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The Court for Administrative Affairs, Jerusalem  
AP 1106/09

Opened January 29, 2009, Normal procedure

**At the Jerusalem District Court**  
**Sitting as the Court for Administrative Affairs**

In the matter of:

1. **HaMoked: Center for the Defence of the Individual,  
founded by Dr. Lotte Salzberger**

all represented by counsel, Att. Ido Bloom (Lic. No. 44538) and/or Abeer Jubran-Daqwar (Lic. No. 44346), and/or Yotam Ben Hillel (Lic. No. 35418) and/or Hava Matras-Irron (Lic. No. 35174) and or Sigi Ben Ari (Lic. No. 37566) and/or Nirit Hayim (Lic. No. 48783) and/or Daniel Shenhar (Lic. No. 41065) and/or Leora Bechor (Lic. No. 50217)

Of HaMoked Center for the Defence of the Individual,  
founded by Dr. Lotte Salzberger  
4 Abu Obeida St., Jerusalem, 97200  
Tel: 02-6283555; Fax: 02-6276317

**The Petitioner**

v.

1. **Minister of Interior**
2. **Official in Charge of Freedom of Information at the Ministry of Interior**

represented by the Jerusalem District Attorney  
7 Mahal St., Jerusalem  
Tel: 02-5419555; Fax: 02-5419581

**The Respondents**

**Petition under the Freedom of Information Act**

A petition is hereby filed under Section 17 of the Freedom of Information Act 5757-1998 (hereinafter: **the Freedom of Information Act**). The Honorable Court is hereby requested to instruct the Respondents to respond to a request to obtain information on powers related to entry from the Gaza Strip into Israel (hereinafter: **the application**). The requested information is detailed in a letter attached to the application, which is attached hereto as Exhibit **P/1**.

**The application was sent to Respondent 2 on September 24, 2008. Its receipt was confirmed on October 5, 2008. Despite the fact that almost four months have passed since then, no response has been forthcoming, in clear violation of the law.**

## **The Facts**

### **The parties**

1. The petitioner (hereinafter also **HaMoked**) is a registered non-profit organization dedicated to promoting the human rights of residents of the Occupied Palestinian Territories (OPT). HaMoked: Center for the Defence of the Individual was established in 1988 against the background of the first intifada and has since provided assistance in tens of thousands of complaints by Palestinians. HaMoked's assistance includes contacting the authorities and taking legal action on behalf of individuals and as a public petitioner. HaMoked also issues reports, both periodic and on specific issues, as part of its public objectives and its desire to uphold the democratic value of the public's right to know.
2. Among its activities, HaMoked assists Palestinians living in the Gaza Strip in their struggle against a variety of human rights violations related to their freedom of movement. In this context, HaMoked assists Palestinians wishing to enter Israel from the Gaza Strip (or pass through it), whether for the purpose of travel to the West Bank or for travel abroad for various reasons such as medical treatment, family, employment and business, religious worship etc.
3. Under Section 3 of the Freedom of Information Act, the Respondents are entrusted with providing responses to requests pursuant to the Act.

### **The Application**

4. As aforesaid, this petition concerns information regarding powers related to entry from the Gaza Strip into Israel and the bodies to which these powers have been delegated.
5. Section 1 of the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, stipulates:  
"Commander of the Area" – for Judea and Samaria – Israel Defense Forces commander in Judea and Samaria and for the Gaza Strip – **a person authorized by the Minister of Interior with the consent of the Minister of Defense.**
6. The Entry into Israel Order (Exemption of Gaza Strip Residents) Temporary Order 5765-2005 stipulates:  
A resident of the Gaza Strip who enters Israel from the territory of the Gaza Strip pursuant to a permit, including a general permit, issued by the director of the population registry, or **an official authorized by the Minister of Interior for this purpose**, is exempt from the provision of Section 7 of the Law and from the provision of the Law regarding a visa and permit for transitional residency or visit, for as long as he meets the conditions of the permit as aforesaid;
7. In the application submitted by the Petitioner in this petition, the Respondents were requested to provide the following information:
  - A. A list of all officials and bodies so authorized by the Minister of Interior pursuant to the Entry into Israel Law (Temporary Order) 5763-2003, the date on which each of the latter was authorized and a copy of each letter of authorization given to all such officials and bodies.
  - B. A list of all officials and bodies so authorized by the Minister of Interior pursuant to the Entry into Israel Order (Exemption of Gaza Strip Residents) Temporary Order 5765-2005, the date

on which each of the latter was authorized and a copy of each letter of authorization given to all such officials and bodies.

