

AIC Decision on appeal #95

CASE NUMBER AI8036

BANK GUIDANCE ON ENVIRONMENTAL, FOREST AND OTHER NATURAL RESOURCE ASPECTS OF DEVELOPMENT POLICY FINANCING

(Decision dated April 27, 2023)

Summary of Decision

- **Violation of policy.** The Access to Information Committee (“AIC”) found that the Bank Guidance: Environmental, Forest, and other Natural Resource Aspects of Development Policy Financing, issued on December 21, 2021, (“Environmental Guidance”) is restricted by the *Deliberative Information* exception under the *Bank Policy: Access to Information*, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“[AI Policy](#)”). This is because the Environmental Guidance contains information that feeds into the Bank’s internal discussions as well as the Bank’s discussions with its member countries. For this reason, the AIC found that the World Bank (“Bank”) had properly and reasonably denied access to the Environmental Guidance based on the *Deliberative Information* exception under the AI Policy and there was no violation of policy. The AIC found it to be an error to deny access to part of the information based on the *Corporate Administrative Matters* exception under the AI Policy; however, the information remains restricted and the error is harmless.
- Notwithstanding the above, the AIC decided to partially reverse the Bank’s initial denial of access to the Environmental Guidance by exercising the Bank’s prerogative to disclose part of the information. For this reason, a public version of the Environmental Guidance has been disclosed and can be found by [clicking here](#).
- **Public interest.** The AIC found no compelling reason to override the *Deliberative Information* exception that continues to restrict access to certain portions of the Environmental Guidance.

The Decision

Facts

1. On May 20, 2022, the Bank received a public access request (“Request”) seeking access to the following information, in relevant part (verbatim):

(...) current (updated) World Bank Policy & Procedure Framework Guidance on environmental, forest, and natural resources, and any similar document that is used to guide e[n]vironmental impact assessment (apart from OP 8.60), that is applied to development policy finance. (“Requested Information”).

2. On May 26, 2022, the Bank consulted the responsible business unit to identify and locate the Requested Information. As a result, the responsible business unit identified the Bank Guidance: Environmental, Forests, and other Natural Resource Aspects of Development Policy Financing, issued on December 21, 2021, (“Environmental Guidance”) as responsive to the Request.

3. On June 21 and 28, 2022, the responsible business unit completed its due diligence and offered its views on the possible disclosure of the Requested Information.
4. On June 30, 2022, the Bank issued its decision and denied public access to the Requested Information based on the *Corporate Administrative Matters* and *Deliberative Information* exceptions under the AI Policy. On the same day, the Bank received an application (“Application”) appealing the Bank’s initial decision to deny public access to the Requested Information. The Application challenges the Bank’s decision to deny public access to the Requested Information on the basis that the denial “violates the AI Policy” and that there is a “public interest” case to override the AI Policy exceptions that restrict access to the Requested Information.
5. On July 6, 2022, the secretariat to the AIC (“AIC Secretariat”) consulted the responsible business unit to seek its views on the possible disclosure of the Requested Information in light of the Application.
6. On July 13, 2022, the responsible business unit offered its views on the appeal and a detailed explanation (a) for restricting public access to the Requested Information based on the *Corporate Administrative Matters* and *Deliberative Information* exceptions under the AI Policy, and (b) of the harm of disclosure if the Requested Information is made publicly available.
7. On July 27, 2022, August 31, 2022, December 14, 2022, and March 29, 2023, the AIC discussed the Application under this appeal at its regular meetings.

Findings and Related Decisions

8. In reviewing the Application in accordance with the AI Policy, the AIC considered:
 - (a) the Request;
 - (b) the Bank’s initial denial of access;
 - (c) the Application and the grounds for appeal;
 - (d) input from the responsible business unit;
 - (e) the nature of the Requested Information;
 - (f) whether the *Corporate Administrative Matters* and *Deliberative Information* exceptions and/or any other exception(s) under the AI Policy justify the Bank’s initial denial of access to the Requested Information;
 - (g) the public interest nature of the appeal;
 - (h) whether information in the public domain already discloses the Requested Information, in part or in its entirety; and

- (i) whether there is a public interest to override the exception(s) that restrict access to the Requested Information.

