

AIC decision on appeal #55

CASE NUMBER AI4148 CERTAIN INFORMATION RELATED TO THE EMPOWERMENT AND LIVELIHOOD IMPROVEMENT “NUTON JIBON” PROJECT (Decision dated January 12, 2017)

Summary of Decision

- The Access to Information Committee (“AIC”) upholds the World Bank’s decision to deny access to the information identified as responsive to the request “[c]opy of agreement and amendment as asked in page 4 of mission report as ‘Agreements had been reached with the Gram Parishad and the umbrella agreement with the village had been amended. Upon request by the previous mission, SDF prepared a list of villages showing the recollected and redistributed funds as of March 11, 2015.’”. The AIC considered the appeal on both violation of policy and public interest grounds.
- **Violation of Policy.** The AIC found that the requested information 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 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.
- **Public Interest.** Based on the above, the appeal on public interest ground is dismissed for appealing a matter that the AIC does not have authority to consider.

The Decision

Facts

1. On January 13, 2016, the requester submitted a request (“Request”) for certain information related to the Empowerment and Livelihood Improvement “Nuton Jibon” Project in Bangladesh, namely the following:

[...]

1) List of Conditions required for public/private partnership with communities as business promotion, Livelihood and market linkage to help poor women .

2) List of conditions of rating as A or B or C or D of villages institutions (Gram Samiti, Social Audit committee, VOC)

3) List of District, Upazila, Union, Cluster and Village covered in SIPP-I and SIPP-II and to be covered in NJLIP.

4) Copies of Advertisement notice to CPTU for tube wells boring and basis of contract in SIPP-II

5) Copies of Advertisement notice to CPTU for supply materials for Dairy and Poultry and basis of contract in SIPP-II.

[...]

1) *Fund Disbursement since inception of the project in the format as shown in annex III.*

2) *Copy of agreement and amendment as asked in page 4 of mission report as “Agreements had been reached with the Gram Parishad and the umbrella agreement with the village had been amended. Upon request by the previous mission, SDF prepared a list of villages showing the recollected and redistributed funds as of March 11, 2015.*

2. On April 22, 2016, the World Bank (“Bank”) replied to the Request by: (a) providing access to certain information identified as responsive to certain portions of the Request; (b) informing the requester that certain information is not in the Bank’s custody; and (c) denying access to certain information identified as responsive to the portion of the Request for “[c]opy of agreement and amendment as asked in page 4 of mission report as ‘Agreements had been reached with the Gram Parishad and the umbrella agreement with the village had been amended. Upon request by the previous mission, SDF prepared a list of villages showing the recollected and redistributed funds as of March 11, 2015’” on the basis of the *Deliberative Information* exception under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“AI Policy”).

3. On April 25, 2016, the secretariat to the Access to Information Committee received an application appealing the Bank’s decision on “violation of policy” and “public interest” grounds. The AIC considered this application in its [Decision No. 45 \(dated June 16, 2016\)](#), where it found that:

[t]hat the document originally identified as responsive to the request, namely an outline of the umbrella financing agreement, is information already publicly available. [...]

[t]hat the scope of the request was broader than the scope considered by the Bank at the time of the denial of access. As a result, the AIC found that there is additional information responsive to the request, which the Bank has not yet either considered or denied. For the above reasons, the AIC refers the request back to the External and Corporate Relations (ECR) Unit for processing as a request for public access in accordance with the AI Policy.

4. On September 9, 2016, the Bank replied anew to the portion of the Request for “[c]opy of agreement and amendment as asked in page 4 of mission report as ‘Agreements had been reached with the Gram Parishad and the umbrella agreement with the village had been amended. Upon request by the previous mission, SDF prepared a list of villages showing the recollected and redistributed funds as of March 11, 2015.’” by denying access to the information identified as responsive on the basis of the *Deliberative Information, Information Provided by Member Countries or Third Parties in Confidence*, and *Financial Information* exceptions under the AI Policy. The Bank further informed the requester that this new Bank’s decision can be appealed in accordance with the AI Policy.

5. On October 17, 2016, the secretariat to the Access to Information Committee received an application (“Application”) appealing the Bank’s decision of September 9, 2016, 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 sustainable Livelihood of poor people mainly women. 2) I approached many poor women in villages and discovered that their suffering is increasing every day though world bank is funding various projects for the purpose. 3) During the efforts I discovered that there are misappropriation, fraud and corruption of vary high level but top management of implementing agency do not allow any information to reach to the right people so that things can be made straight. 4) We asked approached the villagers and tried to tally the world bank report which were totally mismatch. 5) To be sure and to find out what is really going wrong I started asking very basic details from SDF who is implementing agency but they refused to share any information. 6) Due to refusal of information which will serve the livelihood of poor women in Bangladesh I applied for information to access to information but most the information are 1) Delayed too much. 2) Not provided as asked. 3) Even not in possession is being claimed. 4) Even not being provided on the argument of as exception world bank is not allowing is being claimed. 5) If I get all information transparently we will be able to serve the sustainable livelihood of poor women and will be able to mitigate the issues for future. 6) All IGA providing entrepreneur like me gets totally confused and start working with wrong villages where there is no fund and SDF top management takes advantage due to non-transparency and no right access to information. 7) During the process of 1st appeal I keep working for the poor and given to understand that there has been lapses in disbursement to villages .Population was considered instead of Poor and Hard core poor. 8) Lapse caused an umbrella agreement which caused confusion among villagers and leads to non transparency and accountability problem. 9) To mitigate effect of non transparency and accountability I asked either village wise month wise funds being disbursed and adjusted is informed or copy of agreement including amendment be provided or informed which was further again denied after long waiting. 10) This delay and denial of 7 months since 07th January 2016 is causing: a) Poor and HCP feels project not favorable . b) Social and civic bodies lose interest causing one side claims on success. c) Various concerned get a way to carry out fraud and manipulation. d) Important components performance gets retarded . 10) The spirit and purpose of seeking information is to find a proper way of IGAs for poor poor and HCP poor only. Getting any confidential document or information is not reason of asking these information.

