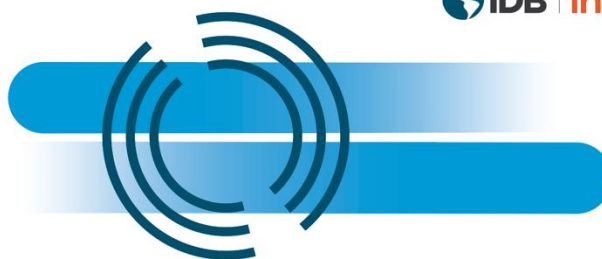


Access to information policy



Access to Information Policy Implementation Guidelines

Public Consultation Report

I. Introduction

1. The Access to Information Policy, (hereinafter the “Policy”) was adopted on April 23, 2019 by the Board of Executive Directors of IDB Invest. In order to support IDB Invest in the implementation of the Policy and aware of the importance of its application for the various interested parties, the Administration developed draft Guidelines that seek to create greater predictability regarding the main processes needed to achieve the purpose and aim of the Policy.

2. On November 4, 2019, IDB Invest launched a public consultation process to provide all stakeholders the opportunity to offer insights regarding the Access to Information Policy Implementation Guidelines (hereinafter the “Implementation Guidelines”). This report outlines the consultation process, stakeholders’ participation, and IDB Invest’s responses to stakeholders’ comments. Also, this report highlights the engagement tools and communication mechanisms used to facilitate a dialogue with stakeholders.

II. The consultation process

3. On November 4, 2019, IDB Invest [announced the consultation process](#) and invited stakeholders to review the draft Implementation Guidelines during a 30-day period. To promote the consultation, IDB Invest implemented the following dissemination activities:

- a) Creation of a [dedicated website](#), where people could access the proposed [Implementation Guidelines, the Consultation Plan](#), and submit their comments.
- b) Internal announcement within the IDB Group through email and internal digital channels.
- c) External announcement through a press release.
- c) Approximately 960 invitations were sent to a broad list of stakeholders to participate in the consultation process. This list included IDB Invest clients, private sector organizations and businesses, NGOs, government agencies, academics, community-based groups, indigenous organizations, chambers of commerce, banks, other financial intermediaries as well as all those who self-registered to the Access to Information Policy Consultation.
- d) 33 social media posts in LinkedIn, Twitter and Facebook.

III. What we heard

4. Through our consultation portal, we received three written set of comments:

- a) Regional Coalition (4 organizations).¹
- b) Accountability Project (22 organizations).²
- c) Individual submission

5. The leading topics that emerged from the comments received were:

- General Aspects and Principles
- Exceptions and Classification
- Environmental and Social Information
- Positive Override
- Requests for Information

IV. Proposed Improvements

6. IDB Invest Management is providing specific answers to the comments received from stakeholders in the public consultation process (See Annex I), as well as proposing a series of improvements and clarifications to be included in the Implementation Guidelines. These improvements mostly relate to the following topics:

- Introduction to better frame the Implementation Guidelines.
- Information related to the Request for Information system.
- Statement to request review.
- Characteristics of External Panel members.

V. Next Steps

7. IDB Invest Management will approve the Implementation Guidelines with the proposed changes in early January and will post the approved Implementation Guidelines on IDB Invest's website.

¹ The 4 organizations are the following: 1. Asociación Ambiente y Sociedad (Colombia); 2. Centro de Estudios para el Desarrollo Laboral y Agrario, CEDLA (Bolivia); 3. CONECTAS (Brasil); 4. Derecho Ambiente y Recursos Naturales, DAR (Perú).

