

## AI Appeals Board Decision

Case No. AI3127

Public Access Requests Received by the World Bank in October 2013 and Related Information

(Decision dated June 11, 2014)

### Decision of the AI Appeals Board

1. Reference is made to the above-mentioned case number. The Access to Information Appeals Board (the AI Appeals Board) has reviewed the application for appeal regarding the above case number and decided to admit the application in part. The AI Appeals Board reverses the decision of the Access to Information Committee (AIC) to uphold the initial decision to deny the following documents: “Copies of all access to information requests submitted in the month of October, 2013”. The remaining documents (namely: “Any list of access requests in the month of October, 2013”; and “Any summary prepared by the World Bank concerning requests made in the month of October, 2013”) shall remain restricted because (a) we accept that the Bank has indicated that it has not prepared such a list or summary, and so the information requested is not held by it; and (b) in the Appeal made to the AI Appeals Board, the Requester has confirmed that these determinations are not contested. Our reasons for reaching these decisions are as follows:

### Background

2. On December 27, 2013, the Bank received a public access request for: “1. Copies of all access to information requests submitted in the month of October, 2013. 2. Any list of access requests in the month of October, 2013. (3) Any summary prepared by the World Bank concerning requests made in the month of October, 2013” (“the Request”).
3. The Operational Communications Unit, External and Corporate Relations Vice Presidency (“ECROC”), which is the unit responsible for managing public access requests for information not older than 5 years, reviewed the Request.
4. On January 22, 2014, the Bank denied the Request on the basis that the information is covered by the AI Policy's “Security and Safety” exception (paragraph 12 of the AI Policy).
5. On February 7, 2014, the Bank received an appeal challenging the Bank's decision to deny access to the information requested. The requester sent the actual statement of appeal by email (outside of the electronic submission system), explaining the reason for this was because the statement of appeal exceeded the word limit allowed. At the time of receipt of the requester's notice of appeal, the Bank's case management system (which is automatically populated in the first instance based on the requester's submission) did not specify whether the requester was filing the appeal on a violation of policy and/or public interest. The requester's statement of appeal also did not explicitly specify the grounds for the appeal. As a result, the AIC Secretariat wrote several times to the requester seeking clarification on this point, to which the requester responded, but the responses were inadvertently misdirected and not received by the AIC Secretariat before the AIC's consideration of the appeal. In the absence of a clear indication of the basis for the requester's appeal, the AIC considered the appeal

on both “violation of policy” and “public interest” grounds and reflected such consideration in its decision.

6. On February 12, 2014, in light of the appeal, the AIC Secretariat sought the views of Mr. Sumir Lal, Manager, ECROC, on the Bank’s denial of the request for information. In his response of February 19, 2014, Mr. Lal offered his views on the possible disclosure of the Requested Information, and asserted that the requested information was properly and reasonably restricted on the basis of the “Security and Safety” exception, since “disclosing ‘copies of all access to information requests submitted in the month of October, 2013’ as requested would jeopardize the anonymity of the requesters, who in turn, were not informed nor aware that the Bank would release their requests for information.” He further noted that the Request in part would require the collation of information. Mr. Lal also indicated that steps were being taken to establish a system for “disclosing summaries of requests received” going forward.
7. On February 26, 2014, the AIC considered the appeal on both “violation of policy” and “public interest” grounds. For the reasons set forth in its decision on the appeal, the AIC decided that the Bank properly and reasonably denied access to “copies of all access to information requests submitted in the month of October, 2013” on the following basis:

“(a) this portion of the Request is of a blanket nature, covering all such requests for the month of October 2013, without specifying any particular case;

(b) the “access to information requests,” as reflected in and reproduced from the Bank’s access to information case management system, all include some form of personal information such as names, email addresses and personal and/or professional affiliations;

(c) the members of the public who had submitted the access to information requests were given no notice that their requests and personal information would be publicly released;

(d) as a result, the persons neither consented nor had reasonable opportunity to communicate any security and safety concerns relating to such disclosure;

(e) international codes of ethics and codes of conduct for archivists recognize the need to respect the privacy of users, including maintaining the confidentiality of their research and protecting their personal information;

