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At the Tel Aviv District Court
sitting as Court for Administrative Matters

AP 30640-06-25

Thursday, June 12, 2025

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Registered Association No. 580163517

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The petitioner

- V -

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The Respondent

Administrative Petition

An administrative petition is hereby submitted against the Respondent's decision dated **April 30, 2025**, partially denying the freedom of information application submitted by the Petitioner on **January 21, 2024** (hereinafter: **the Decision** and **the Application**, respectively), relying on Section 9(a)(1) of the Freedom of Information Law, 1998 (hereinafter: **the Law**).

- I. The competent panel to hear the petition is a single-judge panel, pursuant to Section 4(a) of the Courts for Administrative Affairs Law, 2000.
- II. The court fee payable for filing the petition is 2,273 NIS, according to Item 20 of the Appendix to the Courts Regulations (Fees), 2007.

III. This Honorable Court has subject-matter jurisdiction to hear the petition pursuant to the provisions of Section 17(a) of the Freedom of Information Law, 1998. This Honorable Court has territorial jurisdiction to hear the petition pursuant to Regulation 2(c) of the Courts for Administrative Affairs Regulations (Procedures), 2000.

IV. No other action is pending in any court or tribunal concerning the same factual matter.

A. The Respondent's decision dated April 30, 2025 is attached hereto and marked as Exhibit A;

B. The freedom of information application dated January 21, 2024 is attached hereto and marked as Exhibit B.

A. The Facts

A(1) The Parties to the Petition

1. The Petitioner is a Jerusalem-based registered association that works to promote the protection of the human rights of Palestinians in the occupied territories.
 - 1.1. One of the Petitioner's main areas of activity is the protection of the basic rights of Palestinian detainees held by the State of Israel. Specifically, since the outbreak of the war, the Petitioner has devoted significant effort to tracking the location of detainees from the Gaza Strip.
 - 1.2. As part of these efforts, the Petitioner has filed dozens of habeas corpus petitions with the High Court of Justice addressing the legality of holding detainees whose place of detention has not been disclosed to their families (see, inter alia, HCJ 2254/24 **Abu Musa v. Israel Defense Forces**, May 2, 2024). The Petitioner also assists hundreds of families to trace their detained loved ones without the need for a petition.
 - 1.3. Furthermore, the Petitioner works to promote policy changes with the aim of improving the state of human rights as it relates to the detention of individuals from the Gaza Strip. The Petitioner publishes periodic and thematic reports as part of its public objectives and its efforts to implement the democratic principle of the public's right to know.
2. The Respondent is the State of Israel, specifically the Israel Defense Forces and the official responsible for the Freedom of Information Law within it.

A(2) Procedural Background

3. The Petitioner applied to the official responsible for public access to information with the Respondent on **January 21, 2024**, requesting current information regarding the facilities in which detainees from Gaza are held. The application stated as follows:

1. How many residents of the Gaza Strip have been held in facilities under the military's responsibility from October 7, 2023, until the date of response?
 - 1.1 Of these, how many are adult men, how many are adult women, how many are male minors and how many are female minors?
 - 1.2 Under what status were/are Gazans held in military facilities; how many were held under the Incarceration of Unlawful Combatants Law, 2002; how many under the Criminal Procedure (Enforcement Powers - Detention) Law, 1996; how many under the Emergency Regulations (Swords of Iron) (Custody and Removal of Illegal Aliens Who Are Gaza Strip Residents), 2023? How many under any other status? Please specify.
 - 1.3 Please specify how many detainees were transferred to IPS custody upon conclusion of detention in facilities under the military's responsibility; how many were released back to the Gaza Strip; and how many were transferred elsewhere
2. On October 8, 2023, the Sde Teiman military base was declared a detention facility.

	Have any other places been declared detention facilities since October 7, 2023? If so, which ones?
2.1	Please specify how many people were held in each of these facilities from October 7, 2023, until the date of response.
3.	In the judgment in HCJ 9733/03 HaMoked: Center for the Defence of the Individual v. State of Israel , the Court ruled that approval by a senior official is required in order to hold a person in a secret facility. Please indicate who the parties involved in the decision to hold a person in a military facility are.

