



Policy Paper

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Access to Information Policy

This document is being disclosed to the public prior to its consideration by ADB's Board of Directors in accordance with ADB's Public Communications Policy 2011.

Asian Development Bank

ABBREVIATIONS

ADB	–	Asian Development Bank
AIC	–	Access to Information Committee
AIP	–	Access to Information Policy
IAP	–	Independent Appeals Panel
PCP	–	Public Communications Policy
US	–	United States

Vice-President	Bambang Susantono, Knowledge Management and Sustainable Development
Steering Committee	<p>Nessim Ahmad, Deputy Director General, SDCC</p> <p>Shirin Hamid, Principal Director, Officer of Information Systems and Technology (OIST)</p> <p>Hun Kim, Director General, South Asia Department (SARD)</p> <p>Tomoyuki Kimura, Director General, Strategy and Policy Department (SPD)</p> <p>Christopher Stephens, General Counsel, Office of the General Counsel (OGC)</p> <p>Vicky C.L. Tan, Principal Director, Department of Communications (DOC)</p> <p>Christopher Thieme, Deputy Director General, Private Sector Operations Department (PSOD)</p> <p>WooChong Um, Director General, Sustainable Development and Climate Change Department (SDCC)</p> <p>Eugene Zhukov, The Secretary, Office of the Secretary (OSEC)</p>
Principal Director Director	<p>Vicky C.L. Tan, DOC</p> <p>Omana Nair, Media and External Relations Division, DOC</p>
Team leader Team members	<p>Karen Lane, Principal Communications Specialist, DOC</p> <p>Marc Crowe, Principal Editor, OSEC</p> <p>Kurumi Fukaya, Lead Operations Coordination Specialist, PSOD</p> <p>Lesley Lahm, Advisor and Head, Interagency Relations and Nonsovereign Operations Unit, SPD</p> <p>Lyailya Nazarbekova, Principal Counsel, OGC</p> <p>Francesco Tornieri, Principal Social Development Specialist, SARD</p> <p>Patrick Vermeij, Information Technology Specialist, OIST</p> <p>Nick Angelo Villaluz, Communications Officer, DOC</p>

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I. BACKGROUND

1. The Public Communications Policy 2011¹ (PCP) of the Asian Development Bank (ADB) was approved by ADB's Board of Directors on 25 October 2011 and became effective on 2 April 2012. This review was undertaken in accordance with the policy.

2. **Review process.** The PCP 2011 review started with the establishment in July 2016 of a steering committee to provide strategic guidance on the policy review process. In 2016, ADB conducted a desk review of the PCP 2011 and a peer assessment of other multilateral development banks, followed by internal consultations. A PCP review website was established where the first consultation drafts of the proposed new policy and the implementation arrangements were posted in November 2016 for public comment.² ADB held consultations with external stakeholders in November 2016 and in June–July 2017 in 16 countries and one region.³ ADB's Board of Directors was informally consulted in April 2017 and April 2018.

3. **Policy review.** The policy review showed that the principles and disclosure exceptions of the PCP 2011 are in line with those of other multilateral development banks and many countries. It also found that other multilateral development banks are shifting toward principles-based policies, which are now considered best practice for information disclosure. Further, annual assessments of the PCP 2011 show an increase in the number of documents disclosed on the ADB website (www.adb.org), the timely disclosure of routinely disclosed documents, and the number of information requests that ADB receives and responds to. However, the assessments also found that document disclosure was sometimes delayed because some of the policy's disclosure requirements were outdated.