(f) in order to ascertain with certainty the level of risk posed to the requesters’ security and safety if their personal information was to be released, the Bank would need to notify and seek the views of each individual impacted by the disclosure, which means, at minimum, contacting and getting the views of each person who had submitted an access to information request in the month of October 2013;

(g) in view of the blanket nature of the Request, it would be impractical for the Bank to address this portion of the Request within a reasonable period of time, should the Bank need to notify and consult each potentially impacted individual, noting that such notice and consultation are not mandated by the AI Policy; and

(h) short of such notice and inquiry, the Bank cannot reasonably discount or dismiss the possibility that the disclosure of the persons’ requests and personal information could compromise their security or safety.” (AIC decision, paragraph 6).

8. The AIC concluded this part of its decision as follows: “[u]nder the circumstances, the AIC found the Bank had acted reasonably and in the spirit of the AI Policy, by giving due regard to the security and safety of those persons who had submitted access to information request (sic) to the Bank.” This

makes it clear that the AIC's decision was premised on a finding relating to the safety and security of the requesters rather than any other individual.

9. Notably, however, the AIC introduced a second new ground for refusing the appeal, (in addition to the "blanket request" ground referred to above), namely: "Additionally, the AIC found that "access to information requests" reproduced from the Bank's access to information case management system also reveal information about Bank staff (e.g., staff names) and the Bank's information technology systems. Thus, while the Bank's communication to the requester only indicated the *Security and Safety* exception (which may also apply to Bank staff and assets), the AIC finds that *Corporate Administrative Matters* exception is also triggered." (paragraph 7 of the AIC decision).
10. So far as the second and third parts of the Request were concerned, the AIC found that the Bank had in terms of its written denial of the Request, erroneously denied the Request on the basis of the "Security and Safety" exception, the AIC "found the error to be harmless because: (a) there is no evidence of the existence of such a list or summary; and (b) the AI Policy expressly reserves the Bank's right to refuse requests that would require it to create, develop or collate information or data that does not already exist or is available in its records management system." (paragraph 9 of the AIC decision).
11. For the reasons set forth in the decision, the AIC also dismissed the appeal on public interest grounds.
12. On March 19, 2014, the AIC's decision on was transmitted to the requester. On April 2, 2014, the requester filed a second level appeal before the AI Appeals Board, asserting that the Bank's denial of the Request is a violation of the AI Policy.

#### Admission of the Appeal

13. The AI Appeals Board admitted the application for appeal on the following grounds:
  - (I) In Time: the application was filed before the AIC and the AI Appeals Board within 60 days.
  - (II) A *prima facie* case 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 has been established on the basis of the grounds of appeal submitted by the appellant.
  - (III) 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.

#### AI Appeals Board Deliberations and Findings

14. In this appeal, important issues relating to the application and implementation of the AI Policy as a whole arise. Specifically, the issues that require our consideration are as follows:
  - (i) The proper meaning and interpretation of "unreasonable and unsupported requests" in paragraph 26 of the AI Policy;
  - (ii) The proper meaning and interpretation of the "Security and Safety" exception in paragraph 12 of the AI Policy;

(iii) The proper application of the Corporate Administrative Matters exception in paragraph 15 of the AI Policy;

(iv) The proper application of the redaction policy (as articulated in the AI Policy Interpretation dated July 14, 2010).

15. Paragraph 38 of the AI Policy states, inter alia, that the Appeals Board “has the authority to uphold or reverse the relevant decisions of the AIC”. It follows that our authority is to review the approach taken by the AIC in determining the appeal that came before it.

**Findings in Respect of: the First Part of the Request: the request for copies of all requests made in October 2013:**

*The proper meaning and interpretation of “unreasonable and unsupported requests”*

16. The concept of an unreasonable request (or similar term) exists in many national access to information statutes. It is intended to avoid the information holder having to comply with demands which may be, for example, excessively burdensome or a repetition of a previously refused request or some other abuse of the right to information. The AIC has held that the first part of this Request is unreasonable as it is a “blanket request”. In our judgment, the Request did not constitute a “blanket request”. “Blanket” means ‘indiscriminate’ or ‘entirely unspecific’, in that such a request would not apply to a particular record or records, nor a set or category of records. In the present case, the request was for a very specific set of records, namely, the records of requests made for information during a specified period of time, namely, the month of October 2013. In so doing, the Requester is seeking to be proportionate, expecting that given the fact that the World Bank has previously published reports on the number of such requests it has received annually that such a request would encompass a limited number of records. Self- evidently the Requester cannot be expected to specify the source or subject matter of the requests – that is the nature of the information that the Request seeks.

