

IAMnet Good Practice Note:

IAMs' Access to and Use of Project Information

NOVEMBER 2018

Since the 1992 United Nations Conference on Environment and Development in Rio de Janeiro, commonly known as the Earth Summit, International Financial Institutions (IFIs) have established Independent Accountability Mechanism (IAMs) as part of their governance structures. The Independent Accountability Mechanisms Network (IAMnet) seeks to identify and foster means for collaboration, cooperation and knowledge sharing amongst these institutions.

IAMNET GOOD PRACTICE NOTE ON IAMs' ACCESS TO AND USE OF PROJECT INFORMATION

BACKGROUND

The goal of the working group on good practice (WG-GP) is to systematize knowledge sharing and documentation of good practice among IAMnet members. The group decided upon the preparation of a “**Good Practice Notes**” series that would elaborate on good practices among the mechanisms in the network. The objectives of these notes would be to:

- Facilitate learning amongst IAMs;
- Provide examples of good practice which IAMs can apply to their work; and
- Support improvements in practice both at the level of IAMs and in terms of the enabling environment provided for IAMs by their respective IFIs.

The WG GP envisions that the production of the Good Practice Notes should be demand driven, based on the needs of individual IAMs to call upon insight and guidance from their peer organizations in a way that reflects the dynamic nature of this work. The notes would be drafted in such a way as to provide examples of existing and emerging good practice, not a definitive or binding best practice.

As used in this note a ‘good practice’ is an approach that IAMnet members view as supportive of the core principles of citizen-driven accountability. An ‘**established good practice**’ is positive practice or approach that was identified in five or more IAMs. An ‘**emerging good practice**’ is a positive practice or approach one which is being applied by less than five IAMs.

SCOPE & METHODOLOGY

This note explores IAMs' access to information produced by or in possession of their respective IFI, IFI clients or executing agencies, among others, and the ways in which access to this information, or lack thereof, impacts the work of the IAM. The note also covers issues of confidential information, and how that information may be used, or not, by the IAM in its public reports.

This note was prepared based on survey responses gathered from 10 IAMs. The survey included a variety of multiple choice and open-ended questions organized under the four sub-headers described below. The original survey can be found in the annex of this document.

CONCEPTUAL FRAMEWORK

Receiving timely access, free of overly burdensome processes, to project information is an important part of the enabling environment for IAMs so that they may effectively process complaints in all stages and meet their objectives. Such access allows the IAM to respond to complainants in a timely fashion, provide objective and impartial analysis, and ultimately contribute to lessons learned for the IFI. The ability to share project information with third party stakeholders, namely complainants and the greater public, enables IAMs to meet a generally shared core principle of transparency with regard to its work.

1. PRACTICES REGARDING IAMs' ACCESS TO INFORMATION HELD BY THE IFI

ESTABLISHED GOOD PRACTICE

- IAMs have specific policies and procedures regulating their access to information held by the IFI;
- When processing a complaint IAMs are able to request further information than what is readily accessible either on the IFI website or in any internal databases accessible to all IFI employees;
- When processing a complaint IAMs are granted systematic access, either automatically or by request, to further information than what is readily accessible either on the IFI website or in any internal databases accessible to all IFI employees; in these cases, the access can be characterized as “full direct access to all operational files”.

EMERGING GOOD PRACTICE

- When processing a complaint IAMs are automatically granted systematic access to further information than what is readily accessible either on the IFI website or in any internal databases accessible to all IFI employees.

2. PRACTICES REGARDING IAMs' ACCESS TO INFORMATION HELD BY THE IFI CLIENT, EXECUTING AGENCY, ETC.

EMERGING GOOD PRACTICE

- The IFI includes in its legal agreements with the client, executing agency, etc., standard clauses that note the role of the IAM and establish requirements for such parties to provide relevant information to the IAM and such information is regularly provided on request.

ADDITIONAL INFORMATION

This emerging good practice was identified in responses provided by three mechanisms. Some specific practices are elaborated on below.

CAO

The CAO, the accountability mechanism for the IFC and MIGA, reports that IFC contracts include standard language about CAO and the obligation of a client to share information.

As an example, in one publicly disclosed agreement, the CAO is defined in the section on definitions, and later in the Covenants section it states:

“Unless IFC otherwise agrees, the Borrower shall: ... (d) Access. Upon IFC’s request, permit representatives of IFC and CAO to visit and inspect any of the premises where the business of the Borrower is conducted and to have access to its books of account and records and to its employees and agents”

And

“The Borrower shall apply prudent banking criteria in the evaluation and assessment of Eligible Sub-loans and Eligible Sub-borrowers and determination of the terms and conditions of, including security for, Eligible Sub-loans.... (vi) permit representatives of IFC, the CAO and/or the Borrower to visit any sites, plants, equipment or facilities included in the relevant project and any premises where the business of the Eligible Sub-borrower associated with that project is conducted and to have access to that Eligible Sub-borrower’s books of account and records and to its employees and agents”.¹

Independent Complaints Mechanism

The Independent Complaints Mechanism, the accountability mechanism for FMO, reports that legal agreements with clients include clauses on Access and Disclosure. Access relates to the right to review documentation, view the premises and meet and discuss matters with management and employees. Disclosure relates to the right to disclose information to their Independent Expert Panel, to publish an admissible complaint on the mechanism’s website and to publish the final investigation report on their website.