² The 22 organizations are the following: 1. International Accountability Project (IAP), International; 2. Fundación para el Desarrollo de Políticas Sustentables (Fundeps), Argentina; 3. Comunidades Unidas, Colombia; 4. Acción Ciudadana, Guatemala; 5. Ecoa – Ecologia e Ação, Brazil; 6. Iniciativa para las Inversiones Sustentables China-América Latina (IISCAL); 7. Fundación Ambiente y Recursos Naturales (FARN), Argentina; 8. Derecho, Ambiente y Recursos Naturales (DAR), Perú; 9. Gender Action, USA; 10. Asociación Ambiente y Sociedad, Colombia; 11. Centro de Incidencia Ambiental, Panamá; 12. Project on Organizing, Development, Education and Research (PODER), Regional; 13. Accountability Counsel, USA; 14. Coalición Regional por la Transparencia y la Participación, Regional; 15. Fundación CAUCE, Cultura Ambiental - Causa Ecologista, Argentina; 16. Fundación Cambio Democrático, Argentina; 17. Sociedad y Discapacidad - Sodis, Perú; 18. Asociación Unión de Talleres 11 de Septiembre, Bolivia; 19. Fundación Tierra Viva, Honduras; 20. Both ENDS, The Netherlands; 21. Bank Information Center (BIC), USA; 22. Center for International Environmental Law (CIEL), USA.

ANNEX I - SUMMARY OF PUBLIC COMMENTS

Issues raised by stakeholders	IDB Invest response to stakeholders' comments
General aspects and Principles	
A section should be added in the beginning of the Implementation Guidelines explaining the significance of framing the Policy as one that recognizes access to information as a fundamental human right, the importance and interpretation of the principles in relation to the implementation of the Policy, and the purpose of the Implementation Guidelines themselves.	The Access to Information Policy incorporates many of the standards developed both nationally and internationally on access to information. In addition, paragraph number 3 of the Policy recognizes the solid developments made in recent years to advance the recognition and exercise of the right to access information as a fundamental human right. An introduction has been added to the Guidelines to address this comment.
It is essential that the Implementation Guidelines ensures not only the rights of IDB Invest clients, but also the human rights of those affected communities by projects.	The Access to Information Policy established that, as part of the process of managing the risks and impacts of the investment projects, IDB Invest's clients engage with communities affected by their projects, including through the disclosure of information, in a manner that is consistent with IIC Environmental and Social Sustainability Policy.
Paragraph 53: Please take into consideration including the possibility to "update information", as feature of the Information Management System.	The system can update information. Furthermore, a functionality for automatic disclosure is under development and should be available in the first quarter of 2020.
Exceptions and Classification	
To comply with the human right to information, IDB Invest needs to apply the three-part test in case it considers that any information could potentially be classified as secret.	A harm test underlies all the Policy exceptions (ex-ante). Paragraph 11 of the Policy notes that the exceptions are based on a determination that certain categories of information will not be accessible because IDB Invest has determined that the potential harm caused by such disclosure outweighs the benefits deriving from accessibility.
We continue to recommend that IDB Invest documents respect, protect and fulfil the right to information as a human right and refrain from treating it as a privilege of the institution and, sometimes, even a privilege of its clients.	The Access to Information Policy incorporates many of the standards developed both nationally and internationally on access to information. In addition, paragraph number 3 of the Policy recognizes the solid developments made in recent years to advance the recognition and exercise of the right to access information as a fundamental human right. An introduction has been added to the Guidelines to address this comment.

