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From: MCC FOIA <foia@mcc.gov>
Sent: Monday, November 28, 2016 1:43 PM
Subject: RE: FOIA Request
Attachments: OGC-2014-2.0 Policy on Access to MCC Materials and Information (FINAL).pdf; Copy of Revised AppendixA_summaryclearances .pdf

Flag Status: Flagged

Please be advised that the Millennium Challenge Corporation (MCC) has granted your request for information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552.

We have enclosed The MCC Policy on Access to Information and Materials and its appendix A, which are being released to you in its entirety. If you determine that the response to your FOIA request necessitates an appeal, you must initiate your appeal in writing and it must be electronically transmitted or postmarked by MCC within ninety (90) days after your receipt of this notice. Your appeal must identify the designated reference number (FOIA 17-09) and include a statement that clearly specifies why you believe an error exists. Your appeal shall be sent to the following address:

Millennium Challenge Corporation
ATTN: FOIA Appeals Officer
1099 Fourteenth Street, NW, 7th Floor
Washington, DC 20005

You may also submit an appeal to MCC's FOIA e-mail address at foia@mcc.gov. If you have any questions please feel free to contact me at foia@mcc.gov.

Thank you.

FOIA Program Officer
Acting Chief FOIA Officer

Millennium Challenge Corporation

Policy on Access to MCC Materials

OGC-2014-2.0

March 31, 2014

Submitted by:

Office of General Counsel, Policy Owner
Millennium Challenge Corporation (MCC)

875 15th Street N.W.

Washington, DC 20005



MILLENNIUM
CHALLENGE CORPORATION
UNITED STATES OF AMERICA



Index Number: OGC-2014-2.0
Approval Date: 03/31/2014

POLICY ON ACCESS TO MCC MATERIALS

ACTION:	APPROVER:	DATE:
APPROVAL:	Tom Hohenthauer, Acting VP & General Counsel	March 31, 2014

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1. PURPOSE

The Millennium Challenge Corporation (MCC) is committed to transparency in the fulfillment of its mission to reduce poverty through economic growth. Providing appropriate access to MCC materials is critical in order to meet this commitment.

This internal policy is intended to assist MCC staff in making determinations as to whether materials that are not produced primarily for public release should be distributed outside of MCC. The policy outlines the circumstances under which such materials may be distributed, and the procedures for doing so. The policy also describes materials that are sensitive or otherwise restricted and cannot be shared outside of the agency.

This policy supports MCC's commitment to transparency and a presumption in favor of openness by providing staff with clear procedures to facilitate proactive sharing of materials. This policy complements the public statement on MCC's access to information practices that can be found in the Open Government Plan.

2. SCOPE

This policy applies to materials not originally produced for the purpose of public release that are generated or received by MCC in the course of its official business.

The following issues are outside the scope of this policy:

- Decisions on publishing materials on MCC's public website or another media and directing the general public to these resources. This function is fulfilled by MCC's Open Government Plan, which is developed in accordance with the Open Government Directive issued by the Executive Office of the President on December 8, 2009, as such directive may be revised from time to time.
- Responses to Freedom of Information Act (FOIA) requests. This function is fulfilled by MCC's Regulations for Implementing the Freedom of Information Act (22 CFR Part 1304). This policy cannot expand on or contract those obligations of MCC to release materials that must be released pursuant to FOIA. The policy also cannot expand on the exemptions that permit MCC to withhold the release of certain documents requested by an outside entity. Even though certain categories of documents may be withheld pursuant to a FOIA exemption, MCC may choose to release any of those documents if MCC determines the release is in the best interests of MCC, and will not harm any Federal agency program.



- Release of materials to Congress, the Office of Inspector General and the U.S. Government Accountability Office.
- Record keeping requirements consistent with federal regulations, mandates, and directives in compliance with the Federal Records Act and governed by the National Archives & Records Administration (NARA).

3. AUTHORITIES

3.1 Millennium Challenge Act of 2003, as amended (22 U.S.C. 7701, et seq.)

3.2 5 U.S.C. 552

3.3 5 U.S.C. 552a

3.4 Executive Order 13526 – Classified National Security Information

4. RELATED MCC POLICIES AND PROCEDURES

- MCC Open Government Plan
- MCC Privacy Policy (AF-2010-7.3)
- MCC Foreign Government Information (FGI) Policy (OGC-2005-14.1)
- MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs (DCI-2007-55.2)
- MCC Regulations Implementing the Freedom of Information Act (22 CFR Part 1304)
- MCC Contracts Operating Manual (AF-2008-18.1)

5. KEY DEFINITIONS

FOIA – refers to the Freedom of Information Act, as amended (5 U.S.C. 552).

