

## Access to Information Appeals Board Decision

Case Number AI6479-A

All documents concerning amendments to the Tanzanian Statistics Act  
Decision dated May 4, 2021

### 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 in this case and decided to admit the application in its entirety and to uphold in part the decision by the Access to Information Committee (the "AIC") to deny some of the requested information in its entirety, while releasing information outlined in the Appendix, for the reasons set out below.

### **Background**

#### Initial Request

2. On July 8, 2019, the requestor submitted a public access request for all World Bank documents concerning amendments to the Tanzanian Statistics Act ("The Act") between April 1, 2018, and July 8, 2019. The requestor indicated that the 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."

#### Denial Letter

3. On August 28, 2019, the Bank replied to the requestor informing them that the documents requested are restricted from public access under the World Bank Policy on Access to Information (the "AI Policy") because they are covered either by the *Attorney-Client Privilege* or the *Deliberative Information* exceptions under the AI Policy.

#### Appeal to the AIC

4. On Sept. 17, 2019, the requestor made an appeal against the denial of the request to the AIC. In the AIC appeal the requestor noted their arguments for release of the information in

relation to each exception. In relation to the Attorney Client Privilege exception the requestor stated:

*“ This exception, which tracks similar exceptions in other IFI policies and national access to information laws, is designed to protect communications covered by legal privilege. This is limited to communications between clients and lawyers which relate to the legal concerns or interests of the client, such as when the lawyer is handling a legal matter affecting the client. It is accepted that this exception does not cover comments by lawyers, and especially in-house lawyers, on other matters. This would be a far too expansive application of the exception which would be open to serious abuse, since it could then be deemed to cover any communication involving a lawyer, even where identical communication would not be exempt if it had been made by anyone else. When a Bank lawyer is consulted on a programmatic policy matter rather than an issue affecting the Bank’s legal interests, he or she is acting as a policy advisor and not as the Bank’s legal counsel. It is normal for the Bank to consult its lawyers when it wishes to assess the quality of a law. The problem with attempting to cover this by the Attorney-Client Privilege exception becomes clear by way of analogy. If, instead of a law, the Bank wished to assess the quality of an economic policy, it would consult with its economists or other qualified professionals. The idea that policy advice on a law is specially exempt while policy advice on anything else would not be (unless, perhaps, another exception applied) is clearly illogical and not how the exception is supposed to operate” .*

5. In relation to the Deliberative information exception, the requestor argued that the use of the exception would be:

*“...abusive and overlooks an important distinction between disclosures that actually might interfere with the “integrity of the deliberative process” and disclosures that do not cause any such interference but, instead, usefully inform the public. The use of this exception in this case is inappropriate at least to the extent that it shields from disclosure information of a factual nature.... There are numerous problems with the way this exception has been applied in this case. First, it is accepted that there is a key distinction, when applying exceptions of this sort, between statements of fact and statements of opinion. This is clearly reflected in the reference, in the exception itself, to the “exchange of ideas” as opposed to the sharing of information. The rationale for this is fairly obvious. While staff may be reluctant to share controversial opinions or advice if they thought that advice might become public, no such impact is possible when it comes to facts. Thus, for example, suppose a report concluded: “Almost no country imprisons people for issuing statistics which contradict official statistics.” That is a factual statement which should be disclosed because its release would not upset the deliberative process (i.e. this*

*would not prevent staff in future from including such factual statements in reports). Second, not all advice or opinions are controversial. It is only where there is some degree of controversy that advice would need to be protected against disclosure. This is because staff would not be reluctant to provide uncontroversial advice even if it might be made public. This again is widely reflected in the way this exception is applied, for example at the national level (where, it may be noted, the need for open debate within government is essentially the same as for the Bank). It may be noted that factual material and opinions together cover an enormous part of all of the information held by the Bank. If they were not subject to disclosure, the impact of the information policy would be very seriously undermined. However, contrary to this, the documents that the Bank does disclose on a proactive basis contain a wealth of both factual and non-factual information.”*

#### Background of two prior appeals to the AIAB

6. Having received no substantive response from the AIC by February 2020, the requestor appealed to the AI Appeals Board 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.” The [decision by the AIAB dated March 18, 2020](#) sets out the details of the initial request, the Bank’s actions, correspondence between the Bank and the requestor, and the requestor’s appeal to the AIAB. The AIAB decided that it could not admit that appeal on procedural grounds: the responsive documents were being processed for review by the AIC. As the AIC had not yet made a substantive decision about what information would or would not be released, the AIAB determined that it did not have the authority under the AI Policy to hear the appeal.
7. The AIAB also acted upon an application for appeal that the requestor filed with the World Bank on July 17, 2020. The requestor asked the AIAB to look into the “unreasonable delay” by the AIC in making a decision on whether to release records that he had requested in July 2019. The AIC’s decision on July 29, 2020, on the release of documents corresponding to the original request rendered the appeal substantively moot. The [AIAB’s decision dated September 4, 2020](#) sets out its rationale and observations.

#### AIC decision of July 2020

8. On [July 29, 2020, the AIC upheld the Bank’s decision](#) to deny access to certain information except for information that is designated as public. In the decision, the AIC considered a total of 535 documents as part of the appeal. The AIC found most of the information to be properly and reasonably restricted by the Attorney-Client Privilege and Deliberative Information exceptions (that is, 22 documents), and found in additional cases that some

documents should have also been restricted based on the exception that they were Provided by Member Countries or Third Parties in Confidence. However, the AIC found that six documents were public through other sources shortly after their filing in the Bank’s official records management system. The AIC partially upheld the Bank’s decision to deny public access to 524 documents, and partially reversed the Bank’s decision to deny public access to six documents; three other documents were correctly filed as public.

