



Policy Paper

September 2018

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
OSEC	–	Office of the Secretary
PCP	–	Public Communications Policy
US	–	United States

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I. BACKGROUND

1. The Public Communications Policy 2011 (PCP) of the Asian Development Bank (ADB) was approved by the 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 review started with the establishment in July 2016 of a steering committee to provide strategic guidance on the process. In 2016, ADB conducted a desk review of the PCP 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 its implementation arrangements were posted in November 2016 for public comment.¹ ADB held consultations with external stakeholders in December 2016 and in June–July 2017 in 16 countries and one region.² Second consultation drafts were posted on the website in February 2018. ADB’s Board of Directors was informally consulted in April 2017 and April 2018. A policy working paper was made available on the website and to the Board in July 2018.

3. **Policy review.** The policy review showed that the principles and disclosure exceptions of the PCP 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 showed an increase in the number of documents disclosed on the ADB website (www.adb.org). However, the assessments also found that document disclosure was sometimes delayed because staff were unaware of disclosure requirements, particularly for product or document types introduced since the PCP was approved in 2011, and thus not written in the policy.

4. The review also found that the information request and appeals processes were functioning well. In 2017, ADB received 3,653 formal requests for information, a sharp increase in volume from 230 requests in 2012.³ In 2017, ADB acknowledged 81% of requests within the requisite 5 days and responded to 96% within the 20-day deadline. Seven requests for information were denied, of which six were requests for financially sensitive information about bond issues. One case was appealed in 2017, the same as in 2016.⁴

5. **Proposed policy changes.** The PCP uses a rules-based approach to disclosure. It provides detailed guidelines aimed at capturing the most foreseeable cases and circumstances with predetermined and strictly prescribed disclosure exceptions and timelines. The rules-based policy manages disclosure through a rigid approach to information sharing. However, the business of ADB is changing as the bank adapts to the needs of a fast-changing region. ADB’s disclosure policy needs to match this rapid evolution. Rules-based approaches are often too inflexible to adapt quickly to changes. This can sometimes produce results that are inconsistent with the intended policy objectives—a presumption in favor of disclosure and information sharing that is timely enough to allow stakeholders to provide meaningful inputs and feedback.

¹ ADB. 2016. *Public Communications Policy Review*. <https://www.adb.org/site/disclosure/pcp-review>

² 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.

³ ADB. 2017. *Public Communications Policy Annual Report 2017*. <https://www.adb.org/sites/default/files/institutional-document/424291/pcp-annual-report-2017.pdf>

⁴ <https://www.adb.org/site/disclosure/pcp-implementation/appeals/appeals-received>

6. As such, and in line with peer institutions, ADB proposes a two-part disclosure policy framework: (i) a principles-based policy approved by ADB's Board of Directors, as set forth in this paper; and (ii) detailed implementation arrangements approved by Management and made publicly available in ADB's *Operations Manual*, in accordance with ADB's normal procedures.

7. An effective principles-based approach demands clear principles and proactive and collaborative communications between ADB and its stakeholders. It also requires regular training and awareness raising for staff and partners, as well as a clear appeals process to ensure that the principles are applied properly, consistently, and in good faith. Active monitoring and reporting, including to the Board of Directors, are also essential to ensure that policy principles are being met effectively and consistently. The policy, implementation arrangements, monitoring reports and other related information will continue to be available through a single ADB webpage.⁵

8. The proposed policy focuses on principles, led by a new overarching principle of "clear, timely, and appropriate disclosure". Other principles are largely unchanged from the PCP and are underpinned by a presumption in favor of disclosure with limited exceptions. Going forward, while the policy principles will remain in place until changed by the Board, the implementation arrangements can be updated as needed—to reflect new products or processes, for example—with ADB Management approval. This shift should ensure implementation clarity and disclosure predictability. Providing up-to-date guidelines on which documents and when documents need to be routinely disclosed is intended to help ADB improve timeliness and policy effectiveness. With regard to disclosure of independent evaluation reports, the implementation arrangements reflect the current practice of disclosure of completed reports⁶ or other arrangements as may be required in any future Board-approved policy governing ADB's Independent Evaluation Department.