4. **Proposed policy changes.** The proposed policy focuses on principles—largely unchanged from the PCP 2011—with the policy implementation arrangements housed separately. While policy principles will remain fixed, the implementation arrangements can be updated as needed with ADB Management approval. This shift should ensure implementation clarity, flexibility, and disclosure predictability. With regard to disclosure of independent evaluation reports, the implementation arrangements will reflect the current practice of disclosure of completed reports⁴ or other arrangements as may be required in any future Board-approved policy governing ADB's Independent Evaluation Department. Up-to-date implementation arrangements should improve disclosure timeliness and policy effectiveness. Other proposed changes from the PCP 2011 include the removal of background information sections, which had become outdated, and ADB's public communications approach section.⁵ In view of the refinements to the PCP 2011, the policy is proposed to be renamed the Access to Information Policy (AIP) to better capture the concepts, principles, and improvements described below.

5. The second draft consultation policy paper – posted on ADB's website in March 2018, refined and clarified some of the principles and exceptions in the first draft. It also shifted some of the details related to information requests and appeals for disclosure to the implementation

¹ ADB. 2011. *Public Communications Policy 2011*. <https://www.adb.org/documents/pcp-2011>

² ADB. 2016. *Public Communications Policy Review*. <https://www.adb.org/site/disclosure/pcp-review>

³ In order of the consultations: Bangladesh, Nepal, Philippines, Tajikistan, Thailand, Cambodia, Lao People's Democratic Republic, Viet Nam, Canada, United States (US), Europe (from Germany), Australia, Timor-Leste, Fiji, India, Azerbaijan, and Georgia.

⁴ Under current practice, all independent evaluation reports are published upon circulation to Management and the Board, except for Independent Evaluation Department annual evaluation review reports which are disclosed upon discussion by the Board.

⁵ ADB's communications approach will be described in a separate document.

arrangements. Based on the comments received on the drafts, this working paper was developed for Board consideration, which will be followed by a final policy paper for Board approval. If approved by the Board, the new policy will become effective 1 January 2019. The implementation arrangements will be approved by ADB Management and become effective at the same time as the policy.

II. INTRODUCTION

6. The objective of the Access to Information Policy (AIP) is to promote stakeholder trust in ADB and to increase the development impact of ADB activities. The policy reflects ADB's commitment to transparency, accountability, and participation by stakeholders in ADB-supported development activities in Asia and the Pacific. It also recognizes the right of people to seek, receive, and impart information about ADB's operations.

7. The policy applies to documents and information that ADB produces, requires to be produced by its borrowers or clients, or are produced and provided to ADB by other parties in the course of ADB operations. The policy will be implemented in accordance with detailed arrangements approved by Management and made publicly available in accordance with ADB's normal procedures.⁶

III. POLICY PRINCIPLES AND EXCEPTIONS

A. Policy Principles

8. The AIP is based on the following principles:

- (i) **Clear, timely, and appropriate disclosure.** ADB discloses information about its operations in a clear, timely, and appropriate manner to enhance stakeholders' ability to meaningfully engage with ADB and to promote good governance.
- (ii) **Presumption in favor of disclosure.** ADB discloses information unless that information falls within the exceptions to disclosure specified in the policy.
- (iii) **Limited exceptions.** Full disclosure of information is not always possible. For example, ADB needs to explore ideas, share information, hold candid discussions, and freely debate ideas internally and with its members or clients. In other cases, ADB needs to consider the special requirements of its nonsovereign operations and clients,⁷ protect personnel's right to privacy, or protect its own and its clients' legitimate business interests. The policy provides a limited set of exceptions that balances the rights and interests of various parties. However, ADB reserves the right, under exceptional circumstances, to override the policy exceptions or not to disclose information that it would normally disclose.
- (iv) **Proactive disclosure.** ADB proactively shares its knowledge products and information about its operations in a timely manner to facilitate participation in ADB decision making. While the ADB website (www.adb.org) remains the primary

⁶ Currently, the implementation arrangements for ADB policies are provided under operational procedures in ADB's Operations Manual (as amended from time to time).

⁷ A legally binding undertaking not to divulge clients' confidential business information is a standard requirement for private sector financial institutions, as well as for ADB's comparators, to engage in business with clients. The need for protection of confidential business information is also widely recognized in freedom of information laws, which include an exception for the release of commercial information obtained in confidence.

vehicle for proactive disclosure, ADB also uses other appropriate means to disclose and communicate information.

