

AIC Decision on appeal #79

CASE NUMBER AI7157 CAMEROON TRANSPORT PROJECT

(Decision dated December 3, 2020)

Summary of Decision

- The Access to Information Committee (“AIC”) found that the information in the Bank’s possession identified as responsive to the request is restricted from public access because the Bank exercised its prerogative to restrict. The AIC considered the appeal on both violation of policy and public interest grounds. The AIC decision on appeals challenging a Bank denial of access on the basis of the Bank’s exercise of prerogative to restrict is final.
- **Violation of Policy.** The AIC found that part of the information is restricted from public access because there is more harm in disclosing the information than benefit; part of the information is subject to an ongoing procurement process and, thus, does not yet exist. Despite the error in denying access to part of the information based on the *Deliberative Information* exception under the AI Policy, the information remains restricted and the error is harmless. For this reason, the AIC found that the Bank properly and reasonably restricted part of the information from public access and there is no violation of policy. Based on the above, the AIC upholds the Bank’s decision to deny public access to part of the information and dismisses the portion of the appeal regarding the part of the information that does not yet exist.
- **Public Interest.** The AIC dismisses the public interest portion of the appeal because the relevant part of the information is restricted by the Bank’s exercise of prerogative, which is not subject to a public interest appeal.

The Decision

Facts

1. On August 31, 2020, the World Bank (“Bank”) received a public access request (“Request”) seeking access to the following contracts:

“-Travaux de construction de trois (03) centres directeurs des opérations d’urgences à yaoundé, Garoua et Maroua (03 lots)[.]
- Contrôle et surveillance des travaux de construction de trois (03) centres directeurs des opérations d’urgences à yaoundé, Garoua et Maroua[.]
- Travaux de réparation de la clôture autour de l’aéroport de Douala[.]
- Contrôle et surveillance des travaux de réparation de la clôture autour de l’aéroport de Douala[.]

- Travaux de bitumage économique de la route de patrouille autour de l'aéroport de Douala.
- Contrôle et surveillance des travaux de bitumage économique de la route de patrouille autour de l'aéroport de Douala.
- Travaux de bitumage économique d'une route de contournement de l'aéroport de Yaoundé (02 lots)[.]
- Contrôle et surveillance des travaux de bitumage économique d'une route de contournement de l'aéroport de Yaoundé.” (“Requested Information”).

2. On August 31, 2020, the Bank consulted the responsible business unit to identify and locate the Requested Information.

3. By September 10, 2020, the responsible business unit located part of the Requested Information responsive to the Request as restricted from public access by the *Deliberative Information* exception under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“[AI Policy](#)”). The business unit clarified that the remaining part of the Requested Information includes contracts merged into two activities for which procurement is ongoing and, thus, this part of the Requested Information is not yet available.

4. On the same date, i.e., September 10, 2020, the Bank denied access to the part of the Requested Information in the Bank’s possession based on the *Deliberative Information* exception. The Bank also clarified that the remaining part of the Requested Information includes contracts still under procurement and, thus, the information is not yet available.

5. On September 16, 2020, the AIC, through its secretariat (“AIC Secretariat”), received an application (“Application”) appealing the Bank’s decision to deny public access to the Requested Information, i.e., contracts, “in particular those whose existence has been acknowledged by the Bank.” 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 exception that restricts the Requested Information.

6. On September 18, 2020, the AIC Secretariat consulted the responsible business unit to seek its views on the possible disclosure of the Requested Information in light of the Application.

7. On November 10, 2020, the responsible business unit informed the AIC Secretariat that the part of the Requested Information in the Bank’s possession is restricted from public access by the Bank’s prerogative to restrict access under the AI Policy. The responsible business unit confirmed that the remaining part of the Requested Information is still under procurement; therefore, such information is not yet available. The responsible business unit also noted that

certain information on the contract awards related to the Requested Information is publicly available.¹

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 AI Policy's *Deliberative Information* exception that justified the Bank's initial decision to deny public access to part of the Requested Information;
 - (d) the Application;
 - (e) input from the relevant business unit;
 - (f) the nature of the Requested Information;
 - (g) whether the *Deliberative Information* exception and/or any other exception(s) under the AI Policy sufficiently protects the specific interests that could be harmed if part of the Requested Information is disclosed;
 - (h) the specific interests that could be harmed if part of the Requested Information is disclosed;
 - (i) the Bank's exercise of its prerogative to restrict access to part of the Requested Information.

