POINT OF ACCESS: BARRIERS FOR PUBLIC ACCESS TO ISRAELI GOVERNMENT ARCHIVES

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List of Abbreviations

GSS – General Security Service (also known as Shin Bet or Israel Security Agency)

IDEA – Israel Defence Force and Security Establishment Archive

IDF – Israel Defence Force

ISA – Israel State Archive

MoD – Ministry of Defense

RAP – Restricted Access Period

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Report's Summary

The "memory" of state institutions in the form of government records – protocols, correspondences, reports and such like documents and certificates – is stored in the government archives. This information has been created, collected and held for the public's benefit and was paid by public funds; it should be restored to the public and serve it for research and debate; it should enrich our knowledge of events and the processes that brought us so far, laying a foundation to continue building our future. Yet, this report shows a mere 1% of all these files is open for public access.

The Archives Law stipulates, "Any person may consult the archival materials deposited in the [Israel State] Archive." Regulations on the consultation of materials in the government archives ("The Access Regulations") draw on the Freedom of Information Law and its regulations, while also imposing Restricted Access Periods (RAPs) on material consultation. These periods range from 15 to 70 years, according to subjects and origins. However, **Restricted Access Periods are not tantamount to "prohibition of access" periods**. When a person request to consult a "restricted" material, regulations order that **as a rule, requested material should be unclassified and made available,** unless it emerges, upon reviewing the request, that one of the grounds specified in the regulations, which mainly concern the protection of state security, its foreign relations and the right of privacy, unequivocally precludes the material's declassification. Pursuant to the orders of the Israeli administrative law, a decision to deny the requested material's declassification must provide a reasoning that may guarantee that all necessary considerations have been weighed. Examination of the state-of-affairs at the government archives, as summarized in the findings of this report, reveals an all-together different practice.

The report reveals that the small staff assigned to archival material declassification **precludes in fact any routine declassification** of materials past their RAP, delaying the process of handling archive users' requests to consult materials (partial improvement is expected at the Israel State Archive within the coming months); the report portrays a **routine of extending file classification with no legal authority**. Representatives of the originating government offices make decisions that deny archive users access to files past their RAP, despite this authority being conferred by law on the State Archivist alone, subjected to approval by a ministerial committee. The policy of **denying access to the full catalogue** of materials held therein undermines the autonomy of research at the government archives, coupled with the "criteria documents" that outline the yardsticks to exercise discretion in decisions concerning the declassification of materials, and **are inconsistent with their professed purpose**. The report further shows that **government**

archives **provide no reasoning for denials of requests** to consult archival material, citing the ground for said denial, at best. This policy is in breach of the law, hindering review of the discretion leading to decisions denying access and making it hard to appeal them. Moreover, appeal procedures themselves are not regularized by internal procedures.

The General Security Service (GSS) and Mossad archives hold material of high importance for understanding Israeli society, as well the history of the state and the Israeli-Palestinian conflict. Alongside a sensitive intelligence material, its confidentiality a matter of consensus, it also contains additional, highly valuable material that can be cleared for public consultation. After it turned out that the GSS, Mossad and other security bodies failed to provide access to archival materials 50 years since generated, pursuant to the orders of the regulations at the time, the Access Regulations were revised. The current reulations have the RAP on specific security organizations' materials extended to 70 years, while introducing a regulation ordering that these organizations prepare a special procedure for declassifying 50-year-old materials. The report shows that the GSS has yet to prepare a declassification procedure, thereby hindering any public access to its archival materials; and that **the GSS and Mossad alike are making no preparations** for the end of the 70-year-long Restricted Access Period placed on their archival material, in a few years' time. Being as so, public access to the important materials held in these archives is expected to be denied in the following years as well.

The archive has a role to play in promoting and protecting human rights and in exposing their violations. This role is addressed by the final chapter of this report. It shows that **government archives in Israel often take actions to withhold records on state-perpetrated human rights violations**, particularly those associated with the Israeli-Palestinian conflict. Indeed, criteria for classification or declassifications of materials determined in government archives in the past, with the purpose of protecting the image of the state, its institutions and officials, have been revoked following the State Comptroller's observations and High Court petitions. Still, documents that shed light on sordid affairs in the state's history remain classified, many years after their RAPs expire. A picture emerges from this chapter that reveals an effort to conceal old documents of this kind, even those held by non-governmental archives, with no legal authority. Furthermore, documents already cleared in the past, including some extensively quoted by different publications, have been re-sealed to be withheld from the public.