*The proper meaning and interpretation of the “Security and Safety” exception*

17. The relevant tests for the “Security and Safety” exception in paragraph 12 of the AI Policy are as follows:
- In the case of Bank Staff and their families, contractors, other individuals, and Bank assets, there is a high test in that the sub-paragraph (a) of paragraph 12 states that information should be withheld where disclosure “would compromise” security.
  - In the case of “any individual” (presumably, “any individual” other than an individual contemplated in sub-paragraph (a)) or “the environment”, paragraph 12 states that information should be withheld where disclosure is “likely” to endanger life, health, or safety.
18. The question for us is whether these tests were properly applied. The crucial paragraph of the AIC’s decision is paragraph 6, in which the AIC’s approach to the appeal is made clear (and which is quoted extensively above).
19. The AIC expresses concern about the disclosure of personal information and in particular that “the members of the public who had submitted the access to information requests were given no notice that their requests and personal information would be publicly released...as a result, the persons

neither consented nor had reasonable opportunity to communicate any security and safety concerns relating to such disclosure”.

20. In this context, it should be noted that there is no personal information exception in the AI Policy. Those individuals who had made the requests for information that were the subject of the Request made by the appellant do not have any right to veto disclosure simply because they would prefer their details be withheld and so, consequently, in its current form the AI Policy imposes no duty on the Bank to notify the said requesters that their requests have been the subject of an access to information request and will be disclosed to the requester.
21. The AIC found that the Request constitutes a “blanket request” pursuant to paragraph 26 of the AI Policy and further constitutes, therefore, an “unreasonable and unsupported request”. Where a request is “unreasonable or unsupported”, the Bank has the “right to refuse” the request. The AIC’s decision then states that “in view of the blanket nature of the Request, it would be impractical for the Bank to address this portion of the Request” [namely, to notify and seek the views of each of the individuals impacted by the disclosure, specifically, the requesters who had made requests in the month of October, 2013].
22. As a result of this approach, the AIC comes at the issue from the wrong angle by making, in effect, its application of the exceptions (in this case the “Security and Safety” exception) contingent on the request being reasonable and supported. In this case, this erroneous approach led the AIC to find that the “Bank cannot reasonably discount or dismiss the possible risk of harm to the persons’ security and safety should the information be made public.” (See ground (h) in paragraph 6 of the AIC decision, cited above). Consequently, in turn, the AIC applied an erroneous test when applying the “Security and Safety” exception. The correct thresholds to trigger the exception are “would compromise” and “is likely to endanger”, not that a remote or unspecified harm may possibly occur.
23. Hence, the approach adopted by the AIC constitutes an improper application of the AI Policy. Whilst it is clear that an AI request could be denied on the basis that it is “unreasonable and unsupported” pursuant to paragraph 26 of the AI Policy, to conflate paragraph 26 with paragraph 12 as the AIC did in this case is an improper application of the AI Policy in that as a consequence the test(s) set out in paragraph 12 were not properly applied.
24. To establish whether or not disclosure “would compromise” the security pursuant to paragraph 12(a) of the AI Policy or would be “likely” to endanger the security or safety of individuals pursuant to paragraph 12(c) of the AI Policy (in this case, the requesters who had made requests in October 2013), requires the Bank to undertake a sufficient and appropriate inquiry as to the relevant facts of each case. No such inquiry was conducted in this instance, either in respect of the original consideration of the Request by the Bank or by the AIC.
25. Consequently, the AIC has not proffered, far less established, any grounds that would lead to a reasonable belief that an individual’s security would be compromised or health and safety likely to be endangered by disclosure of the information requested. This constitutes a failure to apply the AI Policy properly. Instead, the AIC has erroneously taken a class-based approach to the requests rather than a case-by-case approach. The nature of the exception is such that it should be applied to the circumstances of each request. If there was any well-founded and reasonable apprehension of harm relating to the circumstances of any specific request the Bank could, by contacting the requesters in those presumably few instances, have sought to establish if there was any basis to fear endangerment.