4. Processing of the application was prolonged, ultimately forcing the Petitioner to file a petition for failure to respond with this Honorable Court (AP 15768-01-25), only as a result of which did the Respondents provide a response on **April 30, 2025**. In its decision, the Respondent partially granted the request, but refused to provide some of the requested information.

Below is a table summarizing key information relevant to the petition herein that the Respondent declined to provide:

Question number	Information requested but not provided	Respondent's response
1.1	How many residents of the Gaza Strip, disaggregated by age, adults vs. minors, were held in detention facilities under the responsibility of the military from October 7, 2023, until the date of response?	"Given the directive of security officials, the figures cannot be provided disaggregated by age, adults vs. minors. In light of the above, the request is rejected pursuant to Section 9(a)(1) of the Law.
1.2	Under what status were/are Gazans held in military facilities; how many were held under the Incarceration of Unlawful Combatants Law, 2002; how many under the Criminal Procedure (Enforcement Powers - Detention) Law, 1996; how many under the Emergency Regulations (Swords of Iron) (Custody and Removal of Illegal Aliens Who Are Gaza Strip Residents), 2023? How many under any other status?	"In light of information security guidelines, it is not possible to disclose the reason for the incarceration of all detainees. In light of the above, the request is rejected pursuant to Section 9(a)(1) of the Law.
2.1	How many people were held in each of the detention facilities [such as Sde Teiman] from October 7, 2023, until the date of the response?	"In light of information security guidelines, it is not possible to provide disaggregation by facility. In light of the above, your request on this matter is rejected pursuant to Section 9(a)(1) of the Law.

5. Hence this petition.

B. Grounds for the Petition

B(1) Section 9(a)(1) is not a magic incantation, and the Respondent has not established its applicability

6. The Respondent's refusal to provide the requested information, detailed in the table above, relies entirely on Section 9(a)(1) of the Freedom of Information Law, which stipulates that "**a public authority shall not provide information that is one of the following [...] information the**

disclosure of which presents concern over potential harm to national security, foreign relations, public safety or the safety or security of a person.” To invoke this section, the Respondent is required to demonstrate a substantiated “concern,” meaning an assessment of the likelihood of harm to protected interests, namely, national security, foreign relations, public safety or the safety and security of a person [HCJ 2007/11 **Yanai Shani v. Ministry of Environmental Protection** (published in Nevo, February 5, 2012), para. 4]. The onus of proving an exception to the obligation to provide information rests with the party asserting the exception [AAA 2975/15 **Haaretz Newspaper Publishing v. Ministry of Foreign Affairs**, para. 24 (June 6, 2016)].

7. In the matter at hand, beyond the internal inconsistency in the Respondent’s refusals (addressed below), the Respondent has failed to meet the burden imposed upon it under Section 9(a)(1) of the Law.
 - 7.1. The Respondent’s conduct reflects a fundamental misunderstanding of the essence of the Freedom of Information Law. The law was not designed to create a mechanism for authorities to arbitrarily decide what information to disclose and what to withhold, but rather to ensure that public information is available to the public, subject only to clearly defined and justified exceptions. When a public authority invokes an exception, it must clearly and specifically substantiate its elements. The absence of such substantiation cannot be remedied by reference to internal guidelines or vague assertions. The Respondent is required to provide substantive and detailed reasoning, and, in its absence, the request for information under the Freedom of Information Law must be granted in full.
 - 7.2. It is evident that the Respondent’s decision was made without so much as an attempt to establish the conditions for the application of Section 9(a)(1). The Respondent does not state that the requested information could harm national security, foreign relations or public safety, but merely that the information cannot be disclosed due to the Respondent’s information security guidelines.
 - 7.3. Note well: The section provides that a state authority may refrain from providing information the disclosure of which “presents concern” over potential harm to national security or public safety. As noted above, the term “concern” does not refer to theoretical possibilities or internal guidelines, but rather to a concrete, proven, identifiable and demonstrable risk. Thus, the Respondent must demonstrate not only that a concern exists but also explain why the disclosure of the specific information requested may cause the alleged harm. In the matter at hand, the Respondent was satisfied with a generic reference to “information security guidelines,” without specifying the concrete concern or explaining how the disclosure of statistics could harm any of the interests protected by the section.
 - 7.4. The onus of proving the conditions for the exception under Section 9(a)(1) are met rests entirely with the Respondent, and it must satisfy this burden at a high evidentiary standard. The exception to the right to information does not materialize merely upon its invocation, but only after it has been fully proven. In the present case, the Respondent has not presented even a hint as to how the disclosure of the information could compromise security. It has not explained why disaggregation by age is more problematic than an aggregate number, why the legal basis for detention constitutes sensitive information, or how knowledge of the number of detainees in a known facility could harm security. This lack of explanation is not merely a procedural issue but constitutes a substantive failure to establish the basic elements of the claimed exception.
8. Moreover, the Respondent has fundamentally breached the duty to provide reasons incumbent upon it as a public authority under the basic principles of Israeli administrative law. The duty to provide reasons requires a public authority to specify the substantive considerations that led to its decision, the factual data upon which it relies and the causal connection between the facts and the conclusions. This duty is enhanced when the decision impinges on an applicant’s legal rights, as is the case with a refusal to provide information under the Freedom of Information Law.

