

## **Access to Information Appeals Board decision**

### **Case Number AI8644**

14 June 2024

#### **Decision of the AI Appeals Board**

1. The Access to Information Appeals Board (the AIAB, or the AI Appeals Board) has reviewed the application filed with the World Bank (WB, or the Bank) on 29 September 2023, and transmitted to the AIAB on 6 October 2023.
2. The AI Appeals Board has decided this application cannot be admitted; it is dismissed without review of its merits. The decision of the Access to Information Committee (the AIC, or the Committee) dated 13 September 2023 will, therefore, stand.
3. The reasons for this decision are set out below.

#### **The original request**

4. The Bank received a public access request on 23 June 2023 for:

“climate change adaptation and mitigation co-benefits by SECTOR for all IBRD/IDA projects (investment, DPF & PforR) from 2002 to the present. I would like this data at the project-level, NOT a summary of the data at the yearly level.” (the Request).
5. On 11 August 2023, the Bank refused the Request. The reason for the refusal was that the Request required the Bank to collate the requested data and, so, pursuant to the Bank Directive/ Procedure on Access to Information, at Section III.C.3, met the definition of “Unreasonable or Unsupported Requests”.
6. In refusing the Request the Bank referred the requester to already publicly available information and explained that it did not have any requested data for the period covering 2002 through 2011.
7. The Bank received an application appealing the Bank’s decision to refuse to collate the requested data on the grounds that it was a violation of the Bank’s policy.

## The AIC decision

8. The AIC in its decision of 13 September 2023<sup>1</sup> found:

“... that:

- (a) the Bank refused the request because the information can only be provided if collated;
- (b) collating the data requires substantial effort, time, and resources, including staff across multiple teams to extract, collate, validate, and reconcile the data of approximately 4500 projects approved since 2011; and
- (c) certain information is already publicly available [...], namely the references to project level financing information for climate change adaptation and mitigation for FY18, FY19, FY20, and FY21, and aggregate climate finance numbers Corporate Scorecard, MDB Report, WB Climate Related Financial Disclosures Report, IDA20 Reporting, and Capital Package Reporting, and the joint MDBs methodology for tracking climate finance.”<sup>2</sup>

9. The AIC also found:

“ that not only would the Bank have to collate the requested data but it would be overly burdensome for the Bank to do so [...]. There are no justifiable business reasons to engage in such overly burdensome exercise. The Request is unreasonable for requiring the Bank to collate the requested data and for being overly burdensome to do so.”

10. The AIC dismissed the appeal as it was a matter that the AIC does not have authority to consider as set out at Section III.D.1.a.(iii)).

### “ D. ACCESS TO INFORMATION – APPEALS

#### 1. Notification of Decision.

- a. Requesters are notified if the appeal is dismissed: [...] or (iii) for appealing a matter that the AI Committee or Appeals Board does not have authority to consider.”

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<sup>1</sup> AIC Decision on appeal #96 CASE NUMBER AI8644 CLIMATE CHANGE ADAPTATION AND MITIGATION CO-BENEFITS BY SECTOR FOR ALL IBRD/IDA PROJECTS (INVESTMENT, DPF & PforR) FROM 2002 TO THE PRESENT (Decision dated September 13, 2023)

<sup>2</sup> Refer to the original decision for links to FY18, FY19, FY20, and FY21, Corporate Scorecard, MDB Report, WB Climate Related Financial Disclosures Report, and the joint MDBs methodology for tracking climate finance.

## **AIAB reasoning**

### Arguments on appeal to the AIAB

11. The requester's arguments are summarized below.
12. The requester considered the denial was a violation of Bank policy, because:
  - 12.1. the Bank's position that the data needed to be collated, created, or developed was untrue;
  - 12.2. the requester knew that the information existed;
  - 12.3. the requester had previously been a Bank employee and in this capacity had knowledge of the data, its creation, storage, accessibility, and how it could be interrogated;
  - 12.4. the requester had previously responded to a request for clarification from the A2I team, providing them with the name of the staff who could provide the A2I team with the requested;
13. The requester also set out his views on the way the Bank had communicated with him and their general approach to the application of their policy in relation to collation.

### Admission of the appeal: summary of applicable policy, directives, and procedure

14. All appeals to the AIAB are required to be considered in line with the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01 (AI Policy) **and** the Bank Directive/Procedure: Access to Information, October 18, 2019, Catalogue No. ECR4.01-DIR.123 (AI Policy Directive/Procedure).
15. The Bank's AI Policy and AI Policy Directive/Procedure:
  - 15.1. allows access to any information in the Bank's possession that is not on the list of exceptions (AI Policy, Section III.B.1).
  - 15.2. provides that ***the Bank reserves the right to refuse unreasonable or unsupported requests***, including multiple requests, blanket requests, and 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 (AI Policy Directive/Procedure, Section III.C.3).
  - 15.3. provides further criteria to determine unreasonable requests, including requests that, at the Bank's discretion, are considered ***excessively***

**burdensome** or distort the implementation of the AI Policy by, for example, and not limited to, disrupting Bank operations and/or units in a manner that is disproportionate to the expected benefit from public disclosure (Annex 4 to the AI Policy Directive/Procedure, para. 4(a)).