The different barriers set for public access to archives that unfold in this report paint a bleak picture. **Findings show that government archives betray their role of making the state's archival materials available for public access**. The archives' conduct is out-of-step with the change occurring

in recent years in the status of the public's right to obtain information held by authorities and the corresponding 2010 revision of the Access Regulations. The main government archives appear to open their gates to the public, welcoming it to use their services, but whoever seeks to rely on them to gain access to the records held therein is set to be disappointed: the scope of archival material open for public consultation is negligible; the open archives are in fact closed. A thorough reform in the government archives is required, coupled with a deep understanding that records kept of the work done by the government and its officials is the public's property, rather than a secret to be kept from it.

Introduction

> Archives are no passive records cellars. Their methods for organizing materials, their degree of accessibility and the technology they employ to collect, archive and provide accessibility, all affect historical studies relying on archive work, and thereby public discourse as well, and if archives affect public discourse, then whatever takes place therein must be the object of public discourse.[1]

The governing enterprise invariably leaves its traces in the form of records: debate protocols, clerical correspondence, execution reports. As time goes by, these records– or the surviving portion thereof – make it to the archives, where they await their extraction from the cardboard containers, to be used in public discourse, as research knowledge, for private relief, or to be destroyed.

The first few decades of the State of Israel saw severe restrictions placed on public's consultation of government archival materials – a public property created by public servants for the public. The 1955 Archives Law, particularly the regulations introduced in 1966 to regulate public right to access archival materials, deemed them the property of the clerical service that created the records. Accordingly, the largest government archives in Israel – Israel State Archive (ISA) and IDF and Defense Establishment Archive (IDEA) – granted the public restricted, limited access to materials kept in them.

The basic right of individuals to obtain information held by the authority – a right recognized by case law – received legislative grounding in 1998, with the enactment of the Freedom of Information Law. The introduction of this bill stated that:

> The right to obtain information from public authorities is a basic right in any democratic regime and a fundamental condition if a person is to fulfil their freedom of expression and practice their political and other rights in all domains of life. Greater accessibility to information may facilitate the promotion of other social values, including equality, the rule of law and respect for human rights, and allow better public control of the government's actions."[2]

1. The Social History Workshop, "No Agenda Archives", Haaretz Online. www.haaretz.co.il/blogs/sadna/1.2678966, 8 July 2015

2. Freedom of Information Bill, 5757-1997, Bill 2630, p. 397 (Hebrew)

Along with Basic Law: Human Dignity and Liberty, Freedom of Information Law created a new judicial environment, where the right to know and freedom of information carry legislative nature and paramount importance, reflecting and promoting, among other things, freedom of speech and the value of transparency and criticism of governing authorities.[3] Therefore, despite the fact that Freedom of Information Law does not directly apply to materials transferred to archives, its orders should be regarded as an "upper threshold" for restrictions that may be placed on accessing archive material and treated as an interpretive guide "[...] in any issue that concerns the right to know, despite having no direct applicability on it."[4] This principle was adopted in the updated version of the Access Regulations, accepted in 2010 (see below). The Archives Law and Freedom of Information Law share the rule of transparency, whereby any person may consult materials held in the archive; the Access Regulations are inspired by this rule, embracing some of the exceptions to it as well, almost to the word. The Access Regulations further adopted, with slight modifications, some of the Freedom of Information Law's procedures: the list of protected interests that serve as grounds for restricting declassification; some of the authority's considerations when in decisions on information requests; and the procedure for delivering partial or conditional information. In other words, the Access Regulations themselves have assimilated the new judicial environment as far as the freedom of information is concerned. The fact that archives are public institutions whose entire purpose is to protect public information and make it available for the public's consultation further establishes the relevance of progressive freedom of information norms for the conduct of government archives.

Access to Archives

> The public has the right of access to archives of public bodies. Both public and private entities should open their archives to the greatest extent possible.
> Principle 1 of the Principles of Access to Archives

The archive, any archive, holds in records on the human enterprise. Documents, photographs, items – all attesting to the activity of the organizations and individuals to which the archive is dedicated.