9. In the present case, the Respondent limited itself to a generic decision, containing no more than a reference to the statutory provision and internal guidelines, without specifying the particular facts justifying the application of the exception, the concrete concern over potential harm to security, or how the disclosure of the specific information requested could cause the alleged harm. A decision bereft of substantive reasoning, such as this, constitutes a violation of the duty to provide reasons, fundamentally violates the applicant's right to understand the considerations underlying the refusal and impairs their ability to challenge them in a substantive manner.

Furthermore, the Respondent made no reference whatsoever to the need for disclosure of the information or to the public interest underlying the request. Section 9(a)(1) of the Law is not an absolute exception, and even where concern over potential harm to security is present, a balance must be struck between this concern and the public interest in disclosure. In the case at hand, the information concerns the critical public need for oversight of the prison system. The Respondent made no attempt to strike a balance between the various interests, as it is required to do under Sections 9-10 of the Law, but rather, chose to apply the exception in a rigid and absolute manner, entirely disregarding the substantive public interest in disclosure and the legal rights of the Petitioner.

B(2) Merits of the Matter

10. As demonstrated above, the Respondent has failed to establish the applicability of Section 9(a)(1) with respect to the requested items of information. Now, for the sake of caution, we will also address, in detail, the State's arguments regarding each specific item of information.

11. Refusal to provide a breakdown of detainees by age [Question 1.1]:

- 11.1. The Respondent's decision not to provide a breakdown of detainees into adults and minors lacks any legal or security basis. The Respondent has provided the Petitioner with the total number of detainees from the Gaza Strip without any security reservation, indicating that disclosure of the total number does not harm state security or public safety. A simple breakdown of this figure into two basic categories, adults and minors, adds no new operational or security information, but merely reorganizes information that has already been provided. There is no security rationale for this artificial distinction, and the Respondent has not offered a rational explanation as to how this statistical breakdown could increase security risk beyond the information already disclosed.
- 11.2. Furthermore, an age breakdown constitutes basic information required for exercising public oversight with respect to the State's compliance with its legal and international obligations. The rights of minors in detention receive special protections under both Israeli law and international law, and the public is entitled to know how the State discharges its obligations in this area. The requested information does not reveal individual identities or sensitive operational details, but is rather a general statistic needed to assess incarceration policy and ensure that the State complies with the legal rules governing the detention of minors. The Respondent has offered no explanation as to why this information, which is routinely published in other contexts, is suddenly deemed dangerous when it pertains to detainees from Gaza.

12. Refusal to provide information on the legal status of the detainees [Question 1.2]:

- 12.1. The Respondent's refusal to provide information on the legal basis for detention raises fundamental legal questions pertaining to the transparency of the legal system and the public's right to oversee the application of the law. The requested information, namely, how many detainees are held under each specific law, is purely legal and procedural in nature, and does not pertain to operational details or security methods. There is no logic in the claim that disclosing a breakdown of detainees by the various laws enabling detention would compromise national security or public safety.

