

## AI Appeals Board Decision

Case No. AI1362

Certain information concerning the  
Turkey Emergency Flood and Earthquake Recovery Project

(Decision dated February 15, 2013)

On July 23, 2012, the Secretariat to the Access to Information Appeals Board received an application (“Application”) appealing the Bank’s alleged decision to deny access to certain information concerning the Turkey Emergency Flood and Earthquake Recovery Project. The Access to Information Appeals Board (“AI Appeals Board”) reviewed the Application in accordance with the World Bank Policy on Access to Information and issued the following decision, dated February 15, 2013:

### Decision of the AI Appeals Board

1. The AI Appeals Board affirms the full decision of the AI Committee. The reasons for our decision are set out below.

### Background

2. On October 19, 2011 the World Bank received a public access request for certain information concerning the Turkey Emergency Flood and Earthquake Recovery (TEFER) Project. On October 20<sup>th</sup> the Archives Unit provided a link to publicly available information regarding TEFER
3. There then followed a period of several months in which The World Bank sought to identify and provide information in response to the request, with the Requester making supplementary submissions which, in effect, served to illustrate or specify the nature of the information being sought. In particular the Bank officials in the Turkey Country Management Unit (Turkey CMU) met with the requester at the Bank’s Ankara office and also instigated an extensive review of the project files held in Turkey and the United States to identify information within the scope of the request. Certain further information was provided to the Requester.
4. On May 7 the Bank's Lead Operations Officer formally replied to the Requester on the Turkey CMUs behalf, indicating which information had been provided and the extent of the search for additional information. This determined that no other information was held, save for two documents, both of which were being withheld under the terms of the Access to Information (AI) Policy.
5. The Requester’s appealed against this outcome and the appeal was heard by the Access to Information Appeals Committee on June 20 2012. In the absence of an indication by the requester of the ground(s) of the appeal the AIC considered the appeal on both grounds i.e. violation of the AI policy and /or public interest.
6. The AIC found that the Bank had conducted an extensive search of the records in its possession and did not locate information directly responsive to the requests for information made subsequent to the initial request. The AIC therefore dismissed the application for appeal on the basis that as it did not involve information held in the Banks possession the Bank’s response did not constitute a denial to information held by it.
7. On July 23, 2012, the requester filed an appeal before the AI Appeals Board

### Admission of the application for appeal

8. The AI Appeals Board first considered this application on December 13, 2012. Following an adjournment, during which time the AIC issued a supplemental decision, the AI Appeals Board concluded its deliberations and came to a decision on 15 February.

9. The Board admitted the application for appeal on the following grounds:

- The application was filed before the AIC and the AI Appeals Board within 60 days and therefore was within time.
- Although the grounds for appeal were stated in the most general terms, the basis for dissatisfaction was clear from the file on this case which contains sufficient information to reasonably support the appeal, providing at least a *prima facie* case that the World Bank has in some respect violated the Policy by improperly or unreasonably restricting access to information that it would normally disclose under the policy.
- The AI Appeals Board has authority to consider an appeal if 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. In this case, on 20 June 2012, the AIC initially dismissed the application on the basis that the information sought was not in the Banks possession. Subsequently the AIC issued a supplemental decision in January 2013 in which it determined that two documents, which the AI Board had remitted to it for specific consideration, had been denied without violation of the AI Policy.

