

TO: The team responsible for the review process of the Inter-American Development Bank's (IDB) Access to Information Policy

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RE: Comments and Final Recommendations- Analysis of the Approved Version of the Inter-American Development Bank's (IDB) Access to Information Policy (June 2024)

DATE: December 2024

The IDB Working Group, a coalition of multiple regional and international civil society organizations who have been focusing on advocacy targeting the Inter-American Development Bank (IDB) and actively participated throughout the IDB's Access to Information Policy (AIP) review process, presents the following comments and observations on the new AIP approved by the IDB Board in June 2024. Many of these comments and observations will also be relevant for the development of the Implementation Guidelines.

We also want to highlight significant problems encountered in the public consultation process for the Access to Information Policy. Upon the release of the initial consultation plan, we sent a [letter](#) with specific recommendations to strengthen the process because it was originally weak. Although the IDB considered our recommendations and introduced improvements, such as conducting in-person consultations, opening a comment period on a second draft, and publishing the final report with specific responses, these actions were reactive and insufficient to address all highlighted concerns. Furthermore, after the consultation process, the approval of the AIP was unjustifiably delayed, and communication with the coordinating team was inefficient, leaving stakeholders in the dark about updates and new developments.

Positive Aspects of the New AIP

From the **IDB Working Group** we celebrate many improvements included in the AIP, such as:

- Elimination of the negative override, which allowed the IDB to deny access to information typically available to the public by claiming that disclosure could be more harmful than beneficial.
- Incorporation of a harm test for applying exceptions.
- Introduction of redaction mechanisms or the creation of public versions of documents to avoid full denial of information
- Reduction in the number of exceptions (from 10 to 6).

We also welcome that many of the recommendations proposed by the IDB Working Group during the review process have been fully or partially incorporated into the new AIP, namely:

1. **Recognition of access to information as a fundamental human right** and reaffirmation of the IDB's commitment to transparency (Section 1.1).
2. Strengthening the principle of **maximum access to information**, ensuring clear, complete, and timely disclosure, and promoting meaningful engagement of communities affected by projects (Section 2.1a).
3. Inclusion of the principle of **“Reasoned Decisions and Right to Review”**, affirming the right of requesters to appeal a denial of information (Principles, Section 2.1c).
4. Strengthening the link with the **Environmental and Social Policy Framework (ESPF)** and aligning proactive disclosure with the ESPF.
5. Inclusion of **public interest** as a criterion for applying the positive override (Section 5.1a) and provisions for cases where information provided by a country is considered public under local legislation (Section 5.1c).
6. Allowing **anonymous information requests**, protecting the identity of requesters at high risk of reprisal in IDB-financed projects (Section 7.1b).
7. **Reduction of response times for information requests.** Responses must be provided within 25 calendar days, or 30 calendar days for historical information (Sections 7.1c, 7.1d).
8. **Establishment of conditions and shortened timelines for reviews by the Committee on Access to Information (CAI)** and appeals to the External Panel (Section 8.4).
9. Ensuring **accessible information for persons with disabilities**, with implementation guidelines defining mechanisms to facilitate access.

10. **Strengthening procedural provisions for the review mechanism, differentiating between requests related to administrative or Executive Board information.** As in other MDBs, the CAI will analyze positive override cases along with reviews of denials.
11. Clarification that the **selection of candidates for the External Review Panel** must consider gender and diversity criteria (Section 9.4).
12. Assurance that **no costs will be charged to requesters** for submitting or processing information requests.
13. Expansion of the list of corporate and operational information in the **Annex - Illustrative List of Routinely Disclosed Information** to be published on the IDB website (Annex, Section 3.1).
14. Inclusion of a **“Glossary of Terms, Acronyms, and Abbreviations”** section.