3. See AP (Tel Aviv) 12848-05-11 **Claris Strihan vs. Clalit Health Services Dan District and Others**, TAK-DCC Administrative Petitions (Tel Aviv-Yafo) 12848-05-11(1), 23796 (24/03/2013)

4. Letter from Attorney Avner Pinchuk of the Association for Civil Rights in Israel to State Archivist Dr. Yehoshua Freundlich, **Comments by the Association for Civil Rights in Israel – Archives Regulations draft (consulting materials transferred to the archive), 2009** (29/11/2009), pp 1, 8 (Hebrew).
www.acri.org.il/pdf/archives291109.pdf

This documentation serves to preserve the memory of the respective activity, which is fragile and subjected to revisions.[5] The term "archive" has several meanings, which pertain, according to context, to the organization, as well as its physical structure and the subject of its activity. Accordingly, this term serves in some cases to describe a collection of certificates of long-term value, which may serve as evidence to the actions of an organization that contains unique information regarding individuals, places, events, or phenomena. Another sense of the term "archive" is the organization that holds such records, i.e. collecting, preserving, cataloguing and making its contents accessible, fully or partially. The term has another, narrower sense: the physical building that is home to the records.[6]

The role and value of the archive, as an institution that records social enterprise, is cemented in the vital link between knowing the past and knowing the present. Archivists, archives and their superiors are entrusted with safeguarding and providing access to archive materials, so as to ensure that as comprehensive as possible a record of society is kept, and so that these records are made available to the public. The archiving profession, therefore, is designed to ensure "[...] the preservation and use of the world's documentary heritage."[7]

Public use of archival materials is conditioned upon the ability to access the archive. Two key provisions must be met for this accessibility: authorization by law to come and consult records held in archives, and the existence of finding aids (catalogues, inventories, computerized search interfaces, etc.) that allow to find the information requested.[8] Nevertheless, access to archival materials can be subjected to restrictions and limitations that stem from their physical conditions or other limits, like public interests pertaining to protection of privacy, security considerations or national foreign relations.

In recent years, the global archivist community, alongside human rights activists and legal experts, have started consolidating principles and

5. Randall C. Jimerson, Archives and Memory, 19 OCLC Systems & Services 3 (2003), p 90.

6. See entry Archive in the Multilingual Archival Terminology dictionary of the International Council on Archives: http://www.ciscra.org/mat/mat/term/64

7. Section 10 of the International Council on Archives (ICA) Code of Ethics. www.ica.org/en/ica-code-ethics

8. International Council on Archives (ICA), "Dictionary of Archival Terminology" (Draft Third Edition/DAT III, 1999). See also a series of corresponding definitions of different sources, cited in the entry "Access", the Multilingual Archival Terminology, International Council on Archives (ICA).

guidelines for access to archives. The guidelines were drafted using several tools: glossaries, policy papers of state and inter-state bodies,[9] and national and international courts' case law.[10] Among other things, the International Council on Archives (ICA) has adopted a document of standards on access to archives. This document, "Principles of Access to Archives",[11] was drafted with the purpose of reviewing present procedures for access to archives and modify them in accordance with international professional standards. The principles address the public's right of appropriate access to materials, as well as archive professionals' responsibility to provide conditions for such access.

The Archive and the Right to know

The disclosure of information held in archives is of particular importance for the realization of the right to know. This right has been taking shape over the last few decades, all the more so in light of the shift experienced in Eastern Europe, Latin America and other places, from oppressive regimes to democratic ones, and was sparked by concern for the fate of civilians subjected to forced disappearance by these oppressive regimes.[12] The right to know pertains to nations and societies, as well as individuals.

With regards to society, principles were determined whereby every nation has the right to know the truth about past events associated with serious crimes perpetrated as part of a widespread, systematic violation of human rights, and the circumstances and reasons at their base. This was informed by the view that a full, effective implementation of the right to the truth

9. Council of Europe, Recommendation No. R (2000) 13 of the Committee of Ministers to member states on a European policy on access to archives (Adopted by the Committee of Ministers on 13 July 2000, at the 717th meeting of the Ministers' Deputies) http://wcd.coe.int/ViewDoc.jsp?id=366245

10. For a review of court rulings in Latin America on the right of access to information contained in documents with direct concern to human rights violation and international law, see Inter-American Commission on Human Rights, The Inter-American Legal Framework regarding the Right to Access to Information (2012). pp 123–126.

11. International Council on Archives (ICA) Working Group on Access, Principles of Access to Archives (2012),www.ica.org/en/principles-access-archives

12. The principles of the right to know were formulated by "The Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity". Commission on Human Rights, Report of the independent expert to update the Set of principles to combat impunity, 8 February 2005. E/CN.4/2005/102/Add.1.

should prevent the recurrence of such crimes.[13] It was also determined that human rights violations that resulted in oppression constituted part of a nation's heritage, and the state therefore had the duty of preserving historic memory by means of archives and circulation of knowledge regarding human rights violations perpetrated.[14]

As far as the rights of individuals, a principle was formulated indicating that victims of human rights violations and their families have the right to know the truth about the circumstances surrounding the human rights violations suffered by themselves or their loved ones, and the fate of family members subjected to forced disappearance or execution.[15] The principle was also determined that the state must take appropriate action to realize the right for truth. This further stresses the state's duty to preserve archives on human rights violations, and allow public access to them.[16]

