
- **Violation of Policy.** The AIC found that the requested procurement plan is not restricted by any exception under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“AI Policy”), and hence the denial was in violation of the AI Policy. With respect to the requested “list and details of targeted rural upazilas (sub-districts) and selected urban slums” and the “list and details of Learning Centers (LCs)”, the AIC found that the available information responsive to this portion of the Request was provided by the implementing entity of the project *in confidence*, and hence it was properly restricted by the *Information Provided by Member Countries or Third Parties in Confidence* exception under the AI Policy. However, the AIC found that said information can now be made publicly available, since the World Bank has obtained consent to disclose by the implementing entity.
- **Public Interest.** Consideration of the portion of the appeal asserting “public interest” was not required, in view of the above AIC’s decision and findings.

The Decision

Facts

1. On September 15, 2016, the requester submitted a public access request (“Request”) for certain information related to the Bangladesh Second Reaching Out of School Children Project (“Project”), namely the following:

[...]

/ Procurement plan , Notices , and contract date of the project up to 31/07/2016 as not much mentioned at url <http://www.worldbank.org/projects/P131394/bd-reaching-out-school-children-ii?lang=en&tab=procurement&subTab=notices>

2/ List and details of targeted rural upazilas (sub-districts) and selected urban slums as mentioned in ISR24772

3/ List and details of Learning Centers (LCs) established in 148 of the most disadvantaged and remote upazilas as mentioned in ISR24772

2. On October 12, 2016, the World Bank (“Bank”) replied to the Request, by denying access to the requested information on the basis of the *Information Provided by Member Countries or Third Parties in Confidence* exception under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“AI Policy”).

3. On October 13, 2016, the secretariat to the Access to Information Committee (“AIC”) received an application (“Application”) appealing the Bank’s decision to deny access to the requested information. The application challenges the Bank’s decision on “violation of policy” and “public interest” grounds. The application states, in relevant part, the following:

[...]

1) I am an emerging social entrepreneur and started working for Rural and urban development for skill, education and Livelihood of poor people mainly women.

2) I approached many poor and extremely poor women in rural villages and in urban area of Bangladesh. During the approach I discovered that their suffering is increasing every day though world bank is funding various projects for the purpose.

3) During the field visit It came to notice that lack of very basic education and skill development is one of the important reason of suffering of the poor and Hard core poor.

4) As I found that few families and house hold are not able to send their children for basic schooling due to unawareness and poverty I approached ministry of primary and mass education to find out where all this project is working and how can I be of help to poor families and for this project but I was refused to furnish any details on the subject.

5) Due to above refusal I approached the access to information in World Bank for vary basic details to put poor families children to school and basic education as per this case AI-4523.

6) My case was denied by even AI on the ground that " Request is restricted from public access under the World Bank Policy on Access to Information (the Policy) because they are covered by the "Information Provided by Member Countries or Third Parties in Confidence" exception under the Policy.

7) If I get above basic information the objective of the project get served and poor children gets access to school with certain efforts.

8) Social worker like me gets totally confused and approach wrong places where there are no means and funds and officials of implementing agencies takes advantage due to non transparency ,no access to information and no accountability.

[...]

In view of the above I appeal to please provide information which is denied and not provided in this case.

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;

(c) the Application.

(d) the nature of the restricted information;

(e) the *Information Provided by Member Countries or Third Parties in Confidence* exception under the AI Policy that justified the Bank’s decision to deny public access to the requested information; and

(f) the information provided by the relevant business unit.

“Violation of the AI Policy”

5. 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).

6. The AI Policy states that the Bank “does not provide access to documents that contain or refer to information listed in sub-paragraphs (a) through (j)” of Section III.B.2 of the AI Policy, which set out the AI Policy’s list of exceptions. Sub-paragraph (g) of Section III.B.2 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. The AI Policy also states, in relevant part, that “[w]hen a member country or a third party provides [...] non-public information to the Bank with the understanding that it will not be disclosed, the Bank treats the information accordingly” (*see* AI Policy at footnote 7).

7. The AI Directive/Procedure further specifies with respect to documents prepared by member countries/borrowers that are in the Bank’s possession that “[i]f the country/borrower has assigned an information classification that restricts public access, the Bank does not disclose the material without obtaining the country’s/borrower’s written consent; in such cases, the Bank decides whether to refer the requests for information to the country/borrower authorities. [...] If the Bank believes that such information was given by the country or third party (explicitly or implicitly) in confidence, the information is classified accordingly and restricted from disclosure pursuant to section III.B.2(g) of the Policy.” (*see* AI Directive/Procedure at Section III.B.4 a).

8. In this case, the AIC found that no AI Policy exception restricts the requested procurement plan for the Project. On this basis, in response to the appeal asserting a violation of the AI Policy for this portion of the Request, the AIC found that the Bank improperly denied access to this information based on the

Information Provided by Member Countries or Third Parties in Confidence exception, and thus, the denial was in violation of the AI Policy. For this reason, the AIC reversed the Bank’s decision to deny access to this information.

9. With respect to the requested “list and details of targeted rural upazilas (sub-districts) and selected urban slums” and the “list and details of Learning Centers (LCs)”, the AIC found that the available information found to be responsive to this portion of the Request was provided by the implementing agency of the Project *in confidence*, and hence it was properly restricted by the *Information Provided by Member Countries or Third Parties in Confidence* exception under the AI Policy. However, since the submission of the Application, the Bank has obtained consent to disclose said information. Accordingly, while the AIC upholds the Bank’s decision to deny public access to the requested “list and details of targeted rural upazilas (sub-districts) and selected urban slums” and the “list and details of Learning Centers (LCs)”, the AIC notes that said information can now be made publicly available.

10. Please find the information identified as responsive to the Request attached below.

[Information was attached in original decision sent to the requester.]

Public Interest case

11. For the above reasons, consideration of the portion of the appeal asserting “public interest” was not required.