Materials– refers to any documents, reports or other materials of any media (including, but not limited to, paper, electronic, photographic, film, other images, sound recordings, videotapes and data) generated or received by MCC in the course of its official business.

MCC – refers to the Millennium Challenge Corporation.

MCC Board Materials – has the meaning given the term in Section 6.2.1 (c) of this policy.

MCC country team – refers to a group formed within MCC and assigned primary responsibility for managing the development or implementation of a compact or a threshold program.

MCC Decisional Materials – has the meaning given the term in Section 6.2.1 (b) of this policy.



MCC Due Diligence Reports – has the meaning given the term in Section 6.2.1 (a) of this policy.

MCC's FGI Policy – refers to MCC's Policy on Foreign Government Information.

MCC Senior Staff – For the purposes of this policy, a MCC management group including departmental Vice Presidents, the Chief Executive Officer (CEO), and individuals in the Office of the CEO authorized to provide approval consistent with the procedures in Section 7.

OCEO – refers to MCC's Office of the Chief Executive Officer.

OGC – refers to MCC's Office of the General Counsel.

Privacy Act – refers to the Privacy Act, as amended (5 U.S.C. 552a).

Sensitive Personally Identifiable Information (SPII) - information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Some categories of SPII are sensitive as stand-alone data elements. Examples of this type of SPII include Social Security number (SSN), passport number, or biometric identifier. Other data elements such as driver's license number, financial account number, citizenship or immigration status, or medical information, in conjunction with the identity of an individual (directly or indirectly inferred), are also SPII.

6. POLICY

6.1 Materials Not To Be Made Publicly Available

Notwithstanding any other provision of this policy, **the following materials, or materials which include the following types of information, are not to be made publicly available.**

- a. Classified National Security Information which requires protection from public release in the interest of national defense or foreign relations of the United States, in accordance with Executive Order 13526 or similar statements of executive branch policy.
- b. Materials that are restricted for use, including material covered by MCC's FGI policy and/or marked "For Official Use Only (FOUO)," "Sensitive But Unclassified (SBU)," "Controlled Unclassified Information (CUI)" or given a similar designation.
- c. Procurement-sensitive information in violation of the Federal Acquisition Regulation, MCC's Contracts Operating Manual, or MCC's Program Procurement Guidelines, including, but not limited to, information related to a specific procurement process, a



- contractor's proprietary information and personal information contained in contracts or other materials.
- d. Information obtained from a foreign government that, if disclosed, would likely damage the foreign relations of the United States or prejudice MCC's relations with that government.
 - e. Information obtained from a governmental or other entity that, if disclosed, would likely violate terms of a relevant confidentiality arrangement or prejudice MCC's relations with that entity.
 - f. Information provided to MCC by a party that, if disclosed, would likely prejudice the commercial interests, financial interests or competitive position of that party.
 - g. The source or details of any allegation of corruption and the names of persons or entities under investigation for any violation of law or policy.
 - h. Materials or information that if disclosed would likely violate applicable law, such as the Privacy Act or MCC's Privacy Policy, which prohibits the disclosure of Sensitive Personally Identifiable Information (SPII).
 - i. Information on the application, selection or hiring process of MCC staff, both past and current is generally not releasable to the public, unless required to be released by a court of competent jurisdiction or an administrative tribunal with the authority to order the release of such documents. This restriction applies to any information related to a current or former MCC employee involved in a judicial or administrative action against MCC, unless the information is otherwise publicly available.
 - j. Information which could compromise the safety and/or security of MCC staff, their families, other individuals or MCC assets covered under MCC/Security's Emergency Preparedness & Planning Portfolio umbrella. This portfolio includes Continuity of Operations Plans (COOP) for Washington, DC headquarters as well as for each overseas Resident Country Mission, the Washington, DC Occupant Emergency Plan (OEP) and the global Pandemic Influenza Plan.
 - k. Information and analysis used or produced to support the execution of MCC's internal financial or budgetary transactions or to support the preparation of internal or external financial reporting.¹ In addition, it should be noted that the Quarterly Disbursement Request Package (QDRP) is a series of documents which must be made

¹ Despite this exclusion, MCC does produce extensive external financial reporting required by all applicable laws, regulations and directives. These are described in MCC's Open Government Plan at: <http://www.mcc.gov/pages/activities/activity/open>

public by each accountable entity and is therefore outside the scope of this policy. Despite this, MCC staff are encouraged to observe the principles of discretion and coordination with both MCC team members and accountable entity counterparts prior to releasing draft versions of QDRP material.

