

# Access to Information Policy

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**Office of External Relations**

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This proposal for a new Access to Information Policy to replace the current Disclosure of Information Policy (OP-102), was prepared by the Office of External Relations for the consideration of the Board of Executive Directors.

## **Access to Information Policy**

- 1. Objectives and Scope**
- 2. Principles**
- 3. Standard of Disclosure**
- 4. Exceptions**
- 5. Simultaneous Disclosure and Country Disclosure Requirements**
- 6. Classification**
- 7. Declassification and Archives**
- 8. Overrides**
- 9. Review Mechanism**
- 10. Effective Date**
- 11. Report and Review**

### **Annex I. List of Information not to be Disclosed**

### **Annex II. Information to be Disclosed in connection with Non-Sovereign Guaranteed Operations**

## ACCESS TO INFORMATION POLICY

### 1. Objectives and Scope

- 1.1 The Bank reaffirms its commitment to transparency in all aspects of its operations as a means of aligning itself with international best practice, especially among the countries of Latin America and the Caribbean, and as a matter of enhancing its accountability and development effectiveness. Through implementation of this policy the Bank seeks to demonstrate its transparent use of public funds, and by deepening its engagement with stakeholders, to improve the quality of its operations and knowledge and capacity-building activities.
- 1.2 The policy will apply to information produced by the Inter-American Development Bank and to specific information that is in the possession of the Bank, subject to a list of exceptions. The policy will cover information on Bank activities produced by the Bank in connection with its Office of Evaluation and Oversight, its Office of Institutional Integrity (OII), its Sanctions Committee and the Independent Consultation and Investigation Mechanism (ICIM).
- 1.3 This policy will supersede the version of OP-102 (GN-1831-18) dated August 17, 2006 (<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=784916>) with respect to documents and information produced on or after its effective date. .

### 2. Principles

- 2.1 This policy is based on the following principles:

**Principle 1: Maximize access to information.** The Bank reaffirms its commitment to transparency in all of its activities and therefore seeks to maximize access to any documents and information that it produces and to information in its possession that is not on the list of exceptions. Further, so long as the Bank is not legally obligated to non-disclosure, and has not received information with the understanding that it will not be disclosed, information on the list of exceptions will be disclosed in accordance with timelines and procedures specified for that purpose.

**Principle 2: Narrow and clear exceptions.** Any exceptions to disclosure will be predicated upon the possibility, narrowly and clearly defined, that the potential harm to interests, entities or parties arising from disclosure of information would outweigh the benefits, that the Bank is legally obligated to non-disclosure, or has received information with the understanding that it will not be disclosed . The Bank may, in exceptional circumstances, decide not to disclose information that would be normally accessible if it determines that the harm that might occur by doing so will outweigh the benefits of access. The Bank may also, in exceptional circumstances, make available to the public information ordinarily excluded from disclosure when it determines that the benefit would outweigh the potential harm.

**Principle 3: Simple and broad access to information.** The IDB will employ all practical means to facilitate access to information. Guidelines for maximizing access to information will include clear and cost-effective procedures and timelines for processing requests and will be based on use of a system for classifying information according to its accessibility over time.

**Principle 4: Explanations of decisions and right to review.** When denying access to information the Bank will provide an explanation for its decision. Requesters who believe they have been denied access to information in violation of the policy will have the right of review of such decisions by an interdepartmental Access to Information Committee chaired by the Office of the Presidency. In the event that the requesters are denied access to information by the Committee, they may have further redress through review by an external panel established by the Bank for that exclusive purpose.

### 3. Standard of Disclosure

- 3.1 The Bank seeks to maximize access to information that it produces and will therefore disclose any information not contained on a list of exceptions. The policy is predicated not on a list of information that it chooses to disclose but rather on a clear definition of information that it will *not* disclose.

### 4. Exceptions

- 4.1 While the Bank is committed to disclosing as much information as possible, there are compelling reasons to protect certain types of information.<sup>1</sup>The following categories of information/documents will not be accessible because the Bank has determined that the potential harm caused by their disclosure outweighs the benefit to be derived from accessibility. Annex I of this policy supplements these exceptions and contains a list of specific information that will not be disclosed.