Records found in government archives of different nations, particularly those in the heat of armed conflicts or freshly out of them, are of importance that transcends their implications for political discourse. The ample information generated and collected by the state holds decisive sway over the ability of its citizens and anyone under its control to enjoy their human rights and provide for remedy for their violation. Furthermore, archive records, particularly their declassification, are of veritable importance in preventing policies marked by significant infringement of human rights and for the accountability of officials and public servants involved in serious violations

13. ECOSOC, Commission on Human Rights, Promotion and Protection of Human Rights: Impunity, Add. 1 Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, Principle 2, U.N. Doc. E/CN.4/2005/102/Add.1 (Feb. 8, 2005).

14. Updated Set of Principles, Principle 3.

15. Updated Set of Principles, Principle 4.

16. Updated Set of Principles, Principle 5.

thereof, as well as in other criminal offences.[17]

The growing recognition of the archive's importance in protecting human rights is also manifested in a new document of international principles, its drafting is completed these very days. The document, "Basic Principles on the Role of Archivists in Support of Human Rights",[18] determines principles concerning the main roles of the archive and archivist in this area, by providing access to materials that concern human rights violations, among other things.

About This Report

Hundreds of archives operate in Israel, the overwhelming majority thereof private – i.e. kept by individuals or owned by commercial companies, NGOs or other bodies. Others have been declared "public archives" in accordance with the Archives Law: private archives of public importance. Such is The Central Zionist Archive, which caters for the Zionist Movement's institutions (World Zionist Organization, Jewish National Fund, etc.) and constitutes its property. This report does not cover access to materials held in the different private and public archives; rather, it concerns access to materials held in the government archives. Nor does this report cover the variety of aspects that warrant review in the functioning of government archives; its focus is the possibilities and restrictions that pertain to realizing the public right to access materials held in these archives.

17. For the role of archives in the transition of societies from authoritarian regimes or ongoing armed conflicts, see for instance: Antonio González Quintana, Archival Policies in the Protection of Human Rights International Council on Archives (ICA) (2009); Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the seminar on experiences of archives as a means to guarantee the right to the truth. U.N. Doc. A/HRC/17/21 (Apr. 14, 2011); Trudy Huskamp Peterson Securing Police Archives: a Guide for Practitioners. Swisspeace (2013); Trudy Huskamp Peterson, The Probative Value of Archival Documents. Swisspeace (2014); Louis Bickford and others, Documenting Truth. The International Center for Transitional Justice (ICTJ) (2009); United Nations Office of the High Commissioner on Human Rights, Rule-of-Law tools for Post-Conflict States: Archives. United Nations Publications (2015); Meirian Jump, "The Role of Archives in the Movement for the Recovery of Historical Memory in Spain. La Rioja: A Regional Case Study", 33 Journal of the Society of Archivists 2 (October 2012), pp.149–166; Leswin Laubscher, "Facing the Apartheid Archive", 40 South African Journal of Psychology 4 (2010), pp. 370–381; Giulia Barrera, Of condors and judges: archival musings over a judicial investigation, 9 Archival Science 3 (2009), pp 203–214.

18. ICA Human Rights Working Group, Basic Principles on the Role of Archivists in Support of Human Rights – Draft (2014), www.ica.org/download.php?id=3388.

This report records the accumulation of barriers for public access to government archive materials in Israel, in many key areas of their work, even in light of the glaring criticism levelled at them for years. The first chapter of the report deals with arrangements in the Israeli law that directly concern access to archives: the Archives Law and Access Regulations. The chapter explores the gist of the relatively sparse case law of recent years on the fulfilment of the public's right to access archival materials. The following chapters review key failures in the access to archival materials held by the official government archive – Israel State Archive (ISA), and by the state's largest archive – the IDF and Defense Establishment Archive (IDEA). The report further reviews the state of affairs relative to how well the General Security Service (GSS) and Mossad fulfil their duty of providing public accessibility to some portions of the archive. The last chapter deals with the role of archives in protecting and promoting human rights. The report's Conclusion offers the gist of the main findings, along with a list of recommendations.

