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The Jerusalem District Court
Sitting as the Court for Administrative Affairs

In the matter of:

**HaMoked: Center for the Defence of the Individual
founded by Dr. Lotte Salzberger - registered non
profit organization**

Represented by attorneys Ido Blum (lic. no. 44538)
and/or Abir Joubran-Dekoar (lic. No. 44346) and/or
Yotam Ben Hillel (lic. No. 35418) and/or Hava Matras-
Iron (lic. no 35174) and/or Sigi Ben-Ari (lic. no. 37566)
and/or Nirit Heim (lic. no, 48782) and/or Daniel
Shenhar (lic. no. 41065)

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

The Petitioners

- Versus -

1. **Minister of the Interior**
2. **Overseer of the Freedom of Information Law at the
Ministry of the Interior**

Represented by the Jerusalem District Attorneys
7 Mahal Street, Jerusalem , 91010
Tel: 02-5419555; Fax: 02-5419581

The Respondents

Petition under the Freedom of Information Law

A petition is hereby filed under section 17 of the Freedom of Information Law, 5758-1998 (hereinafter: the “**Freedom of Information Law**”). The honorable court is requested to order the respondents to reply to this application, which is concerned with the receipt of information on the subject of the authority with regard to entering

Israel from the Gaza Strip (hereinafter: the “**application**”). A detailed list of the requested material may be found in a letter, which is attached to the application, and which is also attached here marked **p/1**.

The Request was transferred to respondent 2 on 24 September 2008, and it was reported that it was received on 5 October 2008. Although almost four months have elapsed, the request has not yet been answered, in clear violation of the law.

The Factual Basis

The parties

1. The petitioner (hereinafter also: “**HaMoked: Center for the Defence of the Individual**” or “**HaMoked**”) is a registered non profit organization, which works for the advancement of human rights of residents of the Occupied Territories. HaMoked: Center for the Defence of the Individual was established in 1988, against the backdrop of the events of the first Intifada, and ever since, and until today it has handled tens of thousands of applications, through making applications to the State Authorities and through legal action, whether by representing others or whether as a public petitioner. Likewise HaMoked is involved with publishing periodical reports and subject reports, as part and parcel of its public purpose, and its desire to realize the democratic principle of the right of the public to know.
2. Among other things, HaMoked assists Palestinians living in the Gaza Strip to fight against a whole range of violations of human rights, which pertain to their freedom of movement. HaMoked handles, in this context, Palestinians who seek to enter (or pass through) Israel from the Gaza Strip – whether for the purpose of passage to the West Bank or whether to go abroad from there – for various reasons, such as receiving medical care, maintaining the family life, work and livelihood, fulfilling a religious ordinance or ritual, etc.
3. The respondents are responsible under section 3 of the Freedom of Information Law to grant a solution to their problems in accordance with the Law.

The subject matter of the application

4. This petition is concerned, as aforementioned, with receiving information with regard to the authority with respect to entering Israel from the Gaza Strip, as well as the persons to whom this authority has been delegated.
5. The Citizenship and Entry into Israel Law (Temporary Order), 5763-2003 establishes in section 1 that:

“Area Commander” – with regard to Judea and Samaria – commander of the Israel Defence Forces in Judea and Samaria, and with regard to the Gaza Strip – **someone who the Minister of the Interior shall authorize, with the consent of the Minister of Defence.**
6. The Entry into Israel Order (Exemption for Residents of the Gaza Strip) (Temporary Order) 5765-2005, determines that:

A resident of the Gaza Strip who enters Israel from the territory of the Gaza Strip by virtue of a permit, including a general permit, which was granted by the director of the population administration or by **someone authorized by the Minister of the Interior**, is exempt from the provisions of section 7 of the Law and from the provisions of the Law with respect to a visa and transit or visitor's permit, so long as he fulfils the conditions of the aforementioned permit;

7. In the petitioner's application, which forms the subject of this petition, the respondents were requested to supply the following information:
 - a. A list of all the officials, persons and bodies which, as stated were authorized by the Minister of the Interior pursuant to the Citizenship and Entry into Israel Law (Temporary Order), 5763-2003, the date on which each one of them was authorized, as well as a copy of all the letters of authorization which were issued to each of these officials, persons and bodies.
 - b. A list of all the officials, persons and bodies which, as stated were authorized by the Minister of the Interior pursuant to the Entry into Israel Order (Exemption for Residents of the Gaza Strip) (Temporary Order) 5765-2005, the date on which each one of them was authorized as well as a copy of all the letters of authorization which were issued to each of these officials, persons and bodies.

