

AIC decision on appeal #50

CASE NUMBER AI4381 CERTAIN INFORMATION RELATED TO THE EMPOWERMENT AND LIVELIHOOD IMPROVEMENT “NUTON JIBON” PROJECT (Decision dated November 16, 2016)

Summary of Decision

- The Access to Information Committee (“AIC”) upholds the World Bank’s decision to deny access to certain information related to the Empowerment and Livelihood Improvement “Nuton Jibon” Project in Bangladesh. The AIC considered the appeal on both violation of policy and public interest grounds.
- **Violation of Policy.** The AIC found that the requested letters dated September 25, 2013, and November 18, 2015, contain deliberative information, and thus are restricted by the *Deliberative Information* exception under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“AI Policy”). The AIC noted that the Bank’s decision erroneously specified the Information Provided by Member Countries or Third Parties in Confidence exception under the AI Policy as restricting the letters. The AIC considered this error to be harmless, as the requested letters were already restricted from public access. With respect to the information restricted in response to the request for “village matrix of Daskin Mohodipur in District Gaibandha cluster no 2 as on 15th August in year i)2012 ii) 2013 iii) 2014 iv) 2015 as per MIS report as mentioned in PAD” (“MIS Reports”), the AIC found that it has already addressed the treatment of said information in its [decision under Case No. AI4409](#) (dated October 20, 2016).
- **Public Interest.** The AIC found no compelling public interest reason to override the *Deliberative Information* exception that solely restricts the two above-mentioned letters. With respect to the part of the information restricted by the *Information Provided by Member Countries or Third Parties in Confidence*, and banking and billing information under the *Financial Information* exceptions, namely the MIS Reports, the portion of the appeal on public interest ground is dismissed for appealing a matter that the AIC does not have authority to consider.

The Decision

Facts

1. On June 24, 2016, the requester submitted a public access request (“Request”) for certain information related to the Empowerment and Livelihood Improvement “Nuton Jibon” Project in Bangladesh (the “Project”), namely the following:

[...]

1/ Content or copy of letter dated September 25 2013 as mentioned in amendment letter dated January 14 2014 to financing agreement in World Bank Website of link <http://www.wds>.

worldbank.org/external/default/WDSContentServer/WDSP/SAR/2014/02/21/090224b0822b5fcd/1_0/Rendered/PDF/Official0Docum00for0Credit047570BD0.pdf
2/ *Content or copy of letter dated November 18 2015 as mentioned in amendment letter dated December 30 2015 to financing agreement in World Bank Website of link http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/SAR/2016/04/22/090224b0842be934/2_0/Rendered/PDF/Official0Docum0t0for0Credit047570BD.pdf*
3/ *Copy Of village matrix of Daskin Mohodipur in District Gaibandha cluster no 2 as on 15th August in year i)2012 ii) 2013 iii) 2014 iv) 2015 as per MIS report as mentioned in PAD.*
4) *Amount available in VCO of every village as on 31st march 2016 and on 31st December 2014 as per MIS report and as per details from District office.*
[...]

2. On August 11, 2016, the World Bank (“Bank”) replied to the Request under Case No. AI4300, by: (a) denying access to the information identified as responsive to the portion of the request for “letter dated September 25 2013”, “letter dated November 18 2015” and “village matrix of Daskin Mohodipur in District Gaibandha cluster no 2 as on 15th August in year i)2012 ii) 2013 iii) 2014 iv) 2015 as per MIS report” on the basis of the *Information Provided by Member Countries or Third Parties in Confidence* exception under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“AI Policy”); and (b) informing the requester that information related to “amount available in VCO of every village as on 31st march 2016 and on 31st December 2014 as per MIS report and as per details from District office” is not in the Bank’s custody.