As part of the research for this report, Akevot interviewed numerous archive users – historians, students and academic scholars, as well as random users. We would like to thank all those interviewed, for the knowledge and points of view they kindly shared with us. We relied on the many instances they had cited when establishing our understanding regarding the current state of affairs, but the examples cited in the report itself are usually derived from our own experience of working at the archives. We also had some conducive conversations in our meetings with Israel's State Archivist, Dr. Yaacov Lozowick, and with Ms. Ilana Alon, director of IDEA, and Mr. Avi Tzadok, in charge of the institution's documentation and cataloguing. We wish to thank them for the great assistance extended to us by them and their staff, and it is our hope to maintain an ongoing, fruitful professional dialogue with them, in order to further open access to archival materials in the institutions of their custody. Significant information was also gained with a series of requests filed to the Prime Minister's Office and Ministry of Defense, pursuant to the Freedom of Information Law, and we wish to thank all officials that worked to collect the data and information while handling our requests. A special acknowledgment goes to Attorney Avner Pinchuk, director of the unit for civil and political rights at the Association of Civil Rights in Israel, for his professional advice and for sharing his ample knowledges and experience, the product of his longtime commitment to extend access to records treasured held Israel's archives.

Chapter 1:
Access to Archives in Israeli Law

The archives law and its regulations

The government and public archives domain of the State of Israel is regulated by the 5715-1955 Archives Law with its attending regulations.[19] The 60-year-old law "constitutes the legal, administrative and professional framework for maintaining the archival system of the state"[20] and determines principles for handling documents and records held in other government and public archives around the country: principles on handling documents by government offices and state institutions, and their transfer for archiving, registration, inspection and protection, copying and disposal. Several institutions are authorized by law to perform these tasks, among them the Israel State Archive (ISA) itself (referred to by the law as the "the Archive") and its head, the State Archivist.

The ISA is the due place of all archival records of state institutions, including local authorities, as well as those of governing bodies that predate the state – the British Mandate of Palestine and the Ottoman Rule. The ISA is a unit at the Prime Minister's Office, funded from its budget.[21] Heading this institution and the government archive system at large is the State Archivist – director of the ISA, who is authorized by law to "guide, instruct and oversee the archives and records management in state institutions, local authorities and government corporations."[22] The Archives Law and its attending regulations confer on the State Archivist different authorities that pertain to all materials of archival value in Israel. These materials are defined by law as any original records of social, historic or public value, whether in the

19. For an exhaustive review of the drafting, legislation and amendment history of the Archives Law, see P.A Alsberg, "The Israel Archives Law, History and Implementation", **Arkhyon: Reader in Archives Studies and Documentation** 1 (1987), pp 7-29 (Hebrew).

20. Prime Minister's Office, **2010 Annual Report** (2011), p 71 (Hebrew).

21. The IDF and Defense Establishment Archive (IDEA), as well as other government archives, are formally considered extensions of the Israel State Archive (ISA), albeit enjoying an executive autonomy and independent budget sources.

22. Prime Minister's Office, 2010 Annual Report, see footnote 20, p 71.

possession of a public institution or in private hands.[23]

The law, as aforesaid, cites a single archival institution for the archiving of government records – the ISA, but there are in fact other government archives operating in the country. The largest of which and indeed, the largest archive in Israel, is the IDEA, operating alongside it.[24] As the following chapters shall illustrate, it seems the subordination of these government archives to the State Archivist remains formal by nature, with great autonomy still extended to them by him in at least some of their activity, allowing them to operate under powers that by law should be his.

The Supreme Archives Council

Alongside the State Archivist, the law also establishes the Supreme Archives Council. The council is made of representative from the Ministry of Education and other government offices, representatives of various archives (the IDF and the Defense Establishment Archive, National Library,

23. Alongside the Archive and the State Archivist, the institution of the public archive was also determined. At the time when the Archives Law was created, in the early 1950s, quite a few archives had already been operating in the country, some of them large and old. Thus for instance, the National Institutions Archive, known today as the Central Zionist Archives, was originally designed to serve as the state archive; it was only the circumstance of war in 1948 that led to the establishment of the Israel State Archive as a separate body (Alsberg, see footnote 19, p 7). These archives and other non-governmental archives that were nevertheless considered to be of public importance had the status of "public archive" created for them. Section 1 of the Archives Law defines 'public archive' as an "archive owned or directed by a non-profit body, and sanctioned by the government, in a statement published on records, as a public archive." The most up-to-date list of public archives can be found in the ISA website, including 19 archives in the country, among them the Chaim Weizmann Archive, Rehovot, and Yad Vashem archive, to cite but some. According to the Archives Law, archive material stored in a public archive may not be seized or pledged and may only be transferred from there to the ISA or another public archive, while the regulations introduced shall determine rules for granting or revoking public archive status, as well as yardstick for their management. The regulations determined (archive regulations (conditions for approving public archives and rules for their management arrangements 5718-1957) subordinated work practices in public archives to the professional instruction of the State Archivist, in a manner reflective of the general spirit of the Archives Law, whereby the ISA and the State Archivist at its head are the main professional authority on public archives and the handling of their records.