- l. Survey data collected during the course of MCC independent evaluations which has not yet been cleared for public release by MCC's Disclosure Review Board.²
- m. Materials that are likely to increase the risk that the accountable entity (for compacts) or the government (for compacts and threshold programs) will place undue reliance on the materials and, for example, utilize the findings from such materials rather than conduct their own analysis of relevant issues in carrying out their responsibilities to ensure compact or threshold program activities are designed and implemented in a sound manner.
- n. Materials related to ongoing, pending or potential litigation, arbitration or similar proceedings involving MCC or an accountable entity.

In cases where materials contain both restricted portions that should not be released, as well as portions that are suitable for release, the restricted portions should be redacted before the release of the remainder.

6.2 Materials Which Can Only Be Released with the Approval of MCC Senior Staff

6.2.1 MCC Due Diligence Reports, MCC Decisional Materials and MCC Board Materials

These categories of documents are to be considered to be among the most sensitive of MCC materials. Consistent with MCC's general presumption of transparency, however, there may be sections of individual materials that are not sensitive and could be useful to a partner country, an MCC contractor, or to the work of another donor. Decisions whether to distribute portions of these materials outside of MCC must be made on a case-by-case basis in accordance with the procedures in Section 7.1 (a) and Section 7.1 (b) of this policy. For all of the following types of materials, this includes approval by members of MCC Senior Staff as named in Section 7.

- a. *MCC Due Diligence Reports.* For all compact and compact-eligible countries, MCC country teams produce materials that contribute to MCC's compact due diligence report (also referred to as the due diligence checklist, deal book, or due diligence

² While MCC does plan to release survey data collected during the course of independent evaluations, this must be done in accordance with legal and ethical standards regarding the protection of human subjects. For this reason, the release of survey data to the public must be done with prior approval of the MCC Disclosure Review Board.

book) prior to compact signing. In addition, due diligence activities may continue as part of implementation activities. Due diligence is also prepared as part of developing and implementing threshold programs.

Collectively, the materials that contribute to MCC's compact and threshold due diligence reports are referred to in this policy as "MCC Due Diligence Reports." MCC Due Diligence Reports contain sensitive discussions of technical, economic, social and environmental feasibility, as well as legal, implementation and sustainability issues that are used by threshold program or country teams and MCC Senior Management in making decisions.

- b. *MCC Decisional Materials.* Any materials prepared in support of MCC's deliberative and decision making process, including, but not limited to, those prepared for or by the Chief Executive Officer, Investment Management Committee (IMC), Investment Risk Committee (IRC), or department Vice Presidents (collectively referred to in this policy as "MCC Decisional Materials").
- c. *MCC Board Materials.* A final category of sensitive materials are those prepared for or by the MCC Board of Directors, collectively referred to as "MCC Board Materials." This particular category of decisional materials is distinguished from other types of materials in that they are produced specifically for the review and decision making of one or more members of MCC's Board of Directors.

6.3 Materials Which Can Be Released with Appropriate MCC Staff Approvals

These materials are not, by their nature, sensitive enough to categorically restrict their release. Therefore decisions on whether to distribute portions of these materials outside of MCC must be made on a case-by-case basis by those MCC staff members most familiar with the benefits and risks of release. The procedures for release are included in Section 7.1 (c) of this policy and are generally consistent with an approach of reasonable consultation of relevant team members and exercise of sound professional judgement.

6.3.1 Materials Paid for Using MCC Funds Granted to a Country Eligible for Compact or Threshold Program Assistance

Materials prepared directly by or for eligible countries under contracts or grants entered into by such countries, but paid for using MCC funds, are the property of the eligible country.



Nonetheless, MCC retains broad rights of use with respect to any such materials. When appropriate, these procedures are designed to encourage the disclosure of materials as this position enhances MCC's reputation for transparency and accountability.

There are, however, reasons why MCC may decide not to further distribute these types of materials. In some instances, the decision not to release may be made because to do so would likely discourage frank assessments of the relevant subject within MCC (similar to considerations regarding MCC Due Diligence Reports and MCC Decisional Materials). Materials in this category also may contain information that, if released, could jeopardize the preparer's relations with a government or another donor.

Decisions whether to distribute all or portions of particular materials in this category are to be made on a case-by-case basis in accordance with the procedures in Section 7.1 (c) of this policy.

