

Access to Information Appeals Board Decision

Case Number AI6479-A

Documents concerning amendments to the Tanzanian Statistics Act

Decision dated March 18, 2020

Decision of the AI Appeals Board

1. The Access to Information Appeals Board (the AI Appeals Board or AIAB) has reviewed the application for appeal and decided it cannot admit the application on procedural grounds: the responsive documents are currently being processed for review by the Access to Information Committee (AIC). As the AIC has not yet made a substantive decision about what information may be released, the AIAB does not have the authority under the World Bank's Access of Information Policy (AI Policy) to hear the appeal. The reasons for our decision are set out below, along with the AI Appeals Board's observations about the case.

Background

2. Initial Request

On July 9, 2019, the Access to Information (AI) team of the World Bank (also referred to as the Bank or WB) received a request for:

“... all World Bank documents concerning amendments to the Tanzanian Statistics Act between April 1, 2018, and July 8, 2019. This request should be interpreted broadly and should include communications to and from the country office in Tanzania to WB headquarters and all correspondence on this topic with the Tanzanian government.”

3. Denial letter

The AI team began work that day to identify responsive records. After several weeks of consultation with the relevant World Bank units, including the Country Director for Tanzania and the Chief Counsel for the Africa Region, the following reply was provided to the Requester on August 28, 2019:

“In response to your request under case number AI6479, we regret to inform you that the documents you requested are restricted from public access under the World Bank Policy of Access to Information (the Policy) because they are covered either by the Attorney Client Privilege or the Deliberative Information exceptions under the Policy.”

The brief denial letter gave no additional information about the withholding or the nature of the documents that had been located. The denial letter did tell the Requester that he could appeal the denial.

4. Requester's appeal to the AIC

The Requester, a journalist, made his timely appeal by letter dated September 17, 2019. The Requester stated that he was seeking the records to inform the public about the Bank's position on the Tanzanian Government's amendments to the Tanzanian Statistics Act: "That information will both provide support for the Bank (assuming it had good reasons for the change of position) and support greater openness around statistics in other countries/contexts." The Requester suggested that the asserted exemptions (Attorney-Client and Deliberative Information) were overly broad in their application and also argued that the Bank "should follow the well-established practice under access to information laws worldwide of using redactions."

Actions of the Access to Information Committee

5. The AIC communicated with the relevant business unit on September 18, 2019, to advise that the Requester was appealing the denial. One month later, the business unit provided to the AIC the responsive records totaling approximately 500 documents. The AIC met next on October 30 to discuss the appeal; on November 13 the AIC requested additional information from the business unit.
6. On November 14, the AIC wrote to the Requester to say that the AIC "requires additional time to consider and review your appeal due to the high number of documents identified as responsive to your original request."
7. On November 26, the AIC again met to discuss the appeal and the additional clarifications it had gotten from the business unit. The AIC decided to request the business unit to review the documents to eliminate duplicate copies and more clearly identify the responsive documents.
8. By email dated December 10, 2019, the Requester asked about the status of his appeal. The same day, on December 10, the AIC replied to the Requester that although the AIC "makes its best efforts to reach a decision on appeals within 45 working days," again "the AIC requires additional time to consider and review your appeal due to the high number of documents identified as responsive to your original request."
9. On January 20, 2020, the Requester asked about the status of his appeal. On January 21, the AIC again told the Requester that it needed additional time to consider and review his appeal.
10. On February 20, 2020, the Requester wrote again to the AIC to learn the status of his appeal. On February 24, the AIC wrote to the Requester to say that additional time was needed "to ensure the [AIC] has accurate information to consider under appeal. It is to your benefit that the Bank is diligently looking at all information you requested under appeal for which

the additional time is needed.” (emphasis in original). The AIC’s letter went on to state that the request was being interpreted “broadly,” as the Requester had specified in his initial request, and that “the universe of information that needs to be considered is voluminous.”

11. In the meantime, however, the Requester had filed an appeal with the AIAB on February 20, 2020.

Arguments on Appeal to the AIAB

12. The Requester appealed on the basis that the AIC was “acting in contravention of the AI Policy by failing to respond in a timely manner to my appeal made five months ago.” He questioned whether the delay in response is justified. He asked the AIAB to “seek some quantitative definition of this supposed burden” and to find out “whether the Bank has allotted adequate resources to handle the request and the appeal.” The Requester also stated that he believed “the delay may relate to the Bank’s communications with the Tanzanian government about this request” and asked for documentation of such interactions.

Authority of the AIAB to hear the appeal

13. The relevant provisions of the AI Policy and implementing procedures are set out in full at the end of this decision as Annex 1. In sum, the Bank’s AI Policy, Sec. III B(8)(b) sets out a two-stage appeal process. The Requester in this case has appealed the initial denial of access to the AIC and then, having not yet received a substantive response from the AIC, appealed to the AIAB.
14. At the second appeals stage, the AIAB looks at whether the appeal (1) is timely; and (2) establishes 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 Policy,”; and (3) involves a matter that the AIAB “has authority to consider.” [See AIAB Operating Procedures, Sec. III A(2)(a)-(c)].
15. The AIAB considers the current appeal to be timely. The AIAB also considers the Requester to have made a *prima facie* case for an improper withholding, in light of the delays in responding to his appeal. [See AI Directive/Procedure, Sec. III D(1)(c) (Oct. 18, 2019): the AIC must make “its best efforts to reach a decision on appeals within 45 working days of receiving an appeal”]. The AIAB’s authority to hear the appeal in this case, however, is lacking in that the AIC has not yet made an initial decision to grant or deny access to documents. [See AIAB Operating Procedures, Sec. III A(2)(a)(c)(i)]. It is for that reason—that the AIC has not yet made a decision—that the AIAB concludes it cannot admit the application for appeal.

