

AIC Decision on appeal #94

CASE NUMBER AI8100 TECHNICAL NOTE ON USE OF MILITARY FORCES TO ASSIST IN COVID-19 OPERATIONS (Decision dated March 13, 2023)

Summary of Decision

- The Access to Information Committee (“AIC”) upholds the World Bank’s (“Bank”) decision to deny access to the “Technical Note: Use of Military Forces to Assist in COVID-19 Operations Suggestions on How to Mitigate Risks” (“Technical Note”). The AIC considered the appeal on both violation of policy and public interest grounds.
- **Violation of policy.** The AIC found that the Bank’s assertion that the *Deliberative Information* exception in its initial denial of access is no longer applicable. It found, rather, that the information in the entire Technical Note remains restricted by the Bank’s exercise of prerogative to restrict. The AIC also found that all requirements for the Bank’s exercise of prerogative to restrict have been met and the Technical Note is properly and reasonably restricted from public access based on the Bank’s exercise of prerogative to restrict under the AI Policy. Therefore, there is no violation of policy. Based on the above, the AIC upholds the Bank’s decision to deny public access to the Technical Note. This decision on appeal is final.
- **Public Interest.** The AIC dismisses the public interest portion of the appeal because information restricted by the Bank’s exercise of prerogative to restrict is not subject to a public interest appeal.

The Decision

Facts

1. On June 29, 2022, the Bank received a public access request (“Request”) seeking access to the following information (verbatim):

World Bank technical note, “Use of Military Forces to assist in COVID-19 Operations, suggestion on how to mitigate risks.” (“Requested Information”)

2. On July 7, 2022, the Bank consulted the responsible business unit in light of the Request. As a result, on July 28, 2022, the responsible business unit informed that the “Technical Note: Use of Military Forces to Assist in COVID-19 Operations Suggestions on How to Mitigate Risks” (“Technical Note”) responsive to the Request is restricted from public access because it is deliberative.

3. On August 17, 2022, the Bank issued its decision and denied public access to the Requested Information based on the *Deliberative Information* exception under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01, as amended (“[AI Policy](#)”).
4. On September 19, 2022, the Bank received an application (“Application”) appealing the Bank’s initial decision to deny public access to the Requested Information. The Application challenges the Bank’s decision to deny public access to the Requested Information on the basis that the denial “violates the AI Policy” and that there is a “public interest” case to override the AI Policy exception that restrict access to the Requested Information.
5. On September 20, 2022, the secretariat to the AIC (“AIC Secretariat”) consulted the responsible business unit to seek its views on the possible disclosure of the Requested Information in light of the Application.
6. On October 21, 2022, the responsible business unit offered its views detailing its explanation (a) for restricting public access to the Requested Information based on the *Deliberative Information* exception under the AI Policy, and (b) of the harm of disclosure if the Requested Information is made publicly available.
7. On October 24, 2022, the AIC Secretariat requested the responsible business unit to provide additional clarifications to the AIC.
8. On October 31, 2022, the responsible business unit provided additional clarifications as per the AIC Secretariat’s request. In light of the complexity of the matter, the AIC Secretariat requested the responsible business unit to appoint relevant representative(s) to attend the following AIC meeting.
9. On November 16, 2022, the responsible business unit appointed relevant representative(s) to attend the AIC meeting on November 30, 2022.
10. On November 30, 2022, and December 14, 2022, the AIC held its regular meetings and discussed the Application under this appeal.

Findings and Related Decisions

11. In reviewing the Application in accordance with the AI Policy, the AIC considered:
 - (a) the Request;
 - (b) the Bank’s initial denial of access;
 - (c) the Application and the grounds for appeal;

- (d) input from the responsible business unit, including views on the possible harm if the information is disclosed;
- (e) the nature of the Requested Information;
- (f) whether the *Deliberative Information* exception and/or any other exception(s) under the AI Policy justifies the Bank’s initial denial of access to the Requested Information;
- (g) the public interest nature of the appeal; and
- (h) whether any information has already been disclosed.

“Violation of the AI Policy”

12. 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).

13. The AI Policy states that the Bank “does not provide access to documents that *contain or refer* to information listed in subparagraphs (a) through (j)” of the AI Policy, which set out the AI Policy’s list of exceptions (*see* AI Policy, at Section III.B.2, emphasis added). The AI Policy also provides that, notwithstanding the broad intent of the AI Policy, the Bank reserves the right, under exceptional circumstances, to restrict access to information that it normally discloses (*see* AI Policy at Section III.B.1 and Section IV.2). Section III.B.2.(i) of the AI Policy provides, under the *Deliberative Information* exception, that, to facilitate and safeguard the free and candid exchange of ideas for the purpose of preserving the integrity of the deliberative processes, while the Bank makes publicly available the decisions, results, and agreement that result from its deliberative process, the Bank does not provide access to information prepared for, or exchanged during the course of, (a) its deliberations with member countries or other entities with which the Bank cooperates, and/or (b) its own internal deliberations (*see* AI Policy, at Section III.B.2.(i).i and ii). Safeguarding the deliberative process is also one of the AI Policy’s five principles (*see* AI Policy, at Section III.A.1).