A copy of the application dated 24 September, 2008 is attached and marked **p/1**.

8. As is well known, the right to receive information is not dependent on the applicant proving his interest in the information (see section 7 (a) of the Law as well as Adm.Pet (Jerusalem) 717/02 **Rabbi Adv. Uri Regev v. Yad Vashem**, *Takdin Mehozi* 2002(3), 6893, 6896; Ze'ev Segal, *The Right to Know in light of the Freedom of Information Law*, 221). Nonetheless, and over and above what is required, we wish to elucidate somewhat the very clear importance in receiving the aforementioned information.

The authority to permit entry into Israel from the Gaza Strip

9. The authority to permit entry from the Gaza Strip into Israel belongs to the Minister of the Interior, according to the Entry into Israel Law, 5712-1952, and is regulated by the Entry into Israel Law (Temporary Order), 5763-2003. As this has been described by the honorable Justice Grunis in H CJ 4487/08 **Physicians for Human Rights Organization v. Commander of the IDF Forces in Gaza and the GOC Southern Command** (unreported, 4 September, 2008):

As we have seen, the security legislation was repealed in everything that involved the Gaza Strip upon the exit of the IDF Forces from there. From here we see that with regards to the Gaza Strip the Area Commander currently has no authority, by virtue of the security

legislation, to permit exit from Gaza, including an exit in the direction of Israel. The authority to permit an entry permit to Israel from the Gaza Strip is placed in the hands of the Minister of the Interior under the Entry Law (paragraph 13 of the judgment).

10. Further on the honorable Justice Grunis adds that:

Following the exit of the IDF Forces from the Gaza Strip and the termination of the military administration, the Minister of the Interior made use of the authority vested in him under section 17(b) of the Entry Law and instituted the Entry into Israel Order (exemption for the Residents of the Gaza Strip) (Temporary Order) 5765-2005 (hereinafter – the “**New Order**”)...

It should be noted that **after giving this Order, the Minister of the Interior authorized a number of army personnel who work in the Civil Liaison Administration at the Erez Crossing to grant a permit to the residents of the Gaza Strip for the sake of entry into Israel** (“consent to grant a permit” dated 18 June, 2007) (paragraph 6 of the judgment. Emphasis added).

11. Another Law pertaining to our case is the Citizenship and Entry into Israel Law (Temporary Order), 5763-2003, which limits the authority of the Minister of the Interior under the aforementioned Entry into Israel Law when it establishes in section 2 that:

The Minister of the Interior shall not grant a resident of the Area or a citizen or a resident of the State who is listed in the Citizenship Annexure of the Citizenship Law and he shall not give an Israeli residence permit under the Entry into Israel Law and the Area Commander shall not give a resident of the Area a permit of stay in Israel under the security legislation of the Area.

12. Some exceptions to this provision were established, which are defined in section 3B of the Law as follows:

Notwithstanding the provisions of section 2, the **Area Commander** may give a permit of stay in Israel for purposes that are listed below:

- (1) Medical care;
- (2) Work in Israel;

- (3) For a temporary purpose, and provided that the permit of stay for the aforementioned purpose shall be given for a cumulative that does not exceed six months.

For everything pertaining to the Gaza Strip, an “area commander” is defined in section 1 of the Law as follows:

“Area Commander” – (...) with regard to the Gaza Strip – **someone who the Minister of the Interior authorized; with the consent of the Minister of the Interior.**

13. Therefore in order to know into whose hands the authority to allow entry into Israel from the Gaza Strip has been placed, we need to know who was authorized by the Minister of the Interior pursuant to each one of the two aforementioned Law – namely who are those “military personnel who work in the Civil Liaison Administration at the Erez Crossing” (per the dicta of the honorable Justice Grunis in H CJ 4487/08 above) or any additional persons who were authorized pursuant to the Entry into Israel Order (Exemption for Residents of the Gaza Strip) (Temporary Order) 5765-2005; and who was authorized as an “Area commander” pursuant to the Citizenship and Entry into Israel Law (Temporary Order), 5763-2003 with the consent of the Minister of the Interior.
14. It should be emphasized that since the Rafah Crossing has for a considerable period, been completely sealed, the only way of leaving the Gaza Strip is via Israel, and therefore those authorized to permit the entry from the Gaza Strip into Israel are in practice **those who have almost complete control over the options of a million and a half human beings who live in the Gaza Strip to leave it** – for Jordan, the West Bank, or any other place in the world. Quite obviously the knowledge of the identity of those persons, in whose hands the key to the exit from Gaza has currently been placed, is of immense importance.