3. PRACTICES REGARDING CONFIDENTIALITY OF INFORMATION

ESTABLISHED GOOD PRACTICE

- The IAM exercises judgment in the use of non-public information obtained from the IFI or the client, executing agency, etc. in its published compliance reports.

ADDITIONAL INFORMATION

This established good practice was identified in responses provided by five mechanisms. Some specific practices are elaborated on below.

CAO

The CAO, the accountability mechanism for the IFC and MIGA, reports that it may refer to information from non-public IFC documents in its reports, though it will rarely quote from these documents unless it is necessary to support a finding. CAO typically would not cite a non-public source of information specifically, preferring rather to describe the document in general terms (e.g. “Supervision Documentation” or “Assessment Review Documentation”).

CAO may also refer to non-public documents that are provided by the IFC client. CAO reports, will generally not quote from these documents, but may refer to their contents if relevant. A preferred approach is to identify information IFC had access to at the relevant time (e.g. “IFC was aware that its client had received advice about [x] issue”).

¹ This language comes from a disclosed operation, which can be seen at: <https://www.sec.gov/Archives/edgar/data/1114700/000095012311062849/c19278exv4w8.htm>

Project Complaint Mechanism (PCM)

The PCM, the accountability mechanism for EBRD, reports that per its Rules of Procedures, while conducting an Eligibility Assessment, a Compliance Review, or a Problem-solving, the PCM Officer and the PCM experts have full access to relevant Bank staff and files, including electronic files, cabinets and other storage facilities. At a basic level, PCM typically refrains from direct quotes and instead summarizes information at a more general level. Where necessary, PCM footnotes that information is non-public to provide a rationale as to why there may be a gap in information provided in a report. Based on inputs from the parties (Complainant, Bank Management and Client) with regard to the information disclosed in the report, PCM may determine that there is a need for rewording, or redacting of non-public information in the draft Compliance Review report.

Independent Complaints Mechanism

The Independent Complaints Mechanism, the accountability mechanism for FMO, reports that exercising judgement with regard to the use on non-public information is done on a case-by-case basis in consultation with key stakeholders and based on justified arguments.

EMERGING GOOD PRACTICE

- In the case that confidential information must be redacted or otherwise removed, the IAM makes the determination.

ADDITIONAL INFORMATION

This emerging good practice was identified in responses provided by four mechanisms. Some specific practices are elaborated on below.

CAO

The CAO, the accountability mechanism for the IFC and MIGA, reports that its Operational Guidelines set out CAO's approach to disclosure of information and confidentiality (2013, section 1.4).² CAO is bound by IFC and MIGA disclosure policies as well as the World Bank Group Staff Rules. Per the Operational Guidelines, "CAO may not publish information received from parties in the course of a case if disclosure of that material is restricted under IFC or MIGA disclosure policies." Within these frameworks, CAO's approach to disclosure of information has evolved over time. For example, CAO generally will not refer to individuals by name, but may refer to their role (if necessary). CAO avoids disclosing details about financial arrangements (e.g. shareholdings) that are not publicly available. Dealing with clients that are listed companies raises particular concerns in terms of disclosure of non-public information that may influence share prices. CAO may discuss concerns regarding disclosure of information with management prior to publication of a compliance report, however, the CAO VP maintains the final decision as to what information should be included in a report.

² Available at: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

The Office of the Compliance Review Panel (OCRP)

The OCRP, the accountability mechanism for the ADB, reports that per the ADB Accountability Mechanism policy, if the complainants request that their identity be kept confidential, the CRP does not include the name of the complainants in the report. In documents where the name of the complainants are originally revealed or if there are descriptions in the document that might reveal a complainant's identity, OCRP will blacken/erase those so that the identity of the complainant will not be compromised.³

OCRP may discuss concerns regarding disclosure of sensitive of non-public information with management prior to publication of a report. In such cases, OCRP may reconsider the language in question or re-phrase certain sentences with a view to addressing the sensitivities raised while still pursuing its point in an effective manner.

4. PRACTICES REGARDING ACCESS TO INFORMATION WITHIN THE IAM

ESTABLISHED GOOD PRACTICE

- For those IAMs with two or more functional areas there are no limitations to information sharing between those functional areas.

