

**AIC decision on appeal #9**

**CASE NUMBER AI0876**

**LOAN AGREEMENT FOR ESKOM INVESTMENT SUPPORT PROJECT**

**(Decision dated July 13, 2011)**

1. On May 20, 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 “loan agreement for the Eskom Investment Support Project” (the “Loan Agreement”). The World Bank (the “Bank”) had denied access to the Loan Agreement based on the “Information Provided by Member Countries or Third Parties in Confidence” and “Financial Information” exceptions under the Bank’s Access to Information Policy (the “Policy”); the decision to deny access was communicated on May 20, 2011.

2. The Application challenges the decision to deny access on the ground that the denial is a “violation of the Policy”. It states:

According to Attachment A of the Access to Information Handbook, pg 25, loan agreements should be disclosed once the agreement is effective.

***Findings and Decision of the Access to Information Committee***

3. In reviewing the Application in accordance with the Policy, the Access to Information Committee (the “AIC”) considered:

- (a) the original request;
- (b) the “violation of the Policy” allegation as set out in the Application;
- (c) the circumstances in which the Loan Agreement was negotiated and entered into; and
- (d) the “Information Provided by Member Countries or Third Parties in Confidence” and “Financial Information” exceptions under the Policy that justified the Bank’s initial decision to deny access.

4. The AIC found that the Loan Agreement had been negotiated and entered into with the signatory with the explicit understanding that the document would be kept confidential due to the confidentiality of certain information contained in the document, and for which the signatory had requested confidentiality.

5. With respect to Attachment A of the Access to Information Staff Handbook (“Attachment”), which the applicant references as the basis for the appeal, the Attachment states that “[t]he Bank’s Policy on Access to Information governs disclosure of Bank information. The purpose of this Attachment is only

*to provide guidance to staff, outlining generally expected work flow processes in preparing and making information routinely available on the Bank’s external website. The Attachment is a living document and is subject to periodic change.” (Italics added.)*

### ***“Violation of Policy”***

6. 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 that restrict access.

7. The Bank had denied access of the Loan Agreement based on two Policy exceptions, namely the “Information Provided by Member Countries or Third Parties in Confidence” exception and “Financial Information” exception. As noted in the Findings above, the AIC found that the Loan Agreement was negotiated and entered into with the signatory with the understanding that the document would be kept confidential due to the confidentiality of certain information contained in the document. In view of the explicit expectations of confidentiality, the Loan Agreement is covered by the “Information Provided by Member Countries or Third Parties in Confidence” exception under the Policy. Paragraph 14 of the Policy states, 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. Thus the Bank does not provide access to information provided to it by a member country or a third party on the understanding of confidentiality, without express permission of that member country or third party.”

8. Based on the above finding, the AIC concluded that the Bank had properly and reasonably denied access to the Loan Agreement based on the “Information Provided by Member Countries or Third Parties in Confidence” exception of the Policy and, therefore, did not violate the Policy.

9. With respect to the Bank’s assertion of the Policy’s “Financial Information” exception as one of the bases for the denial, the AIC recognized that the exception covers:

(a) Estimates of future borrowings by IBRD, contributions by individual donors to IDA, financial forecasts and credit assessments, and data on investment, hedging, borrowing, and cash management transactions generated by or for the Bank’s treasury operations for the World Bank Group entities and other parties.

(b) Documents, analysis, correspondence, or other information used or produced to execute financial and budgetary transactions, or to support the preparation of internal and external financial reports.

(c) Details of individual transactions under loans and trust funds, information regarding amounts overdue from borrowers, or actions taken before any loans are placed in nonaccrual status.

(d) Banking or billing information of World Bank Group entities, member countries, clients, donors, recipients, or vendors, including consultants.

Policy at para. 17 (a) – (d). Financial information that has been provided to the Bank on a confidential basis would be covered by the “Information Provided by Member Countries or Third Parties in Confidence” exception rather than the “Financial Information” exception. While the AIC found that the Bank’s assertion that the “Financial Information” exception (specifically, the Bank’s reference to paragraph 17 (a) – (c) of the Policy) to the Loan Agreement was not appropriate, the error was harmless, as the document is covered by, and therefore would remain restricted under, the “Information Provided by Member Countries or Third Parties in Confidence” exception.

10. For the above reasons, the AIC upholds the Bank’s decision to deny public access to the Loan Agreement.

11. Under the Policy, if the AIC upholds the initial decision to deny access to information in appeals alleging “violation of the Policy”, the requester may file an 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 or copy and paste the following URL into your browser:

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