

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 April 2020

Public Authority: Department for International Development
Address: 22 Whitehall
London
SW1A 2EG

Decision (including any steps ordered)

1. The complainant submitted a request to the Department for International Development (DFID) concerning an evaluation report into the Preventing Maternal Deaths Programme. The report itself was published but a number of detailed country policy analyses were not. The complainant sought a copies of these documents. DFID withheld this information on the basis of the following exemptions within FOIA: section 27(1)(a), (b), (c) and (d) (international relations), section 38(1)(a) and (b) (health and safety), section 40(2) (personal information) and section 43(2) (commercial interests).
2. The Commissioner has concluded that the withheld information is exempt from disclosure on the basis of sections 27(1)(c) and (d) of FOIA and that in all the circumstances of the request the public interest favours maintaining the exemptions.

Background

3. The requests which are the focus of this complaint concern DFID's Preventing Maternal Deaths Programme (PMDUP). PMDUP and Preventing Maternal Death (PMD), combined were 7.25 year programmes involving 20 countries. They delivered Sexual and Reproductive Health (SRH) services as well as undertaking policy and training work to contribute to a more enabling environment for the provision of comprehensive and sustainable SRH services including safe abortion. The programme was managed by DFID and implemented by Marie Stopes International (MSI) and Ipas.

4. An external evaluation of PMDUP was commissioned by DFID covering the period 2011-2016. It was conducted by Eva PMDUP, a consortium led by the London School of Hygiene and Tropical Medicine (LSHTM), and comprising the Population Council, Guttmacher Institute and Hyderus. DFID published the evaluation report in May 2018¹ which drew on, amongst other sources, the country analysis papers which are the focus of the request.
5. The evaluation report includes the following reasons why the country reports were not published:

'The evidence generated by Eva-PMDUP will be useful to a variety of audiences including policy makers, health system officials, researchers, policy institutes and civil society. Disseminating the findings to these audiences was central to the Eva-PMDUP plan. However, the dissemination was, in the end, more limited than either the evaluators or their communications consultants had wanted or had thought necessary to fulfil the original goals of the evaluation project. The constraints arose towards the end of the programme because both DFID and the implementers were worried that the data would be either misunderstood or deliberately misconstrued by groups with an ideological opposition to abortion and by other donors, especially the United States. The implementers were worried that the data might be used maliciously to limit future funding of projects designed to reduce maternal deaths from unsafe pregnancies. The implementers were also worried that any discussion at all of many of the projects within PMDUP might endanger their staff in country.'

Request and response

6. The complainant submitted the following request to DFID on 2 August 2019:

*'Under the terms of the Freedom of Information Act I request the information referred to in the quote indicated in bold: 'Many other findings, however, remain unpublished. The final evaluation report, published nearly 18 months after its first submission, contains only a condensed summary of evaluation findings, while **DFID annexed the detailed country policy analyses reports into sections that will remain internal**' -quote from an article in the Lancet published in*

¹ http://iati.dfid.gov.uk/iati_documents/33882711.pdf

March 2019 entitled 'When ethics and politics collide in donor-funded global health research' by K Storeng.

Please provide the information in the form of an email.'

7. And on 25 August 2019 he submitted the following request:

'Under the terms of the Freedom of Information Act I request the detailed country policy analyses pertaining to the Effectiveness Evaluation of the Prevention of Maternal Deaths from Unwanted Pregnancy Programme referred to in Written Parliamentary Question Number 266640 on June 19th 2019.

Please provide the information in the form of an email.'

8. DFID responded on 24 September 2019 and confirmed that it held the information falling within the scope of the requests. However, it explained that it considered this information to be exempt from disclosure on the basis of the following exemptions within FOIA: sections 27(1)(a), (b), (c) and (d) (international relations), section 38(1)(a) and (b) (health and safety), section 40(2) (personal information) and section 43(2) (commercial interests).
9. The complainant contacted DFID on 25 September 2019 in order to ask for an internal review of this refusal.
10. DFID informed him of the outcome of the internal review on 20 October 2019 and concluded that the exemptions cited in the refusal notice had all been correctly applied.

Scope of the case

11. The complainant contacted the Commissioner on 7 November 2019 in order to complain about DFID's refusal to provide him with the information he had requested.
12. Although the complainant submitted two requests to DFID they were for the same information. The information which DFID holds falling within the scope of these requests consists of seven country analysis papers.
13. DFID's position is that all of this information is exempt from disclosure on the basis of sections 27(1)(c) and (d) of FOIA. It also considers significant parts of the information to be exempt from disclosure on the basis of sections 27(1)(a) and (b) and that sections 38(1), 40(2) and 43(2) also apply to other parts of the information.

