

AIC decision on appeal # 12

CASE NUMBER AI0708

“ALL PROJECT DOCUMENTS FOR THE PROJECT “ZA: PPIAF – REGULATORY FRAMEWORK FOR IPPS,” PROJECT ID P120878”

(Decision dated November 21, 2011)

Summary of Decision

- The requester filed an appeal against the World Bank’s decision to deny access to the information requested. *In the first part, the requester alleged that the denial violated the Policy on Access to Information (“Policy”).* The AIC considered the appeal and found the denial did not violate the Policy because the documents in the World Bank’s possession that have been identified as responsive to the request are restricted under the Policy for the reasons explained below. However, the AIC also found that, subsequent to the World Bank’s denial, the recipient of the grant gave its consent to disclose the final terms of reference (“TOR”) and final request for proposals (“RFP”), and thus, these documents are now publicly available. Based on these findings, the AIC upheld the Bank’s decision to deny access, but recognized that the TOR and RFP may now be disclosed and have made them available to the requester as an attachment to this decision.
- *In the second part, the requester appealed on public interest grounds.* With respect to the requester’s public interest appeal, the AIC found that the requester provided no reason in support of the public interest appeal. As the AIC was given no basis upon which to consider overriding the Policy exceptions for public interest reasons, the public interest portion of the appeal is dismissed.

Decision

1. On May 16, 2011, the World Bank (the “Bank”) denied a public access request for “all project documents for the project “ZA: PPIAF – Regulatory Framework for IPPs,” project ID P120878” (the “Request”) on the basis that the documents in the Bank’s possession identified as responsive to the Request are covered by the *Deliberative Information* exception under the Bank’s Access to Information Policy (the “Policy”). On May 26, 2011, the Secretariat to the Access to Information Committee received the attached application (the “Application”) appealing the Bank’s decision to deny the Request.

2. The Application indicates two grounds for the appeal, namely “violation of Policy” and “public interest”. It states:

I would argue that since this project has been approved it is no longer in the deliberative phase and there should be a document, such as the TOR or application, that stipulates the commitments of and required deliverables from the government. Those are facts and are not deliberative. Assuming the existence of a document, this violates the presumption of disclosure of the Bank’s policy.

Findings and Decisions of the Access to Information Committee

3. The Access to Information Committee (the “AIC”) considered the Application on both grounds. In reviewing the Application in accordance with the Policy, the AIC considered:

(a) the Request;

(b) the Application;

(c) the terms of reference (“TOR”) and request for proposals (“RFP”), the grant agreement (“Grant Agreement”), the approved grant funding proposals (“GFRs”) (collectively, the “Documents”);

(d) the financial management assessment report, email correspondence and office memoranda prepared for, or exchanged during the course of, the Bank’s deliberations with the National Treasury of South Africa (as the recipient and implementing agency for the project, hereinafter the “Recipient”) or the Bank’s own internal deliberations (collectively, the “Other Documents”);

(e) the Recipient’s views regarding disclosure of certain Documents;

(f) the potential harm of disclosure of certain Documents; and

(g) the *Deliberative Information* exception under the Policy that justified the Bank’s initial decision to deny access.

“Violation of Policy”

4. Pursuant to the 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 Policy by improperly or unreasonably restricting access to information that it would normally disclose under the Policy (*see* paragraph 36 (a) of the Policy). The Policy states that the Bank “does not provide access to documents that contain or refer to information listed in paragraphs 8-17” of the Policy, which set out the Policy’s list of exceptions (*see* paragraph 7 of the Policy). Paragraph 14 of the Policy states, under the *Information Provided by Member Countries or Third Parties in Confidence* exception, that the Bank does not provide access to information provided to it in confidence by a member country or third party without the express permission of the member country or third party. Paragraph 16 of the Policy explicitly states, under the *Deliberative Information* exception, that the Bank does not provide access to information prepared for, or exchanged during the course of its deliberations with member countries or other entities with which it cooperates, or information prepared for, or exchanged during the course of the Bank’s own deliberations (*see* paragraph 16 (a) and (b) of the Policy).

5. The Policy also states that the Bank reserves the right, under exceptional circumstances, to restrict access to information that it would normally disclose under the Policy if it determines that such disclosure is likely to cause harm that outweighs the benefits of disclosure (*see* paragraphs 6 and 19 of the Policy).