¹ The following are the publicly available resources:

- (a) The World Bank [project procurement app](#) (IOS version - for apple phones). Once the app is installed, a user can write the project number (P#) in the search string. Any interested party will have access to prior review contract awards published. Each contract award details have the names of contractors and suppliers;
- (b) [WBG Finances Data](#) (updated as of October 22, 2020). Users have the option to export data, for example, as csv for MS Excel and have a list of all awarded contracts published by the Bank. Users are then able to filter the information according to fields such as country, project number, year of award, and other field values; and
- (c) Using the World Bank external website, the link is as follows (click the URL below and then hit "contracts" tab, contractor/supplier names are provided in each contract award link):
<https://projects.worldbank.org/en/projects-operations/project-procurement/P150999>

“Violation of the AI Policy”

9. Under 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). Notwithstanding the broad intent of the AI Policy, under exceptional circumstances, the Bank reserves its right to restrict access to information that it would normally disclose if it determines that such disclosure is likely to cause harm that outweighs the benefits of disclosure (*see* AI Policy, at Section III.B.1 and Section IV.2). 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.). Appeals challenging the Bank’s exercise of prerogative to restrict are considered by the AIC, whose decisions in the cases are final (*see* [Bank Directive/Procedure on Access to Information Policy](#), at Section III.B.5.b.ii).

10. The AIC found that, in this case, the Requested Information consists of contracts resulting from procurement processes under one project financed by the Bank. The AIC also found that the Bank possesses only part of the Requested Information; one part of the Requested Information does not yet exist because the procurement process is ongoing.

11. Similar to the AIC’s decisions in *Case No. AI6359, Lithuania Lease Tender*, dated November 18, 2020, *Case No. AI6929, Kenya Supplier Contracts*, dated November 24, 2020, and *Case No. AI7183, West and Central Africa Air Transport Safety and Security Project for Burkina Faso, Cameroon, Guinea, And Mali (P083751)*, dated November 24, 2020, the AIC found that the Requested Information refers to contractual information that contains details whose disclosure could negatively impact competition under projects financed by the Bank, increase costs, and prevent the Bank from ensuring the economy and efficiency necessary in the use of its funds. Thus, the Bank has an interest in restricting public access to contractual information resulting from procurement processes carried out in Bank-financed projects. Such interest is to enable the Bank to fulfill its mandate under its Articles of Agreement, i.e., make arrangements to ensure the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency (*see* [Articles of Agreement](#), at Article III, Section 5(b)).

12. Because (a) the AI Policy exceptions are insufficient to ensure the protection of the Bank’s interests in procurement processes carried out under Bank financed projects, and (b) disclosing the Requested Information is likely to cause harm to the Bank’s interests in the procurement process that outweighs the benefits of disclosure, as well as to the interests of contractors who are parties to those contracts, there are exceptional circumstances that justify the business unit’s decision to exercise the Bank’s prerogative to restrict access to part of the Requested Information in the Bank’s possession.

13. For the avoidance of doubt, the AIC recognizes that the *Deliberative Information* exception was erroneously applied. Nevertheless, the error in denying access to the information based on such exception is harmless because the information remains restricted from public access by the Bank's exercise of prerogative to restrict.

14. Based on the above, the AIC decided that, with respect to the part of the Requested Information:

(a) in the Bank's possession, the Bank properly and reasonably exercised its prerogative to restrict access to the Requested Information. For this reason, the AIC upholds the Bank's decision to deny public access to this part of the Requested Information; and

(b) that does not yet exist because the procurement process is ongoing, the AIC dismisses this portion of the Application for appealing a matter that the AIC does not have authority to consider (*see* Bank Directive/Procedure on Access to Information, at Section III.D.1.a(iii)). Nevertheless, the AIC recognizes that, despite not being in the Bank's possession, this part of the Requested Information is also restricted by the Bank's prerogative to restrict.

15. As noted in paragraph 9 above, the AIC decision on appeals challenging the Bank's exercise of prerogative to restrict is final.

“Public Interest” case

16. 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 (*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.*).

17. In this case, the Requested Information is restricted by the Bank's exercise of prerogative to restrict access (*see* AI Policy, at Section IV.2). Information restricted by the Bank's exercise of prerogative to restrict is not eligible for public interest appeals. For this reason, the AIC dismisses the public interest portion of the Application because it appeals a matter that the AIC does not have authority to consider (*see* AI Directive/Procedure, at Section III.D.1.a.(iii)).

18. 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.).