

AIC Decision on appeal #27

CASE NUMBER AI2701 INFORMATION RELATED TO BANK MISSIONS TO BOLIVIA SINCE 2012 REGARDING THE NATIONAL ROADS AND AIRPORT INFRASTRUCTURE PROJECT (P122007)

(Decision dated November 20, 2013)

Summary of Decision

- The Access to Information Committee (“AIC”) upholds the decision to deny public access to the aide memoires and the meeting minutes requested under Case Number AI2701-A. In this case, the requester sought to access “Aide Memoires, Minutes for VC, Back to office reports from all Bank missions to Bolivia since 2012 regarding the National Roads and Airport Infrastructure Project (P122007)”. The World Bank (“Bank”) denied the request for the aide memoires and meeting minutes. In response to the denial, the requester filed an appeal on public interest grounds.
- The Access to Information Committee (“AIC”) considered the appeal and found the requested documents are restricted by the Access to Information (“AI”) Policy’s *Deliberative Information* exception. This AI Policy exception indicates that the Bank does not provide access to information prepared for, or exchanged during the course of, the Bank’s deliberations with member countries or other entities with which the Bank cooperates. While the AI Policy also indicates that aide memoires of operational missions may be made publicly available if both the Bank and the member country agree, the AIC found that, in this case, the member country has not agreed to make the aide memoires public. The AIC recognized that a substantial amount of project information has been publicly released for this project (through 29 project documents), and that the publicly released documents should provide information in support of the public interest asserted in the appeal. For these reasons, the AIC decided not to override the *Deliberative Information* exception that restricts the aide memoires and meeting minutes. The AIC also considered whether the available facts would support an exercise of the Bank’s prerogative to disclose these documents and, in light of the substantial amount of publicly available project information, the AIC decided not to exercise this prerogative. Based on these considerations, the AIC upheld the Bank’s decision to deny access to the requested information.

Decision

1. On July 18, 2013, the World Bank (“Bank”) denied a public access request for “Aide Memoires, Minutes for VC, Back to office reports from all Bank missions to Bolivia since 2012 regarding the National Roads and Airport Infrastructure Project (P122007)” (“Request”). The Request was denied on the basis that the aide memoires (“Aide Memoires”) and the “Minutes for VC” (“Meeting Minutes”) are restricted by the *Information Provided by Member Countries or Third Parties in Confidence* exception under the Bank’s Access to Information Policy

(“AI Policy”). While back-to-office reports were also requested, the Bank found that none had been created for the project in question. On August 15, 2013, the secretariat to the Access to Information Committee (“AIC”) received an application (“Application”) appealing the Bank’s decision to deny public access to the Aide Memoires and the Meeting Minutes.

2. The Application challenges the Bank’s decision to deny public access to the information on the basis that there is a “public interest” case to override the AI Policy exception that restricts the Aide Memoires and the Meeting Minutes. The Application states, *inter alia*, the following:

The documents requested, a) Aide Memoires and b) Minutes for VC of Project P122007, are inaccurately classified as confidential under exception 7 paragraph 14 of the Policy on Access to Information, “information provided by Member Countries or Third Parties in Confidence”. They are Bank produced/owned documents of findings and recommendations by a WB’s assistance, supervision and/or monitoring mission, and they are not a country owned or generated document. The implementation of project P122007 is already delayed for more than two years raising questions of why, especially regarding the effective implementation of the conditions and legal covenants as well as the mitigation plans and indigenous peoples plan. In this context, there is an important public interest at stake which outweighs the financial, business or proprietary interests of any third party or project proponent. It is unclear whether there is any information in them whose release would cause harm to the business interests of any party.

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 AI Policy’s *Information Provided by Member Countries or Third Parties in Confidence* exception that justified the Bank’s decision to deny public access to the Aide Memoires and the Meeting Minutes;
- (d) the nature of the Aide Memoires and the Meeting Minutes, and their relevance to the AI Policy’s *Deliberative Information* exception; and
- (e) the project information that has been made available to the public.

“Public Interest” case

4. 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 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). Paragraph 16 of the AI 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, the Bank’s deliberations with member countries or other entities with which the Bank cooperates, to facilitate and safeguard the free and candid exchange of ideas for the purpose of preserving the integrity of the deliberative processes (*see* AI Policy at paragraph 16 (a)). The AI Policy further provides that aide memoires of operational missions may be made publicly available if both the Bank and the member country/borrower agree (*see* AI Policy at paragraph 20 (a)).

6. The AIC found that the Aide Memoires and the Meeting Minutes do not contain information provided to the Bank in confidence but reflect the Bank’s deliberations with the member country and/or third parties and, thus, these documents are restricted by the AI Policy’s *Deliberative Information* exception (*see* AI Policy at paragraph 16 (a)). Based on these findings, the AIC concluded that the Bank’s initial assertion that the *Information Provided by Member Countries or Third Parties in Confidence* exception restricted the Aide Memoires and the Meeting Minutes was made in error. However, the AIC found the error to be harmless since the documents remain restricted by the *Deliberative Information* exception. Because the requested documents are restricted only by the *Deliberative Information* exception, which may be subject to an appeal based on public interest grounds, the AIC found the Application is properly before the AIC for consideration.

7. The AIC also found that: (a) the member country has not agreed to make the Aide Memoires publicly available; (b) all project documents required to be disclosed (in this case, [29 project documents](#)) have been publicly released; and (c) the publicly available project documents should provide information relevant to the public interest asserted in the Application. With this

consideration, the AIC decided not to override the *Deliberative Information* exception that restricts the Aide Memoires and the Meeting Minutes.

8. Notwithstanding the AIC's determination with respect to the public interest appeal, the AIC took the decision to also consider whether the available facts would support an exercise of the Bank's prerogative to disclose the Aide Memoires and the Meeting Minutes; for information restricted by the *Deliberative Information* exception, the AIC has the authority to exercise this prerogative under the AI Policy (*see* paragraph 18 (c) of the AI Policy). The AIC took into account the available information before it, including the statements made by the requester in the Application, the views of the relevant business unit, and the significant amount of project information publicly released through [29 project documents](#). After weighing these considerations, the AIC decided not to exercise the Bank's prerogative to disclose the requested documents in this case.

9. For the reasons discussed above, the AIC upholds the Bank's decision to deny public access to the Aide Memoires and the Meeting Minutes. Under the AI Policy, for appeals that assert a public interest case to override an AI Policy exception, the decision of the AIC is final (*see* paragraph 37 of the AI Policy).