9. Other proposed changes from the PCP include the removal of background information sections, which had become outdated, and ADB's public communications section. ADB's public communications approach describes the bank's institutional communications practices. Communications approaches can change rapidly as new communications channels emerge and targeted audiences evolve. As these activities differ substantially from those of disclosure, they will be described in a separate document and made available through the ADB access to information website (footnote 5).

10. In view of the refinements to the PCP, the policy is renamed the Access to Information Policy (AIP). The new title better describes the more focused information disclosure and information provision objectives of the policy. This title change is in line with peer development banks, particularly those with principles-focused policies.

11. Based on the comments received on the first and second consultation drafts and the working paper, this R-Paper was developed for consideration by ADB's Board of Directors. If approved, 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.

12. **Resources.** The initial budget for internal and external outreach, awareness-raising, translation, and staff training has been allocated to ensure a smooth rollout of the new AIP. The Office of the Secretary (OSEC) will assume full responsibility for AIP implementation. Two additional staff positions—one international and one national—have been identified and will be

⁵ <https://www.adb.org/site/disclosure/main>

⁶ Under current practice, all independent evaluation reports are published within 14 days of completion and circulation to Management and the Board of Directors, except for Independent Evaluation Department annual evaluation review reports, which are disclosed within 14 days of discussion by the Board of Directors.

allocated to handle the AIP. The additional resource requirements for the implementation of the AIP will be confirmed during the annual budget preparation and allocation process.

II. POLICY INTRODUCTION

13. The objective of the 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.

14. 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 ADB Management and made publicly available in accordance with ADB's normal procedures.⁷

III. POLICY PRINCIPLES AND EXCEPTIONS

A. Policy Principles

15. 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,⁸ protect personnel's right to privacy, or safeguard 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 (para. 18) or not to disclose information that it would normally disclose (para. 19).
- (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 remains the primary vehicle for proactive

⁷ The implementation arrangements for ADB policies are provided under operational procedures in ADB's *Operations Manual* (as amended from time to time).

⁸ 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.

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,⁹ 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 content 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

16. ADB discloses 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 certain types 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. 15)—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. 17. If a document or part of a document is not disclosed because it contains information that falls under one or more of the policy exceptions, ADB cites the exception(s) for nondisclosure.

17. Subject to the AIP's provision regarding the positive override (para. 18), the following categories of information or documents are not disclosed:

1. Deliberative and Decision-Making Process

Information that informs the deliberative or decision-making process of ADB is generally 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:

⁹ ADB's translation guidelines allow 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.

- (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 between Board members, directors' advisors, members of Management, ADB staff, and ADB consultants 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 approaches that led to such decisions because stakeholders need to freely present and debate such ideas, views, and approaches.
- (ii) Proceedings of the Board of Directors,¹⁰ except for Board papers,¹¹ verbatim transcripts,¹² minutes of Board meetings,¹³ and chair's summaries of certain Board meetings,¹⁴ 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 ADB cooperates with. 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 ADB cooperates with 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 information or another party that may be affected by the disclosure of the information.

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, the term Proceedings of the Board of Directors refers to any document or information created for, or in, meetings and deliberations of the Board of Directors and Board committees, and comprise Board papers (the documents circulated to the Board of Directors for information, discussion, or consideration) and Board records, such as statements made or filed during Board of Directors' meetings or committee meetings, 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, Board committees, and/or offices of the executive directors, in all formats, including electronic.

¹¹ Unless restricted by policy exemptions, documents circulated to the Board of Directors for information are posted on the website upon circulation. Documents circulated to the Board for consideration are generally disclosed upon approval or endorsement by the Board.

¹² Verbatim transcripts of formal meetings of the Board of Directors may be disclosed on 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 that the Access to Information Committee determines that they do not contain or refer to any information that falls within the policy exceptions.

¹³ Minutes of each regular Board of Directors 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.

¹⁴ Chair's summaries of each Board of Directors discussion on a country partnership strategy and regional cooperation strategy, and each policy or strategy approved or endorsed by the Board at a formal Board meeting, are disclosed within 14 days of the date of their final circulation to the Board.

- (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.¹⁵
- (xii) Information provided to ADB alleging fraud, corruption, or other violation of ADB's Anticorruption Policy¹⁶ 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 investigation or the administration of justice; except, in either case, to the extent permitted by and in accordance with ADB rules. This paragraph also applies to the

¹⁵ This may include restrictions imposed by securities and banking laws, and copyright law.