Reasons for decision

Sections 27(1)(c) and (d) – international relations

14. Sections 27(1)(c) and (d) of FOIA state that:

'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

...(c) the interests of the United Kingdom abroad, or

(d) the promotion or protection by the United Kingdom of its interests abroad'

DFID's position

15. DFID argued that it was in the interests of both it and other government departments to be able to plan and deliver programme activity which supports the UK policy position on reproductive, maternal, newborn, child and adolescent health, including the reduction of maternal deaths and objectives of PMD and other current and future programmes.
16. DFID argued that in its judgment, disclosure of the requested information would be likely to prejudice UK interests and the ability to implement the UK policy position and jeopardise its work in this area, in a way which would be detrimental to the UK government's long-standing policy position.
17. In support of this position, DFID explained that in countries where it supports Sexual and Reproductive Health and Rights (SRHR), there are varying legal and policy frameworks for safe abortion, and varying social attitudes. DFID explained that the UK supports a range of activities depending on the context, always in line with local law. DFID explained that the inclusion of CAC (comprehensive abortion care) and PAC (post-abortion care), where legal, in its family planning and comprehensive reproductive health care policy and programme work is a sensitive issue in certain countries. It explained that given the heightened sensitivity of the topic DFID considered it necessary to manage the disclosure of information on this work carefully, in order to keep staff safe, manage relationships with its partner countries and support its policy objectives over the long term.
18. In order to emphasise the sensitivity of work in this area, DFID noted the conditions within many of the countries, and the activities of groups and organisations opposed to family planning and safe abortion mean that in many cases its implementing partners operate at risk. These risks include the potential for their entire services and operations to be curtailed or closed (leading to lack of programme delivery contrary to

DFID's policy intentions) and also to personal risk to members of staff and their operational partners in some circumstances..

19. With regard to content of the withheld information itself, DFID explained that the reports were commissioned as part of a suite of background papers and were not intended to be published in the draft form in which it held them from the evaluation consortium. DFID explained that the reports contain quotes and anecdotal style content on the activities of partner countries, their governments and their agencies. DFID argued that disclosure of information which commented on, or revealed the views of, such partners would be likely to prejudice relations between the UK and those parties, thus undermining the ability of the UK to protect and promote its interests in this area.
20. Furthermore, DFID argued that the purpose of the published evaluation report was to detail the activities in terms of what did and did not work in relation to the Programme. In DFID's view the information contained within the withheld information on this area of activity could be deliberately misconstrued or maliciously misused in order to thwart the activities that the UK seeks to promote outside the UK contrary to UK interests. In DFID's view the withheld papers could be used in this way to counter DFID's programming activity and activities of its implementing partners (who DFID noted are still active in this area and which DFID continues to work with and are likely to do so on other subsequent programming) thus impacting its ability to save lives and reduce maternal deaths.
21. In support of its critical position of the approach taken in the withheld information, DFID explained that its independent Evaluation Quality Assurance and Learning Service (EQuALS) had also noted significant methodological and reporting issues with these papers and highlighted that that their robustness was severely compromised and that they should not be used or publicly disseminated by DFID.
22. Finally, in response to the complainant's argument set out in the paragraph 23 below, DFID explained that it did not agree that the researchers' views on whether their work should be published is necessarily a valid consideration on whether or not they should be disclosed under FOIA. Rather, DFID argued that for the reasons set out above disclosure would be likely to have prejudicial consequences and it was its consideration as a public authority which should hold weight and not the views of the researchers who are likely not to have the same considerations or concerns as a government department over the disclosure of the information.

The complainant's position

23. The complainant explained that the researchers involved in conducting the evaluation of the PMDUP programme had published a series of papers in which they alleged that DFID was working contrary to its own ethical research guidelines. More specifically, the complainant cited a Lancet article, in which the authors claimed that ambivalent and negative findings of DFID's work in 14 countries as part of PMDUP programme had been deliberately censored.² The complainant argued that the authors of the article were experts in their fields and were more than aware of the content of the withheld information and the confidentiality framework within which they worked and in their opinion such information could be disclosed without any of the prejudicial consequences identified by DFID to support its reliance on the various exemptions it had cited.

The Commissioner's position

24. In order for a prejudice based exemption, such as section 27(1) to be engaged the Commissioner considers that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.