**a. Personal information.** The Bank will maintain appropriate safeguards to respect the personal privacy of staff members and protect the confidentiality of personal information about them. However, this shall not limit the provision of information concerning specific staff members which may be released at the request of the staff member, or in accordance with Bank policies such as those intended to assure that staff members will meet their personal legal and financial obligations.

**b. Legal, disciplinary or investigative matters.** Legal advice, information subject to attorney-client privilege, matters in legal dispute or under negotiation, and legal documentation pertaining to Bank non-sovereign guaranteed projects will not be accessible to the public. This includes also disciplinary and investigatory information generated in or for the Bank, except documents intended for public

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<sup>1</sup> As an international organization established by its member countries, certain privileges and immunities are afforded to the Bank under the Agreement Establishing the Bank. The Agreement provides that “the archives shall be inviolable.” Although the Board of Executive Directors may approve the public availability of many categories of Bank information, the Bank’s archival immunity provides the basis upon which the institution may protect information from compulsory disclosure. The approval of this policy is not intended and shall not be construed as a waiver of the Bank’s archival immunity.

release pursuant to the Bank's ICIM. The Bank will not disclose documents, reports or communications in circumstances where disclosure would violate applicable law, or could subject the Bank to undue litigation risk. In the context of litigation, the Bank will require that its privileges and immunities under the Agreement Establishing the Bank be respected.

**c. Communications involving Executive Directors.** Communications between and within Executive Directors' offices, between those offices and the member country or countries they represent and between those offices and third parties.

**d. Safety and security.** The Bank will not disclose information that could compromise the security or safety of Bank staff and their families, contractual employees and outside contractors; Bank assets; or the national security of member governments.

**e. Information provided in confidence; intellectual property; and business/financial information.** Information provided to the Bank by member countries, private-sector entities or other parties in confidence or with restrictions on disclosure, will not be disclosed without their explicit authorization. Intellectual property of and financial, business or proprietary information belonging to parties outside the Bank, or intellectual property of the Bank will not be disclosed.

**f. Corporate administrative information.** Information related to corporate expenses, including real estate, will not be disclosed, except in the case of the Bank's annual budget program document and as referenced in the quarterly business reports.

**g. Deliberative information.** Except as provided for explicitly in the policy, information about deliberations between the Bank and its clients or third parties, of the Board of Executive Directors, the Board of Governors and member countries, as well as information pertaining to the Bank's own internal deliberative processes, will not be disclosed.

**h. Certain financial information.** Information that may affect the Bank's activities in capital and financial markets or to which such markets may be sensitive.

**i. Country-specific information.** The Bank will not disclose information that is contained within country-specific documents produced by the Bank if it has been identified in writing by countries as confidential or potentially damaging to its relations with the Bank.

**j. Information relating to non-sovereign guaranteed operations.** Information and documents relating to non-sovereign guaranteed operations or provided to the Bank in connection with such operations, other than: i) information listed in Annex II of this policy and ii) information with respect to which the respective borrower has expressly consented to disclosure.

## **5. Simultaneous Disclosure and Country Disclosure Requirements**

- 5.1 **Simultaneous disclosure of certain Board documents at the time of distribution to Board of Executive Directors.** Information sent by Management to the Board of Executive Directors for information and classified as "Public" under the Bank's new

information security classification system (*see* Section 6 of this policy) will be disclosed at the time it is distributed to the Board.

Included among documents distributed to the Board by Management for consideration are draft Country Strategies, Sector Strategies, Operational Policies and Loan Proposals and Technical Cooperation Plans of Operation (the latter only involving resources of more than \$1.5 million). Country Strategies are first considered by the Board's Programming Committee and the Operational Policies and Sector Strategies by the Policy and Evaluation Committee. Loan Proposals and Technical Cooperation Plans of Operation are approved by the Committee of the Whole without having been considered previously by any committee.

To allow stakeholders to review how inputs provided during public consultations have been considered, Operational Policies and Sector Strategies will be disclosed at the time of their distribution to the respective committee of the Board, if some earlier version of the document had been previously considered by the Board. Country Strategies, and Loan Proposals and Technical Cooperation Plans of Operation for sovereign-guaranteed operations, would be disclosed simultaneously with their distribution to the Board, subject to the non-objection of the country concerned. Other information sent by Management to the Board of Executive Directors for consideration and that is classified as other than "Public" will not be disclosed until the Board has completed consideration.