¹⁶ 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).

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 rules.

7. Internal Audit Reports and Trust Fund Audit Reports¹⁷

- (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; 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)

18. ADB has the right to disclose, under exceptional circumstances, information that falls under the exceptions to disclosure 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 requires 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)

19. ADB also has 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 exercises this prerogative.

E. Historical Information

20. 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, is considered historical information. Historical proceedings of the Board of Directors are disclosable on request provided the Access to Information Committee (AIC) determines that such proceedings of the Board do not contain or refer to any information that falls within any of the policy exceptions, taking into consideration the provisions in para 17.1(ii). All other historical information is disclosable on request except for information that falls within the exceptions listed in paras. 17.2 (information provided in confidence), 17.3 (personal information), 17.5 (security and safety information), or 17.6 (legal and investigative matters), which shall remain exempt from disclosure.

¹⁷ Audit opinions and audited financial statements disclosed to the public as part of ADB's *Annual Report* are not covered by this exception.

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.

IV. INFORMATION REQUESTS AND APPEALS

A. Requests for Information

21. 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. Requests should indicate with reasonable specificity the information that is being sought to enable ADB to locate the information within a reasonable period.

22. Requests may be submitted to ADB in English or in any of the official or national languages of ADB members.¹⁹

23. ADB is not 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.

24. ADB promptly acknowledges the receipt of a request and communicates its decision on the request.²⁰ For complex requests,²¹ ADB may extend the deadline for responding to the request, provided the requester is notified and acknowledges the extension.

B. Access to Information Committee

25. The AIC is an oversight body established to interpret, monitor, and review the policy and its implementation arrangements. It will comprise senior ADB personnel nominated by the President and will 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. 28). The AIC will have the authority to (i) uphold or reverse decisions made by ADB departments and offices to deny access to information and (ii) consider requests for disclosure in the public interest of information covered by a policy exception (para. 18).

C. Appeals

26. 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. The remedy available to a requester who prevails on any appeal is limited to receiving the information requested.

¹⁹ English is used as the standard language for ADB responses to requests. Responses may be translated depending on local circumstances.

²⁰ Where ADB uses its prerogative under para. 18 (positive override) or para. 19 (negative override), ADB will communicate to the requester once a final decision has been made. The requester will be notified of any extension, as appropriate.

²¹ 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.

27. The two-stage appeals process is as follows.

1. First Stage: Access to Information Committee

28. 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 as described in para. 18 to override the policy exception(s).

2. Second Stage: Independent Appeals Panel

29. 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 has the authority to uphold or reverse the decision of the AIC. The IAP's decision is final.

30. The IAP does not have the authority to consider appeals concerning (i) decisions by the Board of Directors or the President if the appeal is based on the public interest override or (ii) decisions by the Board of Directors to use its prerogative to restrict access to information normally disclosed.

31. The IAP will comprise three external experts on access to information, independent from ADB. The ADB President appoints the IAP members with the approval of the Board of Directors.

3. Submission of Appeals and Notification of Decisions

32. 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 are not 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.

33. Requesters are 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

34. Any reference in this policy to other ADB policies includes those other policies as amended from time to time.

E. Compliance Review

35. The AIP is subject to the appeals process (paras. 26–33). The AIP is an “operational policy” within the meaning of the ADB Accountability Mechanism Policy. As such, complaints by project-affected people alleging ADB's violation of this policy in the course of the formulation,

processing, or implementation of a project can also be filed under ADB's Accountability Mechanism Policy.²²

V. POLICY MONITORING AND AMENDMENTS

36. ADB will monitor the implementation of the policy and will post annual reports 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

37. The policy will become effective on 1 January 2019 and will supersede the PCP 2011.

VII. RECOMMENDATION

38. It is recommended that the Board of Directors approve the Access to Information Policy as described in sections II-VI of this paper.

²² The Accountability Mechanism provides a forum for people who are adversely affected by ADB-assisted projects to voice and seek solutions to problems and report alleged noncompliance with ADB's operational policies and procedures. ADB. *Accountability Mechanism*. <https://www.adb.org/site/accountability-mechanism/main>