AI Appeals Board Deliberations and Findings

16. We note that although the AIAB's quite narrow authority is contingent upon the AIC having made a decision about disclosure, the AIAB might properly intervene in a case where there has been both an unreasonable delay and the World Bank has not demonstrated its due diligence in locating and reviewing a large number of documents. Here, however, the Bank has made good faith assurances to the AIAB that the business unit and the AIC Secretariat are actively working on the request.
17. In coming to its decision, the AIAB has had access to the correspondence between the Requester and World Bank officials and among the Bank employees working on the request. In addition, the AIAB members talked with the Secretariat supporting the AIC to understand the nature and volume of the responsive records and the estimated time frame for a substantive response by the AIC.
18. Although the AIAB ultimately concludes that it does not have the authority to admit the appeal—due to the fact that the AIC has not yet completed its review and made a decision to provide access—the AIAB members have concerns about how the request was handled at both the initial response stage and the appeals stage. The written communications with the Requester failed to provide even minimal information about the nature and volume of the responsive records. No one attempted to talk with the Requester at any point in the process. Better communications would go some way towards helping the Requester understand what the Bank is doing to comply with its AI Policy and why it will take more time still, especially given that the request was made in July 2019 and the appeal in September 2019.

AI Appeals Board Findings

19. Accordingly, we find that the appeal should not be admitted.
20. The AI Appeals Board's decision is final.

ANNEX 1 – RELEVANT PROVISIONS OF THE AI POLICY AND IMPLEMENTING PROCEDURES

Access to Information Policy, issued and effective July 1, 2015:

Sec.III.B(8)(b)(ii) of the Policy provides in relevant part that the AIAB “consider[s] appeals alleging that the Bank violated this Policy by restricting access to information that it would normally disclose under the Policy, **if the AI Committee upholds the initial decision to deny access**; the Appeals Board does not consider appeals concerning requests to override the Policy's exceptions. The Appeals Board has the authority to uphold or reverse the relevant decisions of the AI Committee, and the Appeals Board's decision in such instances are final.” [emphasis added]

Access to Information Appeals Board – Operating Procedures (issued January 31, 2020, and effective Feb. 1, 2020) provides in Section III A(1), (2) and (4):

1. Mandate. The mandate of the AIAB is to consider – at the second stage of appeal – appeals for which the requester is able to establish a prima facie case that the World Bank has violated the Policy by improperly or unreasonably restricting access to information that it would normally disclose under the Policy, **and the AIC has – at the first stage of appeal – upheld an initial decision of the World Bank to deny access.** In fulfilling its mandate, the AIAB reads and applies the Policy as it is written – using the ordinary meaning of the words, absent an express interpretation to the contrary issued by the AIC or the Board – or as the Policy has been amended by the Board, or interpreted by issuance of an express interpretation by the AIC or the Board, when relevant. [emphasis added]

2. Admitting an Application for Appeal. To carry out this mandate, the AIAB admits an application for appeal only when such application meets the following criteria:

(a) In Time. The application is timely filed both before the AIC, at the first stage of appeal (i.e., within 60 calendar days of the World Bank’s initial decision to deny access), and before the AIAB, at the second stage of appeal (i.e., within 60 calendar days of the AIC’s decision to uphold the World Bank’s initial decision to deny access), consistent with the Policy, at Section III.B.8.(b).i and ii;

(b) Establishes Prima Facie. The application before the AIAB establishes a prima facie case (i.e., provides sufficient information that would reasonably support the appeal) that the World Bank violated the Policy by improperly or unreasonably restricting access to information that it would normally disclose under the Policy, consistent with the Policy, at Section III B.8.(a).i;

(c) Authority to consider. The application appeals a matter that the AIAB has authority to consider:

(i) **The appeal follows an AIC decision to uphold a World Bank decision to deny access on the basis that the denial did not violate the Policy. The requester filed an appeal alleging a violation of Policy at the first stage of appeal, and in response to that appeal, the AIC (A) found that it had the authority to consider the appeal in accordance with the Policy, and (B) decided to uphold the World Bank’s decision to deny access to the requested information, consistent with the Policy, at Section III.B.8.(b).ii;** [emphasis added]

(ii) The second stage appeal alleges a violation of Policy. The application before the AIAB concerns information in the World Bank’s possession and alleges that the World Bank’s decision to restrict access violates the Policy, consistent with the Policy, at Section III.B.8.(b).ii;

(iii) The appeal does not concern the World Bank’s exercise of prerogative to restrict access. The application for appeal does not relate to a decision of the World Bank to exercise the prerogative to restrict access in accordance with Section IV.2 of the Policy; and

(iv) The appeal does not concern a decision of the Board. The application for appeal does not relate to a decision of the Board, consistent with the Policy, at footnote 24.

...

4. The Policy – Basis for Consideration and Decision. Upon admission of an application in accordance with Section III.A.2 of this Procedure, the AIAB reviews the documents of record as described in Section III.E.2 of this Procedure. **The AIAB considers and decides whether the World Bank has violated the terms of the Policy by improperly or unreasonably restricting access to information that it would normally disclose under the Policy.** [emphasis added]

[end of Annex 1]