- 5.2 **Borrower disclosure practice.** The Environment and Safeguards Compliance Policy (GN-2208-20, paragraph 4.20) provides that "as part of the environmental assessment process...appropriate information will be provided in location(s), format(s) and languages(s) to allow for affected parties to be meaningfully consulted." Management's annual reports to the Board on implementation of the Access to Information policy (*see* paragraph 11.1) will review the practices of borrowers with respect to the disclosure of environmental and social assessments related to Bank-financed projects.

## 6. Classification

- 6.1 This policy will include use of a new information security classification system, which would require designation of all information produced by the Bank at the time of its creation as either "Public" or belonging to one or more non-public classification levels. The application of any classification other than "public" may only occur as a consequence of the information in question being subject to non-disclosure according to one of the policy's exceptions.
- 6.2 EXR is responsible for designing and implementing by the date on which the policy takes effect, guidelines for the application of the system in general and for assisting and training the authors/owners of specific information in its use. Planning for the adoption of the new system is being managed by a working group chaired by EXR that includes the Records Management Section (ACP/REC), Information Technology Department, Office of the Secretary, the Legal Department, and the Knowledge and Learning Sector (KNL), with other Bank units to be added as needed. All information newly produced by the Bank as of the effective date of this policy will be required to bear a classification label. All information produced by the Bank not already in the public domain as of the

date the new policy is adopted will also be required to be classified. All information received by the Bank from clients and other parties outside the Bank will also be classified.

## **7. Declassification and Archives**

- 7.1 The Bank recognizes that the classification of information as non-public under the exceptions listed in Section 4 of this policy may change over time, thus the implementation of this policy will also include a system for declassification to be developed by Management and disclosed prior to the policy's effective date.
- 7.2 The classification level assigned to information/documents will determine the schedule for disclosure, including the declassification of records under a three-tiered timeline after five, ten or 20 years. Information classified under the strictest confidentiality standard of the classification system will not be disclosed even after 20 years. Requests for information created before the effective date of this policy and not available on the Bank's external website will be reviewed by the Bank on the basis of the procedures for classification and declassification referred to herein and their corresponding timelines.

## **8. Overrides**

- 8.1 As described in Principle 2, the Bank may decide to provide access to certain specified types of information normally subject to one of the policy's exceptions, in extraordinary circumstances, -if it determines that the benefit to be derived from doing so would outweigh the potential harm that application of the policy might otherwise entail, and so long as the Bank is not legally or otherwise obligated to non-disclosure and has not been provided information with the understanding that it will not be disclosed, as in the case of most information relating to non-sovereign guaranteed operations<sup>2</sup>. Any decision to provide access to information via the override would require the express written authorization of the Access to Information Committee. Similarly, use of a "negative" override, in which the Bank would decide to exclude normally available information from access based on the premise that access would occasion more harm than benefit, would require the Committee's express written authorization. Requests to override the policy with respect to records of the Board of Executive Directors would require the express written authorization of the Board.

## **9. Review Mechanism**

- 9.1 This policy creates a two-stage review mechanism for requesters who are denied access to information in the form of a) an interdepartmental Access to Information Committee and b) in the event that the interdepartmental Committee were to deny the request, a three-member external panel. The interdepartmental Committee, which will be chaired by a representative of the Office of the Presidency and include representatives of the Office of the Executive Vice President, the four vice presidencies and EXR, will be

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<sup>2</sup> Use of the "positive" override would be restricted to information contained in Annex I of this policy, under sections F, G and H, the headings on Corporate administrative information, Deliberative information and Financial information, respectively.

authorized to receive requests for review from parties outside the Bank and to uphold or reverse prior decisions to deny access.