- (v) **Sharing of information and ideas.** The AIP includes processes by which people may, equally, seek, receive, and convey information and ideas about ADB operations. Effective communications and exchange of information and ideas with stakeholders is a vital component of effective and sustainable development.
- (vi) **Providing information to project-affected people and other stakeholders.** ADB works closely with its borrowers and clients to ensure two-way communications about ADB projects with project-affected people and other stakeholders. This is done within a timeframe, using relevant languages,⁸ and in a way that allows project-affected people and other stakeholders to provide meaningful inputs into project design and implementation.
- (vii) **Country and client ownership.** ADB borrowers and clients own the projects that ADB supports or in which the bank invests. Thus, in some cases, the views of borrowers and clients regarding the manner and timing of disclosure are considered before documents are disclosed.
- (viii) **Clear appeals process.** A clear process to appeal an ADB decision not to disclose requested information is an important part of a meaningful disclosure framework.
- (ix) **Continuous monitoring.** ADB monitors the effectiveness of the policy, learns lessons from its successes and shortcomings, and stays abreast of new technologies and practices.

B. Exceptions to Disclosure

9. ADB allows disclosure of information in its possession that does not fall under any of the policy exceptions. The exceptions are based on ADB's determination that disclosure of this type of information would cause harm to specific parties or interests that would outweigh the benefits of disclosure. A harm–benefit assessment is the process of weighing the likely adverse effects of disclosure against the benefits likely to accrue from disclosure. In the context of ADB's disclosure principles (para. 8)—particularly the presumption in favor of disclosure—such an assessment and the basis for nondisclosure are limited to the categories of information described in para. 11. If a document subject to posting on the ADB website (www.adb.org) or part of a document is not posted because it contains information that falls under one or more of the policy exceptions, ADB cites the exception(s) for nondisclosure.⁹

10. Subject to the AIP's provision regarding the positive override (para. 12), the following categories of information or documents are not disclosed:

⁸ ADB's Translation Framework was adopted in 2007 and updated in 2012. The framework allows for materials to be translated into official and national languages. Local languages can be used on a case-by-case basis as determined by the country office.

⁹ ADB, at its own discretion, redacts, modifies, or withholds the document from disclosure. If an entire document is withheld, the website will refer to the title of the document unless citing the document would itself violate an exception. In the case of a document where only portions are redacted, the explanation will be made inside the document unless citing the removed information would itself violate an exception.

1. Deliberative and Decision-Making Process

11. Information that informs the deliberative or decision-making process of ADB is exempt from disclosure. This category of exception is based on the premise that deliberations, debates, and advice that inform decision making must be free and candid. This comprises the following:

- (i) Internal information that, if disclosed, would or would likely compromise the integrity of ADB's deliberative and decision-making process, by inhibiting the candid exchange of ideas, views, and approaches, and thereby adversely affect the quality of decisions and outcomes for ADB and its stakeholders. Examples include advice and ideas exchanged with and among ADB governors and their alternates, Board members, directors' advisors, members of Management, ADB staff, ADB consultants, and other entities and/or individuals appointed by ADB that are generally deliberative in nature. While ADB typically discloses the results of its decision-making processes, it may not disclose all the ideas, views, and advice that led to such decisions because stakeholders need to freely present and debate such ideas, views, and advice.
- (ii) Proceedings of the Board of Directors,¹⁰ except for verbatim transcripts,¹¹ minutes of Board meetings,¹² and chair's summaries of certain Board meetings,¹³ as disclosure of such documents would inhibit the frank exchange of ideas, views, and approaches among Board members.
- (iii) Information exchanged, prepared for, or derived from the deliberative and decision-making process between ADB and its members and other entities with which ADB cooperates. If disclosed, this information would or would likely compromise the integrity of the deliberative and decision-making process among ADB and its members or other entities with which ADB cooperates by inhibiting the candid exchange of ideas, views, and approaches.

