

AIC Supplemental Decision on Appeal #19

CASE NUMBER AI1362 TURKEY EMERGENCY FLOOD AND EARTHQUAKE RECOVERY PROJECT

(Supplemental Decision dated January 28, 2013)

Summary of Supplemental Decision

- Following the decision of the Access to Information Committee (“AIC”) on appeal, the requester filed a subsequent appeal before the Access to Information Appeals Board (“AI Appeals Board”).
- In considering the appeal, the AI Appeals Board found that the Bank possesses two documents that fall within the scope of the request, i.e., a Progress Report and a Completion Report, and that the AIC’s findings and decision on appeal did not address those two documents’ disclosability. In view of such findings, the AI Appeals Board decided to adjourn and requested the AIC to consider whether the Progress Report and the Completion Report should be disclosed or are restricted by one or more exception under the AI Policy.
- Under the AI Policy, the Bank does not provide access to documents that contain or refer to information that is on a list of exceptions.
- In considering the issue posed by the AI Appeals Board in accordance with the AI Policy, the AIC concluded that:
 - (a) the Progress Report is restricted by both the “Information Provided by Member Countries or Third Parties in Confidence” and the “Deliberative Information” exceptions under the AI Policy; and
 - (b) the Completion Report is restricted by the “Deliberative Information” exception under the AI Policy.
- In the absence of an indication by the requester of under which ground(s) he/she wished to appeal before the AIC, the AIC considered the issue posed by the AI Appeals Board on both grounds, i.e., “violation of the AI Policy” and “public interest”.
- With respect to the “violation of the AI Policy” ground, the AIC concluded that the Bank’s decision to deny access to these two documents on the basis of the “Deliberative Information” exception under the AI Policy did not violate the AI Policy. For this reason, the AIC upholds the Bank’s decision to deny public access to the Progress Report and the Completion Report.
- With respect to the “public interest” ground, the AIC: (a) found that because the Progress Report is also restricted by the “Information provided by Member Countries or Third Parties in Confidence”, this portion of the appeal is not properly before the AIC and, thus, is dismissed; and (b) found no compelling public interest reasons to override the “Deliberative Information” exception of the AI Policy restricting the Completion Report and, thus, the AIC upholds the Bank’s decision to deny public access to the Completion Report.

Supplemental Decision

1. On July 20, 2012, the AIC's decision to dismiss the appeal under Case No. AI1362-A was transmitted to the requester.
2. On July 23, 2012, the requester filed a subsequent appeal before the AI Appeals Board.
3. On December 12, 2012, the AI Appeals Board convened to consider the appeal under Case No. AI1362-A. In considering the appeal, the AI Appeals Board found that the Bank possesses two documents that fall within the scope of the request, i.e., (a) the Progress Report No. 20 prepared by the Project's Implementation Unit ("Progress Report"), and (b) the Completion Report of Project Component B, dated November 2003, prepared by consultants Posch & Partners ("Completion Report"). The AI Appeals Board found that the AIC's findings and decision on appeal were silent with respect to the disclosability of the Progress Report and the Completion Report. In view of such findings, the AI Appeals Board decided to adjourn and requested that an issue be posed back to the AIC for consideration, i.e., whether the Progress Report and the Completion Report should be disclosed or are restricted by one or more exception under the World Bank's Access to Information Policy ("AI Policy").

Findings and Supplemental Decision of the Access to Information Committee

4. The AIC considered the issue posed by the AI Appeals Board on both grounds for appeal. In reviewing the issue in accordance with the AI Policy, the AIC considered:
 - (a) its original decision on the appeal;
 - (b) the AI Appeals Board note of adjournment, which sets out the issue posed to the AIC for consideration;
 - (c) the additional information provided by the Turkey Country Management Unit ("CMU") regarding the Progress Report and the Completion Report, including the views of the Government of Turkey ("GoT") on the documents' possible disclosure;
 - (d) the nature of the Progress Report; and
 - (e) the Completion Report.