### Arguments on Appeal

9. On August 21, 2020, the requestor filed an appeal of the AIC decision of July 29, 2020 to the AI Appeals Board. The requestor summarized the appeal as follows:

- “The use of the attorney-client privilege exemption is patently unjustified.”
- “The deliberative process exemption is being too broadly applied and has been used to prevent disclosure of conclusory documents and factual information.”
- “The Bank is violating its policy by not using redaction to disclose portions of documents which do not fall under the exceptions.”

10. The requestor also stated that, “This is not just an exercise in post hoc analysis. Restrictions by the Tanzanian government on public discussion of statistics may be a continuing issue because of a new social media law. And similar issues exist in other countries. The Bank’s role as a funder and influencer makes understanding its position on this issue an important one, with free speech and other human rights implications.”

### **Admission of the Appeal**

11. Where there is an appeal to the AIAB, 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](#), Section III.A.2(a)-(c); AI Policy, Section III.B.8(b)(ii). The AI Appeals Board admitted the application for appeal on the following grounds:

In **Time**: the application was filed before the AIC and the AI Appeals Board within 60 days.

A **prima facie case** has been established in that the appeal provides sufficient information that would reasonably support the allegation that the World Bank has

violated the AI Policy by improperly or unreasonably restricting access to information that it would normally disclose under the policy.

**Authority:** The AI Appeals Board has authority to consider the appeal as it follows an AIC decision to uphold a World Bank decision to deny access on the basis that the denial did not violate the AI Policy and, further, the Appeal does not fall under any of the exceptions described under Section III.A.2(c) of the Operating Procedures of the AIAB.

### **AI Appeals Board Reasoning**

12. This case concerns a request for information about a Bill to amend the Tanzanian Statistics Act that was passed on September 10, 2018, which criminalized the dissemination of “any statistical information which is intended to invalidate, distort or discredit official statistics.” Offenses were punishable by a \$6,000 fine or a three-year prison sentence. The Bill also extended the jurisdiction of the Act beyond official statistics.

13. The Bank has made a number of public statements about its view on the Act, which were highlighted by the AIC and the Requestor:

- The [Bank on Oct. 1, 2018, said in a statement](#) that it was “deeply concerned” about severe restrictions placed on freedom of speech concerning statistics in Tanzania. The Bank called the law “out of line with international standards such as the UN Fundamental Principles of Official Statistics and the African Charter on Statistics.”
- The Bank also made public its view on the amendments to the Act through responding to a Tanzania Parliamentary committee’s invitation to participate in a public hearing on June 21-22, 2019, in Dodoma, where the Bank team delivered an oral statement in front of the Parliamentary committee, reiterating its view on the remaining concerns as contained in the bill, and it also submitted a statement in writing to the Committee. The World Bank comments are available in a public document – [talking points for Parliamentary Public Hearing](#) on the Draft Amendments to the Statistics Act, June 21-22, 2019.

14. Thus, the Bank’s fundamental objections to the Statistics Act amendments, as well as specific changes to the bill that it proposed at various times, are known and are in the public domain. This is an important contextual consideration.

## Exceptions to Disclosure and the AIAB's Process of Adjudication

15. 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). Section III.B.2(d) of the AI Policy states that, under the Attorney-Client Privilege exception, the Bank does not provide access to information subject to attorney-client privilege, including, among other things, communications provided and/or received by the General Counsel, in-house Bank counsel, and other legal advisors. Section III.B.2(g) of the AI Policy provides, 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. Section III.B.2(i) of the AI Policy, under the Deliberative Information exception, recognizes 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).
16. All of these exceptions exist in the AI Policy for good reason. There will be times when disclosure of information would cause harm to a specific interest embodied in the exceptions. We are sensitive to this consideration, and fully recognize that the Bank operates often in very delicate diplomatic and political contexts with its clients and partners. This case concerns the access to information related to the Bank’s role and positioning with regards to a very controversial change in the law by a sovereign member state government – one that attracted considerable concern amongst a significant range of state and non-state actors, including civil society organizations in Tanzania itself. We also note that some of the civil society organizations have been the subject of reprisals and/or other forms of detrimental conduct as a result of the stand that they took or have continued to take in relation to the integrity of statistics and other public information disclosure.
17. We also recognize that often the Bank, working with other donors, diplomatic missions, or international financial institutions, will find itself playing a role in seeking to broker agreement or consensus amongst ‘like-minded’ organizations and institutions. This, too, can

involve delicate engagement and, therefore, potential harm to the public interest in protecting candid deliberation or confidentiality in respect of correspondence related to or arising from such engagement. Thus, we were mindful of the legitimate need for the Bank to protect the integrity of such deliberations, recognizing that in some cases what might appear to be simply fact-sharing or otherwise transactional exchanges might in and of themselves be revealing of a strategic intent that should be protected from disclosure.

18. We have sought to weigh such considerations carefully in the balance. Hence, we have approached our adjudication with very great care, seeking to balance the Bank's duty to withhold information whose disclosure could cause real harm with the right of access to information that the requestor has claimed in this matter.
19. Accordingly, having admitted the appeal, it has been our responsibility as the AIAB to painstakingly review every single one of the more than 500 pieces of information that are the subject of this appeal<sup>1</sup>, to determine whether there has been a violation of the AI Policy or not. This has been a laborious and time-consuming exercise. We recognize that the time period between the transmittal of this appeal to the AIAB and this decision is far longer than any other previous AIAB case. However, the process of carefully considering each document and doing so remotely, via the Bank's internal digital archive (WBDocs), has unfortunately proved to be an unwieldy process logistically. In addition, the appeal has given rise to some very challenging questions of interpretation, application, and adjudication, as can be gathered from what follows below.
20. One of the complexities of this case is the fact that many of the documents are email threads. The AI policy refers only to "information" and not records or documents. There is no explicit provision or other guidance provided to assist with applying the AI Policy to email threads (and, in addition, attachments to emails – see below). Given that redaction is not required under the AI Policy (as we note below), this may not matter greatly, other than that in a long email thread it would only require one email to be, say, 'deliberative' and therefore potentially covered by an exception to the AI Policy, for the rest of the email thread to be exempt as a whole – even if the other emails were purely transactional or fact-based exchanges where no harm to the candid exchange of views or the integrity of the decision-making process could possibly arise. In addition, one of the reasons for the large volume of documents in this case is that many email threads appear more than once, but at different stages in the 'thread' of correspondence. Accordingly, one document containing, say, the first six email exchanges might, in our judgment, be disclosable but another

