

AIC decision on appeal #58

CASE NUMBER AI4406

AUDITED FINANCIAL STATEMENTS FOR FOREST AND NATURE CONSERVATION PROJECT, DEMOCRATIC REPUBLIC OF CONGO (Decision dated February 9, 2017)

Summary of Decision

- The Access to Information Committee (“AIC”) upholds the World Bank’s decision to deny access to requested audited financial statements for the Forest and Nature Conservation Project in the Democratic Republic of Congo (“Audited Financial Statements”). The AIC considered the appeal on both violation of policy and public interest grounds.
- **Violation of Policy.** The AIC found that the Audited Financial Statements are restricted by 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”). This is because the Audited Financial Statements are for a project, for which the Bank has not obtain the recipient’s consent to disclose said documents. The AIC noted that the Bank’s decision erroneously specified *Deliberative Information* exception under the AI Policy as restricting the Audited Financial Statements. The AIC considered this error to be harmless, as the Audited Financial Statements were already restricted from public access.
- **Public Interest.** 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 July 12, 2016, the requester submitted a public access request (“Request”) for “the annual and final audited financial accounts for the completed project 'Forest and Nature Conservation Project, Democratic Republic of Congo', IDA-H4570,TF- 92910,TF-94135” (“Audited Financial Statements”).
2. On September 7, 2016, the World Bank (“Bank”) replied to the Request by denying access to the Audited Financial Statements on the basis of the *Deliberative Information* exception under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“AI Policy”).
3. On October 1, 2016, the secretariat to the Access to Information Committee (“AIC”) received an application appealing the Bank’s decision to deny access to the Audited Financial Statements. The application challenges the Bank’s decision on “violation of policy” and “public interest” grounds. The application states the following:

The rejection of the application has not provided justification for why the information is not to be disclosed, and is therefore in breach of policy and is not in the public interest.

Findings and Related Decision

4. In reviewing the application in accordance with the AI Policy, the AIC considered:
 - (a) the Request;
 - (b) the Bank’s denial of access;
 - (c) the application;
 - (d) the nature of the Audited Financial Statements;
 - (e) the *Deliberative Information* exception under the AI Policy that justified the Bank’s decision to deny public access to the Audited Financial Statements; and the *Information Provided by Member Countries or Third Parties in Confidence* exception under the AI Policy; and
 - (f) the information provided by the relevant business unit.

“Violation of the AI Policy”

5. 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).

6. 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.

7. The Bank Directive/Procedure: Access to Information, July 1, 2015, Catalogue No. ECR4.01-DIR.01 (“AI Directive/Procedure”) provides that audited financial statements¹ for investment project financing for which the invitation to negotiate is issued on or after July 1, 2010, are made available to the public as a condition of doing business with the Bank (*see* AI Directive/Procedure, at Section III.B.3 c (and

¹ The audited financial statements are received by the Bank from the borrower/recipient and contain the borrower/recipient’s financial statements, together with the auditors’ opinion, as required by the provisions of the legal agreement for a project.

corresponding footnote)). For this purpose, after July 1, 2010, the contractual arrangements between a recipient of Bank financing and the Bank provide explicitly for the recipient's consent to disclose the audited financial statements. *A contrario*, for investment project financings for which the invitation to negotiate was issued before July 1, 2010, the Bank has not – through the contractual arrangements – obtained the written consent of the recipient to disclose the audited financial statements, and as such, this information is considered restricted by *Information Provided by Member Countries or Third Parties in Confidence* exception.

8. In this case, the AIC found that the invitation to negotiate the Forest and Nature Conservation Project was issued before July 1, 2010, and the legal agreements for said project were also negotiated and signed prior to July 1, 2010. As such, the Bank has not obtained – through the contractual arrangements – the written consent of the recipient to make the Audited Financial Statements publicly available. In addition, the AIC noted that such consent has not been obtained in any other way.

9. Based on all the above findings, the AIC concluded that the Audited Financial Statements are restricted by the *Information provided by Member Countries or Third Parties in Confidence* exception, and hence the Bank's decision to deny access did not violate the AI Policy. The AIC noted that the Bank's decision erroneously specified the *Deliberative Information* exception under the AI Policy as restricting the Audited Financial Statements. The AIC considered this error to be harmless, as the Audited Financial Statements were already restricted from public access.

10. Accordingly, the AIC upheld the Bank's decision to deny public access to Audited Financial Statements. 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*].

Public Interest case

11. 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).

12. 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*, the AIC concluded that the public interest appeal to override this exception

restricting the Audited Financial Statements is not properly before the AIC for consideration (*see* AI Directive/Procedure at Section III.D.1 a (iii)).

13. 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.

14. 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).