24. It was only in 2009 that the archives kept by these additional bodies were formally made subordinate to the State Archivist, following a High Court appeal filed by journalist Ronen Bergman and his newspaper Yedioth Ahronoth. See chapter 4.

and Central Zionist Archives, to cite but some) and different experts.[25] Chaired by the State Archivist himself, the council is designed to serve as a control body for the State Archivist's actions and advise him on several subjects stated by the law. Among other things, the council serves as an instance of appeals against the State Archivist's decisions on the disposal of archival material held in the ISA or by an individual or private institution (sections 13-14 of the law). The law also charges the government with the duty of consulting the council prior to appointing a new State Archivist (section 2(a)), and before installing regulations by force of the Archives Law (section 18 (c)). The council was further authorized to sanction, in some cases, the State Archivist's decision to restrict public consultation of some materials (section 10).

According to protocols of council meetings held in 2010-2015,[26] major processes and events concerning archiving in Israel are brought to the council, but other than powers defined by the law, it has few executive tools at its disposal. In 2011, the council protested its insufficient involvement in the new State Archivist's appointment and the sparse information handed to it in the consultation process stated by the Law.[27] At least since 2008, the council has received no requests by the State Archivist to restrict public consultation of certain materials.[28]

25. It is the government that the law authorizes to appoint the expert and determine the archives and government offices from which to appoint representative for the council.

26. Copies of five protocols from this period have been handed to Akevot following a request pursuant to the Freedom of Information Law. According to the reply, the protocol of one meeting was deleted before circulated due to a PC replacement. Letter from Ayelet Moshe, Implementation of the Freedom of Information Law, Prime Minister's Office, to Dr. Noam Hofstadter, Akevot researcher (18 June 2015).

27. The protocol of the Supreme Archives Council meeting on 12 June 2011 (14 June 2011). The protocol was handed to Akevot as a response to a request filed by the Freedom of Information Law, 30 April 2015.

28. Letter from Ayelet Moshe addressed to Dr. Noam Hofstadter (18 June 2015). See footnote 26.

Section 10 of the Archives Law: the Right to Consult Archival Materials

The Archives Law determines the basic principle whereby every person, without discrimination, is entitled to have access to the archive and consult its materials: "Every person may consult archival materials deposited in the Archive[.]"[29] The rest of the very same sentence also generates the power to restrict consultation. This power interpreted in the early years after its legislation as allowing to impose no restriction bar technical ones (like determining consultation hours and place, request to present an ID card etc.), with no power to place essential restrictions on the right to consult materials, like highly sensitive materials.

Over the years, Section 10 of the law was amended twice, in 1964 and 1981. This in turn determined the authority to restrict, pursuant to regulations, archival materials consultation by the yardsticks set for the type of material ("confidential" and "secret") and according to the time elapsed since their creation.[30] These parameters were employed when drafting the Access Regulations for archival materials, first introduced in 1966.

Access Regulations and Restricted Access Periods

The regulations that determine practices for archival material consultation are known as the Archives Regulations (access to archival material held in the archive) 2010 (hereinafter referred to as "Access Regulations").[31] These were first introduced in 1966, and have since been updated on several occasions, to be finally replaced by a new version in 2010. At the heart of the Access Regulations lies the introduction of practices for consulting archival materials held in the ISA and its extensions, including restricted consultation periods and declassification practices, proactively or in following public requests.

The Access Regulations stated "Restricted Access Periods" that range, in their current version, from 15 to 70 years, according to the material's content and origin. The rule goes that the "ordinary" period of restricted access shall stand at 15 years from the material's date of creation, unless the material in

29. The Archives Law, 5715-1955, *Sefer Hahukim [the Book of Laws], section 10 (a).*

30. P.A Alsberg, see footnote 19, p 27; Ziona Raz, "Opening Archival Materials for Consultation", **Arkhyon: Reader in Archives Studies and Documentation** 1, (1987), p 46.