Filing the application and non replying to an application

15. As stated on 24 September, 2008 the application was sent to respondent 2, attaching a check in the sum of NIS 86 for deposit by the Ministry of the Interior’s comptroller. The application is attached to this petition as appendix **p/1.**
16. On 5 October, 2008 respondent 2 announced that the application had been received and was being examined
- A copy of respondent 2’s letter dated 5 October, 2008 is attached and marked **p/2.**
17. After not receiving any additional replies from the respondents, the petitioner waited for a full month before sending a letter of reminder to respondent 2, while emphasizing that under section 7 of the Freedom of Information Law,

5758-1998 it was incumbent upon the respondent to announce its decision with regard to the application within 30 days from its receipt.

A copy of the reminder dated 6 November, 2008 is attached and marked **p/3**.

18. On 9 November, 2008 the respondent briefly announced that the application “is still being handled” and that “when the replies are received we will notify you as soon as possible” – while completely disregarding the fact that the date prescribed by Law had already passed.

A copy of the respondent’s notice dated 9 November, 2008 (which was received on 13 November, 2008) is attached and marked **p/4**.

19. After more than another month had passed the respondent again briefly announced that the application was “still being handled”, this time, so he claimed “because of the population administration’s move to its new premises”.

A copy of the respondent’s notice dated 15 December, 2008 (received on 23 December, 2008) is attached and marked **p/5**.

20. **And alas, almost four months from the day of receiving the application, it did not merit any substantive reference whatsoever on the part of the respondent. There is therefore no escape but to file this petition.**

The Legal Argumentation

The right of the public to know, and to receive information from a public authority

21. Freedom of information is one of the central principles of a democratic State, and constitutes a primary source for overseeing the Government Authorities and for protecting human rights.

The purpose of the Freedom of Information Law is to enable transparency of the public authority’s activities and to enable informed control of its functioning. “Enhanced access to information will assist the promotion of social values including equality, the rule of law and respect for human rights, and will also enable the public to have better control over the government’s actions”. (Freedom of Information Bill, 5756-1996). (Adm. Pet. 717/02 **Uri Regev v. Yad Vashem**, *Takdin Mehozi* 2002(3) 6893, p. 6896 (2002)).

22. In AdmA 9135/03 **The Council of Higher Education v. Ha’aretz Newspaper Publishing Company**, *Takdin Elyon* 2006(1), 697, 704 (2007), it was stated that:

True to the purposes which the Freedom of Information Law is intended to fulfill, section 1 of the Law opens

with a general and broad declaration with respect to the existence of the right to receive information from the public authorities by establishing: every Israeli citizen or resident has the right to receive information from a public authority pursuant to the provisions of this Law. In his book *The Right to Know in Light of the Freedom of Information Law*, Professor Segal states that this section is “the key section upon which the entire Law is based. It constitutes the ‘foundation stone’ upon which the legal right to receive information from a public authority is based”.

23. The petitioner wishes to receive information which has direct ramifications for the rights of a million and a half human beings who live in the Gaza Strip. It is true that the Freedom of Information Law allows the public authority to deny an application to receive information. However, this only applies to specific grounds, which (at least *primo facie*) have not been fulfilled in our case (see sections 8 and 9 of the Law). The respondents also did not argue that the application to receive information should be dismissed (as is well known, the petitioner did not receive any substantive reply to its application). Therefore, the petitioner reserves for itself the right to address any argument that is raised, in the event that such is raised, for the first time by the respondents, after the filing of this petition.

The Ministry of the Interior’s conduct constitutes a gross violation of the Law

24. As is well known, the Law requires the Authority to notify the applicant without delay, and at most within a **30 day** period, of its decision with respect to its application. The respondents did not meet this obligation. The Authority may extend this period by another thirty days for **reasoned grounds** (section 7(b) of the Law). The respondents did not extend the period pursuant to this provision – and even if they had done so, this additional period has in any event passed.
25. The application which forms the subject of this petition was sent on 24 September, 2008 and was received on 5 October, 2008, almost four months ago, and until this day, the petitioner has not received any reply whatsoever to the application.

For all these reasons the honorable court is requested to require the respondents to reply to the petitioner’s application and to deliver to the petitioner the requested information in its entirety. In addition, the court is requested to order the respondents to pay the petitioner’s costs and legal fees.

29 January, 2009

[T.S. 37230]

(signed)

Adv. Ido Blum

Counsel for the petitioner