“Violation of the AI Policy”

9. 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).

10. The AI Policy states that the Bank “does not provide access to documents that contain or refer to information listed in subparagraphs (a) through (j)” of the AI Policy, which set out the AI Policy’s list of exceptions (*see* AI Policy, at Section III.B.2). Section III.B.2.(h) of the AI Policy states that, under the *Corporate Administrative Matters* exception, 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. Section III.B.2.(i) of the AI Policy provides, under the *Deliberative Information* exception, that, to facilitate and safeguard the free and candid exchange of ideas for the purpose of preserving the integrity of the deliberative processes, while the Bank makes publicly available the decisions, results, and agreements that result from its deliberative process, 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 Section III.B.2.(i).i and ii). Safeguarding the deliberative process is also one of the AI Policy’s five guiding principles (*see* AI Policy, at Section III.A.1).

11. Additionally, pursuant to the Bank Directive/Procedure on Access to Information Policy (“[AI Directive/Procedure](#)”):

The Bank considers disclosure of documents in their original form. The Policy imposes no obligation or duty on the Bank to either consider redaction or modification of a document that includes information restricted by one or more AI Policy exception. The Policy also imposes no obligation or duty on the Bank to redact or in any way modify a document that includes such restricted information. Documents that include information restricted by one or more AI Policy exception are, on their face, restricted from disclosure under the AI Policy. The Bank may, *in its sole discretion*, choose to redact *or modify* a document that includes restricted information, as the Bank may deem appropriate, to make the document eligible for disclosure in accordance with the AI Policy. A determination as to whether to redact restricted information from a document in order to make it publicly available is, therefore, a discretionary decision to be taken by Bank. (emphasis added)

12. In this case, the AIC found that the Environmental Guidance is a Bank guidance. As such, it is a non-mandatory “statement of information that explains a Policy, a Directive or a Procedure, or provides other guidance to staff” (*see* [Bank Directive Policy and Procedure Framework](#), at Section II, para. 4, and Section III, para. 1.b). More specifically, the AIC found that the content of the Environmental Guidance reflects:

- (a) non-mandatory advice on how Bank staff should implement the requirements of the Bank Policy Development Policy Financing (“DPF”), dated July 13, 2017. Such advice includes explanations on how (i) Bank staff should assess whether specific country policy reforms supported by DPF operations are likely to cause significant effects on member countries’ environmental, forests, and other natural resources and if so, how to assess the member country’s systems for managing such effects, including measures to address any identified gaps or shortcomings in such systems and how to describe these steps in the Bank’s DPF program document, and (ii) to make available to the public as part of the consultation process of the member country relevant to the operation key analytical findings of the Bank’s assessment of significant effects, the member country’s systems for managing such effects, and measures to address any identified gaps or shortcomings in such systems, in accordance with the Bank Policy on Access to Information;
- (b) information about internal roles, units, and internal processes and responsibilities that business units and staff members are advised to consider when performing the activities described in the Environmental Guidance. Moreover, the tone and content of the Environmental Guidance reflect that it was formulated for an internal audience and was made to guide Bank staff on the discharge of their functions when carrying out an operational matter, i.e., reflects an instructional nature from management to staff; and
- (c) internal implementation process of methodologies, workflow diagrams, and examples of case studies with explanations on how the implementation of prior actions may impact the environment. The methodologies and diagrams in the Environmental Guidance reflect and summarize detailed internal considerations and instructions that are evolving and serve the Bank’s internal deliberations and the Bank’s deliberations with its member countries. The examples of case studies, as the Environmental Guidance clarifies, are for illustrative purposes only and, thus, are tentative, not final.

13. The AIC also found that the majority of the information contained in the Environmental Guidance has already been disclosed through other publications, e.g., the Report [“Assessing the Environmental, Forest, and Other Natural Resource Aspects of Development Policy Lending : A World Bank Toolkit”](#).