- 9.2 Requests for reviews regarding denials of access to information may be of two types: i) an allegation that the Bank has violated the policy in denying or restricting access to information or ii) a request for an override of the exceptions that would preclude its disclosure, because the benefit to be derived from disclosure would outweigh the potential harm. Decisions of the interdepartmental Access to information Committee on requests of the second type are final and not eligible for the second stage review by the external panel.
- 9.3 Alleged violations of the policy related to Bank operations may also be addressed under the ICIM. In order to bring an allegation of violation of the policy to the ICIM, a complainant must reasonably assert that harm has occurred or can be expected to occur as a consequence of the Bank not having complied with the policy, and must meet the remaining eligibility criteria of the ICIM. Presentation of an allegation of a violation of the policy before the ICIM would require that the requester had resorted first to Management, and met the Mechanism's eligibility requirements. The establishment of the external panel under this policy would in no way preclude the right of persons alleging violations of this policy to submit requests to the ICIM, nor of the ICIM to take up such cases.

#### **10. Effective date**

- 10.1 The provisions of this policy will take effect on January 1, 2011 with respect to information produced on or after that date. EXR will propose no later than July 31, 2010 a detailed schedule for implementation that will take into consideration the need for training and development and implementation of IT needs to occur following Board approval. The disclosure of documents and information produced before the effective date will be governed by the classification and declassification provisions of this policy and made available in response to requests.
- 10.2 Procedures for disclosure of information, classification and declassification of information and archives, for responding to requests for information and for the rendering of decisions from the interdepartmental Committee and external review panel will be included as part of guidelines for implementation of the policy to be prepared by EXR.

#### **11. Report and review**

- 11.1 EXR will present reports to the Board of Executive Directors on issues related to implementation of the new policy, along with any recommendations for changes, on an annual basis. Such reports will take into account new information access standards or policies developed and implemented by peer institutions and partners regarding the range of their activities.



## Annex I

### List of Information Not to be Disclosed

Based on the exceptions set forth in Section 4 of the policy, the following specific types of information will not be disclosed, provided, however, that some information originally classified as non-public may be declassified over time. Information classified under the strictest confidentiality standard of the classification system will never be disclosed. The contents of this list will be reviewed in the context of annual reviews of the policy and the evolving standards and practices of the Bank and peer institutions and partners.

- A. **Personal information:** this includes staff records, medical information, information on salary and benefits, and personal communications, of Executive Directors, Alternate Executive Directors, Counselors, employees of the offices of the Executive Directors, employees of the Office of Evaluation and Oversight, staff of the ICIM, the President of the Bank, the staff of the Bank and the families of all of the above, with the exception of personal information which can be disclosed in accordance with Bank Staff Rules.

The heading also includes information on staff appointment and selection processes, information regarding proceedings of the Bank's internal conflict resolution mechanisms, and information concerning investigations of allegations of staff misconduct, except to the extent permitted by the Staff Rules and except in the case of decisions of the Bank's Administrative Tribunal.

- B. **Legal, disciplinary or investigative matters**

- ***Conduct Committee of the Board, Committee on Ethics and Professional Conduct, OCFC and the Sanctions Committee:*** deliberations and materials considered in the proceedings of the Conduct Committee of the Board of Executive Directors, of the Ethics and Professional Conduct Committee and the OCFC and the Sanctions Committee, except information regarding sanctions imposed by the Sanctions Committee, will not be disclosed.
- ***Office of Institutional Integrity (OII):*** information gathered, received, or generated in the course of an investigation by OII or a third party on behalf of OII will not be disclosed, subject to the exceptions provided in other Bank policies concerning disclosure of information to national authorities and other affected international organizations. Information related to allegations of prohibited practices received by OII, consultations regarding integrity matters, and information regarding integrity due diligence in private sector and non-sovereign guarantee operations will not be disclosed.
- ***Attorney-client privilege:*** this heading includes, *inter alia*, communications provided and/or received by the General Counsel, in-house Bank counsel, and other legal advisors.
- ***Violations of law.*** The Bank will not disclose information if such disclosure would violate applicable law (such as restrictions imposed by securities and banking laws).