<p>Commercially Sensitive Information: the exception still contains vague and broad language.</p>	<p>The Implementation Guidelines are based on the provisions of the Access to Information Policy approved by the IDB Board of Directors. Based on the Policy, IDB Invest will analyze the application of the exceptions on a case-by-case basis. Policy principles will be taken into account in the application of the Policy exceptions.</p>
<p>Financial Information: The Implementation Guidelines should confirm and provide explicit examples and guidance for instances where human and environmental rights concerns could legitimately trump financial and commercial information.</p>	<p>As stated above, based on the Policy, IDB Invest will analyze the application of the exceptions on a case-by-case basis. Policy principles will be taken into account in the application of the Policy exceptions.</p>
<p>Deliberative Information: IDB Invest should follow the lead of other international institutions demonstrating that meetings of public organization themselves should be public, and not only their minutes.</p>	<p>IDB Invest supports the private sector and state-owned enterprises that do not have a sovereign guarantee. In this regard, based on a business approach, IDB Invest seeks to preserve the trust of its clients and to safeguard a space for reflection and discussion free of public scrutiny. Under the Policy, IDB Invest makes public the final decision, results, and agreements that emerge from deliberative processes.</p>
<p>Legal, Disciplinary, or Investigative Matters: as a public institution, the Bank must publicly inform and recognize when the result of the proceedings shows that the institution and/or its staff have violated or witnessed violations of human and environmental rights.</p>	<p>The Policy of the Independent Consultation and Investigation Mechanism provides that after the Board of Executive Directors considers a Compliance Review Report, which includes the findings of a MICI-established panel of experts as to whether (and if so, how and why) an action or omission by IDB Invest relating to an IIC-Financed Operation resulted in the failure to comply with the Environmental and Social Sustainability Policy or the Access to Information Policy, the report, and Management's and the Requesters' responses will be published on the Public Registry and the final decision by the Board of Executive Directors recorded.</p>
<p>Communication of Executive Directors' Offices: Agendas of Executive Directors and Bank management should be made public and transparent so as to build public trust and guarantee no preferential treatment in relation to clients or States vis-a-vis communities or civil society organizations advocating for human and environmental rights in specific investments or in relation to specific policies.</p>	<p>Based on the Policy, under exception on the Communication of Executive Directors' Offices, the Agendas of Executive Directors are considered confidential information.</p>
<p>Security and Safety: IDB Invest should define what is information that "could endanger the national security of a member country"; or "could endanger the life, health or safety of any individual or the environment if disclosed".</p>	<p>Based on the Policy, IDB Invest will analyze the application of the exceptions on a case-by-case basis.</p>

<p>Personal Information: Selection and appointment process of people that will work for and/or receive income from a public institution should be completely transparent and justified.</p>	<p>Based on the Policy (paragraph 28): “IDB Invest discloses information on its organizational structure, the names, contact information, and hierarchical positions of all its personnel. It also makes available to the public general information on IDB Invest salary structure and the benefits received by staff members, as well as the description of announced employment vacancies for which external candidates are eligible”. However, under paragraph 58 ii) of the Policy it is considered confidential: “information relating to personnel appointments and selection processes, internal conflict resolution mechanisms, and investigations of allegations of staff misconduct”. As stated above, the Policy was approved by IDB Invest Board of Executive Directors and cannot be modified by implementations guidelines.</p>
<p>Personal Information: Please take into consideration the possibility to disclosing the conflict resolution policies.</p>	<p>The information related to the IDB Invest conflict resolution policies can be found in the following links: https://www.iadb.org/en/about-us/mediation-secretary https://www.iadb.org/en/administrative-tribunal/administrative-tribunal</p>
<p>Paragraph 57 (Classification of client’s Information): Includes a vague language, which is contradictory with the principle of Maximum Disclosure. This provision does not provide adequate clarity with respect to the classification criteria for confidential information.</p>	<p>The Implementation Guidelines are based on the Access to Information Policy approved by the IDB Board of Directors. In line with the Policy, IDB Invest will analyze the application of the exceptions on a case-by-case basis.</p>
<p>Based on the Policy exceptions, it is not clear if the IDB Invest will review the confidentiality classification assigned by the clients to their information.</p>	<p>IDB Invest is not the owner of the information of its clients. The intention of this provision is to reflect the market practice regarding the treatment of client information.</p>
<p>The Implementation Guidelines should include clear criteria to determine what type of information is confidential and that such decision does not fall on a single instance. Therefore, it is recommended to create an information evaluation mechanism integrated by clients and independent third parties.</p>	<p>The Administration Committee will approve and update each department’s Classification Instructions, which instruct Employees on how to Classify Information created or received according to the Policy.</p>

Environmental and Social Information

The proposed Guidelines should recommend that IDB Invest staff clearly outline the applicable safeguards and identify which environmental and social documents were mandated to be produced for the project in question, including Environmental and Social Action Plans (ESAPs) and stakeholder engagement plans. In this regard, at the bare minimum, the Guidelines should provide examples for when an update would be necessitated - for example, when the status of a project changes, or when the nature of the project is adjusted – in order to ensure that communities and the public at large remain informed.