31. Archive Regulations (consultation of archival material deposited in the repository), 2010, regulation file 6917, pp 1462-1467 (Hebrew).

question originates or includes contents restricted under any of the additional sections of the "First Supplement" to the Access Regulations, which sets maximum Restrictted Access Periods ranging from 20 to 70 years.[32]

Restricted Access Periods (RAPs) are often perceived as periods of complete prohibition of public access imposed on the archival materials, yet the legal reality couldn't be more different. See the State Attorney's announcement, made during a discussion into a petition that requests, among other things, to order a declassification of particular archival material:

> Let it be stressed that setting a limit on these periods is all the more significant where proactive declassification is concerned. As for individual requests through the tool of authorized researcher – periods are of lesser significance and requests are reviewed in their own merit. The same applies for materials past their relevant periods as stated in the supplement to the regulations, as well as materials within this period – declassification is performed by reviewing the material individually, in order to ascertain that its declassification does not compromise protected interests like state security, its foreign relations, and the right of privacy.[33]

Restricted Access Periods (RAPs), therefore, are mainly designed to set the time for proactive declassification of the archival materials held by the archive, so as to comply with the basic order of the Archives Law: "Any person may consult the archival materials deposited in the Archive."

32. Several instances of restricted access periods (RAPs) are stated in the first supplement to the Access Regulations: 20 years for protocols of confidential Knesset committee meetings; 25 years restricted consultation for government office's "foreign affairs material"; 30 years restricted access for archival material of the Israel Police, Israel Prison Service, and the Ministry of Public Security, as well as some of the IDF and Ministry of Defense (MoD) materials. 50 years is the RAP quoted for decisions and protocols of the government's Security Cabinet, as well as "materials on security affairs" of the MoD, IDF and other bodies. 70 years of restricted access were set for materials ambiguously defined as "private affairs materials and personal documents", as well as for raw intelligence materials and materials of MoD support units partially specified in the second supplement to the Access Regulations: the Israel Security Agency, the Mossad, the Israel Institute for Biological Research and Israel Atomic Energy Commission and the "nuclear research centers" under its jurisdiction; in addition, the Minister of Defense was ordained to specify by decree– not to be released – IDF units and other defense bodies whose archival materials shall be subjected to 70 years RAP.

33. Section 17 of advance notification from respondents in **HCJ 2467/05 Gershom Gorenberg v. The Director of the IDF's and the Ministry of Defense's Archive and others** (29 March 2007).

In addition to the proactive classification track, the Access Regulations plot a track for declassification by request. In this track, where an individual requests the declassification of an archival material under RAP, the depositor's representatives must consider the request in its own merit, while weighing protected interests (particularly security, foreign relations and the right of privacy) against the public's right to know. Further conideration to make include the historic value of the material and the time already elapsed since the archival material's creation, relative to the RAP placed on it.

Declassification of Material under Restricted Access Period

> The claim that in the absence of legal duty to disclose, one may withhold information - could be made by a person or private corporation [...] but it could not made by an authority that fulfils a role by law. The personal domain is unlike the public one, as the former owns its own, granting as it pleases, while the latter was created for no other purpose than to serve the public and has nothing of its own: whatever it possesses is deposited in its care as a trustee, with no further rights or duties per se nor different and independent duties that stem from this trusteeship, conferred or placed upon it by statutory orders.[34]

The authority to decide on a person's request to access restricted material ("applicant") during the RAP (and no other time) is conferred on the body that deposited said material in the archive; the government office, the state institution or any other organization (those referred to in the regulations as "depositor"), while the State Archivist is granted a mere advisory role. Nevertheless, the RAPs specified in the first supplement to the Access Regulations are not final and conclusive. According to the regulations, following a member of the public's request to consult the material under RAP, said period may be shortened to allow full or partial access to the requested material (in a procedure referred to as "declassification").[35]

In fact, the law and regulations state that once a person requests to consult materials under Restricted Access Period, the default option is to grant the request and declassify the restricted material, unless it is found, with all relevant considerations being weighed and after exercising all balances

34. HCJ 142/70, **Benjamin Shapira v The District Commission of the Bar Association,** 28(1), 325 (28 February 1971). Section 5 of Justice Haim Cohen.

35. See for instance the state's stance cited in HCJ 3820/11 **Giddi Weitz and others v. Ministry of Justice,** IsrSC 251 (2 October 2013).

required by the law and regulations, that public consultation restriction must be maintained on said material.

The regulations determine protected interests whose potential harm to the depositor must be considered when deciding on archival material declassification: fear lest declassification may undermine state security, public or an individual's well-being, and pose risk for foreign relations or an individual's privacy.[36] In addition, requests to declassify archival material that entails an infringement of the right of privacy of the deceased, compromise of trade secrets or any other material of financial value may be denied.[37]

The balancing test set in the Access Regulations for security-related, foreign relations and privacy considerations is therefore the "test of concern", and in this freedom of information context, the High Court of Justice ruled that though not requiring a "near certainty of actual harm", exercising it must balance the volume of the potential risk and the concern that it may be realized:

> Indeed, this balancing test does not amount to the "near certainty [of actual harm]" that justifies a restriction of the freedom of expression by censorship [...], but neither is it a test that makes do with some likelihood, remote as it may be, of such harm. In practice, it is a test that concerns the harm anticipated to public security or well-being. The equation of risk intensity and the probability thereof points to likely risk for public well-being or security [...]"[38]

36. Secondary Regulation 8 (b) of the Access Regulations. This secondary regulation is phrased as a prohibition: "The depositor may not declassify a material" etc. This secondary regulation's wording is borrowed directly from that of sub-sections 9(b) (6) and 9(b) (10) of the 5758-1998 Freedom of Information Law, which specify similar (and further) grounds for denying material access pursuant to the law.