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<sup>1</sup> We note that the total number of documents is actually considerably higher than the 535 referenced in the AIC decision of July 29, 2020. Many of the numbered documents had multiple attachments, as we explain below.

document, with the seventh email that contains substantive deliberation, would in our judgment have been properly withheld under the AI Policy.

21. In addition, we should explain our approach to attachments to emails. In some cases, the attachment might, for example, contain deliberative information and therefore, in our judgment, render the email exchange properly exempt under the AI policy, even though the emails themselves were purely transactional. In our judgment, the correct interpretation of the AI Policy is to treat the emails and the attachment as one piece of information. Where, however, there was no attachment, even where one email in the email thread makes reference to the attachment, then we could properly ignore the existence of the attachment in relation to our decision on that particular email thread.

#### Application of multiple exceptions

22. In this case the AIC determined that additional exceptions applied to a number of documents responsive to the request, in addition to the exceptions applied by the Bank. In determining this appeal the AIAB decided in accordance with its procedures that it would review these decisions by the Bank and AIC on their face. We acknowledge the care the AIC took in its review of the exceptions and its addition of new exceptions to apply to some of the information. It is our resolute opinion that the role of the AIAB in accordance with its operating procedures and the AI Policy itself is not to add additional exceptions that may arguably apply to any requested information but that have not been claimed to be relevant by either the Bank or the AIC itself. We believe applying exemptions not already claimed falls outside of the jurisdiction of the AIAB. To come to this reasoning we refer to Section III.A.4 of the AIAB Operating Procedures, namely The Policy – Basis for Consideration and Decision, which states:

*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. Such consideration and decision are exclusive of any member country's rules, laws, regulations and/or decisions issued by bodies or entities with no jurisdiction over the World Bank, and are based solely on:*

*(a) the AIAB's mandate as set out in Section III.A.1 of this Procedure;*

*(b) the terms of the Policy:*

*(i) as they are written, using the ordinary meaning of the words (unless the terms have been expressly interpreted by the AIC or the Board pursuant to subparagraph (iii) of this subparagraph (b));*

*(ii) as they may be amended from time to time by the Board; and*



- (iii) as they are expressly interpreted by the AIC or the Board;*
- (c) the standard of review, as described in Section III.E.1 of this Procedure;*
- (d) the documents of record, including, for example, those listed in Section III.E.2 of this Procedure; and*
- (e) any other input that the World Bank may provide at its discretion.*

#### Interpretation of the exceptions

##### ***Attorney Client Privilege Exception (Section III.B.2(d))***

23. In relation to the 23 documents which the Bank and AIC has claimed fall under the Attorney Client Privilege exception, the AI Appeals Board must determine whether the information falls under that exception and come to a view as to whether the Bank has violated its AI Policy in failing to provide access to information.
24. Section III.B.2(d) of the AI Policy states that *“the Bank does not provide access to information subject to attorney-client privilege, including, among other things, communications provided and/or received by the General Counsel, in-house Bank counsel, and other legal advisors”*.
25. No previous decisions of the AIAB have interpreted this provision. In this case we have reviewed a number of documents which have been written to in-house counsel or written by in-house counsel or general counsel and shared with others within and outside the Bank.
26. The AIAB view is that on an ordinary reading of the exception it protects legal advice or opinions by Counsel, and applies to information which is confidential between an attorney and client. It is also our view that under the AI Policy, in its ordinary meaning, the exception includes strategic advice from General Counsel or other in-house counsel on programmatic matters that have legal implications that are confidential or requests for legal advice to the General Counsel or other in-house counsel. The use of the word “including” in the exception is ordinarily used as a word of extension or enlargement, so as to make these communications by in-house counsel protected by the attorney-client privilege.
27. In this regard we find that all the documents for which the bank has claimed Attorney Client Privilege were appropriately restricted by the exception.

##### ***Information Provided by Member Countries or Third Parties in Confidence (Section III.B.2(g))***

28. Section III.B.2(g) of the AI Policy provides:

*Information Provided by Member Countries or Third Parties in Confidence. The Bank has an obligation to protect information that it receives in confidence. Thus, the Bank 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.*

29. The AIC in its [decision dated July 29, 2020](#), noted that of the responsive documents, 43 “documents identified as restricted by the *Information Provided by Member Countries or Third Parties in Confidence* exception were reviewed one by one.” (AIC Decision on Appeal #73, Case Number AI6479, July 29, 2020, p. 3). The AIC also explained “that the business unit pursued the member country’s express permission to disclose the portion of the Requested Information restricted by the *Information Provided by Member Countries or Third Parties in Confidence*. However, no response has been received from the member country. The Bank takes the lack of response as non-consent to disclose the portion of the Requested Information restricted by the *Information Provided by Member Countries or Third Parties in Confidence* exception.”
30. The AIC ultimately found, however, that “a small portion of the Requested Information has been restricted by the wrong AI Policy exception, i.e., 20 documents initially restricted by the *Information Provided by Member Countries or Third Parties in Confidence* exception were found to be restricted by the *Deliberative Information* exception.” (AIC Decision on Appeal #73, Case Number AI6479, July 29, 2020, p. 7).
31. The AIAB reviewed the documents that the AIC designated as being withheld under the Member Countries/Third Party in Confidence exception, some of which were also restricted under the deliberative exception. The AIAB also had access to the business unit’s description of the circumstances under which certain documents were exchanged with an explicit agreement of confidentiality. The AIAB concludes that there were four documents that were restricted under this exception (outlined in the Appendix below) where there is an absence of confidentiality. It is our view that under no reasonable interpretation of the information can one infer that it was sent with an understanding that it would be treated as confidential (to use the language in the exception itself – III.B.2 (g)). In these four cases the information (via) email was a public document or was widely distributed to numerous other organizations or individuals. Therefore, the exception was wrongly applied and there was a violation of the AI Policy. Access to all other information for which this exception was applied by the Bank and AIC, was, however, appropriately restricted by the exception as the information was exchanged with an express or implied understanding of confidentiality.