- 15.4. A requester **who is denied access to information by the Bank** may file an appeal (AI Policy, Section III.B.8. (a)). This has two levels. The AIAB is the second level appeal. A requester may file a second level appeal with the AIAB if they are:
- (a) 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; **and**
  - (b) the AIC has, at the first level, upheld the Bank's initial decision to deny access (see AI Policy, at Section III.B.8. (b).ii)).

#### AIAB mandate

16. It is important in the context of this appeal to be aware of the AIAB's mandate, including the process the AIAB must follow, as this is material to the AIAB's decision. This is summarized from the operating procedures as follows.

“ Operating Procedures, at Section III.A.2 and 3 and Section III.E.4 through 6, provides, in relevant parts:

#### **A. Mandate**

(...)

2. **Admitting an Application for Appeal.** To carry out this mandate, once the Secretariat transmits an appeal to the AIAB and the AIAB receives such appeal, the AIAB admits an application for appeal, or a portion thereof, as referred to the AIAB through the Secretariat only when such application, and solely with respect to the part of the application that, meets the following criteria:

(...)

- (c) **Authority to consider.** The application, or a portion thereof:

(...)

- (ii) follows an AIC decision on appeal to uphold a World Bank's initial decision to deny access to information based on a Policy exception, which AIC decision:

(A) found that the AIC had the authority to consider the appeal in accordance with the Policy, and

(B) is not final.

3. Dismissing an Application for Appeal without consideration of the merits. Pursuant to the Directive/Procedure, at Section III.D.1.a, **the AIAB dismisses any application for appeal that fails to fulfill the criteria set forth in Section III.A.2 of this Procedure.**

(...)

#### **E. Procedures for Considering Applications for Appeal**

(...)

4. Review of Application for Appeal. Upon receipt of an application for appeal through the Secretariat, the AIAB reviews the application and accompanying documents and:
  - (a) admits the application for review and decision only if such application fulfills the criteria set forth in Section III.A.2 this Procedure; or
  - (b) dismisses the application in accordance with Section III.A.3 of this Procedure if such application fails to fulfill the criteria set forth in Section III.A.2 of this Procedure.

#### AIAB consideration of the appeal

17. In line with the procedure set out above, the AIAB's initial consideration was whether it had the authority to admit and consider the appeal. To inform this decision the AIAB sought information from the Bank in order to test the Bank's position that the Request was unreasonable (in terms of the summary under the AIC decision).
18. The AIAB tested the Bank's position by asking for explanations about:
  - 18.1. How did the Bank define collation?
  - 18.2. Clarification of whether the business unit held the information.
  - 18.3. What collation would be necessary?
  - 18.4. Why would collation be burdensome?
  - 18.5. Did the Bank consider that validation of the information was part of the collation process or was it additional work?

- 18.6. Past decisions and references to where unreasonable or unsupported requests had been defined.
19. The aim in seeking this information was not to challenge a discretionary decision the AIAB recognized was the Bank's to take, but to understand better the robustness of how the decision was made and whether it was consistent with past, similar, decisions.
20. The Bank responded to the AIAB's questions. In summary the response:
- 20.1. Referred the AIAB to paragraph 15(d) of the AIC's decision under Case Number AI6799. This set out that collation includes the act to "**manually extract, (...) validate and reconcile** data (...)". This means that the Bank may have to **collect, bring information or data together, and/or compare** carefully **to verify and integrate or arrange** the information or data in order.
  - 20.2. Referred the AIAB to Annex 4 to the Directive/Procedure which addresses Unsupported requests at footnotes 27 and 28.
  - 20.3. Confirmed that the Bank held some, but not all, of the requested information covering the time periods 2002—2022.
  - 20.4. Explained what collation would be needed across that time period, including manually searching for information for 2,710 projects up to 2010; re-evaluation of CCB assessments for 1,592 projects by manually reviewing documents; confirmation of sector allocation for hundreds of projects; validation of sector specific information for 2,644 projects; and that this would amount to thousands of staff days.
  - 20.5. To simply establish how many documents would contain data would take 10,700 staff days.
  - 20.6. Verification of data would be in addition to collation.
  - 20.7. Confirmed that since 2018 the Bank has refused 10 requests because they were considered unreasonable or unsupported, as they required the Bank to collate the data/ information. Of this 10, four (including this one) were appealed. These other cases, AI6799, AI6723, and AI8318, concluded collation was excessively burdensome.
21. The AIAB accepted the explanations from the Bank, although they noted that a contributory factor appeared to be the underlying record keeping practices of the bank (which is not part of this decision).

**AIAB findings**

22. The AIAB accepts that this appeal meets the definition of unreasonable or unsupported, and that collation would be excessively burdensome.
23. The AI Appeals Board finds this application cannot be admitted; it is dismissed without review of its merits. The decision of the Access to Information Committee (the AIC, or the Committee) dated 13 September 2013 will, therefore, stand.