Under the Policy, IDB Invest will provide information to the public with the aim of strengthening engagement with stakeholders. However, stakeholder engagement is not done by IDB Invest directly but by the client, following the standards and provisions established in the IIC Environmental and Social Sustainability Policy, which includes the IFC Performance Standards on Environmental and Social Sustainability (PS) and other relevant regulations and standards followed by multilateral development banks. The IIC Environmental and Social Sustainability Policy is informed by the IDB Invest Environmental and Social Guidance Document (the “E&S Guidance Document”), also available on IDB Invest’s website.

Paragraph 86 of the Implementation Guidelines establishes another vaguely worded exception to disclosure and further limits disclosure of information that is unquestionably of public interest.

Paragraph 86 of the Implementation Guidelines does not limit the Environmental and Social information that IDB Invest routinely makes available in accordance with the Policy, which are listed in paragraphs 31, 32, 33, 34, 44 and 46 of such Policy. However, IDB Invest is not the owner of the information of its clients. For this reason, paragraph 86 of the Implementation Guidelines provides examples of the type of information that could be deemed confidential within such documents. The examples included in paragraph 86 recognize that IDB Invest is not the owner of such information, and at the same time that they protect the identity and details of the beneficiaries of resettlement plans.

It is recommended that the IDB Invest disclose all the materials and information that is produced within the framework of public consultations without distinction of technical or non-technical information. Please take into account that the usefulness of this information depends on the needs of the requesters of information, affected communities and interested parties.

The documents that will be made routinely made available are listed in the Access to Information Policy paragraphs: 31, 32, 33, 34, 44 and 46 of the Access to Information Policy. In addition, regarding investments with high environmental and social risk, IDB Invest may disclose explanatory, nontechnical materials produced by the client in the context of public consultation on the projects, which have been made available to the public. Public consultation is conducted by the client who discloses all available materials. The Environmental and Social Impact Assessment (ESIA) and other environmental and social studies can be disclosed by IDB Invest on its project webpage.

Paragraph 86: This provision does not provide examples of what type of information can be confidential in an environmental impact study, including in

If the ESIA is public under the legal framework of the host country it would be made public through IDB Invest as well. Otherwise the document would

<p>which cases due diligence information could be confidential. Therefore, it is recommended to delete this provision.</p>	<p>be public with exception of any information that falls within the exceptions of the Access of Information Policy (e.g. commercially sensitive information).</p>
<p>Positive Override</p>	
<p>If IDB Invest insists on continuing to use the Positive Override test, it should at least make it clear that all human rights are legitimate rights to be considered as a part of the test.</p>	<p>Based on the Access to Information Policy approved by the Board of Directors, the positive override operates <i>“to avert serious and imminent harm to public health, security, and/or imminent and significant adverse impacts on the environment”</i>. Therefore, under the Policy, these are the interests that will be protected when applying the Positive Override.</p>
<p>Requests for Information</p>	
<p>Paragraphs 96, 97, 98 and 99 of the Implementation Guidelines make reference to “unreasonable or unsupported requests for information” - language that is not found in the Policy itself. These paragraphs give discretionary power to IDB Invest staff in determining the characteristics that fall in the realm of requests that are “unreasonable or unsupported,” language which itself is biased and prejudicial against those filing a request for information. We strongly recommend removing Paragraphs 97 through 99 and excising all language in the Implementation Guidelines which uses prejudicial and discretionary terms, including differentiating between “unreasonable and unsupported” requests and “reasonable” searches.</p>	<p>Based on the Access to Information Policy, <i>“where a request is insufficiently clear or precise to identify the information required, or is unreasonably broad, IDB Invest reserves the right to ask the requester to provide clarifications or to narrow down the scope of the request.”</i> Consistent with the Policy, paragraphs 96 through 99 of the Implementation Guidelines establish a framework to analyze such requests on case-by-case basis.</p>
<p>The proposed Transparency Hub fails to fulfil the criteria for an automated, intuitive, accessible and intelligent system. We recommend the creation of a system wherein information requests made by individuals would be automatically recorded in the system, along with the date the request was made and the date of its eventual response.</p>	<p>A system with these characteristics has already been developed and is expected to come online on January 1st, 2020, date of entrance into force of the Access to Information Policy. Information on the system has been included in paragraph 120 of the Implementation Guidelines.</p>
<p>IDB Invest should eliminate the necessity of a 5 days deadline to acknowledge the receipt of a request or an appeal.</p>	<p>The acknowledge of the receipt will provide more predictability for requesters and IDB Invest. In addition, IDB invest will have a request management system, which will provide an automatic acknowledgement of receipt.</p>
<p>In cases when the request was made by telephone, the information request should be recorded in the system by the staff member receiving the request and the protocol number should be given to the requester, along with the date when a response is due.</p>	<p>The system is set to operate in that way. Telephone requests will be inputted to the system by a Transparency Hub official and notification and response will be provided to the requester through the system. Information on the system has been included in the Implementation Guidelines.</p>