***Deliberative Information Exception (Section III.B.2(i) of the AI Policy)***

32. Section III.B.2(i) of the AI Policy, in part, provides that *“The bank . . . needs space to consider and debate, away from public scrutiny . . . it does not provide access to the following information (including e-mail, notes, letters, memoranda, draft reports, or other documents) prepared for, or exchanged during the course of, its deliberations with member countries or other entities which the Bank co-operates”*.
33. The Deliberative exception was addressed in an [Interpretative Note issued by the Bank on March 16, 2011](#), which stated that the term “Deliberative Information” is applied broadly to include any internal communications and communications with external parties. This interpretative guidance is now repeated in the AI Directive/Procedure, Section III.B.4(c): *“The term *Deliberative Information* under the Policy applies broadly to include any internal communications and communications with external parties.”*
34. On the ordinary wording of the exception in the AI Policy itself, the information that is excepted from disclosure is information that needs to be withheld in order preserve the decision-making integrity of the Bank, including the candour and freedom of any exchange of ideas during the period of time of the deliberation.
35. In this context, the AIAB has in a previous case wrestled with the scope and content of the exception ([the “Nepal Case”](#)), which decision found that for the exception to apply properly, the document withheld has to contain deliberative information: “[a]s defined in the AI Policy, deliberative information must facilitate: debate, away from public scrutiny; room to develop consensus; and the safeguarding of the free and candid exchange of ideas. Information that is not prepared for or exchanged for these purposes fails to meet the threshold of deliberative information.” (Paragraph 17 of the AIAB Decision, Case No. AI5197,CBI Report, Oct. 17, 2018).
36. Further, for the information to be ‘deliberative’ it has to be connected to a specific decision-making process: “[a]s the document was never intended to be used to inform a decision-making process there was no requirement to come to a consensus or safeguard the information from the public. The potential future use of the document for a deliberative purpose does not support a current finding that the document is deliberative information and covered under the exception.” (Paragraph 18 of the AIAB decision in the Nepal Case). The wording of the exception itself refers to the “decisions, results, and agreements” that come from the relevant deliberative process.

37. Hence, our responsibility is to examine the facts of the case in order to not only determine if there was real deliberation sufficient to bring the withheld information within the scope of the deliberative information exception, but also that the deliberation was linked to a “decision, result, or agreement” related to the Bank’s positioning on the statistics law and its engagement with the government of Tanzania about it.
38. In this context, we find that there was a long process of deliberation, starting in or before June 2018 with the publication of the new Bill, and concluding with the Amendment Act on 30 June 2019, including mention of development of Regulations under the Act. This corresponds closely with the period of time that the requestor used as the basis for their request for all documents relating to the change in the statistics law. Throughout, the Bank was seeking to determine its stance in relation to the legal changes, to engage with the Government of Tanzania, and to share information with the missions of other governments, international financial institutions, and donors and, to a lesser extent, civil society groups.
39. Within that long period, there were certain ‘decision-points’, when the Bank settled on a position, and it became public – for example, the Bank’s position on the Statistics Act amendments became known to the media as it posted on the Bank’s website its position regarding a new IDA operation on statistical capacity building on which some media reported. The Bank’s Vice President for Africa, Mr. Hafez Ghanem, gave an interview to a newspaper, The Citizen (Dar es Salaam), in November 2018 as he was departing for Tanzania, stating that “We discussed with the government all those issues, especially on the Statistics Act.” Also, responding to the Tanzanian Parliamentary committee’s invitation for public hearing on June 21-22, 2019, in Dodoma, the Bank team delivered its oral statement in front of the Parliamentary committee, reiterating its view on the remaining concerns as contained in the Bill.
40. Any information that expresses or reflects the decision or result of the deliberation, such as that published by the Bank on its website or reported by the media, is not covered by the deliberative exception.
41. Information prepared for or exchanged with the Government of Tanzania or those ‘like-minded’ parties with whom the Bank “co-operates” (part (i) of the deliberative exception) or amongst Bank staff (part (ii) of the exception) that were part of the deliberation leading

up to those ‘decision-points’ can potentially qualify for the exception. But, as the AIAB held in the Nepal case, Para. 19: “. . . the deliberative exception must be narrowly construed. It cannot simply be used to withhold any information which has been the subject of internal discussion by staff of the Bank at whatever level. If that was to be the case almost all internal documents would be subject to the exception.” As in that case, we find here that the deliberative exception cannot simply be used to withhold any information that has been the subject of external discussions between the Bank and outside entities. Such an exception would swallow the AI Policy whole.

42. Arguably, the exception could cover exchanges that otherwise might be regarded as purely transactional – i.e., not containing anything of substance related to the deliberations – provided that the information directly related to co-operation with regard to information and strategy. Applying the approach taken by the AIAB in the Nepal Case, however, and the ordinary words of the actual text of the AI Policy exception, the information must facilitate: debate, away from public scrutiny; room to develop consensus; and the safeguarding of the free and candid exchange of ideas. This is a minimum threshold. If the information does not do this, then it cannot be regarded as deliberative. An example would be an invitation to attend a meeting to discuss the proposed changes to the law. The fact of such a meeting with the [development partners that fund the Tanzanian Statistics Act project](#) and/or that work in Tanzania does not in and of itself reveal substantive deliberation. That is all the more true for a meeting invitation sent to non-governmental organisations.