14. In this case, the AIC found that:

- (a) the Technical Note was issued to staff on March 25, 2020, only 12 calendar days (i.e., eight business days) after the Bank went on lockdown due to COVID-19. It was originally drafted with the *Deliberative Information* exception in mind and was not intended or meant for public disclosure. Instead, as the responsible business unit explained, the Technical Note was intended to be a “living internal working document,

- to be developed and refined as the Bank gained more experience in preparing emergency COVID-19 projects”. As such, the Technical Note was intended from inception solely for internal use, was aimed at ensuring consistency across regions in a time of crisis, and is far from reflecting any comprehensive treatment of security issues;
- (b) the [Bank Policy Development Cooperation and Fragility, Conflict, and Violence](#), issued on August 16, 2021 (“FCV Policy”), i.e., approximately 17 months after the issuance of the Technical Note, is publicly available. The responsible business unit clarified that *the FCV Policy incorporates part of the content from the Technical Note* and, in fact, *supersedes the Technical Note*. The responsible business unit also clarified that the FCV Policy considers in more detail, and at a policy level, issues relating to the involvement of the military in Bank-supported operations and reflects a more consolidated view of the Bank on the matter than the Technical Note;
 - (c) having part of the content from the Technical Note disclosed through the FCV Policy neither undermines nor eliminates the deliberative nature of the Technical Note at its inception. It does, however, suggest that the deliberations actually continued but the sensitivity of those deliberations diminished over time, more precisely over the 17 months between issuing the Technical Note in March 2020 and publicly disclosing the FCV Policy in August 2021;
 - (d) because part of the content of the Technical Note was disclosed through the FCV Policy, the *Deliberative Information* exception under the AI Policy no longer applies to restrict the Technical Note in its entirety. However, while the disclosure of part of the content from the Technical Note through the FCV Policy may diminish the sensitivity of the deliberative nature of that portion of the Technical Note by giving it a sense of finality, it does not remove other harm that remains of concern should the remaining content of the Technical Note be disclosed;
 - (e) the remaining content from the Technical Note that was *not* disclosed through the FCV Policy is not restricted by any exception under the AI Policy. Because under the AI Policy the Bank allows access to any information in its possession that is not on a list of exceptions, without the *Deliberative Information* exception still restricting the Technical Note in its entirety the Technical Note would be normally disclosed. However, as noted in para. 13 above, under the AI Policy the Bank reserves the right, under exceptional circumstances, to restrict access to information that it would normally disclose (*see* AI Policy at Section III.B.1 and Section IV.2). The responsible business unit argued that disclosing the Technical Note in its entirety could severely and adversely impact the Bank’s carrying out of its business and be detrimental to the Bank’s carrying out of its business not only in COVID-19 operations but also in more ongoing fragile situations. This is because, as the responsible business unit argued, such disclosure would likely harm (i) the ability for staff to perform their work free from any possible interference or pressure in the exercise of their international duties, (ii) the Bank/member country relationship in a range of other fragile situations, (iii) the

trust nurtured between the Bank and its member countries that leads to the carrying out of the Bank's business without undue interference or pressure. For this reason, such disclosure is likely to cause more harm that outweighs the benefits of disclosure and, on this basis, *the responsible business unit decided to exercise the Bank's prerogative to restrict access to the Technical Note* to protect the remaining content that is not public.

15. The AIC considered whether such exercise of prerogative to restrict violates the AI Policy, i.e., is improper or unreasonable. The prerogative to restrict access is an exercise of the Bank's discretion. Pursuant to the AI Policy, such discretion requires "exceptional circumstances", that the information would "normally" be disclosed, and that "such disclosure is likely to cause harm that outweighs the benefits of disclosure". In this case, the AIC found that:

- (a) the use of military in COVID-19 operations *and in subsequent FCV operations* are exceptional circumstances;
- (b) part of the content from the Technical Note is not restricted by any AI Policy exception and, thus, would be normally disclosed;
- (c) the responsible business unit made compelling arguments that disclosing the Technical Note is likely to cause harm in a manner that outweighs the benefits of disclosing the information (see para. 14 (e) above).

16. Based on the above, the AIC found that all requirements for the Bank's exercise of prerogative to restrict have been met. Thus, the Technical Note is properly and reasonably restricted from public access based on the Bank's exercise of prerogative to restrict under the AI Policy. While the AIC found that the Bank's assertion that the *Deliberative Information* exception in its initial denial is no longer applicable, the information remains restricted in its entirety by the Bank's exercise of prerogative to restrict. For this reason, the AIC finds no violation of policy and upholds the Bank's decision to deny public access to the Requested Information. The AIC decision on this appeal is final (*see* Bank Directive/Procedure on Access to Information Policy, at Section III.B.5.b.ii).

"Public Interest" case

17. 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 public access to the information (*see* AI Policy, at Section III.B.8.(a).ii). 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 id.*). Under the AI Policy, for appeals that assert a public interest case to override an AI Policy exception, the decision of the AIC is final (*see* AI Policy, at Section III.B.8.(b).i).

18. In this case, the Requested Information is restricted by the Bank's exercise of prerogative to restrict (*see* AI Policy, at Section IV.2). Information restricted by the Bank's exercise of prerogative to restrict is not eligible for public interest appeals. For this reason, the AIC dismisses the public interest portion of the Application because it appeals a matter that the AIC does not have authority to consider (*see* AI Directive/Procedure, at Section III.D.1.a.(iii)).
19. Under the AI Policy, for appeals that assert a public interest case to override an AI Policy exception, the decision of the AIC is final (*see* AI Policy, at Section III.B.8.(b).i.).