

AIC decision on appeal #35

CASE NUMBER AI3261

POST-PROCUREMENT REVIEW REPORTS AND ANY SUMMARY POST- PROCUREMENT REVIEW REPORT RELATED TO PROJECTS IN BANGLADESH (Decision dated July 17, 2014)

Summary of Decision

- The requester in this case sought to access “[c]opies of all ‘post-procurement review’ reports undertaken during 2013 in relation to Bangladesh projects/programmes,” and “[a]ny report summarizing the outcome of post-procurement reviews undertaken in Bangladesh since 1 July 2010.” The World Bank identified two documents responsive to the request and denied access to the first document based on the *Corporate Administrative Matters* exception and to the second document based on the *Deliberative Information* exception under the World Bank Access to Information Policy (“AI Policy”).
- The Access to Information Committee (“AIC”) found that the World Bank had erroneously denied access to the first document listed in the notice of denial based on the AI Policy’s *Corporate Administrative Matters* exception, but found the error to be harmless since the information is deliberative in nature and therefore restricted by the AI Policy’s *Deliberative Information* exception. Additionally, the AIC found the existence of a summary of this first document; while not mentioned in the notice of denial, the summary is, for the same reasons as the first document, responsive to the request and restricted under the AI Policy’s *Deliberative Information* exception. With respect to the second document listed in the notice of denial, the AIC found that the World Bank properly and reasonably denied access to the document because the information is deliberative in nature and is, thus, also restricted by the *Deliberative Information* exception. Based on these findings, the AIC concluded that the Bank had properly and reasonably denied public access to the information identified as responsive to the request and, therefore, did not violate the AI Policy. For this reason, the AIC upholds the Bank’s decision to deny public access to the information.

The Decision

Facts

1. On May 16, 2014, the requester sought to access “[c]opies of all ‘post-procurement review’ reports undertaken during 2013 in relation to Bangladesh projects/programmes - other than those that have been referred to the integrity vice presidency” and “any report summarizing the outcome of post-procurement reviews undertaken in Bangladesh since 1 July 2010” (“Request”). The World Bank (“Bank”) denied the Request on the premise that the two documents identified as responsive to the Request are restricted under the Bank’s Access to

Information Policy (“AI Policy”). The first document, identified as “Post Review of Procurement Contracts Primary Education Development Program III,” was denied on the premise that the information is covered by the AI Policy’s *Corporate Administrative Matters* exception. The second document, identified as “Procurement Post Review Report for Bangladesh Health Sector Development Program (P118708),” was denied on the premise that the information is covered by the AI Policy’s *Deliberative Information* exception. On June 23, 2014, the secretariat to the Access to Information Committee (“AIC”) received an application appealing the denial (“Application”).

2. The Application challenges the decision to deny public access on the basis that the denial violates the AI Policy. The Application states the following:

1. I sought, according to the [W]orld Bank response: 'Post Review of Procurement Contracts for Bangladesh Primary Education Development Program III (P113435)'

You stated that this is 'covered by the Corporate Administrative Matters under the Policy;

Para 15 states: 'The Bank does not provide access to information relating to the Bank’s corporate administrative matters, including, but not limited to, corporate expenses, procurement, real estate, and other activities' A footnote states: 'Corporate administrative matters include the pension and other retirement benefit plans of the World Bank Group, which are governed by the Pension Finance Committee and the Pension Benefit Administration Committee.

It is clear that this paragraph does not cover the request for 'post procurement review reports' - since these are nothing to do with corporate administrative matters of the World Bank.

2. I sought, according to your response: ' Procurement Post Review Report for Bangladesh Health Sector Development Program (P118708)'

And you said that it 'is covered by the Deliberative Information under the Policy.'

It is unclear how my request comes under 'deliberative' policy in para 16 since it does not come within (a) to (d).

