

AIC decision on appeal #56

**CASES NUMBER AI4498 AND AI4525
CERTAIN INFORMATION RELATED TO THE EMPOWERMENT AND LIVELIHOOD
“NUTON JIBON” PROJECT IN BANGLADESH
(Decision dated February 9, 2017)**

Summary of Decision

- The Access to Information Committee (“AIC”) found that the World Bank’s decision to deny access to certain information under Cases No. AI4498 and AI4525 based on the *Financial Information* exception under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01, was in *error*, as the requested information is not in the World Bank’s possession. Accordingly, the AIC found that it cannot consider an appeal (neither on violation of policy nor on public interest grounds), if the requested information is not in the Bank’s possession. For these reasons, the appeals are dismissed for appealing a matter that the AIC does not have authority to consider.

The Decision

Facts

1. On September 7, 2016, and September 15, 2016, the requester submitted public access requests (“Requests”) under Cases No. AI4498 and AI4525, respectively, for certain information related to the Empowerment and Livelihood Improvement “Nuton Jibon” Project in Bangladesh (the “Project”). Specifically, the Requests concerned the following information:

Under Case No. AI4498:

- [...] 1/ *Contract Data for for construction of low cost offices in villages and district level offices.*
- 2/ *Copies of Advertisement for construction of Roads in villages from this projects funds.*
- 3/ *List of Cluster wise village wise IGA implemented and initiated in every quarter of the year a)2012 b) 2013 c) 2014 d)2015 e) 2016 so that we can make more input for the poor in this respect [...]*

Under Case Number AI4525:

- [...] 1/ *List, details and amount spent for various implemented activities during the reporting period August 2015 - March 2016 as mentioned in <http://pubdocs.worldbank.org/en/241121459853667327/SIPP-III-NJLIP-Progressreport-during-August-2015-March-2016>.*
- 2/ *Component and sub-component wise month wise amount spent during report period August 2015 - 2016 according to project finance details as mentioned in <http://pubdocs.worldbank.org/en/241121459853667327/SIPP-III-NJLIP-Progressreport-during-August-2015-March-2016>*

3/Parameter and contract data of all the 6 Business partnership established through public/private partnership with communities as mentioned in ISR 15606 [...]

2. On October 28, 2016, the World Bank (“Bank”) replied to the request under Case No. AI4498, by: (a) informing the requester that certain information, namely “[c]opies of Advertisement for construction of Roads in villages from this projects’ funds” and “[l]ist of Cluster wise village wise IGA implemented and initiated in every quarter of the year a) 2012 b) 2013 c) 2014 d) 2015 e) 2016”, is not in the Bank’s custody; and (b) denying access to the information identified as responsive to the portion of the request for “contract Data for construction of low cost offices in villages and district level offices” on the basis of the *Financial Information* exception under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“AI Policy”).

3. On November 7, 2016, the Bank replied to the request under Case No. AI4525, by: (a) providing in response to the request for “[p]arameter and contract data of all the 6 Business partnership established through public/private partnership with communities as mentioned in ISR 15606” a list of business partnerships; and (b) denying access to the information identified as responsive to the portion of the request for “list, details and amount spent for various implemented activities during the reporting period August 2015 - March 2016” and “component and sub-component wise month wise amount spent during report period August 2015 - 2016” on the basis of the *Financial Information* exception under the AI Policy.

4. On November 6, 2016, the secretariat to the Access to Information Committee (“AIC”) received an application appealing the Bank’s decision under Case No. AI4498. 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) I asked for advertisement and contract data (Analysis) in another case to AI which was not available with AI nor provided by SDF normally it should have been disclosed voluntarily by SDF on their website.

4) I asked for contract data for low cost offices already constructed or being constructed but not the financial details .Information may please be provided without specific billing or accounting or Bank details.

5) It is contradictory that in previous case advertisement for low cost offices were not available with AI and contract details are available but cannot be as " the document you have requested is restricted from

public access under the World Bank Policy on Access to Information (the Policy) because it is covered by the Financial Information AI Policy exception."

6) The spirit and purpose of seeking low cost details are to offer a worth while proposal to poor and hard core poor mainly women for sustainable livelihood but certainly not to get any billing or banking details.

[...]

