

AIC decision on appeal #23

**CASE NUMBER AI2624
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 Agricultural Carbon Project (PO107798) approved [November] 15, 2010 under the Bio-Carbon Fund.”
- 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 has given its 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 based on the AI Policy’s “Information Provided by Member Countries or Third Parties in Confidence” exception. For this reason, the AIC upheld the World Bank’s decision to deny public access to the requested information.

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 Agricultural Carbon Project (PO107798) approved Nov. 15, 2010 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 10, 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 violates the AI Policy. The Application states the following:

The Bank has inaccurately classified this class of documents (ERPA's) as information provided by member countries/third parties in confidence. They are bank generated contracts for payments for emission reductions, based on a standardized template, and it is unclear whether there is any information in them whose release would cause harm to the business interests of any party. In addition the Bank could request to the other party for their disclosure.

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 for the Kenya Agricultural Carbon Project (PO107798), under the Bio-Carbon Fund, dated November 15, 2010;
- (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. AI Policy provides

that, under the “Information Provided by Member Countries or Third Parties in Confidence” exception, 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. The AIC found that, in the context of ERPAs, the Bank serves in the capacity of a trustee, acting on behalf of the fund participants. The ERPA in this case includes an explicit clause, at section 12.02, titled *Disclosure of Information*, which recognizes that all information provided by the parties (i.e., the project entity and the fund participants, represented by the Bank, as trustee of Biocarbon Fund) in the commercial negotiations leading to the ERPA shall be kept confidential and not disclosed, setting out specific circumstances that could trigger disclosure.

7. Based on the information before the AIC, the AIC concluded that the parties entered into the agreement with the explicit understanding that the information within the ERPA would be kept confidential. In view of the parties’ expectations of confidentiality, and the fact that the circumstances that would trigger disclosure under the ERPA have not occurred and that there is no record of 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.

8. Based on the above findings, the AIC decided 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.

9. 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].