2. Information Provided in Confidence

- (iv) Information provided to ADB by a member or other party in confidence. ADB has an obligation to protect such information and does not disclose the information without the express written permission of that other member or party.
- (v) Proprietary information or any information provided to ADB by a party that, if disclosed, would or would likely materially prejudice the commercial interests, financial interests, or competitive position of the party that was the source of the

¹⁰ Proceedings of the Board of Directors are confidential in accordance with Section 9 of the Rules of Procedure of the Board of Directors of the Asian Development Bank. For the purpose of this policy, proceedings of the Board of Directors refers to proceedings of the Board of Directors and of Board committees, and comprises all statements made or filed during Board meetings or committee meetings and records regarding such meetings, such as verbatim transcripts, minutes, and/or chair's summaries of committee meetings, and memoranda or other communications between ADB Management, departments, or the Secretary and the Board, in all formats, including electronic.

¹¹ Verbatim transcripts of formal Board meetings may be disclosed upon request and in their entirety 10 years after the date of their creation, provided that the formal Board meetings have been held on or after 2 April 2012 and they do not contain or refer to any information that falls within the policy exceptions.

¹² Minutes of each regular Board meeting are disclosed after approval of the minutes by the Board but no later than 60 calendar days after the original Board meeting. This applies to regular Board meetings held on or after 1 September 2005.

¹³ Applies to chair's summaries of each Board discussion on the country partnership strategy and regional cooperation strategies, and each policy or strategy approved or endorsed by the Board at a formal Board meeting.

information or another party that may be affected by the disclosure of the information.

- (vi) Confidential business information covered by a confidentiality agreement or nondisclosure agreement that ADB has entered into with clients or other related parties.

3. Personal Information

- (vii) Any personal information that, if disclosed, would or would likely materially compromise the legitimate privacy interests of the person concerned, except to the extent permitted by the person concerned or by ADB rules. Some examples include information relating to their appointment and selection process, terms of employment, performance evaluations, personal medical information, personal communications, information relating to proceedings of internal conflict resolution and appeal mechanisms, and information related to investigations.

4. Financial Information

- (viii) Financial information that, if disclosed, would or would likely prejudice the legitimate financial or commercial interests of ADB and its operations. Some examples include estimates of ADB's future borrowings, financial forecasts, data on individual investment decisions for ADB's treasury operations, credit assessments, analyses of creditworthiness, credit ratings, risk assessments of its borrowers and other clients, and any information to which capital and financial markets may be sensitive.
- (ix) Financial information that, if disclosed, would or would likely prejudice the ability of a member to manage its economy.

5. Security and Safety

- (x) Information that, if disclosed, would or would likely endanger the life, health, safety, or security of any individual; the safety or security of ADB assets; or prejudice the defense or national security of a member.

6. Legal and Investigative Matters

- (xi) Any information subject to attorney–client privilege (including communications to or from ADB counsel or its external legal advisors) or any information that, if disclosed, would or would likely undermine legitimate attorney–client interests or violate applicable law.¹⁴
- (xii) Information provided to ADB alleging fraud, corruption, or other violation of ADB's Anticorruption Policy¹⁵ or misconduct; or relating to any investigation of alleged fraud, corruption, or other violation of ADB's Anticorruption Policy or misconduct. Any information that, if disclosed, would or would likely materially prejudice an

¹⁴ This may include restrictions imposed by securities and banking laws, and copyright law.

¹⁵ ADB. 2010. *Anticorruption and Integrity: Our Framework Policies and Strategies*. Manila. <https://www.adb.org/sites/default/files/institutional-document/31317/anticorruption-integrity-policy-strategy.pdf>; and ADB. 1998. *Anticorruption Policy*. Manila. <https://www.adb.org/documents/anticorruption-policy> (as may be updated from time to time).

investigation or the administration of justice; except, in either case, to the extent permitted by and in accordance with ADB's staff rules or rules on investigations. This paragraph also applies to the identity of the party making the allegation (whistleblower), unless such whistleblower consents to the disclosure of his or her identity, or except to the extent permitted by and in accordance with ADB's staff rules or other applicable rules.