43. Accordingly, the AIAB has gone carefully through every single piece of information to demarcate:

- Information that is deliberative because there is a substantive grappling with the question of how the Bank should respond to the concerns about the change in the Statistics Law and which, therefore, is exempt from disclosure. For example, some of the correspondence reveals the content of discussion about the exchanges when engaging with the government of Tanzania, in the context of all the understandable sensitivities involved in such an engagement.

- Information that is factual and/or purely transactional, and that does not reveal the substance of the deliberation, and which, therefore, is not exempt. For example, a simple invitation to a meeting, or request to share a document.
- Information that is actually a reflection of the decision or outcome of the deliberation (which is 'decisional' rather than 'deliberative') and therefore not exempt. For example, the final 'talking points' of the public presentation at the Parliamentary public hearings.

44. As a result of this interpretative and analytical approach, we have found documents containing information that should be disclosed and that are listed in the attached Appendix. The fact that they may not be of great interest or use to the requestor, because they are essentially 'transactional,' is immaterial. Our responsibility is to determine if there has been a violation of the AI Policy by withholding information that would normally be disclosed under the AI policy. If the particular document does not contain deliberative information, then it should properly have been disclosed and withholding it constituted an improper application of the deliberative information exception and, therefore, a violation of the AI Policy. Thus, we have identified 102 documents that are factual and transactional, or that are decisional or both, and that do not qualify as deliberative under even the broad interpretation of the AIC.

### **Redaction**

45. We also choose to address the point made by the appellant in relation to redaction. In relation to redaction, the requestor has argued that:

*The Bank should follow the well-established practice under access to information laws worldwide of using redactions, including in the context of the Deliberative Information exceptions, to achieve the overarching goal of its policy, which is to maintain a presumption in favor of disclosure. It is not credible to believe that all of the information requested would, if released, undermine the deliberative process within the Bank. At a very minimum, as noted, factual information should be released but, as I argue above, so should relatively uncontroversial opinions and advice.*

46. The [AIC issued an interpretation on redaction](#) in June 24, 2014 after the issuance of the AI Policy. Under the AI Policy, the AI Committee is responsible for interpreting the AI Policy in line with the AI Policy's guiding principles. In its supplemental interpretation, Paragraph 14, the AIC indicated that:

*The Bank's determination as to whether to redact restricted information from a document in order to make it publicly available is a discretionary decision to be taken by*

Bank. As the Access to Information Committee (AIC) indicated in the Access to Information (AI) Policy interpretation dated July 14, 2010, "[u]nder the AI Policy, the Bank considers disclosure of documents in their original form. If a requested document includes restricted information, the AI Policy does not mandate the Bank to redact (black out) restricted information in order to make the document acceptable for public access. While the Bank does not have a redaction policy to black out restricted information in response to public access requests (meaning, documents that include restricted information are not publicly available), the Bank is not prevented from redacting restricted information on a case-by-case basis if it chooses to do so." **The AIC confirms that (a) neither the AI Policy nor the AI Policy interpretation of July 14, 2010, imposes an obligation or duty on the Bank to either consider redaction (or modification) of a document that includes information restricted by one or more AI Policy exceptions, or to redact (or in any way modify) a document that includes such restricted information, and (b) under the AI Policy, the Bank considers disclosure of documents in their original form and thus documents that include information restricted by one or more AI Policy exceptions are, on their face, restricted from disclosure under the AI Policy, unless the Bank, in its sole discretion, chooses to redact or modify the document as the Bank may deem appropriate to make it eligible for disclosure in accordance with the AI Policy.** [emphasis added by AIAB]

47. In this context, the AIAB has in a previous case dealt with the interpretation of the AI Policy in relation to redaction. In [AI Appeals Board Decision Case No. AI3634](#) - World Bank's review of the procurement process for the dewatering of the Tamnava West Field mine in Serbia (Decision dated December 3, 2015), the AIAB found that:

6. *The nature and breadth of the Bank's AI Policy is such that the exceptions can be said to be class based; thus as long as any information in a document is subject to an exception such as Deliberative Information, the full document is properly restricted since as noted below the AIC has determined that there is no obligation or duty to redact. The AI Appeals Board need only satisfy itself that the excepted information is properly designated as being within the class. We are satisfied that it does for the relevant documents in this case.*
7. *Regarding redaction, it is the role of the AIC to issue AI Policy interpretation, and it has done so regarding redaction, making clear that the Bank is under no obligation or duty to consider redaction. The AI Appeals Board cannot require information to be redacted and disclosed.*

48. We find similarly that the AIAB has no jurisdiction to require information to be redacted and disclosed under the AI Policy because of the AIC-issued interpretation.

**AI Appeals Board Findings**

49. Accordingly, we find that the Bank has violated the AI Policy in part. Hence, the information set out in Appendix should be disclosed.