3. On September 8, 2016, the secretariat to the Access to Information Committee (“AIC”) received an application (“Application”) appealing the Bank’s decision.¹ The application challenges the Bank’s decision on “violation of policy” and “public interest” grounds. The application states, in relevant part, the following:

[...] 1) *I am an emerging social entrepreneur and started working for sustainable Livelihood of poor people mainly women.*
2) *I approached many poor women in villages and discovered that their suffering is increasing every day though world bank is funding various projects for the purpose.*
3) *During the efforts I discovered that there are misappropriation, fraud and corruption of vary high level but top management of implementing agency do not allow any information to reach to the right people so that things can be made straight.*
4) *We asked approached the villagers and tried to tally the world bank report which were totally mismatch.*
5) *Based on compact information available in table 3 to 9 in mission report of August 2015, we were very much enthusiastic to offer cashew processing as IGA and enhance the capacity in bee*

¹ The application was received through the case management system without a case number assigned to it. Following a technical audit, the appeal was identified as being associated with Case. No. AI4381. The secretariat to the AIC informed the requester of the technical issue and sought confirmation that the appeal was indeed associated with this case. The requester confirmed this in a subsequent communication received on October 1, 2016, and provided reasons for appealing the Bank’s decision under the specific case (as set forth in para. 3 above).

keeping (As mentioned in table 8) to provide synergy to poor women, so, approached few Gram samaiti who showed very much interest in our both the offer of Cashew and Bee keeping but hardly could give any detailed information about market situation and awareness and what all IGAs (even what all infrastructure required and available) in their own and nearby villages.

6) To be sure and to find out what is really going wrong I started asking very basic details from SDF who is implementing agency but they refused to share any information. 7) It was given to understand that there were few undue tampering was done in form of amendment to the financing agreement.

7) While going through the financing agreement certain letter and documents were the reference point for amendment, details of which I asked from AI.

8) Due to refusal of information which will serve the livelihood of poor women in Bangladesh I applied for information to access to information but most the information are

a) Delayed too much.

b) Not provided as asked.

c) Even not in possession is being claimed.

d) Even not being provided on the argument of as exception world bank is not allowing is being claimed.

e) If I get all information transparently we will be able to serve the sustainable livelihood of poor women and will be able to mitigate the issues for future.

f) All IGA providing entrepreneur like me gets totally confused and start working with wrong villages where there is no no infrastructure or no willingness in villagers or funds and SDF top management takes advantage due to non-transparency and no right access to information enabling the project remain in capture of Elite only. [...]

In view of the above I appeal to please provide information which is denied and not provided properly in this case at the moment.

Findings and Related Decision

4. In reviewing the applications in accordance with the AI Policy, the AIC considered:
 - (a) the Request;
 - (b) the Bank's decision to deny access to certain information identified as responsive to certain portions of the Request;
 - (c) the Application;
 - (d) the nature of the restricted information;
 - (e) 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 the *Deliberative Information* and the *Financial Information* exceptions under the AI Policy; and

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

5. The AIC notes upfront that the below analysis is limited to information that is in the Bank's possession and to which the Bank has denied access. The AIC recognized the delays in responding to the Request. The AIC noted that: (a) the *Bank Directive/Procedure: Access to Information*, July 1, 2015, Catalogue No. ECR4.01-DIR.01 ("AI Directive/Procedure") provides that "[t]he Bank [...] endeavors to provide a more comprehensive response within 20 working days. Additional time may be justified in special circumstances, including, for example, those involving complex or voluminous requests, or requests requiring review by or consultations with internal Bank units, external parties, the AI Committee, or the Board." (see AI Directive/Procedure at Section III.C.1); and (b) the number and occasional volume of requests submitted by the requester since January 2016.

"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 provides, under the *Deliberative Information* exception, that the Bank must preserve the integrity of its deliberative processes by facilitating and safeguarding the free and candid exchange of ideas. It further recognizes that while the Bank makes publicly available the decisions, results, and agreements that result from its deliberative processes, it does not provide access to information (including letters) prepared for, or exchanged during the course of, its deliberations with member countries or other entities with which the Bank cooperates (see AI Policy, at Section III.B.2 (i) i). In addition, sub-paragraph (j) iv of Section III.B.2 of the AI Policy provides, under the *Financial Information* exception, that the Bank does not provide access to "banking and billing information of World Bank Group entities, member countries, clients, donors, recipients, or vendors, including consultants."

