

AIC decision on appeal #47

CASE NUMBERS AI4300 & AI4409 CERTAIN INFORMATION RELATED TO THE EMPOWERMENT AND LIVELIHOOD IMPROVEMENT “NUTON JIBON” PROJECT (Decision dated October 20, 2016)

Summary of Decision

- The Access to Information Committee (“AIC”): (a) reverses the World Bank’s decision to deny access to the information identified as responsive to the portion of the request for “list of village wise IGA implemented” under Case No. AI4300; and (b) upholds the World Bank’s decision to deny access to certain information related to the Empowerment and Livelihood Improvement “Nuton Jibon” Project in Bangladesh under Case No. AI4409. The AIC considered the appeals submitted under the aforementioned cases on both violation of policy and public interest grounds.
- **Violation of Policy.** Under Case No. AI4300, the AIC found that the information identified as responsive to the portion of request for “list of village wise IGA implemented” is not restricted by any exception under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“AI Policy”), and hence the denial was in violation of the AI Policy. Under Case No. AI4409, the AIC found that the World Bank had properly and reasonably denied access to the requested information based on the *Information Provided by Member Countries or Third Parties in Confidence* exception under the AI Policy. The AIC also found that certain information is restricted by the *Financial Information* (banking and billing) exception under the AI Policy; while the Bank’s denial was silent on the latter exception, the AIC considered the error to be harmless as the information remains restricted from public access.
- **Public Interest.** Under Case No. AI4300, consideration of the portion of the appeal asserting “public interest” was not required, in view of the AIC’s decision above. Under Case No. AI4409, 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 May 9, 2016, and July 13, 2016, the requester submitted public access requests (“Requests”) under Case Nos. AI4300 and AI4409, 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. AI4300:

[...] 1) Contract Data of Tube Well Boring done in villages.

- 2) Copies of Advertisement for construction of low cost offices and district level offices.
- 3) List of village wise IGA implemented [...]

Under Case Number AI4409:

- [...] 1) Copies of report and base line surveys conducted for above mentioned projects during year 2010, 2011, 2012, 2013, 2014 and 2015.
- 2) Contact details of region wise, districts wise, upzila wise, cluster wise, village wise 6151 producer groups with their activities as per ISR23784.
- 3) Copies Of villages matrix of cluster no 2 in district Gaibandha as on 15th June in year i) 2012 ii) 2013 iii) 2014 iv) 2015 v) 2016 as per MIS report as mentioned in PAD [...]

2. On August 11, 2016, the World Bank (“Bank”) replied to the request under Case No. AI4300, by: (a) informing the requester that certain information, namely “contract Data of Tube Well Boring done in villages” and “copies of [a]dvertisement for construction of low cost offices and district level offices”, is not in the Bank’s custody; and (b) denying access to the information identified as responsive to the portion of the request for “list of village wise IGA implemented” 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”).

3. On August 18, 2016, the Bank replied to the request under Case No. AI4409, by denying access to the information identified as responsive to the request on the basis of the *Information Provided by Member Countries or Third Parties in Confidence* exception under the AI Policy.

4. On August 11, 2016, the secretariat to the Access to Information Committee (“AIC”) received an application appealing the Bank’s decision under Case No. AI4300.¹ 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.

¹ The application under Case No. AI4300 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. AI4300. 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 August 23, 2016, and provided reasons for appealing the Bank’s decision under the specific case (as set forth in para. 4 above).

5) *Based on compact informations [sic] available in table 3 to 9 in mission report of August 2015, we were very much enthusiastic [sic] to offer cashew processing as IGA and enhance the capacity in bee keeping (As mentioned in table 8)to provide synergy to poor women, so, approached few Gram samaity 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 infrastucture [sic] 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) *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 [sic] 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.

5. On August 23, 2016, the secretariat to the AIC received an application appealing the Bank's decision under Case No. AI4409. 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 approached the villagers and tried to tally the world bank report which were totally mismatch.*

5) *In many a villages , villagers are totally not aware of any survey or reporting is being conducted.*

6) *It was discovered during the villages visit that most of the poor women knows the SDF as a micro credit organisation and totally unaware about Producers group.*

7) *We visited the villages of cluster 2 of Gaibandha and found total mismatch and even plan to go there once again to look into further possibilities.*

8) *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*

9)) *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 infrastructure or no willingness in villagers or funds and SDF top management takes advantage due to no accountability, non-transparency and no right access to information enabling the project to 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

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 Case Nos. AI4300 and AI4409;
 - (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 *Financial Information* exception under the AI Policy; and
 - (f) the information provided by the relevant business units.

7. 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 public access requests. 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”

8. 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).

9. 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 (g) of Section III.B.2 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. The AI Policy also states, in relevant part, that “[w]hen a member country or a third party provides [...] non-public information to the Bank with the understanding that it will not be disclosed, the Bank treats the information accordingly” (*see* AI Policy at footnote 7). 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.”

