

## AIC decision on appeal #62

CASE NUMBER AI5009

### **TERMS OF REFERENCE FOR THE BANK'S DUE DILIGENCE REPORT/THE INDEPENDENT ASSESSMENT OF THE LAND POOLING SCHEME REFERENCED ON PG. 12 OF THE INTEGRATED SAFEGUARDS DATA SHEET FOR THE AMARAVATI SUSTAINABLE CAPITAL CITY DEVELOPMENT PROJECT (P159808)**

(Decision dated July 7, 2017)

#### Summary of Decision

- **Violation of Policy.** The Access to Information Committee (“AIC”) found that the “terms of reference for the Bank’s due diligence report/the independent assessment of the Land Pooling Scheme referenced on pg. 12 of the Integrated Safeguards Data Sheet for the Amaravati Sustainable Capital City Development Project (P159808)” (“TOR”) 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 TOR is in draft form and has not yet been finalized. For this reason, the AIC found that the World Bank (“Bank”) had properly and reasonably denied access to the TOR based on the *Deliberative Information* exception under the AI Policy.
- Notwithstanding the above, the AIC decided to reverse the Bank’s initial denial of access by exercising the Bank’s prerogative to disclose the draft TOR, based on its determination that the benefit of disclosure outweighs the potential harm. The AIC notes that (a) the TOR is a draft and has not yet been finalized, and (b) the TOR may be revised in the future as the draft report is finalized, and may need to be re-disclosed.
- **Public Interest.** In light of the above, consideration of the portion of the appeal asserting “public interest” was not required.

#### The Decision

##### *Facts*

1. On May 17, 2017, the requester submitted a request (“Request”) for the “terms of reference for the Bank’s due diligence report/the independent assessment of the Land Pooling Scheme referenced on pg. 12 of the Integrated Safeguards Data Sheet for the Amaravati Sustainable Capital City Development Project (P159808)” (“TOR”).

2. On May 22, 2017, the World Bank (“Bank”) denied public access to the TOR based on the *Deliberative Information* exception under the *Bank Policy: Access to Information*, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“AI Policy”).

3. On May 24, 2017, the secretariat to the Access to Information Committee (“AIC”) received an application (“Application”) appealing the Bank’s decision to deny public access to the TOR.

4. 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. The Application states the following:

- Policy violation: The TOR document is no longer at a stage that falls under the deliberative exception. The TOR has been finalized and is being used to guide an independent implementation assessment, which is ongoing. The TOR cannot sensibly fall within the deliberative exception since it is no longer being deliberated upon.

- Public interest: Even if the TOR falls within the scope of deliberative information, the Access to Information policy is guided by the principle of maximum disclosure, and release of the TOR is in the public interest. There is a strong public interest in understanding the nature and scope of the independent assessment as outlined in the TOR, which will evaluate a Land Pooling Scheme that has affected 20,000 farmers in the Amaravati area. Further, without such disclosure, ASCCDP-affected communities cannot meaningfully engage in the independent assessment process, and citizen engagement is also an important public interest.

### ***Findings and Related Decisions***

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

(a) the Request;

(b) the Bank’s denial of public access to the TOR;

(c) the Application;

(d) the nature of the TOR;

(e) the AI Policy’s *Deliberative Information* exception that justified the Bank’s decision to deny public access to the TOR; and

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

### ***“Violation of the AI Policy”***

6. 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).

7. 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 (i) of Section III.B.2 of the AI Policy, under the *Deliberative Information* exception, recognizes that, to facilitate and safeguard the free and candid exchange of ideas for the purpose of preserving the integrity of the deliberative processes, the Bank does not provide access to information (*including draft reports or other documents*) prepared for, or exchanged during the course of, its deliberations with member countries or other entities with which the Bank cooperates.

8. The AIC found that the TOR is in draft form and has not yet been finalized. For this reason, the AIC concluded that the Bank had properly and reasonably denied public access to the TOR based on the *Deliberative Information* exception, and, therefore, did not violate the AI Policy.

9. Notwithstanding the AIC’s determination 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 draft TOR. After weighing these considerations, the AIC decided to reverse the Bank’s initial denial of public access by exercising the Bank’s prerogative to disclose the draft TOR, based on its determination that the benefit of disclosure outweighs the potential harm. The AIC notes that (a) the TOR is a draft and has not yet been finalized, and (b) the TOR may be revised in the future as the draft report is finalized, and may need to be re-disclosed.

*[The requested information has been attached to the decision sent to the requester.]*

### ***“Public Interest” case***

10. For the above reasons, consideration of the portion of the appeal asserting “public interest” was not required.