6. In this case, the AIC found that:

(a) with respect to the TOR and RFP, such documents are covered by both the *Deliberative Information* and the *Information Provided by Member Countries or Third Parties in Confidence* exceptions under the Policy. Therefore, the Bank's decision to deny access to the TOR and RFP was not a violation of Policy. The AIC found, however, that subsequent to the Bank's denial, the Bank sought the Recipient's consent to disclose the final versions of the TOR and RFP. The Recipient has since provided its written consent to disclose the final TOR and RFP. As a result, the final TOR and RFP may now be disclosed;

(b) the Bank determined that disclosure of the Grant Agreement would likely cause harm that outweighs the benefits of disclosure. This determination took into account the likelihood of harm resulting from disclosure, including views conveyed by the Recipient following consultations. On that basis, the Bank decided to exercise its prerogative to restrict access to the Grant Agreement. The AIC found such exercise of the Bank's prerogative to restrict access to be reasonable and not a violation of Policy;

(c) the information contained in the GFRs is similar to that included in the Grant Agreement. As a result, the Bank decided to exercise its prerogative to restrict access to the GFRs for the same reason it exercised its prerogative to restrict access to the Grant Agreement. The AIC found such exercise of the Bank's prerogative to restrict access to be reasonable and not a violation of Policy; and

(d) the Other Documents are information that was prepared for, or exchanged during the course of the Bank's deliberations with the Recipient or of the Bank's own deliberations, all of which are deliberative in nature and, therefore, covered under the *Deliberative Information* exception under the Policy. Some of the Other Documents (i.e., certain email correspondence) has been found by the AIC to also be covered under the *Information Provided by Member Countries or Third Parties in Confidence* exception under the Policy. Therefore, the Bank's decision to deny access to the Other Documents was not a violation of Policy.

7. Based on the above findings, the AIC concluded that the Bank did not violate the Policy by not disclosing the Documents and Other Documents. More specifically, the Bank did not violate the Policy by not disclosing:

(a) the TOR and RFP because such documents are restricted by both the *Deliberative Information* and the *Information Provided by Member Countries or Third Parties in Confidence* exceptions under the Policy and the Bank did not have the Recipient's written consent to disclose at the time it denied the Request. However, based on the Recipient's subsequent consent to disclose the final

versions of the TOR and RFP, these documents may now be disclosed. Thus, please find the final TOR and RFP attached below.

[Documents attached in original decision sent to the requester.]

(b) the Grant Agreement because the Bank reasonably exercised its prerogative to restrict access to the document in accordance with the Policy;

(c) the GFRs because the Bank reasonably exercised its prerogative to restrict access to the documents in accordance with the Policy; and

(d) the Other Documents because they are covered by the *Deliberative Information* exception and, in some instances, also by the *Information Provided by Member Countries or Third Parties in Confidence* exception under the Policy.

8. As discussed above, the Bank's denial only communicated the *Deliberative Information* exception as the reason for the denial. The AIC recognizes that the Policy exception indicated in the denial was not applicable to all of the Documents at issue. However, while the reason cited by the Bank for the denial was erroneous in part, the AIC found the error not to be of significance since the Documents would still be restricted by other justifications under the Policy.

9. For the above reasons, the AIC upholds the Bank's decision to deny public access to the Documents and Other Documents, noting that the final TOR and RFP are now publicly accessible with the consent of the Recipient.

10. Under the Policy, if the AIC upholds the initial decision to deny access to information (other than decisions by the Bank's exercise of its prerogative to restrict access) in appeals alleging "violation of the Policy", the requester may file an appeal to the Access to Information Appeals Board (the "AI Appeals Board") as the second and final stage of appeals (*see* paragraph 38 of the Policy). The decision of the AIC is final for appeals challenging denials of access by the Bank's decision to exercise its prerogative to restrict access. If you wish to file an appeal to the AI Appeals Board, [click here](#) or copy and paste the following URL into your browser:

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

"Public Interest" case

11. Pursuant to the 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 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 Policy).

12. The AIC noted that the requester provided no reason in support of the public interest appeal in the Application. Thus, the AIC had no basis upon which to consider overriding the Policy exceptions for public interest reasons. Pursuant to paragraph 40 (b) of the Policy, this portion of the appeal is dismissed for failure to provide sufficient information that would reasonably support the appeal.

13. Under the Policy, the decision of the AIC is final for appeals that assert a public interest case to override a Policy exception (*see* Policy at paragraph 37).