*In view of the above facts I appeal that low cost office contract details be provided even without Banking and/or Billing details which can certainly fall under AI Policy exception.
Await your favorable decision which will help in creating the sustainable livelihood of poor and Hard core poor mainly Women.*

5. On November 13, 2016, the secretariat to the AIC received an application appealing the Bank's decision under Case No. AI4525. 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) 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.

6) Due to refusal of information which will serve the livelihood of poor women in Bangladesh I applied for information to access to information

asking "1/ List,details and amount spent for various implemented activities during the reporting period August 2015 - March 2016 as mentioned in <http://pubdocs.worldbank.org/en/241121459853667327/SIPP-III-NJLIP-Progressreport-during-August-2015-March-2016>" I am not asking any bank or billing details or any personal details which is restricted by AI policy as exception.

7/ Due to refusal of information which will serve the livelihood of poor women in Bangladesh I applied for information to access to information

asking "2/Component and sub-component wise month wise amount spent during report period August 2015 - 2016 according to project finance details as mentioned in <http://pubdocs.worldbank.org/en/241121459853667327/SIPP-III-NJLIP-Progressreport-during-August-2015-March-2016>" I am not asking any bank or billing details or any personal details which is restricted by AI policy as exception.

8/ Due to refusal of information which will serve the livelihood of poor women in Bangladesh I applied for information to access to information asking " 3/Parameter and contract data of all the 6 Business partnership established through public/private partnership with communities as mentioned in ISR 15606". I am not asking any bank or billing details or any personal details which is restricted by AI policy as exception.

9/ To my surprise while applying for AI there were only 6 partnership agreement declared in resulted indicator at the time of closing the project but it was changed in result indicator after my asking the information.

10/ Over and above as informed about the change of partnership no from 6 to 10 even the name of partners is totally changed as in mission report of August 2015 it says " SDF has furthermore

successfully established linkages with private companies - Rangpur Dairy, Milk Vita Ltd., BRAC Dairy (Aarong), and Pran Milk for milk processing, Zil Bangla Sugar Mill for sugarcane and Renata Ltd. and Novartis Bangladesh Ltd" which is different than the AI information now.

11) Parameter or contract data or amount involved in a component or sub-component is not involving any banking details or billing details which is restricted by AI policy exception. .

12)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.

13)All IGA providing entrepreneur like me gets totally confused and start working with wrong villages where there is no fund and SDF top management takes advantage due to non-transparency and no right access to information.

[...]

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

I request for a positive and prompt response.

Findings and Related Decision

6. In reviewing the applications in accordance with the AI Policy, the AIC considered:

(a) the Requests;

(b) the Bank's decisions to deny access to certain information identified as responsive to certain portions of the Requests;

(c) the applications under Cases No. AI4498 and AI4525; and

(d) the information provided by the relevant business units.

7. The AI Policy governs the public accessibility of information in *the Bank's possession* (see AI Policy at Section I.1). The *Bank Directive/Procedure: Access to Information*, July 1, 2015, Catalogue No. ECR4.01-DIR.01 ("AI Directive/Procedure") provides that the Bank reserves the right to refuse requests for documents that the Bank is unable to locate in the Bank's records management system after a *reasonable search* (see AI Directive/Procedure at Section III.C.3 and footnote 23). 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).

8. In this case, the AIC found that the Bank has carried out a reasonable search and was not able to identify any information that would be responsive to the request for the following information:

- contract Data for construction of low cost offices in villages and district level offices;
- list, details and amount spent for various implemented activities during the reporting period August 2015 - March 2016; and

- component and sub-component wise month wise amount spent during report period August 2015 – 2016.

9. The AIC noted that the Bank’s decisions under both Cases No. AI4498 and AI4525 provided that the above-mentioned information is restricted by the *Financial Information* exception under the AI Policy, which implicitly represented that said information was in the Bank’s possession. The AIC found this representation to be in error.

10. In light of the above, the AIC found that it cannot consider an appeal (neither on violation of policy nor on public interest grounds), if the requested information is not in the Bank’s possession. For these reasons, and pursuant to Section III.D.1 a (iii) of the AI Directive/Procedure, the appeals are dismissed for appealing a matter that the AIC does not have authority to consider.

11. Notwithstanding the above findings, the AIC noted that the Bank’s decision to deny access to the requested information on the basis of an AI Policy exception created a legitimate confusion to the requester.