

AIC Decision on appeal #26

CASE NUMBER AI1856

INFORMATION CONCERNING "MEMORANDUMS OF REPLENISHMENT MEETINGS WITH THE REFERENCE NUMBER OF 'IDA/RPL' FROM IDA-6 TO IDA-12 TOGETHER WITH DISCUSSION PAPERS AND TECHNICAL NOTES USED AT REPLENISHMENT MEETINGS"

(Decision dated November 6, 2013)

Summary of Decision

- The requester filed an appeal against the World Bank's decision to deny public access to "memorandums of replenishment meetings with the reference number of 'IDA/RPL' from IDA-6 to IDA-12 together with discussion papers and technical notes used at replenishment meetings". The application asserts a "public interest" ground for overriding the AI Policy exception that restricts the requested information.
- Under the AI Policy, the World 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; such information is restricted by the AI Policy's *Information Provided by Member Countries or Third Parties in Confidence* exception.
- The Access to Information Committee ("AIC") found that:
 - (a) the World Bank received the information reflected in the requested documents in its capacity as secretariat to the external parties in their deliberation of IDA replenishment matters, and the parties provided the information with the understanding that it would not be disclosed and have not expressly authorized disclosure of the information; thus, the requested information is restricted by the AI Policy's *Information Provided by Member Countries or Third Parties in Confidence* exception; and
 - (b) the AI Policy does not allow the restriction of information pursuant to the "*Information Provided by Member Countries or Third Parties in Confidence*" exception to be appealed on public interest grounds.
- Based on the above, the AIC found that the application, which asserts an appeal on a public interest ground, is not properly before the AIC. For this reason, and pursuant to

paragraph 40 (c) of the AI Policy, the appeal is dismissed for appealing a matter that the AIC does not have authority to consider.

Decision

1. On July 16, 2013, the World Bank (“Bank”) denied a public access request to “memorandums of replenishment meetings with the reference number of ‘IDA/RPL’ from IDA-6 to IDA-12 together with discussion papers and technical notes used at replenishment meetings” (“Request”). The Request was denied on the basis that the requested information is restricted by the *Information Provided by Member Countries or Third Parties in Confidence* exception under the Bank’s Access to Information Policy (“AI Policy”). On July 24, 2013, the secretariat to the Access to Information Committee (“AIC”) received the attached application (“Application”) appealing the Bank’s decision to deny public access to the requested information.

2. The Application challenges the Bank’s decision to deny public access to the information on the ground that there is a “public interest” case to override the AI Policy exception that restricts the requested information. The Application states, in relevant part, the following:

(...) A thorough understanding of the history can guide our future policy actions which is of paramount importance to the public interest in preserving the effectiveness and relevance of the World Bank as a leading international development institution.

Regarding the nature of these documents, they mainly reflect different development perspectives of major donors. While they contain deliberative information, they are not politically sensitive. (...)

Findings and Decisions of the Access to Information Committee

3. In reviewing the Application in accordance with the AI Policy, the AIC considered:

(a) the Request;

(b) the Application and the ground on which the requester appealed the Bank’s denial of the Request;

(c) the nature of the requested information;

(d) the “*Information Provided by Member Countries or Third Parties in Confidence*” exception under the AI Policy that justified the Bank’s decision to deny public access to the requested information; and

(e) the information provided by the relevant business unit concerning the requested information.

“Public Interest” case

4. Pursuant to the AI Policy, a requester 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 requested. Public interest appeals are limited to information restricted under the *Corporate Administrative Matters, Deliberative Information, and Financial Information* (other than banking and billing information) exceptions (*see* AI Policy at paragraph 36 (b)).

5. 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. Paragraph 14 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 (*see* AI Policy at paragraph 14). The AI Policy further recognizes that if the Bank believes that information was given by a member country or third party (explicitly or implicitly) in confidence, the information is classified accordingly and restricted from disclosure pursuant to the *Information Provided by Member Countries or Third Parties in Confidence* exception (*see* AI Policy at footnote 11).

6. In this case, the AIC found that: (a) the Bank received the requested information in its capacity as secretariat to IDA deputies, who are parties external to the Bank, and are the parties involved in the deliberation of the IDA replenishment matters reflected in the requested documents; (b) IDA deputies have an understanding that the information conveyed to the Bank in their deliberations will not be disclosed, and on this basis, the Bank has historically kept such information in confidence; (c) while the IDA deputies have agreed to disclose more information relating to IDA replenishment meetings, they have not authorized disclosure of the requested information. For these reasons, the AIC concluded that the IDA deputies gave the information to the Bank with the implied understanding that the information would be kept in confidence; thus, the requested information is restricted by the *Information Provided by Member Countries or Third Parties in Confidence* exception under the AI Policy.

7. The AIC further 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 paragraph 36 (b)). Because the AI Policy does not allow the restriction of information pursuant to the *Information Provided by Member Countries or Third Parties in Confidence* exception to be appealed on public interest grounds, the AIC concluded that the restriction of the requested

information in this case cannot be the subject of a public interest appeal, and for this reason, the Application is not properly before the AIC for consideration (*see* AI Policy at paragraph 40 (c)).

8. For the above reasons, and pursuant to paragraph 40 (c) of the AI Policy, the appeal is dismissed for appealing a matter that the AIC does not have authority to consider.

9. While the AIC recognized that the information at issue is not subject to a public interest appeal, considering that one of the AI Policy's guiding principles is to maximize access to information, the AIC recommends that the business unit concerned pursue future opportunities to seek the consent of the parties concerned to disclose the requested documents, recognizing the potential benefit of their disclosure and recognizing that the passage of time may diminish the initial concerns that had justified their confidentiality.

10. 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 paragraph 37).