Recommendations Not Incorporated into the AIP

Despite notable progress, several key [recommendations](#) from the IDB Working Group were not incorporated into the Access to Information Policy (AIP). Also, many unresolved issues have been deferred to the Implementation Guidelines, missing an opportunity for the IDB to incorporate them in the policy. Below are the key gaps:

- **Lack of Alignment with the Escazú Agreement.** The AIP does not align with the new standards and provisions of the Escazú Agreement, a regional treaty that focuses on access to environmental information as a necessary condition for the exercise of other rights. Additionally, the agreement is the first in the world to include specific protections for human rights defenders in environmental matters.
- **Limited Role of the External Panel.** The External Panel remains limited to a reactive role in reviewing cases of denied information requests. The working group had recommended that the panel take a more proactive approach, enabling it to review broader issues related to the AIP’s implementation, such as redacted documents, appropriate use of the positive override, and more.
- **Lack of Indicators for Policy Monitoring.** In the section on Policy review, a point on the development of indicators was not added, in line with the recommendation from OVE's 2013 evaluation. Identifying transparency indicators and implementing a system to monitor transparency levels over time is necessary to ensure that the Policy's implementation is effectively increasing the disclosure and accessibility of the information produced by the Bank

Effective Implementation of the AIP

The IDB Working Group acknowledges the advancements made in the AIP but stresses the importance of robust implementation guidelines and implementation plan to guarantee effective

and meaningful application of the policy. Effective implementation will determine whether the new commitments included in the AIP translate into maximum disclosure and meaningful access. We believe that the effectiveness of many of the advancements incorporated into the AIP will largely depend on how the new policy is implemented.

As a first step, we recommend that the IDB:

- **Develop a robust Implementation Plan** defining financial, human, and technological resource allocations for the Office of Access to Information. Adequate resources are critical to guaranteeing this office's efficient and effective functioning, including training for borrowers and IDB staff on the AIP.
- **Engage civil society organizations and impacted communities** in meaningful and effective consultations on the implementation guidelines.
- **Establish a detailed work schedule** that includes clear and accessible mechanisms for receiving feedback from civil society. The schedule should incorporate both virtual and in-person consultation sessions to enable significant engagement.

Recommendations for the Implementation Guidelines

To strengthen the AIP's implementation, we urge the IDB to consider the following:

1. **Coverage and Scope, Point 1.2:** The guidelines should clarify what type of information from OVE (Office of Evaluation and Oversight) and MICI (Independent Consultation and Investigation Mechanism) is covered under the AIP.
2. **Regarding Information on Procurement, Point 3.1d:** The implementation guidelines must clarify what happens in cases where there is a conflict between the IDB's Procurement Policies and the Access to Information Policy—specifically, which policy or criteria will take precedence in such situations.
3. **Regarding one of the most controversial points of the AIP, Point 3.2a, “Nature of Information. Proprietary Country or Client Information”:** This point states that clients own the information they provide to the Bank, and their opinions on the content and timing of access or disclosure will be considered when deciding whether to disclose or protect such information. This provision will be challenging to implement, as it is unclear how the “opinions” of borrowers will be balanced against the right of access to information. For instance, if the Bank wants to publish project documents but the borrower claims the information contained in them is confidential, how will these opinions be reconciled? It is necessary to avoid a situation where the scope and application of this provision are effectively determined by borrower opinions, turning this into a hidden exception. The guidelines should define what constitutes “opinions” of clients and clarify their implications, ensuring this point is harmonized with Section 4 on exceptions and Section 4.2 on the harm test. Additionally, it is unclear how alternatives

like redaction or editing might operate in contrast to full restriction. The guidelines must address this and prioritize redaction over outright denial of information.