14. Based on the above, the AIC concluded that:

- (a) the content of the Environmental Guidance feeds into the Bank’s internal discussions as well as the Bank’s discussions with its member countries;
- (b) based on the above, the Environmental Guidance is deliberative in nature in its entirety;
- (c) most of the content from the Environmental Guidance has already been disclosed through other publicly available documents, e.g., the Report [“Assessing the Environmental, Forest, and Other Natural Resource Aspects of Development Policy Lending : A World Bank Toolkit”](#); and
- (d) the few portions of the Environmental Guidance that describe internal implementation process of methodologies, workflow diagrams, and examples of case studies have not

been disclosed through other publicly available documents. These pieces of deliberative information in the Environmental Guidance continue to evolve as part of the Bank's discussions on climate related matters. For this reason, protecting the Bank's deliberative process is paramount with respect to these pieces of information.

15. Based on the above, the AIC decided that the Bank's initial denial of access to the Environmental Guidance based on the *Deliberative Information* exception was proper and reasonable and, thus, there was no violation of policy. However, based on the content of the information in question, the AIC found that the Bank's assertion that the *Corporate Administrative Matters* exception restricted access to the information is unmerited. Nevertheless, the AIC found this error to be harmless, as the information is covered by, and therefore would remain restricted under, the *Deliberative Information* exception.

16. Notwithstanding the AIC's determination above with respect to the appeal on a "violation of the AI Policy" ground, the AIC decided to also consider whether the available facts would support the exercise of the Bank's prerogative to disclose the restricted information. For information restricted by the *Deliberative Information* exception, the AIC has the authority to exercise this prerogative under the AI Policy (*see* AI Policy, at Section IV.1.(c)). The AIC considered the available information before it and whether the benefit of disclosure outweighs the potential harm to disclose the Environmental Guidance, in part or in its entirety. After weighing these considerations, the AIC determined that the benefit of disclosure outweighs the potential harm to disclose part of the Environmental Guidance. For this reason, the AIC decided:

- (a) to partially reverse the Bank's initial denial of public access by exercising the Bank's prerogative to disclose most portions of the Environmental Guidance, namely, the portions that the AIC found have already been made publicly available through other public documents; and
- (b) that the portions reflecting internal implementation process of methodologies, workflow diagrams, and examples of case studies have not been made publicly available and, as explained above, continue to evolve as part of the Bank's internal discussions as well as the Bank's discussions with its member countries. For this reason, these portions shall remain restricted by the *Deliberative Information* exception under the AI Policy.

17. Based on the above, and although the Bank considers disclosure of documents in their original form while reserving its right to redact or modify information at its sole discretion, the AIC ordered the disclosure of a public version of the Environmental Guidance solely to exclude the portion that remains restricted by the *Deliberative Information* exception. The AIC recognizes the business unit's efforts in doing so, which included corrections of certain typos in the public version of the Environmental Guidance. Accordingly, the Requested Information can be found by [clicking here](#).

18. Under the AI Policy, if the AIC upholds, in part or in its entirety, 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 (the "AI Appeals Board") as the second and final stage of appeals (*see* AI Policy, at Section III.B.8.(b).ii). Considering the AIC partially upheld the Bank's initial decision to deny public access in this case based on the *Deliberative*

Information exception, the link to appeal this portion of the decision will be sent separately to the requester.

“Public Interest” case

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

20. The AIC considered (a) whether the public interest assertion in the Application merited overriding the *Deliberative Information* exception currently restricting access to a portion of the Requested Information, (b) the responsible business unit’s views on the possible disclosure of this information, and (c) the impact of such disclosure, vis-à-vis the claimed public interest in the Application. The AIC found no compelling public interest basis to override the *Deliberative Information* exception that restricts access to a portion of the Environmental Guidance (i.e., internal implementation process of methodologies, workflow diagrams, and examples of case studies). For this reason, the AIC decided to uphold the Bank’s decision to deny access to a portion of the Requested Information that remains restricted by the *Deliberative Information* exception.

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