MCC staff intending to distribute any such materials should notify appropriate counterparts or officials of the eligible country. The notification, however, should be for informational purposes only and should make clear that it does not constitute an approval right to the eligible country concerning the distribution. The notification should be made in writing, but need not be made in advance of the distribution of the materials.

6.3.2 Materials Produced Outside of MCC

Another category of materials not originally produced for the purpose of public release is that prepared by individuals or entities outside of MCC and received by MCC in the course of its official business. Examples of individuals outside of MCC may include consultants, engineers, or other providers under contracts or grants with MCC; non-governmental organizations; inter-governmental organizations; media; academic institutions; private businesses; other governments, and other U.S. government agencies.

MCC-issued contracts and assistance agreements (i.e., grants or cooperative agreements) generally provide MCC with broad rights of use with respect to any materials it receives in the course of its official business.

Decisions whether to distribute all or portions of these materials are to be treated in the same way as decisions to be made with regard to the category of materials contemplated by Section 6.3.1 of this policy, and in accordance with the procedures in Section 7.1 (c).

6.3.3 Materials Produced by MCC, other than MCC Due Diligence Reports, MCC Decisional Materials and MCC Board Materials

MCC staff produce materials that are not created primarily for public release, but are not as sensitive as MCC Due Diligence Reports, MCC Decisional Materials or MCC Board Materials. In certain cases, all or portions of such materials could be useful to a partner country, an MCC contractor or to the work of another donor. So long as these materials are not of a type the distribution of which is otherwise prohibited or restricted (e.g., materials identified in Section 6.1 and Section 6.2 of this policy), these materials may be released.

In cases where these types of materials contain both restricted portions that should not be released, as well as portions that are suitable for release, the restricted portions should be redacted before the release of the remainder. Decisions whether to distribute all or portions of these materials are to be treated in the same way as decisions to be made with regard to the category of materials contemplated by Section 6.3.1 of this policy, and in accordance with the procedures in Section 7.1 (c).

7. PROCEDURES

7.1 Approval of Release of Materials

Decisions to release materials covered by this policy can be requested by any MCC staff member and will follow the procedures outlined below (See Appendix A for a summary of approvals). **These decisions must be made with careful consideration of the types of materials which must not be made publicly available and which are described in Section 6.1 of this policy.**

- a. MCC Due Diligence Reports and MCC Decisional Materials
 - i. *Compact Program Development and Implementation.* Release of portions of MCC Due Diligence Reports and MCC Decisional Materials related to compact development or implementation shall have the approval of the Vice President for Compact Operations, with the clearance of the relevant Country Team Leader, technical expert(s),³ and OGC attorney.
 - ii. *Threshold Program Development and Implementation.* Release of portions of MCC Due Diligence Reports and MCC Decisional Materials related to a threshold program shall have the approval of the Vice President for Policy and

³ The relevant technical experts are designated by the individual providing approval. It should be noted that technical expertise is not necessarily determined by the department of the individual but rather their understanding of the issues involved. Therefore the approving official should be sure to consult, as necessary, with individuals outside of their department, to include Congressional and Public Affairs and Administration and Finance.



Evaluation, with the clearance of the Threshold Program Director, relevant technical expert(s), and OGC attorney.

- iii. *Decisional Materials NOT Related to Compact / Threshold Program.* Release of portions of MCC Decisional Materials which are not related to either compact or threshold programs shall have the approval of the Office of the Chief Executive Officer (OCEO) or the relevant Vice President if delegated in writing by the OCEO. In either case the MCC General Counsel will provide clearance.

b. MCC Board Materials

Release of any materials prepared for or by MCC's Board of Directors shall have the approval of the OCEO and the MCC General Counsel.

c. All Other Materials

Decisions to release materials which are produced or received by MCC in the course of its official business and which are NOT MCC Due Diligence Reports, MCC Decisional Materials or MCC Board Materials and NOT produced primarily for public release can be made at the country team or contract administration level. Documents produced primarily for public release should follow established clearance processes.

- i. When these "other" materials are related to a compact or threshold program this decision is by approval of the relevant Country Team Leader or Threshold Program Director, and in each case with the clearance of the relevant technical expert(s) and the OGC attorney assigned to the team.
- ii. When these "other" materials are paid for using MCC funding (regardless of the type of funds), but are not related to the development or implementation of a compact or threshold program, release shall require the approval of the relevant contracting or grant officer's representative or project monitor (as appropriate to the designation for either) with the clearance of the MCC contracting or grant officer and OGC attorney.
- iii. If the "other" materials are unrelated to any category described here and do not fall into the categories of materials that must not be made publicly available according to Section 6.1 and Section 6.2 of this policy, each individual should consider the FOIA implications discussed in Section 7.2 and exercise best judgment before releasing those materials unilaterally.