A copy of the application dated September 24, 2008 is attached hereto as Exhibit **P/1**.

8. As known, the right to receive information is not subject to proof of the applicant's interest in the information (see Section 7(a) of the Act; see also AP (Jerusalem) 717/02 **Rabbi, Adv. Uri Regev v. Yad VaShem**, TakDC 2002(3), 6893, p. 6896; Zeev Segal, **The Right to Know in Light of the Freedom of Information Act**, p. 221). Despite this, and beyond requirement, we wish to elaborate on the clear necessity of receiving the aforesaid information.

#### **The power to permit entry from the Gaza Strip to Israel**

9. The power to permit entry from the Gaza Strip into Israel is vested in the Minister of Interior by the Entry into Israel Law 5712-1952. This power is regulated by the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003. As described by Honorable Justice Grunis in HCJ 4487/08 **Physicians for Human Rights v. IDF Commander in Gaza, GOC Southern Command** (unreported, September 4, 2008):

As we have seen, as far as the Gaza Strip is concerned, security legislation was revoked upon the withdrawal of IDF forces from the area. It follows that the commander of the area does not currently hold powers to permit exit from Gaza, including into Israel, under security legislation. The power to permit entry into the country from the Gaza Strip is vested in the Minister of Interior by the Entry Law. (§13 of the judgment).

10. Honorable Justice Grunis proceeds to state:

Following the withdrawal of IDF forces from the Gaza Strip and the termination of the military administration, the Minister of Interior exercised the power vested in him by Section 17(b) of the Entry Law and issued the Entry into Israel Order (Exemption of Gaza Strip Residents) Temporary Order 5765-2005 (hereinafter: the new order)...

It is noted that **following the issuance of this order, the Minister of Interior authorized a number of military officials in the coordination administration office at Erez Crossing to issue Gaza residents with permits to enter Israel** ("authorization to issue permits", dated June 18, 2007). (§6 of the judgment, emphasis added).

11. Another relevant statute is the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, which circumscribes the Minister of Interior's powers pursuant thereto by stipulating the following in Section 2:

The Minister of Interior shall not grant citizenship to a resident of the Area or to a citizen or resident of a country listed in the schedule in accordance to the Citizenship Law and shall not grant him a license to reside in Israel in accordance with the Entry into Israel Law; and the commander of the Area shall not grant a resident of the Area a permit to remain in Israel in accordance to security legislation in the Area.

12. Section 3b of the Law stipulates a number of exceptions to the above provision:

Notwithstanding the provisions of Section 2, **the commander of the Area** may grant a permit to remain in Israel for the purposes enumerated below:

- (1). Medical treatment;
- (2). Work in Israel;
- (3). A temporary purpose, provided that the stay permit for the aforesaid purpose is granted for a cumulative period of no longer than six months.

With respect to the Gaza Strip, the “commander of the Area” is defined in Section 1 of the Law as:

“commander of the Area” – [...] for the Gaza Strip – **a person authorized by the Minister of Interior with the consent of the Minister of Defense.**

13. Thus, in order to discern who holds the power to permit entry into Israel from the Gaza Strip, we must uncover who has been authorized by the Minister of Interior pursuant to each of the aforesaid laws; namely, who are those “military officials in the coordination administration office at Erez Crossing” (as described by Honorable Justice Grunis in the above HCJ 4487/08) or additional officials authorized under the Entry into Israel Order (Exemption of Gaza Strip Residents) Temporary Order 5765-2005; as well as who was authorized as “commander of the Area” pursuant to the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, with the consent of the Minister of Defense.
14. We emphasize that since the Rafah Crossing has been generally closed for some time, the only way to leave the Gaza Strip is through Israel. As such, those holding the power to permit entry from the Gaza Strip into Israel effectively have **almost complete control over the ability of a million and a half individuals living in the Gaza Strip to leave it** - for Jordan, the West Bank or any other place in the world. Clearly, knowing the identity of these officials who hold the key to exiting the Gaza Strip is of great importance.