² [When ethics and politics collide in donor-funded global health research](#), Katerini T Storeng, Jennifer Palmer, Lancet 2019; 394: 184–86

25. With regard to the first criterion, the Commissioner agrees that if DFID's ability to deliver its programmes concerning SRHR was undermined then this in turn would undermine the ability of the UK to protect and promote its interests in this area. The first criterion is therefore met.
26. With regard to the second criterion, given the sensitivities surrounding DFID's work in this field, and given the content of the withheld information, the Commissioner accepts that there is a causal link between disclosure of the information and prejudice occurring in the manner envisaged by DFID. In reaching this conclusion the Commissioner accepts the premise of DFID's arguments for engaging the other exemptions it has cited, namely that the content of the information would plausibly result in a variety of negative effects outlined by DFID, including making relations with partner governments and international organisations more difficult, potentially compromising the health and safety of those delivering the programmes, and also risks undermining the commercial interests of its delivery partners.
27. In turn, and with regard to the third criterion, the Commissioner considers that given the broad and cumulative outcome of such effects there is a real and significant risk to DFID's ability to effectively delivery future programmes in this area. Taking this into account the Commissioner is satisfied that DFID's concerns that the withheld information as a whole could be used deliberately misconstrued and or used maliciously to undermine the future effectiveness of programmes in this area are genuine ones. The Commissioner is therefore satisfied that there is a more than a hypothetical risk of prejudice occurring and therefore the third criterion is met.
28. Sections 27(1)(c) and (d) are therefore engaged.

Public interest test

29. However, section 27(1) is a qualified exemption and therefore subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the information

30. The complainant noted that the Lancet article cited above accused DFID of deliberately censoring their research by not allowing the withheld information to be published. More specifically, the complainant noted that the authors levelled claims of '*reputational harm*' '*undermining the research*', '*instructions to omit findings*', '*change the tenor conclusions*' and '*research obstructed*' at DFID. The complainant also noted that written Parliamentary Questions had been asked on this topic but DFID had refused to release the papers in response.
31. The complainant suggested that this implied that DFID may be withholding the information in order to avoid the publication of material that indicates an unsuccessful programme. He explained that in 2018 the ICAI, DFID's watchdog, published its assessment of work on reducing maternal deaths which was highly critical of DFID for exaggerating the number of lives saved as well as for the undue focus on family planning and abortion instead of targeting the highest causes, ie haemorrhage and infection.³
32. The complainant also emphasised the amount of funding committed by DFID to work in this area (he noted the £600m pledged by DFID at the UN in September 2019 on top of the £200m pledged last year) which meant that transparency was essential.

Public interest arguments in favour of maintaining the exemption

33. DFID argued that it was clearly in the public interest for it to be able to effectively deliver the UK's policy objectives in this area and that for the reasons outlined above it had genuine concerns that given the nature of its work and the countries in and with which it worked, it was critical that it was able to manage relationships with all such countries, whilst retaining the ability to review and evaluate the performance of its programmes within a varied and often sensitive policy context. It emphasised that releasing poorly evidenced and presented information that has not gone through its rigorous and independent quality assurance process would not be in the public interest because such information is likely to be of use to entities which seek to undermine or subvert the outcomes DFID seeks to achieve through its reproductive, maternal, newborn, child and adolescent health programming work.
34. DFID explained that its policy is to publish the final report of an evaluation on its website, as it did in this case. However, it does not

³ <https://icai.independent.gov.uk/report/maternal-health/>

always include all contributing elements of the evaluation which for a five year (first phase) programme could be considerable. In this case DFID noted that there was a considerable reference list and summaries of key contributing studies set out in the evaluation report. Furthermore, DFID explained that it had placed a large amount of information in the public domain on PMDUP including on the programme's performance over its lifetime, according to its long-standing transparency commitments. It argued as a result there is a wealth of information that the public can access on the outcome and management of the programme and other related journals and publications. DFID also explained that the withheld information was further analysed by EQuALS who determined that the relevant summary findings of the policy country analysis papers, where it was assessed as sufficiently robust, were already in the public domain in the published evaluation and academic articles and these papers would add no value if released. In view of all of this, DFID argued that disclosure of the withheld information would not add anything significant to the public's understanding of PMDUP.

