

## AI Appeals Board Decision

Case Numbers AI4300 and AI4409

Certain information related to the Empowerment and Livelihood Improvement “Nuton Jibon” Project  
(Decision dated February 3, 2017)

### Decision of the AI Appeals Board

Reference is made to the above-mentioned case numbers. The Access to Information Appeals Board (the “AI Appeals Board”) has reviewed the application for appeal regarding the above case numbers and decided to admit the application in part, and for such part, affirm the decision by the Access to Information Committee (“AIC”) to deny the requested information for the following reasons:

### Background

1. On May 9, 2016, and July 13, 2016, the requester submitted public access requests (“Requests”) under Case Nos. AI4300 and AI4409, respectively, for certain information related to the Empowerment and Livelihood Improvement “Nuton Jibon” Project in Bangladesh (the “Project”). Specifically, the Requests concerned the following information which will be addressed in this appeal:

Under Case No. AI4300:

- 1.1 Contract Data of Tube Well Boring done in villages.
- 1.2 Copies of Advertisement for construction of low cost offices and district level offices.
- 1.3 List of village wise IGA implemented.

Under Case Number AI4409:

- 1.4 Copies of report and base line surveys conducted for above mentioned projects during years 2010, 2011, 2012, 2013, 2014 and 2015.
  - 1.5 Contact details of region wise, districts wise, upzila wise, cluster wise, village wise 6151 producer groups with their activities as per ISR23784.
  - 1.6 Copies of villages matrix of cluster no 2 in district Gaibandha as on 15th June in year i) 2012, ii) 2013, iii) 2014, iv) 2015, and v) 2016 as per the Monitoring and Information System (MIS) report as mentioned in PAD.
2. On August 11, 2016, the World Bank (the “Bank”) denied the request for items 1.1 and 1.2 in AI4300, because the information was not in the Bank’s custody. On the same day, the Bank denied access to item 1.3, applying 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 August 18, 2016, the Bank replied to the request under Case No. AI4409, by denying access to the information identified as responsive to the request, applying the *Information Provided by Member Countries or Third Parties in Confidence* exception under the AI Policy.
4. On August 11, 2016, the secretariat to the AIC received an application appealing the Bank's decision under Case No. AI4300 on "violation of policy" and "public interest" grounds.
5. On August 23, 2016, the secretariat to the AIC received an application appealing the Bank's decision under Case No. AI4409 on "violation of policy" and "public interest" grounds.
6. On October 20, 2016, the AIC issued a joint opinion in these cases together as the subjects were deemed interrelated. The AIC:
  - 6.1 Did not make a finding regarding the scope of the search conducted but concluded that the Bank did not locate information responsive to items 1.1 and 1.2 or 1.4. Thus, it appears that the AIC dismissed the application for appeal regarding this information on the basis that the request and appeal did not involve information held in the Bank's possession;
  - 6.2 Determined upon review, that Item 1.3 was improperly withheld. Thus, the AIC released that information and so, therefore, it does not form part of the appeal to the AIB;
  - 6.3 Determined that Item 1.4 fell within the *Information Provided in Confidence by a Member Country or Third Party* exception. The AIC cited two portions of the AI Directive/Procedure ( July 1, 2015) to support this finding. First, the AIC noted that "[t]he [AI] Policy's applies to information, data, reports and analysis [...], deliberations, and any other work product generated as a result of, or in response to, the confidential information received from a member country or third party" (*see* AI Directive/Procedure at Section III.B.4 a). Second, the AIC held that the AI Directive/Procedure also recognizes that if the Bank believes that information was given by a member country or third party (explicitly or implicitly) in confidence, the information is classified accordingly and restricted from disclosure. (*See* AI Directive/Procedure at Section III.B.3 d).
  - 6.4 Determined that in relation to item 1.6 the Bank has restricted access to reports generated from the Monitoring and Information System (MIS) of the implementing agency of the Project for the years 2013, 2014 and 2015 (the "MIS Reports"). However, the AIC noted that (i) the MIS Reports are provided to the Bank by the implementing agency of the Project in confidence; (ii) the MIS Reports contain information related to bank accounts; and (iii) the parties concerned have not authorized the disclosure of the MIS Reports. For these reasons, the AIC concluded that the MIS Reports: (i) contain confidential information received from member countries or third parties and are, thus, restricted by *the Information Provided by Member Countries or Third Parties in Confidence* exception under the AI Policy; and (ii) further contain banking and billing information, and are, thus, restricted by *the Financial Information* exception under the AI Policy. Additionally, in relation to any obligation on the Bank to generate reports through its limited access to the MIS Reports, the AIC determined that the AI Directive/Procedure provides that "The Bank reserves the right to refuse [...] any request that would require the Bank to create, develop, or collate

information or data that does not already exist or is not available in the Bank's records management system." (See AI Directive/Procedure at Section III.C.3).

7. On November 28, 2016, the requester filed an application for appeal to the AI Appeals Board, which sat on February 1-3, 2017, to consider it and two other related appeals.

#### Admission of the Appeal

8. 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.
  - 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 Appeals Board Findings

9. The AI Appeals Board concludes that in relation to items 1.1, 1.2, 1.4 and any baseline surveys for any year but 2012 in 1.5, there is no basis to find that the Bank has failed to recover and disclose relevant information in its possession. The AI Appeals Board is satisfied that neither Contract Data of Tube Well Boring done in villages nor Copies of Advertisement for construction of low cost offices and district level offices are the type of information that should ordinarily be managed or held by the Bank. Additionally, the Bank has noted that a Baseline Report is meant to capture the status at the outset of a project and thus the existence of only one Baseline Report is reasonable. Moreover, in reviewing the information provided, this Baseline Report may not even be responsive to the request, as the Baseline Report located by the Bank applied to an earlier project. Consequently, even though the AIC did not address the nature of the search conducted, having reviewed the files and spoken to staff, the AI Appeals Board specifically finds that the Bank does not possess responsive information related to items 1.1, 1.2, 1.4 and 1.5.
10. Alternatively, since the Bank and AIC both decided that the 2012 Baseline Report was responsive, the AI Appeals Board now turns to an analysis of the information provided by the Bank for review regarding the Baseline Report. The Board notes that the Baseline Report consists of four volumes. The first volume was provided to the Board for review and that volume standing alone did not contain confidential information. Nevertheless, the AIC was correct that the *Information Provided in Confidence by a Member Country or Third Party* exception applies to "information, data, reports and analysis [...], deliberations, and any other work product generated as a result of or in response to the confidential information received from a member country or third party" (see AI Directive/Procedure at Section III.B.4 a). Thus, since the information in Volume 1 was derived from confidential information it is covered by the exception. Moreover, as we previously noted in

Case No. AI3634 “the nature and breadth of the Bank’s AI Policy is such that the exceptions can be said to be class based,” and the *Information Provided in Confidence by a Member Country or Third Party* exception applies to the totality of the report. In the absence of an agreement to release the information provided to the Bank, the AIC was correct to deny access.

11. Regarding item 1.6, the AI Appeals Board finds that the AIC properly applied the *Information Provided in Confidence by a Member Country or Third Party* and the *Financial Information* exceptions to the Monitoring and Information System (MIS) reports. The reports were provided to the Bank by a third party and contain banking and billing information which falls squarely within the exception.
12. Accordingly, we find that the Bank has not violated its Policy. The Bank did not possess information responsive to items 1.1, 1.2, 1.4 and 1.5 and responsive information contained in items 1.4 and 1.6 properly fall within the *Information Provided in Confidence by a Member Country or Third Party* and the *Financial Information* exceptions.
13. The AI Appeals Board’s decision is final.