- 12.2. Moreover, the refusal to provide this information directly undermines the public interest and the public's right to know. When the public does not know the legal basis for detention, it is difficult, if not impossible, to ensure that detainees' rights are upheld and proceedings in their matters are lawful.

13. Refusal to provide information on the number of detainees in each facility [Question 2.1]:

- 13.1. The refusal to provide a breakdown of detainees by detention facility is perplexing, given that the existence of the facilities themselves is neither secret nor classified. The Respondent has itself informed the public of the establishment and operation of various detention facilities, including Sde Teiman and others, via official statements and public reports. The locations of these facilities are known and have been reported in the media, and the Respondent does not deny or contradict these reports. In these circumstances, the claim that the number of people held in known facilities constitutes sensitive security information lacks any logical or factual basis.
- 13.2. The requested information, namely, the number of detainees in each facility, is raw statistical data that does not reveal operational information, security methods, or specific protective measures. The facilities are subject to legal oversight and the rules of Israeli and international law. The size of the population in a detention facility is basic information required for the exercise of public oversight over detention conditions, the treatment of detainees and compliance with legal and international standards. In the absence of this information, the public is deprived of the basic ability to oversee the detention system and whether and how the rights of detainees are upheld.
- 13.3. Additionally, the refusal to provide this information contradicts the Respondent's established practice in other areas. The Respondent routinely releases statistics on the number of detainees and prisoners in various detention facilities, including both military and civilian prisons, and considers such publication part of its commitment to transparency and public accountability. These statistics are released in recognition of the public's right to know the scale of detention and the distribution of the detainee population among different facilities. There is no substantive or security difference between the information routinely released by the Respondents and the information sought in this petition, and the Respondent has not provided any explanation for this artificial distinction.
14. An analysis of the Respondent's specific refusals reveals inconsistencies and a lack of internal logic indicative of an arbitrary and unjustified application of the security exception. The Respondent is willing to provide the total number of detainees but refuses to break it down by age, even though such a breakdown adds no new security information. It refuses to provide information on the legal basis for detention, despite this being open legal information that it itself publishes in other contexts. It refuses to provide information on the number of detainees in facilities that are known to the public at large and operate openly. The Respondent has not presented even a hint of a concrete or substantial security concern for any of these refusals, nor has it explained how disclosure of the information could harm the interests protected by law.

Conclusion

15. The information sought in this petition concerns the fundamental rights of thousands of individuals held in detention, particularly the protected rights of minors within the prison system. This information is essential for exercising public oversight of the prison system and ensuring the state's compliance with its legal and international obligations. The Respondent's refusal to provide this information severely undermines the principles of public transparency, democratic accountability and the public's right to know. In the absence of this information, the Petitioner and the public at large are denied the ability to verify that the state complies with the law and that the rights of detainees are duly respected.

16. In light of all the above, it is evident that the Respondent's decision of **April 30, 2025**, regarding the partial refusal to disclose the requested information, lacks a solid legal and factual basis. The decision was made in violation of the fundamental duties imposed on the Respondent under the Freedom of Information Law and the principles of administrative law and is based on an erroneous and unjustified application of the security exception. The Respondent has failed to present a substantive justification for its refusals and acted arbitrarily and unreasonably. In these circumstances, there is no alternative but to set aside the Respondent's decision and compel it to provide all the requested information to the Petitioner.
17. In light of all the above, the Honorable Court is hereby moved to:
- 17.1. Set aside the Respondent's decision of April 30, 2025, insofar as it rejects the Petitioner's freedom of information application with respect to the items of information detailed in the table in paragraph 4 above;
 - 17.2. Order the Respondent to provide the Petitioner, within 30 days of the date of the judgment, all the information requested in its application of January 21, 2024, and denied in the impugned decision, including a breakdown of detainees from Gaza by age, information regarding the legal status of the detainees and a breakdown of the number of detainees by the various detention facilities;
 - 17.3. Order the Respondent to pay the Petitioner's costs and legal fees.

[signed]
Idan Moldavski,
Counsel for the Petitioner