³ Examples with an introductory note as to the need for the redaction are available at: [https://lnadbq4.adb.org/dir0035p.nsf/attachments/Visayas%20Base%20Load%20Power%20Devt%20Project%20Compliance%20Review%20Request.pdf/\\$FILE/Visayas%20Base%20Load%20Power%20Devt%20Project%20Compliance%20Review%20Request.pdf](https://lnadbq4.adb.org/dir0035p.nsf/attachments/Visayas%20Base%20Load%20Power%20Devt%20Project%20Compliance%20Review%20Request.pdf/$FILE/Visayas%20Base%20Load%20Power%20Devt%20Project%20Compliance%20Review%20Request.pdf) and [https://lnadbq4.adb.org/dir0035p.nsf/attachments/INO%20Citarum%20Complaint%20in%20English-Names%20Removed-corrected%2027Feb12.pdf/\\$FILE/INO%20Citarum%20Complaint%20in%20English-Names%20Removed-corrected%2027Feb12.pdf](https://lnadbq4.adb.org/dir0035p.nsf/attachments/INO%20Citarum%20Complaint%20in%20English-Names%20Removed-corrected%2027Feb12.pdf/$FILE/INO%20Citarum%20Complaint%20in%20English-Names%20Removed-corrected%2027Feb12.pdf)

ANNEX 1: ORIGINAL SURVEY

Welcome to MICI's Good Practice Note Survey

Thank you for participating in our survey. Your feedback is important.

The "IAMs' Access to and Use of IFI Documents" survey aims to explore IAMs' access to information produced by or in possession of their respective IFI, IFI clients or executing agencies, among others, and the ways in which access to this information, or lack thereof, impacts the work of the IAM. The survey also covers issues of confidential information, and how that information may be used, or not, by the IAM in its public reports.

Your responses collected through this survey are part of an information gathering process for the drafting of a Good Practice Note on this topic. The Good Practice Notes are intended for internal use of IAMnet members.

Please remember that the survey should only be filled out once per IAM, please coordinate.

* 1. IAM Information

Name of the IAM	<input type="text"/>
Name of the IFI	<input type="text"/>
Name of person filling out the survey on behalf of the IAM	<input type="text"/>
Email Address	<input type="text"/>
Phone Number	<input type="text"/>

IAMs' Access to Information Held by the IFI

* 2. Please describe briefly how the IAM's access to information held by the IFI is regulated via specific policies or procedures.

* 3. When processing a complaint, how does the IAM obtain further project information than what is readily accessible on the IFI website and/or in any internal IFI databases accessible to all IFI employees. Check all that apply.

- Request further documents from the IFI
- Systematic access is granted by the IFI *if requested*
- Systematic access is granted by the IFI *automatically*
- Further information is not accessible
- Other (please explain)

* 4. If, as in the previous question, systematic access is granted by the IFI, either as requested or automatically, what type of access is granted?

- Full direct access to all operational files
- Partial access based on what the IFI deems necessary
- N/A
- Other (please explain)

* 5. If the IAM is only granted partial access, how is it determined what documentation the IAM requires from the IFI to process a complaint? Check all that apply.

- The IAM determines the documentation it requires and the IFI furnishes that information
- The IFI provides information it determines relevant for the IAM
- An interactive process by which the IAM requests information as it becomes aware of its existence
- N/A
- Other (please explain)

IAM's Access to Information Held by the IFI Client, Executing Agency, etc.

* 6. What systems exist for the IAM to access non-public information held by the IFI client, executing agency, etc. (choose the best answer)

- The IFI includes in its legal agreements with such parties, standard clauses that note the role of the IAM and establish requirements for the client, executing agency, etc. to provide relevant information to the IAM *and such information is regularly provided on request.*
- The IFI includes in its legal agreements with such parties, standard clauses that note the role of the IAM and establish requirements for the client, executing agency, etc. to provide relevant information to the IAM *but such information is often not provided on request.*
- The IFI's legal agreements with such parties *do not establish requirements* for them to provide information to the IAM.
- Other (please explain in the comments box below)

Additional Comments

Confidentiality of Information

* 7. How does the IAM use non-public information in its published reports (choose the best answer)

- The IAM cannot or does not quote or otherwise refer to non-public information obtained from the IFI or the client, executing agency, etc. in its published reports.
- The IAM publishes modified reports in which references to non-public information obtained from the IFI or the client executing agency, etc. are redacted or otherwise removed.
- The IAM exercises judgment in the use of non-public information obtained from the IFI or the client, executing agency, etc. in its published compliance reports.
- N/A (please explain)

* 8. In the case that information must be redacted or otherwise removed, how is that determination made?

- The IAM makes the determination
- IFI Management makes the determination
- A joint determination is made
- N/A
- Other (please explain)

Access to Information within the IAM

* 9. For those IAMs with two or more functional areas, are there limitations to information sharing between those functional areas?

- Yes
- No
- Partial
- N/A

10. If you answered "yes" or "partial" to Question #9 above, please briefly describe the limitations to information sharing between functional areas.