

AIC Decision on appeal #83

CASE NUMBER AI7461 SIERRA LEONE PROCUREMENT CONTRACT

(Decision dated May 26, 2021)

Summary of Decision

- The Access to Information Committee (“AIC”) found that the requested information is restricted from public access because the Bank exercised its prerogative to restrict access. The AIC considered the appeal on both violation of policy and public interest grounds. The AIC decision is final on appeals challenging a Bank’s denial of access based on the Bank’s prerogative to restrict access.
- **Violation of Policy.** The AIC found that the requested information is properly and reasonably restricted by the Bank’s prerogative to restrict access. For this reason, the AIC found that the Bank did not violate the AI Policy. Based on the above, the AIC upholds the Bank’s decision to deny public access to the requested information.
- **Public Interest.** The AIC dismisses the public interest portion of the appeal because the requested information is restricted by the Bank’s prerogative to restrict access, which is not subject to a public interest appeal. For this reason, the AIC dismisses this portion of the appeal for appealing a matter that the AIC does not have authority to consider.

The Decision

Facts

1. On March 5, 2021, the World Bank (“Bank”) received a public access request (“Request”) seeking access to:

“(…) a copy of the contract referenced in link below for audit services in Sierra Leone as part of the Covid-19 project
<https://projects.worldbank.org/en/projects-operations/procurement-detail/OP00091562>.”
 (“Requested Information”).

2. On March 15, 2021, the Bank asked the responsible business unit to confirm whether certain information located in the Bank’s possession was responsive to the Request.

3. On March 16, 2021, the responsible business unit confirmed that certain information in the Bank’s possession was responsive to the Request. Such information was marked as restricted by the Bank’s prerogative to restrict access under the Bank Policy: Access to Information, July 1, 2015, Catalogue No. EXC4.01-POL.01 (“[AI Policy](#)”).

4. On March 17, 2021 the Bank denied access to the Requested Information based on the Bank’s prerogative to restrict access under the AI Policy.

5. On March 29, 2021, the AIC, through its secretariat (“AIC Secretariat”), received an application (“Application”) appealing the Bank’s 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 restricts the Requested Information.

6. On March 30, 2021, the AIC Secretariat consulted the responsible business unit to seek its views on the possible disclosure of the Requested Information in light of the Application.

7. On April 9, 2021, the responsible business units informed the AIC Secretariat that the Requested Information is restricted from public access by the Bank’s prerogative to restrict access under the AI Policy.

Findings and Related Decisions

8. 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;
- (d) input from the relevant business units;
- (e) the nature of the Requested Information;
- (f) any precedent decision(s) by the AIC regarding information similar in nature;
- (g) the Bank’s exercise of its prerogative to restrict access to the Requested Information.

“Violation of the AI Policy”

9. Under 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). Notwithstanding the broad intent of the AI Policy, under exceptional circumstances, the Bank reserves its right to restrict access to information that it would normally disclose if it determines that such disclosure is likely to cause harm that outweighs the benefits of disclosure (*see* AI Policy, at Section III.B.1 and Section IV.2).

10. 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.). Appeals challenging the Bank's exercise of its prerogative to restrict access are considered by the AIC, whose decisions in the cases are final (see [Bank Directive/Procedure on Access to Information Policy](#), at Section III.B.5.b.ii).

11. The AIC found that the Requested Information consists of a contract, and its respective amendment, resulting from procurement processes under one project financed by the Bank. The AIC found that, as in previous cases decided by the AIC involving information similar in nature:

(...) procurement contracts under Bank financed projects contain details whose disclosure could negatively impact competition under projects financed by the Bank, increase costs, and prevent the Bank from ensuring the economy and efficiency necessary in the use of its funds.¹ Procurement contracts issued under Bank financed projects are documents owned by Borrower countries and reflect the agreements between Borrower countries and their respective contracting parties; the Bank is not a party nor a signatory of such contracts. Nevertheless, and as previously decided by the AIC in *Case No. AI6359, Lithuania Lease Tender*, dated November 18, 2020, *Case No. AI6929, Kenya Supplier Contracts*, dated November 24, 2020, *Case No. AI7183, West and Central Africa Air Transport Safety and Security Project for Burkina Faso, Cameroon, Guinea, And Mali (P083751)*, dated November 24, 2020, *Case No. AI7157, Cameroon Transport Project*, dated December 3, 2020, the Bank has an interest in restricting public access to contractual information resulting from procurement processes carried out in Bank-financed projects. Such interest is to enable the Bank to fulfill its mandate under its Articles of Agreement, i.e., make arrangements to ensure the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency (see [Articles of Agreement](#), at Article III, Section 5(b)).² As in such precedents decided by the AIC:

(...) [b]ecause (a) the AI Policy exceptions are insufficient to ensure the protection of the Bank's interests in procurement processes carried out under Bank financed projects, and (b) disclosing the Requested Information is

¹ See AIC's decisions in *Case No. AI6359, Lithuania Lease Tender*, dated November 18, 2020, *Case No. AI6929, Kenya Supplier Contracts*, dated November 24, 2020, *Case No. AI7183, West and Central Africa Air Transport Safety and Security Project for Burkina Faso, Cameroon, Guinea, And Mali (P083751)*, dated November 24, 2020, *Case No. AI7157, Cameroon Transport Project*, dated December 3, 2020, and *Case No. AI7128, Systematic Tracking of Exchanges in Procurement (STEP)*, dated April 28, 2021.

² See also [World Bank Procurement Regulations for IPF Borrowers](#), at Section I, para. 1.2, and at Annex II, para. 1.

likely to cause harm to the Bank’s interests in the procurement process that outweighs the benefits of disclosure, as well as to the interests of contractors who are parties to those contracts, *there are exceptional circumstances that justify the business unit’s decision to exercise the Bank’s prerogative to restrict access to the Requested Information.* (emphasis added).³ (see [AIC Decision on appeal #81](#), Case Number AI7128, Systematic Tracking of Exchanges in Procurement (STEP) (Decision dated April 28, 2021), at para. 29)

12. Based on the above, the AIC finds that the Bank properly and reasonably exercised its prerogative to restrict access to the Requested Information. For this reason, the AIC upholds the Bank’s decision to deny public access to the Requested Information. As noted in paragraph 10 above, the AIC decision is final on appeals challenging the Bank’s denial of access based on the Bank’s prerogative to restrict.

“Public Interest” case

13. 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 (*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.*).

14. In this case, the AIC found that the Requested Information is restricted by the Bank’s prerogative to restrict access (*see* AI Policy, at Section IV.2). Information restricted by the Bank’s prerogative to restrict access 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)).

15. 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.).

³ See AIC’s decisions in *Case No. AI6359, Lithuania Lease Tender*, dated November 18, 2020, at para. 30.