*The proper application of the Corporate Administrative Matters exception*

26. Although it did not form part of the original decision of the Bank to deny access, the AIC relies upon the Corporate Administrative Affairs exception contained in paragraph 15 of the AI Policy, which it finds is “also triggered” (paragraph 7 of the AIC’s decision). The AIC appears to have reasoned that because of the way in which the Bank organises its information case management system, this serves to reveal personal information about the Bank staff. This information does not form any part of the information sought by the Request, and therefore is not within the scope of the Request. Since the Request did not seek such information it would be an entirely improper application of the AI Policy to deny access to information that the requester would otherwise be entitled to simply because the case management system is organised in way that it generates other information that the requester has not sought access to. The proper course of action is to extract the specific information sought by the Requester from the case records generated by the case management system. In our view, looking at the specific records in this case, the process of extraction is straightforward and not onerous.

*The proper application of the redaction policy*

27. Finally, on the subject of redaction: the AI Policy Interpretation dated July 14, 2010, states that “the Bank is not prevented from redacting restricted information on a case-by-case basis if it chooses to do so”. In our judgment this makes it clear that the Bank has a duty to consider redaction in appropriate cases. So another option open to the Bank in this case, if indeed there was a well-founded concern of harm, was to redact the name and/or contact details of the requesters. By declining to do so, the Bank thereby caused the content of the request, as opposed to the personal details of the requesters, also to be withheld. No suggestion has been made that disclosure of the content would compromise security or likely endanger any individual.
28. Neither the Bank in the first instance based on the requester’s submission, nor the AIC considering the first level appeal, applied their respective minds properly to this aspect of the matter and so, therefore, there was a failure to apply the AI Policy properly. Had the Bank or the AIC done so, and done so reasonably, it would have found that in this instance the process of redaction would have been straightforward and not onerous. First, there were a manageable number of records arising out of the requests for information made during the month of October 2013. Second, the way the records are organised makes for ready identification of the information to be redacted. And third, the redaction of the name of the requester is easily done. Indeed, we note that for the purposes of this appeal all of the records of the requests that have been provided to us have been redacted in this fashion.

**Findings in Respect of: The Second & Third Parts of the Request: the request for a ‘list’ and/or ‘summaries’:**

29. All of the above reasoning and findings are in respect of the first part of the Request, namely, the request for “copies of all access to information requests submitted in the month of October, 2013.” However, the Request also sought access to “any list of access requests in the month of October, 2013 and any summary prepared by the World Bank concerning requests made in the month of October, 2013”. The Bank has indicated that it has not prepared such a list or summary, and so the information requested is not held by it. In the Appeal made to the AI Appeals Board, the Requester has confirmed that these determinations are not contested. Consequently, the AI Appeals Board does not in this case need to take any view on these matters.

### AI Appeals Board Findings

30. In summary, we find that the AIC (a) incorrectly regarded the request as being unreasonable; (b) sought to apply the Security and Safety provisions on a class basis rather than on a case-by-case basis; (c) wrongly justified the withholding of information on grounds other than that set out in the AI Policy Security and Safety exception; (d) withheld information which could have been provided by failing to redact the limited information which it believed would compromise security or would be likely to endanger safety; and (e) in any event has not demonstrated any basis to conclude that disclosure of the information requested would compromise or would be likely to endanger the safety of any persons. In addition, the AIC applied an exception to information not sought by the requester and which should not have been used to justify withholding information that had been requested.
31. Accordingly, we must find that the Bank has violated its AI Policy and so we reverse the AIC's decision. Consequently, the requested documents – namely: “Copies of all access to information requests submitted in the month of October, 2013” – should be disclosed to the appellant Requester.
32. The AI Appeals Board's decision is final.