7. Internal Audit Reports and Trust Fund Audit Reports¹⁶

- (xiii) (a) Internal audit reports of ADB's Office of the Auditor General, as such reports may contain sensitive information about internal systems, which could be exploited by third parties to the detriment of ADB;¹⁷ and (b) certain audit reports of ADB's external auditors on ADB-administered trust funds, where the applicable auditing standards limit disclosure of these reports and related financial statements.¹⁸

C. Public Interest Override (Positive Override)

12. Despite the provisions on information exempted from disclosure, external stakeholders may request ADB to disclose such information in the public interest. ADB may disclose the requested information if the bank determines that the public interest in disclosing the information outweighs the harm that may be caused by disclosure. Any recommendation to disclose or deny such information will require the approval of the Board of Directors for Board records and the President for other documents.

D. ADB's Prerogative to Restrict Access (Negative Override)

13. ADB also reserves the right not to disclose, under exceptional circumstances, information that it would normally disclose if the bank determines that such disclosure would or would likely cause harm that outweighs the benefit of disclosure. Only the Board of Directors may exercise this prerogative.

E. Historical Information

14. Any information concerning ADB operations held by ADB for more than 20 years from the date such information was produced by, or provided to, ADB, will be considered historical information and presumptively disclosable on request,¹⁹ except for historical information that falls within the exceptions listed in paras. 11.2 (information provided in confidence), 11.3 (personal information), 11.5 (security and safety information), or 11.6 (legal and investigative matters), which shall remain exempt from disclosure.

¹⁶ Audit opinions and audited financial statements disclosed to the public as part of ADB's *Annual Report* are not covered by this exception.

¹⁷ Highlights of ADB's internal audits and all audit findings rated high and medium-risk are shared with the Audit Committee of the Board.

¹⁸ Certain trust fund financial statements are prepared in accordance with donors' accounting requirements (which may be different from the accounting standards generally accepted in the US), and are audited in accordance with auditing standards generally accepted in the US (which are applicable to ADB). Such auditing standards limit disclosure of financial statements prepared in accordance with accounting standards other than those generally accepted in the US and the associated audit opinion to those who have a specified interest in the fund, i.e., contributors and those responsible for managing and/or administering the fund.

¹⁹ Proceedings of the Board will be disclosed in accordance with the provisions in para. 11 (ii).

IV. INFORMATION REQUESTS AND APPEALS

A. Requests for Information

15. All requests for information and documents must be made in writing. Requests may be directed to ADB headquarters, a resident mission, a representative office, or any ADB department or office. Details on where to send information requests are on the ADB website (www.adb.org). Requests should indicate with reasonable specificity the information that is being sought to enable ADB to locate the information within a reasonable period.

16. Requests may be submitted to ADB in English or in any of the official or national languages of ADB members.²⁰

17. ADB will not be required to comply with or respond to unsupported requests, blanket requests, or any request that would require ADB to create, develop, or collate information or data that do not already exist or are not available in its records management system. This also applies to requests for information on the same subject from the same person, organization, or group if ADB has provided such information after a previous request or has given reasons why it cannot provide the information.

18. ADB will promptly acknowledge both the receipt of a request and its decision on the request.²¹ For complex requests,²² ADB may extend the deadline for responding to the request, provided the requester is notified and acknowledges the extension.

B. Access to Information Committee

19. ADB's Access to Information Committee (AIC) is an oversight body established to interpret, monitor, and review the policy and its implementation arrangements. The AIC members—all senior ADB personnel—will be nominated by and report to the President. The AIC will convene as needed to review requests for information that have been denied by ADB departments or offices. The AIC will also consider and make decisions concerning appeals (para. 22). The AIC will have the authority to (i) uphold or reverse decisions made by ADB departments and offices to deny access to information, except for decisions by the Board to restrict access (para. 13) and (ii) consider requests for disclosure in the public interest of information covered by a policy exception (para. 12).