7.2 Consideration of the Provisions of FOIA in the Release of Materials

The decision whether to distribute materials is often based, in part, on the nature of the recipient to whom the materials would be released. However, it is important to note that FOIA procedures generally do not allow preferential treatment for categories of requestors. Once a distribution of materials is made to one party under this policy, it may be difficult or impossible for MCC to exercise an exemption under FOIA to later prevent release of those materials to any other party. Section 7.3 of this policy outlines conditions that may be placed on materials being released that may help to mitigate against wider distribution later. The OGC representatives providing clearance as described in this policy will be responsible for considering the following:

- a. Does the release have potential FOIA implications, especially when considering the fact that a release of materials to a third party is often regarded as disclosure of the materials to the public domain?
- b. Will the release of some materials generate additional requests for the release of some or all of redacted portions, unnecessarily increasing the burden on MCC resources associated with such requests?

Even when there may be FOIA implications, MCC may still make the determination that release is appropriate without the submission of a formal FOIA request. OGC will consult with relevant parties, including the Chief FOIA Officer or their designee, as necessary to make this determination as part of their clearance.

7.3 Conditions that May be Placed on Materials Released to a Recipient

Generally, once materials are released, MCC loses the ability to control their subsequent further distribution by the party to which the materials are first given. In those cases where it is determined that materials should be released on a limited and controlled basis, the materials released are to include a proviso limiting further distribution in the form of a legend placed on the first page (or a cover page) of each of the documents that make up the distributed materials. It is not required that the legend be included on every page of the disclosed documents.

The legend is to make clear that the distribution is intended to be limited and that no further distribution of the material is to be made without MCC's prior written consent. An example of acceptable language in this regard is:

“This information is intended for limited distribution only. This material may not be shared with any third parties, including other individuals within your organization, nor quoted, copied or reproduced, in whole or in part,



without the prior written consent of the Millennium Challenge Corporation.”

In addition, materials prepared by consultants or other providers under a contract or grant awarded by MCC (or received by MCC in the course of its official business or prepared by another U.S. Government agency for the benefit of MCC) should include an additional proviso that the analysis and conclusions contained in the materials are those of the person or entity that prepared them and not necessarily of MCC. An example of acceptable language for a legend in this regard is:

“The findings, interpretations and conclusions expressed in this material are those of the material's author, [insert consultant or relevant preparer’s name] and are not necessarily those of the Millennium Challenge Corporation.”

In cases where various materials will be shared over a period of time with the same party or where the nature of the materials is particularly sensitive, it may be appropriate to require that the recipient enter into a confidentiality agreement with MCC. OGC is to be consulted for assistance with respect to creating specific provisos or confidentiality agreements.

8. EFFECTIVENESS

This policy is effective immediately and will remain in effect with respect to any successor position or office performing the functions of its predecessor until this policy is modified, revoked or superseded.



Index Number: OGC-2014-2.0

Approval Date: 03/31/2014

APPENDIX A

APPROVAL SUMMARY FOR DISCLOSURE OF MATERIALS

Appendix A: Approval Summary for Disclosure of Materials and Information

Document Name		Dep't of Compact Operations			Dep't of Policy & Evaluation			Office of The General Counsel (OGC)		Administration and Finance	General (all departments)	Office of the CEO
		Vice President	RCD / CTL	Relevant Technical Expert(s)'	Vice President	Threshold Program Director	Relevant Technical expert(s)'	OGC Representative on Relevant Team	MCC General Counsel	Contracting Officer	Contracting Officer's Technical Representative (COR) / Project Monitor (PM)	
I.	MCC Due Diligence Reports (Section 7.1 (a) of the Policy)											
A.	Related to compact development or implementation	A	C	C			C	C				
B.	Related to threshold program			C	A	C	C	C				
II.	MCC Decisional Materials (Section 7.1 (a) of the Policy)											
A.	Related to compact development or implementation	A	C	C				C				
B.	Related to threshold program				A	C	C	C				
C.	MCC Decisional Materials not related to a compact or threshold program								C			A
III.	MCC Board Materials (Section 7.5(b) of the Policy)											
A.	Materials prepared by or for MCC's Board of Directors								C			A
III.	Other materials and information (Section 7.1 (c) of the Policy)											
A.	Related to compact development or implementation		A	C			C	C				
B.	Related to threshold program					A	C	C				
C.	Other - paid for using MCC funding, but <u>not</u> related to a compact or threshold program							C		C		A