35. The Commissioner specifically asked DFID to comment on the arguments identified by the complainant to support his position that the public interest favoured disclosure of the information.
36. DFID explained that the reports were commissioned by it through the Eva-PMD consortium as described above and that the researchers involved were required to comply with the ethical standards of their respective research institutes. DFID explained that it aims to increase the use and influence of its evaluation reports by ensuring they are not too long or unwieldy and as a result only publishes additional annexes where they contain additional information not covered in the main report that is necessary to aid the reader's understanding of findings in the main report. In this case, given the large scope of the evaluation which summarised many years of work there was a need for brevity.
37. DFID argued that it had ensured all findings were adequately represented in the main report, including those from the country policy analyses, and a subsequent independent review (ie by EQuALS) confirmed this was the case. DFID's argued that its approach to transparency and publication of evaluations includes the objective to ensure that evaluation reports are of a high enough quality to generate reliable results and that the findings are not misleading. DFID explained that it and its research partners in this case were also in agreement that there was a need to ensure that space was limited for the research findings to be misinterpreted. It noted that some changes were made to the published evaluation on that basis by LSHTM but not on the grounds of censorship as alleged by complainant. DFID explained in its view its treatment of the withheld information has been consistent with those

positions, the application of which pre-date the requests for information, and that these approaches are in the public interest.

38. With regard to the allegation that DFID was working contrary to its own guidelines, DFID explained that the withheld information describes the activities of the programme implementers and does not contain information as to whether DFID was working contrary to its own guidelines or its policy of operating in line with local law. Disclosure would not therefore contribute to the public's understanding of this particular allegation.
39. With regard to the allegation that it was withholding the information because it indicates an unsuccessful programme, DFID pointed to the wealth of information it had published already including six annual reports and a completion report, as well as the evaluation report and its response to it. The annual reviews show that the programme was consistently marked as A+, which according to the scoring mechanism means that its outputs 'moderately exceeded expectations'.) Furthermore, the withheld information and published evaluation contains numerous comments on positive effects of the programme, and the published evaluation provides an overall picture of performance including evidence of some negative effects. DFID therefore stated that it was not accurate to say that the withheld information contains negative findings which it did not wish to be published.
40. Finally, DFID explained that the ICAI report referred by the complainant was not a report on the PMD programme, but was instead a report on DFID's work on maternal health in general, with PMD one of the eight case studies. DFID noted that the report makes no negative assessment of the programme but does note the number of lives saved by the programme, as reported by DFID. DFID explained that it had published its response to the report, and provided ICAI with full cooperation and access to information in line with ICAI's function of assessing DFID's work. In its published response to ICAI's report, DFID accepted all recommendations, and by the time the response was published had already partially implemented two of those recommendations.

Balance of the public interest

41. The Commissioner agrees that there is significant public interest in ensuring that DFID can effectively deliver UK policy in this area. Moreover, she accepts that disclosure of the withheld information clearly represents a real threat to DFID's ability to protect and promote the UK's efforts to prevent maternal deaths in Africa and Asia.
42. Consequently, the Commissioner accepts that there is a strong public interest in maintaining the exemptions and withholding the requested information.

43. With regard to attributing weight to the public interest in favour of disclosing the withheld information, the Commissioner recognises the seriousness of the allegations made by the complainant, or more accurately made by the authors of the Lancet article he cited. It is clearly not for the Commissioner to decide whether such allegations having any merit. However, in the context of considering the balance of the public interest test she recognises that such allegations arguably add to the public interest in transparency around the evaluation of this project. Disclosure of the withheld information would allow the public to make an independent assessment of DFID's view that such information had fundamental weaknesses in it versus the allegations of the authors that such material was unnecessarily and inappropriately censored. In the Commissioner's view this argument arguably attracts further weight when one considers the significant budget that DFID committed to PMDUP.
44. That said, in the Commissioner's opinion DFID's explanation for why the country reports were not proactively published – aside from the prejudicial consequences of doing so – to be persuasive ones. That is to say, publication was not necessary given that any relevant content from the withheld information was included in the evaluation report and that to do would be contrary to the approach taken in such evaluation reports. Furthermore, the Commissioner considers it also important to recognise the amount of information in the public domain already about the programme's progress and more specifically its evaluation.
45. Finally, the Commissioner notes DFID's comments on ICAI report and accepts that its characterisation of this in respect of the PMDUP to be an accurate one.
46. Taking all of the above into account, the Commissioner has concluded that the public interest favours maintaining the exemptions contained at sections 27(1)(c) and (d). Disclosure would considerably add to the transparency and thus the public's understanding of the matters surrounding the evaluation process. However, in the Commissioner's opinion there is a greater public interest in not prejudicing DFID's to protect and promote the UK's policy in this area.
47. In light of the Commissioner's findings in relation to sections 27(1)(c) and (d) she has not considered DFID's reliance on the other exemptions it has cited.

Right of appeal

48. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

49. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
50. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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