C. Appeals

20. ADB has a two-stage appeals process that requesters can use when they believe that ADB has denied their request for information in violation of this policy. Details on where to send appeals are on the ADB website (www.adb.org). The remedy available to a requester who prevails on any appeal is limited to receiving the information requested.

21. The two-stage appeals process is described in paras. 22–27.

²⁰ English is used as the standard for ADB responses to requests. Responses may be translated depending on local circumstances.

²¹ This timeline will not apply in cases where ADB uses its prerogative pursuant to para. 13 not to disclose information it would normally disclose. In that case, ADB will submit the matter to the Board for a final decision.

²² Complex requests include seeking information from multiple sources, large numbers of documents, collecting information over multiple years, collating, and correlating raw data and providing findings.

1. First Stage: Access to Information Committee

22. A requester who is denied access to information by ADB may file an appeal with the AIC if the requester can (i) show that an initial request for information was submitted in accordance with the required procedures set forth in the policy, and (ii) either provide a reasonable argument that ADB has violated the policy by denying access to the requested information or make a public interest case pursuant to para. 12 to override the policy exceptions that restrict access to the information requested.

2. Second Stage: Independent Appeals Panel

23. If the AIC upholds the initial decision to deny a request for information, and the requester still believes that ADB has violated its policy by withholding the information, the requester may file an appeal with the Independent Appeals Panel (IAP). The IAP will have the authority to uphold or reverse the relevant decisions of the AIC, and its decisions will be final.

24. The IAP will not have the authority to consider appeals against decisions by the Board of Directors or the President if the appeal is based on the public interest override, or appeals against decisions by the Board using its prerogative to deny access to information normally disclosed.

25. The IAP will comprise three external experts on access to information, independent from ADB. The ADB President will nominate the IAP members, who will be approved by the Board.

3. Submission of Appeals and Notification of Decisions

26. All appeals to the AIC must be filed in writing within 90 calendar days after ADB's initial decision to deny access to the requested information. All appeals to the IAP must be submitted in writing within 90 calendar days after the AIC's decision to uphold ADB's initial decision to deny access. Appeals received beyond the 90-day period for filing an appeal will be deemed out of time and will not be considered. All appeals should contain the following:

- (i) a description of the information originally requested, and
- (ii) an explanatory statement that sets out the facts and the grounds that support the requester's claim that ADB violated the policy or that the public interest override applies.

27. Requesters will be notified if the appeal is dismissed (i) for a failure to file within the required time, (ii) for a failure to provide sufficient information that would reasonably support the appeal, or (iii) because the AIC or the IAP does not have authority to consider the matter being appealed.

D. Relation of the Access to Information Policy to Other Policies

28. Any reference in this policy to other ADB policies will include those other policies as amended from time to time.

E. Compliance Review

29. The AIP is subject to the appeals process as described in paras. 20–27. The AIP is an "operational policy" within the meaning of the ADB Accountability Mechanism Policy, meaning

that a complaint by project-affected people alleging ADB's violation of this policy in the design or implementation of a project might be eligible under the Accountability Mechanism.²³

V. POLICY MONITORING AND AMENDMENTS

30. ADB will monitor the implementation of the policy and post an annual report on its website. Amendments to the policy may be made from time to time with approval of the Board of Directors.

VI. POLICY EFFECTIVE DATE

31. The policy will become effective on 1 January 2019.

VII. REQUEST FOR BOARD GUIDANCE

32. The Board's guidance is sought on the proposed Access to Information Policy (paras. 6–31), as described in this paper.

²³ ADB. *Accountability Mechanism*. <https://www.adb.org/site/accountability-mechanism/main>