

AIC Decision on appeal #41

CASE NUMBER AI3892

WORLD BANK GROUP PROCEDURE ON COUNTRY ENGAGEMENT

(Decision dated February 23, 2016)

Summary of Decision

- The Access to Information Committee (“AIC”) found that the World Bank had properly and reasonably denied access to the World Bank Group Procedure on Country Engagement based on the *Corporate Administrative Matters* exception under the *Bank Policy: Access to Information*, July 1, 2015, Catalogue No. EXC4.01-POL.01. The AIC further found no compelling public interest reason to override the *Corporate Administrative Matters* exception that restricts the World Bank Group Procedure on Country Engagement.
- Notwithstanding the above, the AIC decided to exercise the World Bank’s prerogative to disclose the World Bank Group Procedure on Country Engagement, based on its determination that the benefit of disclosure outweighs the potential harm.

The Decision

Facts

1. On July 30, 2015, the requester submitted a request (“Request”) for the “World Bank Group Procedure, “Country Engagement”, July 1, 2014, Catalogue Number OPCS5.01-PROC.01”.
2. The World Bank (“Bank”) located a revised version of the requested information, namely the “World Bank Group Procedure: Country Engagement”, dated September 2, 2015, Catalogue Number EXC5.01-PROC.02 (“Country Engagement Procedure”) as responsive to the request; and on September 8, 2015, the Bank denied access to the Country Engagement Procedure based on the *Corporate Administrative Matters* exception under the *Bank Policy: Access to Information*, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“AI Policy”).
3. On October 28, 2015, the secretariat to the Access to Information Committee (“AIC”) received an application (“Application”) appealing the Bank’s decision to deny public access to the Country Engagement Procedure.
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 restrict the requested information. The Application states, in relevant part, the following:

1. The denial of my request violates the Bank Policy: Access to Information, as amended 1 July 2015. It erroneously invokes the corporate administrative matters exception in para. 2(h) of the Policy and thus violates para. 1 of the Policy, according to which all documents not covered by an exception must be disclosed.

The requested document is a Bank Procedure as defined in para 9 of the "Bank Policy and Procedure Framework" of July 31, 2013. As such, it is part of the new "Repository" that shall "be published electronically", para. 29. Traditionally, Bank Procedures have been published in the Bank's Operational Manual and been considered accessible by the public. All other Procedures I know are public and designated as such.

Corporate Administrative Matters include information relating to "corporate expenses, procurement, real estate, and other activities", para. 2(h) Bank Policy Access to Information. A Bank Procedure is not such a concrete administrative matter but rather part of the abstract and general internal norms of the World Bank. A procedure governs operations of the Bank in general terms and does not relate to individual expenses, procurement processes or real estate transactions. The purpose of the administrative matters exception to safeguard the Bank's interest in shielding such individual transactions from possible interference does not apply to a Bank Procedure containing general norms.

Besides, the World Bank Inspection Panel is mandated to review compliance with Bank Policy and Procedure on the request of project-affected individuals. A prerequisite for complaints by such groups of individuals is that the respective Policy and Procedure be public. Not publishing them deprives the project-affected individuals of the possibility to avail themselves of their right to complain to the Inspection Panel. Keeping them secret undermines the authority of the Inspection Panel, and by extension of the Board of Directors, who have mandated the Panel.

2. Subsidiarily, there is a public interest case for publishing the Bank's Procedures in general and the requested Procedure in particular. Procedures, including the requested one, are relevant for scientific research on international law and global governance. The World Bank Appeals Committee has recognized academic research as a public interest in the Case Number AI1627: Cost Recovery Report regarding sanitation in India. The same public interest case applies to the document at issue here.

Findings and Related Decision

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

- (a) the Request;
- (b) the Bank’s denial of access to the Country Engagement Procedure;
- (c) the Application;
- (d) the nature of the Country Engagement Procedure, including its joint ownership by the Bank, International Finance Corporation (“IFC”) and Multilateral Investment Guarantee Agency (“MIGA”);
- (e) the AI Policy’s *Corporate Administrative Matters* exception that justified the Bank’s decision to deny public access to the Country Engagement Procedure; and
- (f) the information provided by the relevant business units of the Bank, IFC and MIGA, concerning the Country Engagement Procedure.

“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 the information listed in subparagraphs (a) through (j)” of Section III.B.2 of the AI Policy, which set out the AI Policy’s list of exceptions (*see* AI Policy, at Section III.B.2). Subparagraph (h) of Section III.B.2 of the AI Policy states that, under the *Corporate Administrative Matters* exception, “the Bank does not provide access to information relating to the Bank’s corporate administrative matters, including, but not limited to, corporate expenses, procurement, real estate, and other activities”.

