

AIC decision on appeal #24

**CASE NUMBER AI2625
EMISSION REDUCTION PURCHASE AGREEMENT**

(Decision dated June 19, 2013)

Summary of Decision

- The requester filed an appeal against the World Bank’s decision to deny public access to the “Emission Reduction Payment Agreement (ERPA) for the Kenya Green Belt Movement Project (PO99628), under the Bio-Carbon Fund,” dated November 15, 2010.
- The AI Policy recognizes that the World Bank has an obligation to protect information that it receives in confidence from a member country or a third party, and does not provide access to such information unless the member country or third party concerned provides express permission authorizing disclosure; such information is restricted by the “Information Provided by Member Countries or Third Parties in Confidence” exception under the AI Policy.
- The Access to Information Committee (“AIC”) found that the requested ERPA contains information that the parties to the agreement provided in confidence, with the understanding that the information would be kept confidential, and for which the parties have not expressly authorized disclosure.
- Based on the above, the AIC concluded that the World Bank properly restricted disclosure of the requested information in accordance with the AI Policy. For this reason, the AIC upheld the World Bank’s decision to deny access.

Decision

1. On April 9, 2013, the World Bank (“Bank”) denied a public access request for the “Emission Reduction Payment Agreement (ERPA) for the Kenya Green Belt Movement Project (PO99628) under the Bio-Carbon Fund” (“Request”). The Request was denied on the basis that the requested information is restricted by the “Information Provided by Member Countries or Third Parties in Confidence” exception under the Bank’s Access to Information Policy (“AI Policy”). On April 9, 2013, the secretariat to the Access to Information Committee (“AIC”) received the attached application (“Application”) appealing the Bank’s decision to deny public access to the requested information.

2. The Application challenges the decision to deny public access on the basis that the denial is a violation of the AI Policy. The Application states the following:

The document requested, an Emission Reduction Payment Agreement, is inaccurately classified as confidential under exception to the policy "information provided by member countries or third parties in confidence". It is a bank generated document, signed by the project proponent, and is not a country owned or generated document. While the ERPA may have been signed with an understanding of confidentiality, the ERPA itself is likely to have an confidentiality expiration date of five years contained within it. Additionally, the Bank could easily request to the project proponent authorization to disclose. Lastly, there is an important public interest at stake which [outweighs] the financial, business or proprietary interests of the project proponent, if such interests actually even exist, which is doubtful.

Findings and Decisions of the Access to Information Committee

3. The AIC considered the Application on the basis of whether the decision to deny public access to the requested information violated the AI Policy. In reviewing the Application in accordance with the AI Policy, the AIC considered:

- (a) the Request;
- (b) the Application;
- (c) the nature of the requested information, i.e., the Emission Reduction Purchase Agreement ("ERPA") for the Kenya Green Belt Movement Project (PO99628) under the Bio-Carbon Fund, dated November 15, 2006;
- (d) the "Information Provided by Member Countries or Third Parties in Confidence" exception under the AI Policy that justified the Bank's initial decision to deny public access; and
- (e) the information provided by the relevant business units concerning the requested ERPA.

"Violation of the AI Policy"

4. Pursuant to the AI Policy, 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 paragraph 36 (a)). The AI Policy

states that the Bank “does not provide access to documents that contain or refer to information listed in paragraphs 8-17” of the AI Policy, which set out the AI Policy’s list of exceptions.

5. The Bank had denied access to the ERPA in this case on the basis of the “Information Provided by Member Countries or Third Parties in Confidence” exception. The AI Policy recognizes, 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 (*see* AI Policy at paragraph 14). The AI Policy further recognizes that “information may be given by a member country or third party (explicitly or implicitly) in confidence” and that such information would be restricted from disclosure pursuant to the “Information Provided by Member Countries or Third Parties in Confidence” exception (*see* AI Policy, footnote 11).

6. To better understand the expectations of confidentiality by the parties to the ERPA, on June 5, 2013, the AIC met with staff of the relevant business units. The staff first explained that, in the context of ERPAs, the Bank serves in the capacity of a trustee, acting on behalf of the fund participants, and not on its own behalf. They further explained that, because of the competitive nature of the carbon fund transactions, the participants have been willing to enter into purchase agreements only if their transactions would be kept confidential, and that this understanding is the standard practice in the carbon finance business. The staff noted that, because prices of individual transactions are always confidential, the Bank has published annual reports called “The State and Trends of the Carbon Market” and “State of the Forest Carbon Market,” which publish pricing trends at an aggregate level, in order to provide more transparency to the market.

7. The staff also explained that, before the AI Policy went into effect (i.e., July 1, 2010), the expectation of confidentiality by the fund participants and the project entities to the ERPA was implicit. ERPAs did not include a confidentiality provision because the Bank’s former disclosure policy did not require the disclosure of such agreements. In recognition of the Bank’s AI Policy – which indicates that the Bank allows access to any information in its possession that is not covered by the AI Policy’s list of exceptions – all ERPAs, beginning July 1, 2010, included an explicit clause, at section 12.02, titled *Disclosure of Information*. The clause explicitly recognizes that all information provided by the parties in the commercial negotiations leading to the ERPA shall be kept confidential and not disclosed, setting out specific circumstances that could trigger disclosure.

8. Based on the information presented, the AIC found that, the ERPA in this case predates the AI Policy, and while it does not have an explicit confidentiality clause, the parties entered into the agreement with the implied understanding that the information within the ERPA would be kept confidential. In view of the parties’ expectations of confidentiality, and no record of the occurrence of circumstances that would trigger disclosure, including the parties’ express

authorization to disclose, the AIC found that the ERPA in this case is properly restricted by the AI Policy's "Information Provided by Member Countries or Third Parties in Confidence" exception.

9. Based on the above findings, the AIC concluded that the Bank had properly and reasonably denied public access to the information requested and, therefore, did not violate the AI Policy. For this reason, the AIC upheld the Bank's decision to deny public access to the ERPA in this case.

10. 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 paragraph 38). If you wish to file an appeal to the AI Appeals Board, [click here](#).

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