50. The AI Appeals Board's decision is final.



## APPENDIX: INFORMATION TO BE RELEASED

#	WB DOC #	EXEMPTION CLAIMED	AIAB DECISION	DESCRIPTION OF DOCUMENT	FINDINGS
1	28	Third Party in Confidence/ Deliberative	Release	Fwd.: FW: STAKEHOLDERS COMMENTS - AMENDMENTS OF STATISTICS REGULATIONS.crttext ( Ref. document 51 and 70)	Absence of Confidentiality / Transactional/No Deliberation
2	29	Third Party in Confidence /Deliberative	Release	W: STAKEHOLDERS COMMENTS - AMENDMENTS OF STATISTICS REGULATIONS.crttext	Absence of Confidentiality / Transactional/ No Deliberation
3	36	Third Party in Confidence and Deliberative	Release	scanned docs.crttext	Absence of Confidentiality / Transactional/ No Deliberation
4	52	Third Party Confidence / Deliberative	Release	Letter from NBS	Absence of Confidentiality/ No Deliberation
5	71	Deliberative	Release	Letter from NBS	Factual/ No Deliberation/ Transactional/
6	126	Deliberative	Release	FW: WB views on statistics.msg	Decisional
7	127	Deliberative	Release	FW: Statistics and media coverage.msg	Decisional
8	133	Deliberative	Release	Small Group Meeting of Development Partners on Statistics: Proposing Friday, October 12 morning.msg	Factual/ No Deliberation/ Transactional/
9	139	Deliberative	Release	Meeting with Prof. Kabudi at 8:30am Tuesday confirmed.msg	Factual/ No Deliberation/ Transactional/

<b>10</b>	140	Deliberative	Release	RE: Meeting with Prof. Kabudi at 8:30am Tuesday confirmed.msg	Factual/ No Deliberation/ Transactional/
<b>11</b>	149	Deliberative	Release	RE: Small Group Meeting of Development Partners on Statistics: Friday 2 November 12.30 -1.30pm Umoja House .msg	Factual/ No Deliberation/ Transactional/
<b>12</b>	150	Deliberative	Release	WB views on statistics.msg	Factual/ No Deliberation/ Transactional/
<b>13</b>	154	Deliberative	Release	Tanzania Statistics Act Amendments 02.10.2018.pdf.crtxt	Decisional
<b>14</b>	158	Deliberative	Release	E: Small Group Meeting of Development Partners on Statistics: Friday 2 November 12.30 -1.30pm Umoja House .msg	Factual/ No Deliberation/ Transactional/
<b>15</b>	195	Deliberative	Release	Stats legal opinion.msg	Factual/ No Deliberation/ Transactional/
<b>16</b>	211	Deliberative	Release	RE: FW: STAKEHOLDERS COMMENTS - AMENDMENTS OF STATISTICS REGULATIONS.msg	Factual/ No Deliberation/ Transactional/
<b>17</b>	217	Deliberative	Release	DPG Meeting - January 15	Factual/ No Deliberation/ Transactional/
<b>18</b>	220	Deliberative	Release	DPG Main Meeting - 15 January 2019.msg	Factual/ No Deliberation/ Transactional/
<b>19</b>	225	Deliberative	Release	Re: Comments from the World Bank: STAKEHOLDERS COMMENTS - AMENDMENTS OF STATISTICS REGULATIONS.msg – No attachment	Factual/ No Deliberation/ Transactional/

<b>20</b>	231	Deliberative	Release	Re: Addresses of the WB communications.msg	Factual/ No Deliberation/ Transactional/
<b>21</b>	232	Deliberative	Release	RE: Addresses of the WB communications.msg – No attachment	Factual/ No Deliberation/ Transactional/
<b>22</b>	233	Deliberative	Release	Re: Addresses of the WB communications.msg – No attachment	Factual/ No Deliberation/ Transactional/
<b>23</b>	235	Deliberative	Release	Stats Act amended Regulations.msg	Factual/ No Deliberation/ Transactional/
<b>24</b>	236	Deliberative	Release	Re: Fwd.:.msg	Factual/ No Deliberation/ Transactional/
<b>25</b>	237	Deliberative	Release	RE: comments to stats regulations.msg	Factual/ No Deliberation/ Transactional/
<b>26</b>	239	Deliberative	Release	Re: Validation Meeting - Draft regulations.crtxt	Factual/ No Deliberation/ Transactional/
<b>27</b>	240	Deliberative	Release	FW: STAKEHOLDERS MEETINGS-SCHEDULE.crtxt	Factual/ No Deliberation/ Transactional/
<b>28</b>	241	Deliberative	Release	Response to Draft Amendments of Statistics Regulations .crtxt	Decisional
<b>29</b>	242	Deliberative	Release	Validation Meeting - Draft regulations.msg	Factual/ No Deliberation/ Transactional/
<b>30</b>	243	Deliberative	Release	Swiss Response to the Draft Amendments of the Statistics (Amendments) Regulations.crtxt	Decisional
<b>31</b>	244	Deliberative	Release	Re: Stats Act amended Regulations.crtxt	Factual/ No Deliberation/ Transactional/
<b>32</b>	245	Deliberative	Release	Re: Stats Act amended Regulations.crtxt	Factual/ No Deliberation/ Transactional/
<b>33</b>	250	Deliberative	Release	RE: STAKEHOLDERS MEETINGS-SCHEDULE.msg	Factual/ No Deliberation/ Transactional/
<b>34</b>	251	Deliberative	Release	Re: STAKEHOLDERS MEETINGS-SCHEDULE.msg	Factual/ No Deliberation/ Transactional/