4. **Exceptions:** In the exceptions section, the terms “disclosure” and “access to information” are used interchangeably. When exceptions in an access-to-information policy are framed in terms of disclosure rather than access, it can directly impact the clarity and applicability of the policy. For this reason, we recommend including clear guidelines on how exceptions are applied and establishing clear limits on what information can or cannot be provided to the public, both in disclosure processes and in response to access requests.
5. **Develop definitions, application criteria, and clear procedures for implementing the harm test to prevent discretionary use of exceptions by the IDB and Borrowers.** First, it is recommended to define the concepts of “substantial and identifiable harm,” “benefit of disclosure,” and “appropriate means to prevent harm.” For example, provide concrete examples of what constitutes substantial harm and establish parameters to identify it. Another example would be explaining how the benefit of disclosure is evaluated or clarifying when protecting information is the only viable option compared to alternatives like redacting documents. Second, detailed criteria for harm assessment should be developed. For instance, list types of information and cases that could imply harm (classified documents, confidential negotiations), require objective or reasoned evidence supporting the likelihood of harm, and incorporate consultation mechanisms with experts in sensitive areas. Third, it is recommended to establish procedures with standardized formats to apply criteria consistently, clarify roles and responsibilities, and specify deadlines for application and response. It is also important that the guidelines define an independent review process for harm assessments, such as ensuring that each assessment is documented in a centralized system to facilitate audits. This will minimize discretion and ensure consistent and effective application.
6. **Establish criteria and procedures for redaction and public versions. It is crucial for this point to align with the exceptions and harm test criteria.** A key element to address in the guidelines is developing criteria to apply the principle of proportionality to ensure that only strictly necessary parts of a document are redacted to minimize unnecessary omissions. A clear step-by-step procedure for conducting redactions should also be developed. When creating public versions, guidelines should be provided on how to reorganize content after redaction to maintain coherence and sense, including a section that clearly explains which parts of the document have been redacted and why. Finally, public versions must comply with accessibility standards. It would also be beneficial to establish a peer review process to ensure that redactions are consistent and unnecessary data is not redacted.
7. **Develop specific criteria and procedures for implementing the positive override.** First, it is recommended to define what constitutes a relevant public interest and provide concrete examples of scenarios that could justify a positive override. Second, criteria

should be detailed for evaluating and comparing benefits and potential harms, including examples of substantial benefits and how identified risks are mitigated. Third, clear guidelines should be provided to identify and manage legal or contractual restrictions, such as confidentiality agreements or national laws prohibiting disclosure. Furthermore, this point should be harmonized with the use of redaction, as these are preferable to outright denial of information.

8. **Specify mechanisms to improve the accessibility of information transversally in the Access to Information Policy (AIP).** The guidelines should address this issue to ensure that disclosed information meets universal design standards, including accessible formats and plain language. For example, ensure that digital systems comply with international accessibility standards, such as the Web Content Accessibility Guidelines (WCAG), which include compatibility with screen readers, simple keyboard navigation, adequate color contrast, and responsive design for mobile devices. Additionally, consider large-text formats, braille, descriptive audio, and sign language, and include documents in multiple languages, prioritizing local or Indigenous languages where necessary.
9. **Specify mechanisms to improve the usability of information transversally in the AIP.** It is crucial that the guidelines address this issue to ensure that disclosed or provided information is usable by users. To this end, it is important to prioritize plain language (drafting documents in clear and understandable language, avoiding technical or legal jargon whenever possible) and publish accessible executive summaries for lengthy or technical documents. The structure of the information is important, for example, prioritizing relevant information and filtering out unnecessary content that could overwhelm the user. Another key point here is to publish data in reusable formats (e.g., CSV, JSON) to facilitate analysis and ensure that data is accompanied by clear metadata explaining its context, source, and collection methods.
10. **Mechanism for review and enforcement of the right to appeal.** The review mechanism should ensure an efficient, simple, understandable, brief, and effective process for applicants. In this regard, the procedure for effectively utilizing the review mechanism should be clear. For example, clearly outline the timeframes for the review process, maximum time extensions, and criteria for extending deadlines, provide written responses accompanied by justifications, and publish decisions in a public registry, among other measures.
11. **Complement the annex listing proactively published information by the IDB Group with more examples.** The guidelines can offer more examples of the type of information that should be proactively published.
12. **Specify the procedure of the Access to Information Committee and External Panel to ensure transparent decision-making processes.** The implementation guidelines should establish that all decisions by the Access to Information Committee (AIC) and the External Review Panel be published on the institutional website, along with the reasons justifying the denial, restriction, or acceptance of requests. This promotes accountability

and ensures the publication of decisions. It is recommended to create an accessible registry of all requests and their status (approved, denied, under review, or appeal), excluding confidential information.