10. The AI Directive/Procedure further specifies that “[t]he [AI] Policy’s *Information Provided in Confidence by a Member Country or Third Party* exception applies to information, data, reports and analysis [...], deliberations, and any other work product generated as a result of or in response to the confidential information received from a member country or third party” (*see* AI Directive/Procedure at Section III.B.4 a). The AI Directive/Procedure also recognizes that if the Bank believes that information was given by a member country or third party (explicitly or implicitly) in confidence, the information is classified accordingly and restricted from disclosure pursuant to the *Information Provided by Member Countries or Third Parties in Confidence* exception (*see* AI Directive/Procedure at Section III.B.3 d). Finally, the AI Directive/Procedure provides that “The Bank reserves the right to refuse [...] any request that would require the Bank to create, develop, or collate information or data that does not already exist or is not available in the Bank’s records management system.” (*see* AI Directive/Procedure at Section III.C.3).

11. Under Case No. AI4300, the AIC found that no AI Policy exception restricts the information identified as responsive to the portion of the request for the “list of village wise IGA implemented”. On this basis, in response to the appeal asserting a violation of the AI Policy, the AIC found that the Bank improperly denied access to this information based on the *Information Provided by Member Countries or Third Parties in Confidence* exception, and thus, the denial was in violation of the AI Policy. For this reason, the AIC reversed the Bank’s decision to deny access to this information.

12. Please find the information identified as responsive to the portion of the request for the “list of village wise IGA implemented” attached below.

[Information attached in decision sent to the requester.]

13. Under Case No. AI4409, the AIC found that:

- (a) the Bank has restricted access to a baseline survey was commissioned by the implementing entity of the Project in 2012 (the “Baseline Survey”), and that there is no similar survey for other years. In this case, the AIC found that: (i) the Baseline Survey was provided to the Bank by the implementing agency of the Project in confidence; (ii) the Baseline Survey itself was based on confidential household data and – as stated in the Baseline Survey – “it is vital that all parties with access to this data (the Consultant, the Client and the World Bank) maintain high standards in data protection to ensure that such data is held securely, remains confidential and cannot be used for any purpose other than that for which it is collected”; and (iii) the parties concerned have not authorized the disclosure of the Baseline Survey or the underlying data. For these reasons, the AIC concluded that the Baseline Survey contains confidential information received from member countries or third parties and is, thus, restricted by *the Information Provided by Member Countries or Third Parties in Confidence* exception under the AI Policy.
- (b) the information restricted in response to the request for “contact details of region wise,districts wise, upzila wise, cluster wise, village wise 6151 producer groups with their activities as per ISR23784” does not contain contact details of the 6,151 producer groups; and the Bank is not in possession of such information. Accordingly, the AIC found that this portion of the request should have been dismissed as a request for information that does not exist or is not available in the Bank’s records management system. Notwithstanding this finding, the AIC noted that: (i) the information erroneously found to be responsive to this portion of the request and restricted by the Bank in its decision was a progress report provided to Bank by the implementing agency of the Project in confidence; and (ii) the implementing agency has not authorized disclosure of said report. For these reasons, the AIC concluded that the progress report contains confidential information received from member countries or third parties and is, thus, restricted by *the Information Provided by Member Countries or Third Parties in Confidence* exception under the AI Policy.
- (c) the Bank has restricted access to reports generated from the Monitoring and Information System (MIS) of the implementing agency of the Project for the years 2013, 2014 and 2015 (the “MIS Reports”).² In this case, the AIC found that: (i) the MIS Reports are provided to the Bank by the implementing agency of the Project in confidence; (ii) the MIS Reports contain information related to bank accounts; and (iii) the parties concerned have not authorized the disclosure of the MIS Reports. For these reasons, the AIC concluded that the MIS Reports: (i) contain confidential information received from member countries or third parties and are, thus, restricted by *the Information Provided by Member Countries or Third Parties in Confidence* exception under the AI Policy; and (ii) further contain banking and billing information, and are, thus, restricted by *the Financial Information* exception under the AI Policy. The AIC noted that the Bank’s decision to deny access to this portion of the requested information did not specify the application of the

² No such reports existed for years 2012 and 2016, as of the date of the Bank’s decision under Case No. AI4409.

Financial Information (banking and billing) exception. The AIC considered this error to be harmless, as the information was already restricted from public access.

14. Based on all the above findings, the AIC concluded that the Bank’s decision under Case No. AI4409 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].

15. In view of the AIC’s decision under Case No. AI4300 above, consideration of the portion of the appeal under this case asserting “public interest” was not required. The below section relates exclusively to the portion of the appeal asserting “public interest” under Case No. AI4409.

Public Interest case

16. 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).

17. 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). 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* exception, the AIC concluded that the public interest appeal to override these exceptions restricting the requested information is not properly before the AIC for consideration (see AI Directive/Procedure at Section III.D.1 a (iii)).

18. For the above reasons, and pursuant to Section III.D.1 a (iii) of the AI Directive/Procedure, the portion of the appeals on public interest is dismissed for appealing a matter that the AIC does not have authority to consider.

19. 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).