<b>35</b>	254	Deliberative	Release	Re: STAKEHOLDERS MEETINGS-SCHEDULE.msg	Factual/ No Deliberation/ Transactional/
<b>36</b>	256	Deliberative	Release	Statistics Act.msg	Factual/ No Deliberation/ Transactional/
<b>37</b>	257	Deliberative	Release	Statistics Act amendment.msg	Factual/ No Deliberation/ Transactional/
<b>38</b>	259	Deliberative	Release	RE: STAKEHOLDERS MEETINGS-SCHEDULE.msg	Factual/ No Deliberation/ Transactional/
<b>39</b>	261	Deliberative	Release	RE: Statistics Act.msg	Factual/ No Deliberation/ Transactional/
<b>40</b>	264	Deliberative	Release	RE: STAKEHOLDERS MEETINGS-SCHEDULE.msg	Factual/ No Deliberation/ Transactional/
<b>41</b>	267	Deliberative	Release	RE: Statistics Act amendment.msg	Factual/ No Deliberation/ Transactional/
<b>42</b>	269	Deliberative	release	INVITATION - Meeting at the World Bank office on Friday, March 8 - Statistics Act amendments 2.msg	Factual/ No Deliberation/ Transactional/
<b>43</b>	273	Deliberative	release	Statistics Act amendments.msg	Factual/ No Deliberation/ Transactional/
<b>44</b>	274	Deliberative	Release	RE: Statistics Act amendment.msg	Factual/ No Deliberation/ Transactional/
<b>45</b>	276	Deliberative	Release	Draft Statistics Regulations meeting on Feb 26?.crtext	Factual/ No Deliberation/ Transactional/
<b>46</b>	277	Deliberative	Release	RE: Draft Statistics Regulations meeting on Feb 26?.msg	Factual/ No Deliberation/ Transactional/
<b>47</b>	281	Deliberative	Release	Statistics Act Dialogue Follow-Up Mission Schedule March 4-8, 2019.docx.crtext	Factual/ No Deliberation/ Transactional/
<b>48</b>	282	Deliberative	Release	Statistics Act Amendment.msg	Factual/ No Deliberation/ Transactional/
<b>49</b>	284	Deliberative	Release	INVITATION -Breakfast meeting at the World Bank office (5th Floor Conference Room) on	Factual/ No Deliberation/ Transactional/

				Friday, March 8 from 08:30am to discuss the current situation of the Statistics Act	
<b>50</b>	285	Deliberative	Release	INVITATION - Meeting at the World Bank office on Friday, March 8 - Statistics Act amendments 3.msg	Factual/ No Deliberation/ Transactional/
<b>51</b>	286	Deliberative	Release	INVITATION - Meeting at the World Bank office on Friday, March 8 - Statistics Act amendments 4.msg	Factual/ No Deliberation/ Transactional/
<b>52</b>	287	Deliberative	Release	INVITATION -Breakfast meeting at the World Bank office (5th Floor Conference Room) on Friday, March 8 from 08:30am to discuss the current situation of the Statistics Act	Factual/ No Deliberation/ Transactional/
<b>53</b>	288	Deliberative	Release	INVITATION - Meeting at the World Bank office on Friday, March 8 - Statistics Act amendments 5.msg	Factual/ No Deliberation/ Transactional/
<b>54</b>	289	Deliberative	Release	INVITATION -Breakfast meeting at the World Bank office (5th Floor Conference Room) on Friday, March 8 from 08:30am to discuss the current situation of the Statistics Act	Factual/ No Deliberation/ Transactional/
<b>55</b>	290	Deliberative	Release	INVITATION - Meeting at the World Bank office on Friday, March 8 - Statistics Act amendments 6.msg	Factual/ No Deliberation/ Transactional/
<b>56</b>	301	Deliberative	Release	INVITATION - Meeting at the World Bank office on	Factual/ No Deliberation/ Transactional/

				Friday, March 8 - Statistics Act amendments 14.msg	
<b>57</b>	302	Deliberative	Release	INVITATION - Meeting at the World Bank office on Friday, March 8 - Statistics Act amendments 12.msg	Factual/ No Deliberation/ Transactional/
<b>58</b>	303	Deliberative	Release	INVITATION - Meeting at the World Bank office on Friday, March 8 - Statistics Act amendments 17.msg	Factual/ No Deliberation/ Transactional/
<b>59</b>	304	Deliberative	Release	INVITATION - Meeting at the World Bank office on Friday, March 8 - Statistics Act amendments 21.msg	Factual/ No Deliberation/ Transactional/
<b>60</b>	305	Deliberative	Release	Re: draft statistics regulations.crtxt	Factual/ No Deliberation/ Transactional/
<b>61</b>	306	Deliberative	Release	INVITATION - Meeting at the World Bank office on Friday, March 8 - Statistics Act amendments 16.msg	Factual/ No Deliberation/ Transactional/
<b>62</b>	307	Deliberative	Release	Statistics Act amendments.msg	Factual/ No Deliberation/ Transactional/
<b>63</b>	308	Deliberative	Release	INVITATION -Breakfast meeting at the World Bank office (5th Floor Conference Room) on Friday, March 8 from 08:30am to discuss the current situation of the Statistics Act	Factual/ No Deliberation/ Transactional/
<b>64</b>	309	Deliberative	Release	INVITATION - Meeting at the World Bank office on Friday, March 8 - Statistics Act amendments 20.msg	Factual/ No Deliberation/ Transactional/
<b>65</b>	310	Deliberative	Release	INVITATION - Meeting at the World Bank office on Friday, March 8 - Statistics Act amendments 13.msg	Factual/ No Deliberation/ Transactional/

<b>66</b>	311	Deliberative	Release	INVITATION - Meeting at the World Bank office on Friday, March 8 - Statistics Act amendments 19.msg	Factual/ No Deliberation/ Transactional/
<b>67</b>	312	Deliberative	Release	INVITATION -Breakfast meeting at the World Bank office (5th Floor Conference Room) on Friday, March 8 from 08:30am to discuss the current situation of the Statistics Act	Factual/ No Deliberation/ Transactional/
<b>68</b>	324	Deliberative	Release	RE: Emailing: WB Comments on Draft Statistics Regulations Jan 9 2019.pdf, LTR to NBS WB Comments on Stats Regulations Jan 9 2019.pdf.msg – no attachment	Factual/ No Deliberation/ Transactional/
<b>69</b>	334	Deliberative	Release	URGENT URGENT - STATS ACT PAPER FOR FINAL REVIEW/COMMENTS.crtex t	Decisional
<b>70</b>	335	Deliberative	Release	RE: URGENT URGENT - STATS ACT PAPER FOR FINAL REVIEW/COMMENTS.msg – no attachment	Decisional
<b>71</b>	339	Deliberative	Release	World Bank Summary Note statistics (Clean).docx.crtex t	Decisional
<b>72</b>	351	Deliberative	Release	comments to stats regulations.msg	Factual/ No Deliberation/ Transactional/
<b>73</b>	359	Deliberative	Release	RE: STAKEHOLDERS MEETINGS-SCHEDULE.msg	Factual/ No Deliberation/ Transactional/
<b>74</b>	362	Deliberative	Release	Comments from the World Bank: STAKEHOLDERS	Decisional