8. The AIC found that the Country Engagement Procedure is a document issued as a procedure under the Bank’s Policy and Procedure Framework (“P&PF”). Under the P&PF, a procedure is defined as a “statement of procedural instructions, within Management’s authority, that are required to be followed to: (a) implement a Policy or a Directive, or both; or (b) carry out a function or task not covered by either. It describes *the mechanics of transactions, the documents required to be prepared for a decision-making process, persons or bodies who are authorized to make decisions and participants in the decision-making process.*” (emphasis added) (*see [Bank Directive: Policy and Procedure Framework, January 8, 2014, Catalogue No. LEG4.01DIR.01](#)*, at Section II.8). The Bank Procedures (“BPs”) contained in the Bank’s Operational Manual are

defined as “statements setting out the general mandatory procedural requirements necessary for Bank staff to carry out the policies set out in the OPs. *They are designed to ensure Bank wide consistency and quality in Bank operations.*” (emphasis added) (see [here](#)). Accordingly, the AIC found that while both a procedure under the P&PF and a BP contain procedural instructions, the level of detail in describing internal business processes in the Country Engagement Procedure was of corporate-administrative in nature (i.e., in the context of establishing business processes for the Bank staff to make corporate decisions). The AIC noted that it has already recognized the same in its [decision under Case No. AI0294](#) (dated October 27, 2010). In that case, the AIC found that the Attachments to the Access to Information Handbook, which also included internal work processes, were properly and reasonably restricted under the *Corporate Administrative Matters* exception.

9. The AIC further found that the disclosure of a procedure under the P&PF needs to be assessed, in accordance with the AI Policy, based on the content of the specific document, and not necessarily by reference to a retired BP (particularly when such BP has been replaced by a publicly available document, i.e. [World Bank Group Directive: Country Engagement](#), dated July 1, 2014, Catalogue Number OPCS 5.01-DIR.01). The AIC recognized though that the reclassification of existing procedural requirements should not result in decreasing the transparency of the Bank’s business processes, and the need for clarity on the public availability of Procedures under the P&PF.

10. Finally, the AIC found that the language of the AI Policy does not support the Application’s suggestion that the *Corporate Administrative Matters* exception is designed to protect only information related to individual expenses, procurement processes or real estate transactions. As recognized in its [decision under Case No. AI3226](#) (dated May 7, 2014), the AIC confirmed that the language of the AI Policy explicitly specifies that the examples given to indicate the types of information restricted by the *Corporate Administrative Matters* exception are not intended to be exhaustive (i.e., “including but not limited to, corporate expenses, procurement, real estate, and other activities” (emphases added)).

11. Based on the above findings, the AIC concluded that the Bank had properly and reasonably denied public access to the Country Engagement Procedure based on the *Corporate Administrative Matters* exception, and, therefore, did not violate the AI Policy.

“Public Interest” case

12. 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).

13. The AIC considered whether the public interest assertion in the Application merited overriding the *Corporate Administrative Matters* exception restricting the Procedure. The AIC acknowledged that in its [decision under Case No. AI1627](#) (dated May 30, 2012), it has found that the reasons presented by the requester in support of the public interest appeal to be compelling, and thus decided to disclose the requested information. However, the AIC notes that in that case, the information requested was of a distinct nature and of a different subject matter; a knowledge report with data on sanitation services in India as opposed to a document with internal work processes. In this case, the AIC did not find adequate information to determine a clearly compelling ground to override the *Corporate Administrative Matters* exception.

14. Notwithstanding the AIC's determination with respect to the public interest appeal, the AIC decided to also consider whether the available facts would support an exercise of the Bank's prerogative to disclose the restricted information; for information restricted by the *Corporate Administrative Matters* exception, the AIC has the authority to exercise this prerogative under the AI Policy (*see* AI Policy, at Section IV.1). The AIC took into account the available information before it, including the statements made by the requester in the Application and the views of the relevant business units of the Bank, IFC and MIGA, and after weighing these considerations, the AIC decided to exercise the Bank's prerogative to disclose the Country Engagement Procedure.

15. The AIC recognized that the disclosure of the Country Engagement Procedure will be accompanied by appropriate disclaimers, as determined by the relevant business units of the Bank, IFC and MIGA.

Please find the link below to access the Country Engagement Procedure on-line:

<http://documents.worldbank.org/curated/en/2016/02/25979174/world-bank-group-procedure-country-engagement>