

AIC decision on appeal #7

CASE NUMBER AI0732

**IMPLEMENTATION OF THE WORLD BANK'S INDIGENOUS PEOPLES POLICY:
A PORTFOLIO REVIEW**

(Decision dated April 28, 2011)

1. On March 2, 2011, the Secretariat to the Access to Information Committee (the "Secretariat") received the attached application (the "Application") appealing the Bank's decision to deny access to the "Implementation of the World Bank's Indigenous Peoples Policy: A Portfolio Review (2005-2008)" (the "Report"). The Bank had denied access to the Report based on the "Deliberative Information" exception under the Bank's Access to Information Policy (the "Policy").

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

As the WB approaches revision of IP Policy 4.10, it is critical that information regarding the successes and failures, strengths and weaknesses of the implementation of the current policy is widely circulated. Furthermore, as the WB ramps up climate finance and finance for REDD, potential impacts of bank projects on IPs increase exponentially. This review is absolutely indispensable for civil society, indigenous groups and other to be able to engage meaningfully in these processes. Likewise, requests denied on the basis of "deliberative information" with no further explanation as to the nature of the deliberative information leave one to wonder exactly how the policy is being interpreted.

Findings and Decision of the Access to Information Committee

3. The Access to Information Committee (the "AIC") considered the Application on both grounds.

"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. 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; in both cases, such information includes "draft reports" (*see* paragraph 16 (a) and (b) of the Policy).

5. In this case, the AIC found that the Report at issue is a draft report. No final version of this report exists at this time. As a draft report, the document is covered by the “Deliberative Information” exception and is, thus, restricted from public access under the Policy. The AIC found, however, that a final version of the Report is expected to be available and made public following its distribution to and any consideration by the Bank’s Board of Executive Directors.

6. Based on the above finding, the AIC decided that the Bank properly and reasonably denied access to the Report and, therefore, did not violate the Policy. For this reason, in response to the appeal asserting a violation of the Policy, the AIC decided to uphold the Bank’s decision to deny public access to the Report.

7. Under the Policy, if the AIC upholds the initial decision to deny access to information in appeals alleging “violation of Policy”, the requester can 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). If you wish to file an appeal to the AI Appeals Board, [click here](#).

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

“Public Interest” case

8. 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). In reviewing the Application in accordance with the Policy, the AIC:

(a) considered the fact that the Report is a draft document covered by the “Deliberative Information” exception under the Policy; and

(b) acknowledged that a final version of the Report is expected to be available and made public after its distribution to and any consideration by the Bank’s Board of Executive Directors.

9. In view of the above, the AIC did not find compelling public interest reasons to override the “Deliberative Information” exception of the Policy (on which the Bank initially denied access to the Report). For this reason, in response to the public interest appeal, the AIC decided to uphold the Bank’s decision to deny public access to the Report.

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