#### AI Appeals Board Deliberations

10. In coming to its decision, the AI Appeals Board has had access to all of the correspondence between the Requester and World Bank officials including from the Archives Unit, Turkey CMU and the Secretariat. Members of the Board also spoke with the Lead Operations Officer in the Turkey CMU by video link to clarify and confirm certain matters.
11. In the view of the AI Appeals Board the substantive response given by the Turkey CMU on behalf of the Bank on May 7 raises two related but distinct matters which should be considered in the appeal process. The first is whether the search for information was adequate and the extent to which it has identified information relevant to the request held by the World Bank. The second is, if any such information has been identified, whether it has been denied in violation of the AI Policy.
12. Concerning the adequacy of the search for relevant information it is apparent that in the course of exchanges between the Turkey CMU and the Requester more specific supplementary information requests were made. In particular information was sought on investments broken down by specific location and especially for the Bartin Municipality. A major part of the reason why it took more than 6 months from when the first public access request was received on October 19, 2011 to a final response on May 7, 2012 from the Bank's Turkey CMU was because of the efforts made to search for any information relevant to these requests held in electronic format and archived paper documents in Turkey and in the archives in the United States.
13. By their appeal it can be said that the Requester is challenging the Banks assertion that it does not hold more information relevant to the request, and thereby the Bank is denying access to information which it would normally disclose.
14. The Board's view is that the Bank, and the Turkey CMU in particular, made an extensive and purposeful search for information specifically sought by the Requester. Where information relevant request was found it was provided to the Requester (with the exception of two documents dealt with below.)
15. The withheld information referred to in paragraph 14 was in two documents, a Progress Report and a Completion Report, contained some limited information on investments in the municipalities, but no comprehensive breakdown of the investment financed under the Project by location. In the response to the Requester dated 7 May 2012, the Turkey CMU concluded these documents are "deliberative and are therefore restricted from disclosure and the World Bank cannot release them unless the Borrower gives its written consent to disclose."
16. The AIC appears, in giving consideration to the application for appeal, not to have specifically addressed the basis on which access to these two documents was denied and whether this constituted a

violation of the AI Policy. Had it done so it should also have considered whether the documents were capable of being disclosed in the public interest.

17. The AI Board therefore remitted the case back to the AIC with a request that it address this omission by considering whether or not these two documents had been properly withheld and, if so, whether they could be disclosed on the grounds of public interest.
18. The AIC did so in January 2013 and issued a supplemental decision in which it found that the information had not been withheld in violation of the Bank's policy as the following exceptions applied:
  - (a) the Progress Report was provided by the Borrower in confidence and is restricted by both the "Information Provided by Member Countries or Third Parties in Confidence" (AI Policy paragraph 14) and the "Deliberative Information" (AI policy paragraph 16) exceptions under the AI Policy; and
  - (b) the Completion Report is restricted by the "Deliberative Information" exception under the AI Policy.
19. The Board notes the confirmation that the Progress Report was provided to the Bank by the Government of Turkey, which has explicitly withheld consent to its disclosure.
20. The AIC then considered whether there were grounds to override these exceptions which would permit disclosure in the public interest.
21. On the basis that the Bank's policy (AI Policy at paragraph 36(b)) does not permit information which is restricted by the exception for "Information Provided by Member Countries or Third Parties in Confidence" to be overridden on public interest grounds, the AIC found that there were no public interest grounds for appeal against the withholding of the Progress report.
22. With respect to the Completion Report, restricted by the "Deliberative Information" exception under the AI Policy, the AIC did not find compelling public interest reasons to override the "Deliberative Information" exception of the AI Policy.
23. It should be noted that under the Banks Policy the final determination as to whether the discretion to disclose information in the public interest should be used in any case is a matter for the AIC. Refusal to make such disclosure is not a ground for appeal to the AI Appeals Board which "does not consider appeals concerning requests to override the Policy's exceptions. "(see AI Policy at paragraph 38)

#### AI Appeals Board Findings

24. The AI Appeals Board concludes that there is no basis to find that the Bank has failed to recover and disclose other relevant information in its possession. Consequently there has been no violation of the AI Policy in this regard.
25. The AI Appeals Board finds the exceptions identified by the AIC did apply to the Progress Report and the Completion Report, and accordingly must find that the Bank has not violated its Policy and uphold the AIC's decision.
26. The AI Appeals Board's decision is final.

*Note 1: This appeal was filed in Turkish; the decision of the AI Appeals Board was translated into, and conveyed to the requester in, Turkish.*

*Note 2: The Note of Adjournment from the AI Appeals Board, dated December 13, 2012, and the AIC Supplemental Decision on Appeal, dated January 28, 2013, both referred to in paragraph 8 of the AI Appeals Board decision above, were also translated into, and conveyed to the requester, in Turkish.*