- C. Communications involving Executive Directors.** Communications between and within Executive Directors’ offices, between those offices and the member country or countries they represent and between those offices and third parties.
- D. Safety and security:** this heading includes information that may affect the safety or security of Bank staff and their families, contractual employees and outside contractors; Bank assets; or the national security of member governments; and information about logistical and transport arrangements related to Bank shipments of its assets and documents and the shipment of staff’s personal property
- E. Information provided in confidence by member countries, private-sector entities or third parties:** the Bank will not disclose information subject to restrictions on disclosure or received by the Bank with an understanding that it will not be disclosed, from countries, clients or third parties, without their explicit authorization. This heading includes information (financial, business, proprietary, legal documentation and other non-public information) received by the Bank in connection with Bank (including MIF) non-sovereign guaranteed operations; intellectual property of and financial, business or proprietary information belonging to parties outside the Bank; and intellectual property of the Bank. In addition, as specified in paragraph 4.1i, the Bank will not disclose information contained in country-specific documents and identified by countries as confidential. In such instances the version of the document that is released to the public should indicate that confidential information has been removed from the text.
- F. Corporate administrative information:** The Bank will not disclose information related to corporate expenses, including real estate and other activities, except as contained in the annual program and budget document.
- G. Deliberative information:** in accordance with the exception described in paragraph 4.1g, unless it becomes eligible for declassification over time, the following information will not be disclosed:
- Information (including e-mail, notes, letters, memoranda, draft reports) prepared during the course of the Bank’s internal deliberations, including transcripts of Board meetings and Board committee meetings, statements of individual Executive Directors except when voluntarily disclosed; communications and memoranda produced by the offices of Executive Directors relating to Board or Board committee proceedings; circulars and technical briefing materials prepared by Management for information of the Board of Executive Directors and “presentations” (in PowerPoint and other formats) to the Board of Executive Directors by Management.
  - Information (including e-mail, notes, Letters memoranda, draft reports) prepared during the course of the Bank’s interaction with member countries or with other individuals and organizations with which the Bank partners.
  - Reports of the Office of the Executive Auditor (AUG)
  - Sections of the Progress Monitoring Report (PMR) other than those related to the status of projects in execution.

Nevertheless, the following information will be disclosed by the Bank, subject to the exclusion of records or portions thereof relating to confidential matters or documents:

- Minutes of Board Committee Meetings (new)
- Reports of the Board Committee Chairs to the Committee of the Whole
- Minutes of Meetings of the Board of Executive Directors
- Annual Reports of the Chairs of Committees of the Board of Executive Directors (new)
- Summary Proceedings of Annual Meetings of the Board of Governors
- Resolutions adopted by the Board of Governors
- Major decisions of the Board of Executive Directors

- H. Financial information:** this heading includes estimates of future borrowings, financial forecasts, data on individual investment decisions for the Bank's treasury operations, private bond offering documents, credit assessments, certain details of individual loan and guarantee transactions and information regarding amounts overdue from borrowers, including actions taken prior to placement of such credits in nonaccrual status. In limited circumstances, the Bank may delay the disclosure of certain information that it would otherwise make publicly available because of market conditions or timing requirements, such as conditions or information relating to publicly listed companies, securities offerings or connected with a commercially sensitive transaction.
- I. Country-specific information:** this heading includes drafts of Loan Proposals and Technical Cooperation Plans of Operations for Knowledge and Capacity-Building Products and Operational Inputs, portions of aides-memoire that contain key decisions taken as a consequence of supervision missions, or mid-term reviews and annual project audit reports to which the borrower or beneficiary objects to; Proposals for Operation Development; Loan Review Reports; Loan and Guarantee Proposals for Non-Sovereign Guaranteed operations; Plans of Operation for equity and investment operations of the Multilateral Investment Fund; and e-mail and other written communications from staff with countries, private-sector clients and the Board of Executive Directors concerning the preparation and analysis of proposed operations; and information related to special assets.
- J. Information relating to non-sovereign guaranteed operations.** Information and documents relating to non-sovereign guaranteed operations or provided to the Bank in connection with such operations, other than: i) information listed in Annex II of this policy and ii) information with respect to which the respective borrower has expressly consented to disclosure.

## **Annex II**

### **Information to be Disclosed in connection with Non-sovereign Guaranteed operations**

- Initial Project Abstracts
- Environmental and Social Strategies (ESS)
- Environmental Impact Assessments (EIA)
- Strategic Environmental Analyses (SEA)
- Environmental Analyses (EA)
- Environmental and Social Management Reports (ESMR)
- Abstracts of Approved Projects