#### **Submission of the application and lack of response**

15. As stated, the application was sent to Respondent 2 on September 24, 2008 along with a cheque for 86 shekels to the order of the Ministry of Interior accountant. The application is attached hereto as Exhibit P/1.
16. On October 5, 2008, Respondent 2 notified that the application had been received and was under review.  
  
A copy of the letter from Respondent 2 dated October 5, 2008 is attached hereto as Exhibit **P/2**.
17. A month thereafter, having received no further communications from the Respondents, Petitioner sent Respondent 2 a reminder in which it emphasized that under Section 7 of the Freedom of Information Act 5757-1998, the Respondent was to notify of his decision on the application within 30 days of receipt.

A copy of the reminder dated November 6, 2008 is attached hereto as Exhibit **P/3**.

18. On November 9, 2008, the Respondent briefly informed that the application “is still in processing” and that “once responses are received we will notify you promptly”, entirely ignoring the fact that the deadline stipulated in the law had long since passed.

A copy of the Respondents’ notice dated November 9, 2008 (received November 13, 2008) is attached hereto as Exhibit **P/4**.

19. Following a further month, the Respondent again briefly stated that the application “is still in processing”, now alleging this was due to “the population administration’s relocation to its new facility”.

A copy of the Respondents’ notice dated December 15, 2008 (received December 23, 2008) is attached hereto as Exhibit **P/5**.

20. **It has now been almost four months since the application was received without any pertinent response by the Respondents. There is therefore no recourse but to file this petition.**

### **The Legal Argument**

#### **The public’s right to know and to receive information from a public authority**

21. Freedom of Information is a pivotal value in a democratic country and constitutes a supreme avenue for monitoring the authorities and defending human rights.

The purpose of the Freedom of Information Act is to enable transparency with respect to the actions of public authorities and allow educated monitoring thereof. “Increased access to information will assist in promoting social values such as equality, the rule of law and respect for human rights. It will also allow the public to better monitor government activities.” (Freedom of Information Bill, 5756-1996). (AP (Jerusalem) 717/02 **Regev v. Yad VaShem**, TakDC 2002(3), 6893, p. 6896) (2002)).

22. In AAA 9135/03 **Council for Higher Education v. HaAretz Newspaper Publishing**, TakSC 2006(1) 697, 704 (2007), the Court stated:

True to the purposes that the Freedom of Information Act is designed to fulfill, the Act begins with a broad and general declaration about the existence of a right to receive information from public authorities by stating in Section 1: every Israeli citizen or resident has a right to receive information from a public authority pursuant to this Act. In his book “The Public’s Right to Know in Light of the Freedom of Information Act”, Prof. Segal notes that this section is the linchpin of the entire law. It is the cornerstone of the legal right to receive information from public authorities”.

23. The Petitioner seeks to obtain information that directly impacts the rights of some million and a half individuals living in the Gaza Strip. The Freedom of Information Act does allow a public authority to reject a request for information. However, this can be done for specific reasons which, (at least at face value), do not exist in the case at hand (see Sections 8 and 9 of the Act). The Respondents have made no claim that the application must be rejected (as noted, the Petitioner received no pertinent response to its request). Therefore, the Petitioner reserves the right to address any argument first raised, if indeed they are raised, by the Respondents following submission of this petition.

**The Interior Ministry's conduct is a flagrant breach of the Act**

24. As known, the Act instructs the authority to notify an applicant of its decision on the application without delay and within a maximum period of **30 days**. The Respondents did not meet this obligation. The authority may extend this period by a further 30 days **providing detailed reasons** for the extension (Section 7(b) of the Act). The Respondents did not extend the period pursuant to this provision, and even if they had done so, this additional period has also passed.
25. The application which is the subject matter of this petition was sent on September 24, 2008 and received on October 5, 2008, close to four months ago, and still, the Petitioner has received no response.

**In light of the foregoing, the Honorable Court is requested to instruct the Respondents to respond to the Petitioners' application and provide it with the requisite information in its entirety. The Honorable Court is also requested to instruct the Respondents to pay the Petitioner's legal fees.**

[signed]

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Ido Bloom, Adv.  
Counsel for the petitioner

January 29, 2009

[File 37230]