Findings and Related Decisions

3. The AIC considered the Application on the basis of whether the Bank’s decision to deny public access to the requested information violates the AI Policy. In reviewing the Application in accordance with the AI Policy, the AIC considered:

(a) the Request;

(b) the denial of the Request;

- (c) the Application;
- (d) the nature of the information identified as responsive to the Request;
- (e) the AI Policy's *Corporate Administrative Matters* and *Deliberative Information* exceptions that were used to justify the Bank's decision to deny public access to respective documents identified as responsive to the Request; and
- (f) the information provided by the relevant business units concerning the requested information.

“Violation of the AI Policy”

4. Pursuant to the AI Policy, 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 paragraph 36 (a)). The AI Policy states that the Bank “does not provide access to documents that contain or refer to information listed in paragraphs 8-17” of the AI Policy, which set out the AI Policy's list of exceptions.

5. The Bank denied access to the information identified as responsive to the Request on the bases of two AI Policy exceptions, namely the *Corporate Administrative Matters* and the *Deliberative Information* exceptions. Paragraph 16 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, 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 paragraph 16 (a) and (b)). Information restricted by the *Deliberative Information* exception may be eligible for declassification and disclosure 20 years after the date of the document (*see* AI Policy at paragraph 33, *After 20 years*).

6. In this case, the AIC found that the document identified as “Post Review of Procurement Contracts Primary Education Development Program III” had been prepared by a consultant procured by the Bank to conduct, on behalf of the Bank, a post review of the procurement contracts awarded under the Bangladesh Primary Education Development Program III (“PEDP III”). The information was prepared and used in support of both the Bank's internal deliberations and its deliberations with external parties, including the member country concerned, regarding the implementation of PEDP III. The AIC, therefore, concluded that the requested information is of a deliberative nature and restricted by the AI Policy's *Deliberative Information* exception.

7. With respect to the Bank's assertion that the above-mentioned PEDP III information is covered by the AI Policy's *Corporate Administrative Matters* exception, the AIC found that the information does not reflect matters concerning the Bank's corporate administration and, thus, the exception was improperly applied as the premise for the information's restriction. While the AIC found that the Bank's attribution of the *Corporate Administrative Matters* exception to the information was in error, the AIC found the error to be harmless, as the information is restricted by the *Deliberative Information* exception.

8. In addition, the AIC was notified that a document summarizing the findings of the above-mentioned "Post Review of Procurement Contracts Primary Education Development Program III" document, which was not mentioned in the notice of denial to the Request, also exists. While the AIC recognized that the Bank had inadvertently omitted the summary document in the notice of denial, the AIC found the outcome was not impacted in that the summary document had also been prepared and used for internal and external deliberations concerning the implementation of the project, and is therefore also restricted by the AI Policy's *Deliberative Information* exception.

9. With respect to the document identified in the notice of denial as "Procurement Post Review Report for Bangladesh Health Sector Development Program (P118708)," the AIC found that the document had been prepared by the Bank as part of its post review of the procurement contracts that had been awarded under the Bangladesh Health Sector Development Program ("HSDP"). The AIC determined that the information supported both the Bank's internal deliberations and its deliberations with external parties concerning the implementation of the HSDP. For these reasons, the AIC concluded that the information is of a deliberative nature and, therefore, restricted by the AI Policy's *Deliberative Information* exception.

10. Since the documents at issue are all dated 2013 and restricted by the *Deliberative Information* exception, they are not yet eligible for declassification under the AI Policy.

11. Based on the above findings, the AIC concluded that the Bank had properly and reasonably denied public access to the information identified as responsive to the Request and, therefore, did not violate the AI Policy. The AIC upholds the Bank's decision to deny public access to the information.

12. Under the AI Policy, if the AIC upholds the initial decision to deny public access to information in appeals alleging a violation of policy, the requester may file an appeal to the Access to Information Appeals Board ("AI Appeals Board"), as the second and final stage of appeals (*see* AI Policy at paragraph 38). If you wish to file an appeal to the AI Appeals Board, click here.

[URL provided in original decision sent to the requester].