"Violation of the AI Policy"

5. Pursuant to the AI Policy, a requester who is denied 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; only appeals alleging such violation of the AI Policy are considered by the AI Appeals Board (*see* paragraphs 36 (a) and 38 of the AI Policy). 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 that restrict access.
6. With respect to the Progress Report, the AIC recognized that it is owned by the Borrower and found that it is restricted by both the "Information provided by Member Countries or Third Parties in Confidence" and the "Deliberative Information" exceptions under the AI Policy (*see* paragraphs 14 and 16 (a) of the AI Policy). The AIC based its finding that the Progress Report is

restricted by both AI Policy exceptions mentioned above both on the GoT's views conveyed to the Bank through the CMU and the AI Policy's paragraph 16, footnote 11, which provides, in relevant part, that:

[i]f a member country or a third party has not classified the information given to the Bank and, to the Bank's knowledge, the member country or third party concerned has not made the information public, then such information is considered to be deliberative under paragraph 16 of this policy statement If the Bank believes that such information was given by the member country or third party (explicitly or implicitly) in confidence, the information is classified accordingly and restricted from disclosure pursuant to paragraph 14 of this policy statement.

7. Furthermore, paragraph 14 of the AI Policy states, 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. Thus the Bank does not provide access to information provided to it by a member country or a third party on the understanding of confidentiality, without express permission of that member country or third party." The AIC found that the CMU has sought the Borrower's consent to disclose the Progress Report, and that the Borrower has not consented to disclose the Progress Report. While the AIC found that the Bank did not assert that the "Information Provided by Member Countries or Third Parties" exception also restricted the Progress Report, the omission was harmless, as the Progress Report is covered by, and therefore would remain restricted under, the "Deliberative Information" exception under the AI Policy.

8. With respect to the Completion Report, which is owned by the Bank, the AIC concluded that it is restricted by the "Deliberative Information" exception under the AI Policy. The AIC also recognized that the harm of disclosure could justify the exercise of the Bank's prerogative to restrict the Completion Report should it be considered eligible for disclosure.

9. Based on the above findings, and in response to the AI Appeals Board inquiry on whether the documents in question should be disclosed or are restricted by one or more exception under the AI Policy, the AIC concluded that (a) the Progress Report is restricted by both the "Information Provided by Member Countries or Third Parties in Confidence" and the "Deliberative Information" exceptions under the AI Policy, and (b) the Completion Report is restricted by the "Deliberative Information" exception under the AI Policy. Thus, the Bank's decision to deny access to these two documents on the basis that they are restricted by the "Deliberative Information" exception under the AI Policy did not violate the AI Policy. For this reason, the AIC upholds the Bank's decision to deny public access to the Progress Report and the Completion Report.

"Public Interest"

10. 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* paragraph 36 (b) of the AI Policy).

11. With respect to the Progress Report, based on the above findings, it is restricted by both the “Information provided by Member Countries or Third Parties in Confidence” and the “Deliberative Information” exceptions under the AI Policy (*see* paragraph 6 above). As the AI Policy explains, the Bank “has an obligation to protect information that it receives in confidence. Thus the Bank does not provide access to information provided to it by a member country or a third party on the understanding of confidentiality, without express permission of that member country or third party” (*see* paragraph 7 above). In view of this requirement, 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 (*see* AI Policy at paragraph 36(b)). This portion of the appeal is, therefore, not properly before the AIC.

12. With respect to the Completion Report, restricted by the “Deliberative Information” exception under the AI Policy, the AIC did not find compelling public interest reasons to override the “Deliberative Information” exception of the AI Policy.

13. For these reasons, the AIC decided: (a) to dismiss the public interest portion of the appeal concerning the Progress Report, given that said portion of the appeal involves a matter that the AIC does not have authority to consider; and (b) to uphold the Bank’s decision to deny public access to the Completion Report.

14. 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* paragraph 37 of the AI Policy).

Note: This appeal was filed in Turkish; the AIC Supplemental Decision on Appeal was translated into, and conveyed to the requester in, Turkish.