[...]

In light of the above facts and in public interest as known to me I here by make 2nd appeal to please provide information which is denied and not provided properly in this case

Findings and Related Decision

6. In reviewing the Application in accordance with the AI Policy, the AIC considered:
 - (a) the Request;
 - (b) the Bank's denial of access of September 9, 2016;
 - (c) the Application;

(d) the nature of the information identified as responsive to the portion of the Request for “[c]opy of agreement and amendment as asked in page 4 of mission report as ‘Agreements had been reached with the Gram Parishad and the umbrella agreement with the village had been amended. Upon request by the previous mission, SDF prepared a list of villages showing the recollected and redistributed funds as of March 11, 2015’”;

(e) the AI Policy’s *Deliberative Information, Information Provided by Member Countries or Third Parties in Confidence*, and *Financial Information* exceptions that justified the Bank’s decision to deny public access the said information; and

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

7. The AIC notes upfront that the below analysis is limited to information that is in the Bank’s possession and to which the Bank has denied access. The AIC recognized the delays in responding to the public access request. The AIC noted that: (a) the *Bank Directive/Procedure: Access to Information*, July 1, 2015, Catalogue No. ECR4.01-DIR.01 (“AI Directive/Procedure”) provides that “[t]he Bank [...] endeavors to provide a more comprehensive response within 20 working days. Additional time may be justified in special circumstances, including, for example, those involving complex or voluminous requests, or requests requiring review by or consultations with internal Bank units, external parties, the AI Committee, or the Board.” (*see* AI Directive/Procedure at Section III.C.1); (b) the number and – occasionally – volume of requests submitted by the requester since January 2016; (c) the delay relates only to a specific portion of the Request.

“Violation of the AI Policy”

8. 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).

9. 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).

10. 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).

11. In this case, the AIC found that the information identified as responsive to the specific portion of the Request is a report from the implementing entity of the Project along with the details of certain funds allocated, disbursed and recalled under the Project. This information was prepared the implementing entity and provided to the Bank *in confidence* during the course of the Project implementation. The AIC noted that this information has not been explicitly marked as confidential, but the sensitive nature of the information justified an implicit understanding of confidentiality. Accordingly, the AIC found that the requested information was properly restricted by the *Information Provided by Member Countries or Third Parties in Confidence* exception under the AI Policy. The AIC further noted that consent to disclose from the implementing entity has not been obtained, and as such the Bank cannot disclose said information. In light of this finding, the AIC does not consider necessary to determine whether the *Deliberative Information* or the *Financial Information* also restrict the requested information.

12. Based on all the above findings, the AIC concluded that the Bank's decision did not violate the AI Policy and upheld its decision to deny public access to the information identified as responsive to the specific portion of the Request. Under the AI Policy, if the AIC upholds the initial decision to deny public access to information in appeals alleging “violation of policy,” the requester can appeal to the Access to Information Appeals Board (“AI Appeals Board”) as the second and final stage of appeals (see AI Policy at Section III.B.8 (b) ii). If you wish to file an appeal to the AI Appeals Board, click here.

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

Public Interest case

13. Pursuant to the AI Policy, a requester who is denied public access to information by the Bank 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 information. Public interest appeals are limited to information restricted by the *Corporate Administrative Matters*, *Deliberative Information*, and/or *Financial Information* (other than banking and billing information) exceptions (see AI Policy at Section III.B.8 (a) ii).

14. The AIC recognized that the AI Policy allows requesters to make a public interest case to override certain AI Policy exceptions that restrict the public's access to information, limited to the *Corporate Administrative Matters*, *Deliberative Information*, and *Financial Information* (other than banking and billing information) exceptions (see AI Policy at Section III.B.8 (a) ii). Because the AI Policy does not allow requesters to make a public interest case to override the *Information Provided by Member Countries or Third Parties in Confidence*, the AIC concluded that the public interest appeal to override this exception restricting the requested information is not properly before the AIC for consideration (see AI Directive/Procedure at Section III.D.1 a (iii)).

15. For the above reasons, and pursuant to Section III.D.1 a (iii) of the AI Directive/Procedure, the portion of the appeal on public interest is dismissed for appealing a matter that the AIC does not have authority to consider.

16. Under the AI Policy, the decision of the AIC is final for appeals that assert a public interest case to override an AI Policy exception (see AI Policy at Section III.B.8 (b) i).