				COMMENTS - AMENDMENTS OF STATISTICS REGULATIONS.crtxt	
<b>75</b>	363	Deliberative	Release	WB comments on Draft Statistics Regulations .crtxt	Decisional
<b>76</b>	364	Deliberative	Release	RE: Addresses of the WB communications.crtxt	Decisional
<b>77</b>	368	Deliberative	Release	RE: Statistics Act.msg	Factual/ No Deliberation/ Transactional/
<b>78</b>	378	Deliberative	Release	Documents for Bella Part 1	Factual/ No Deliberation/ Transactional/
<b>79</b>	379	Deliberative	Release	Documents for Bella Part 3	Decisional
<b>80</b>	392	Deliberative	Release	Documents for Bella Part 2	Decisional
<b>81</b>	399	Deliberative	Release	Re: Following up.msg	Factual/ No Deliberation/ Transactional/
<b>82</b>	403	Deliberative	Release	Wb lending and statistics act .msg	Factual/ No Deliberation/ Transactional/
<b>83</b>	405	Deliberative	Release	RE: Wb lending and statistics act .msg	Factual/ No Deliberation/ Transactional/
<b>84</b>	406	Deliberative	Release	RE: Invitation - Small-group DP meeting to discuss updates on the Statistics Act: Friday, May 3 from 10:45am WB 5th floor conference room.msg	Factual/ No Deliberation/ Transactional/
<b>85</b>	413	Deliberative	Release	Following up.msg	Factual/ No Deliberation/ Transactional/
<b>86</b>	415	Deliberative	Release	Invitation - Small-group DP meeting to discuss updates on the Statistics Act: Friday, May 3 from 10:45am WB 5th floor conference room.msg	Factual/ No Deliberation/ Transactional/
<b>87</b>	420	Deliberative	Release	RE: Briefing on next DPG Main 14 May.msg	Factual/ No Deliberation/ Transactional/



<b>88</b>	422	Deliberative	Release	Re: Invitation - Small-group DP meeting to discuss updates on the Statistics Act: Friday, May 3 from 10:45am WB 5th floor conference room.msg	Factual/ No Deliberation/ Transactional/
<b>89</b>	429	Deliberative	Release	Re: Invitation - Small-group DP meeting to discuss updates on the Statistics Act: Friday, May 3 from 10:45am WB 5th floor conference room.msg	Factual/ No Deliberation/ Transactional/
<b>90</b>	430	Deliberative	Release	e: Invitation - Small-group DP meeting to discuss updates on the Statistics Act: Friday, May 3 from 10:45am WB 5th floor conference room.msg	Factual/ No Deliberation/ Transactional/
<b>91</b>	431	Deliberative	Release	Briefing on next DPG Main 14 May.msg	Factual/ No Deliberation/ Transactional/
<b>92</b>	445	Deliberative	Release	Board of Directors NMS message	Factual/ No Deliberation/ Transactional/
<b>93</b>	446	Deliberative	Release	Re: WB mission.msg	Factual/ No Deliberation/ Transactional/
<b>94</b>	473	Deliberative	Release	urgent.msg	Factual/ No Deliberation/ Transactional/
<b>95</b>	482	Deliberative	Release	RE: urgent.crtxt	Factual/ No Deliberation/ Transactional/
<b>96</b>	487	Deliberative	Release	Update statistics act.msg	Factual/ No Deliberation/ Transactional/
<b>97</b>	493	Deliberative	Release	new draft amendments to Stats Act.msg	Factual/ No Deliberation/ Transactional/
<b>98</b>	500	Deliberative	Release	W: Submission of Talking Points of the World Bank's oral remarks during the Parliamentary Committee's Public Hearing on Written	Decisional

				Laws (Miscellaneous Amendments)	
<b>99</b>	503	Deliberative	Release	Submission of Talking Points of the World Bank's oral remarks during the Parliamentary Committee's Public Hearing on Written Laws (Miscellaneous Amendments) (No.3) Bill	Decisional
<b>100</b>	504	Deliberative	Release	W: Submission of Talking Points of the World Bank's oral remarks during the Parliamentary Committee's Public Hearing on Written Laws (Miscellaneous Amendments)	Decisional
<b>101</b>	525	Deliberative	Release	Swiss Response to the Draft Amendments of the Statistics (Amendments) Regulations.msg – no attachment	Factual/ No Deliberation/ Transactional/
<b>102</b>	526	Deliberative	Release	RE: WB letter on proposed statistics act amendments.msg – No attachment	Factual/ No Deliberation/ Transactional
<b>103</b>	528	Deliberative	Release	RE: WB letter on proposed statistics act amendments.msg	Factual/ No Deliberation/ Transactional/
<b>104</b>	529	Deliberative	Release	Swiss Response to the Draft Amendments of the Statistics (Amendments) Regulations.msg	Decisional
<b>105</b>	531	Deliberative	Release	Letter of request for comments on Draft Regulations of Statistics act from National Bureau of Statistics.msg	Factual/ No Deliberation/ Transactional/

<b>106</b>	532	Deliberative	Release	Talking points for World Bank Oral Comments June 21-22,2019 Dodoma.pdf	Decisional
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