8. In this case, the AIC found that: (a) the requested letters dated September 25, 2013, and November 18, 2015, are communications from officials of the Government of the People's Republic of Bangladesh requesting certain amendments to the financing agreement for the Project; (b) the Bank has in response to these letters agreed to amend the financing agreement; and (c) the Bank has disclosed in both cases the letters amending the financing agreement (see [here](#) and [here](#)), and corresponding restructuring papers (see [Report No: 83308-BD](#) and [Report No: RES21489](#)), which describe the changes to the Project. In light of this, the AIC found that the two requested letters were inputs in the deliberative process between the Bank and one of its member countries, and, thus, are restricted based on the *Deliberative Information* exception under the AI Policy. The decisions and agreements that resulted from this deliberative process were disclosed. The AIC noted that the Bank's decision erroneously specified the *Information Provided by Member Countries or Third Parties in Confidence* exception under the AI Policy as restricting the requested

letters. The AIC considered this error to be harmless, as the requested letters were already restricted from public access.

9. With respect to the information restricted in response to the request for “village matrix of Daskin Mohodipur in District Gaibandha cluster no 2 as on 15th August in year i)2012 ii) 2013 iii) 2014 iv) 2015 as per MIS report as mentioned in PAD”, the AIC found that it has already addressed the treatment of said information in its [decision under Case No. AI4409](#) (dated October 20, 2016). In this decision the AIC found that this information is restricted based on *the Information Provided by Member Countries or Third Parties in Confidence* and the banking and billing information under the *Financial Information* exceptions under the AI Policy. The AIC further notes that the Bank has made this determination on the basis of the Monitoring and Information System (MIS) reports as they currently exist, as the Bank is not required to create, develop, or collate information or data that does not already exist (*see* AI Directive/Procedure at Section III.C.3).

10. Based on all the above findings, the AIC concluded that the Bank’s decision did not violate the AI Policy and upheld its decision to deny public access to the requested information in existence. Under the AI Policy, if the AIC upholds 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 (“AI Appeals Board”) as the second and final stage of appeals (*see* AI Policy at Section III.B.8 (b) ii). If you wish to file an appeal to the AI Appeals Board, [click here](#).

[URL provided in the decision sent to the requester].

Public Interest case

11. 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. 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* AI Policy at Section III.B.8 (a) ii).

12. The AIC 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 Section III.B.8 (a) ii).

13. The AIC considered whether the public interest assertion in the Application merited overriding the *Deliberative Information* exception solely restricting part of the information, namely the letters dated September 25 2013, and November 18 2015. Under the AI Policy, the Bank makes publicly available the decisions, results, and agreements that result from its deliberative process, while preserving the integrity of its deliberative process by facilitating and safeguarding the free and candid exchange of ideas (*see* paragraph 6 above). The AIC acknowledged that the result of the outcome of the Bank’s deliberative process has been documented and disclosed (*see* paragraph 7 above). The AIC considered the business unit’s views on the possible disclosure of the letters exchanged during the course of the Bank’s deliberations

with member countries, vis-à-vis the claimed public interest in the Application. The AIC found no compelling ground to support the appeal on a public interest basis and to override the *Deliberative Information* exception solely restricting part of the requested information. For this reason, in response to the public interest assertion in the Application, the AIC decided to uphold the Bank's decision to deny access to the requested information solely restricted by the *Deliberative Information* exception.

14. Because the AI Policy does not allow requesters to make a public interest case to override the *Information Provided by Member Countries or Third Parties in Confidence* and banking and billing information under the *Financial Information* exceptions, the AIC concluded that the public interest appeal to override these exceptions restricting the information restricted in response to the request for “village matrix of Daskin Mohodipur in District Gaibandha cluster no 2 as on 15th August in year i)2012 ii) 2013 iii) 2014 iv) 2015 as per MIS report as mentioned in PAD” is not properly before the AIC for consideration (*see* AI Directive/Procedure at Section III.D.1 a (iii)).

15. For the reasons discussed above, in light of the appeal on public interest ground, the AIC upholds the Bank's decision to deny public access to the part of the information solely restricted by the *Deliberative Information* exception, and dismisses the portion of the public interest appeal referring to the part of the information restricted by the *Information Provided by Member Countries or Third Parties in Confidence* exception and banking and billing information under the *Financial Information* exception for appealing a matter that the AIC does not have authority to consider.

16. 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 Section III.B.8 (b) i).