<p>The Implementation Guidelines should refute the necessity of a statement by the requesters explaining the basis for an appeal.</p>	<p>Based on international practices, with the purpose to provide predictably and to allow IDB Invest to keep a record, it will require a “brief statement” in writing explaining the basis for an appeal. In this regard, a modification will be included in this provision.</p>
<p>While it is possible that Bank staff, External Panel or the Board need more than 30 days to answer to an appeal, this should not exempt these actors to have a fixed response deadline. Otherwise, these actors could not possibly be held accountable when not answering an appeal request. We recommend that the Implementation Guidelines establish a reasonable deadline for cases when additional time is required to respond to appeal requests.</p>	<p>If it requires additional time due to the scope or complexity of the request, IDB Invest will contact the requester in writing to inform them of the delay and provide an estimated timeframe for its response. The necessity of more time to respond a request for information will be evaluated on a case-by-case basis analysis.</p>
<p>In order to safeguard the independence of the External Panel from IDB Invest Management, it is important that the selection process is made public and that their selection is solely focused on their expertise in relation to information and transparency.</p>	<p>Panel members will be selected for their recognized technical competence, integrity, independent judgment and academic and practical knowledge of thematic areas related to private sector development finance, access to information, transparency and governance, preferably in Latin America and the Caribbean. At least one Panel member will be an internationally recognized expert in Access to Information policies and issues and one Panel member will be a recognized expert in the area of private sector development finance. This provision has been added to the Implementation Guidelines.</p>
<p>If the information requested is denied or if the requester receives no response, the Bank should accept an appeal also made by telephone call, which should also be recorded on the Transparency Hub while providing the requesters with a protocol number and a deadline for response.</p>	<p>Based on international practices, with the purpose to provide predictably and to ensure legal certainty, IDB Invest will require a “brief statement” in writing explaining the general basis for an appeal.</p>
<p>We recommend that IDB Invest respond to any request in the same language in which it was received and provide all facilities for applicants and affected communities to have the information translated in cases where the language is different.</p>	<p>IDB Invest will make its best efforts to respond any request in the same language in which it was received. Based on the Policy, as a general rule, requests for information may be submitted in any of the four official languages of IDB Invest. The requested information will be provided in the language in which it is available.</p>
<p>IDB Invest must bear the costs of information requests. Many communities have difficulties in accessing information, therefore, adding economic costs can create a barrier in the processes of requesting information but, also in the processes of consultation and participation in the framework of project development.</p>	<p>Based on the Access Information Policy, IDB Invest Information is made available in digital form free of charge on IDB Invest’s corporate website. The Policy includes the possibility of charging reasonable fees for the cost of producing and sending copies to requesters only in cases where digital disclosure is not possible.</p>

IDB Invest should incorporate a provision oriented to consider create, develop and collect new information to the extent that is relevant for requesters of information, affected communities or any interested party.

IDB Invest will respond requests based on case-by-case analysis and taking into consideration their complexity. Through the system, IDB Invest will be capable of analyzing the types of requests and expand the scope of information as deemed necessary.