37. Secondary Regulation 8(c) of the Access Regulations. According to this secondary regulation, the depositor "may" prevent consultation of the material as specified. The wording of this secondary regulation is borrowed from sub-sections 9(b)(6) and 9(b)10 of the Freedom of Information Law.

38. HCJ 2007/11 **Yanai Shani v. Ministry of Environmental Protection** 2012(1), 2127 (5 February 2012). The formula set here was interpreted by the Ministry of Justice Freedom of Information Unit as follows: "[…] the authority must review the risk concern relative to the equation of 'risk intensity and the probability thereof' (predicted risk). The higher the risk intensity, the lower probability for its materialization that can suffice in order to establish risk concern for the protected interest, and the higher the risk intensity, the higher the probability required of its materialization if harm to the protected interest is to be established." Freedom of Information Procedure 3.1 – "Response requirements in freedom of information denial" (23 June 2013).

The Access Regulations specify the circumstances that must be factored into the balancing formula of the protected interests: the higher the historic, research and public interest of the requested material,[39] and considering the time already elapsed of the RAP placed on the material[40] the more weight should be granted to allow the material's declassification for the applicant.[41]

Even if the depositor decides, having weighed all necessary considerations, that requests to access the restricted material must be denied, regulations state that when omitting certain details or, subjecting access and use to other restrctions limit the possible harm to the protected interests, the depositor must grant the request, so long as it does not require unreasonable resource allocation or one that poses "considerable burden" for its operation.[42]

Declassification after Restricted Access Period

In itself, the expiration of a RAP – 15, 20, 30, 50 or even 70 years after the archival material's creation – is no sufficient condition for approving public consultation thereof. The Access Regulations expressly state that no material shall be submitted for consultation before it is reviewed, even if the RAP has expired.[43] Nevertheless, the regulations set no time limit for the execution of such examination. And so, the review process allows a potential years-long delay in the declassification of material where restriction for public consultation has long since expired.[44]

By the end of the RAP, the burden of responsibility for deciding on the

39. Secondary Regulation 9(e)(1)(a) of the Access Regulations: "the historic, academic and public interest of a material whose declassification is requested or the applicant's personal interest therein."

40. Secondary Regulation 9(e)(1) (b) of the Access Regulations: "The time elapsed from the material's date of creation and the ratio between this time period and the restricted access period set for it."

41. Secondary Regulation 9(e)(1) of the Access Regulations also states that the scope of the material that can be declassified from the requested restricted material should be weighed against the requested material that a hindrance exists for its declassifications pursuant to secondary regulations 8(b) and (c). Regulation 9(e)(2) further orders that the depositor may demand an applicant request if the process of handling the request requires "unreasonable research allocation".

42. Secondary Regulation 9(e)(3) of the Access Regulations.

43. Secondary regulation 8(a) of the Access Regulations.

44. See Attorney Avner Pinchuk's letter, **Comments by the Association of Civil Rights** in Israel, footnote 4, pp 17-19.

declassification shifts: no longer does the depositor holds the authority to decide on the future confidentiality of the archival material. It is now the State Archivist who is authorized to sanction the declassification of an archival material. The depositor becomes a mere advisor for the State Archivist in making its decisions on declassification.

Extending confidentiality past the RAP

In cases where the depositor, having examined a material past its RAP, finds the material must remain protected from public access, they may request that the State Archivist follow a procedure determined in section 10(c) of the Archives Law. This section states that it is within the State Archivist's authority to declare, upon the depositor's request,certain material past its RAP as "secret" or "confidential" – a classification that allows the State Archivist to place further restrictions on public access to it. For this purpose the State Archivist must request the approval of a committee of government ministers: the Ministerial Committee for Permission to Access Classified Archival Records.[45] This committee is authorized only to approve or reject the Archivist's decision. The law does not grant it any other powers.

Ministerial Committee for Permission to Access Classified Archival Records

Following the 1981 Archives Law amendment, the "ministerial committee for permission to access classified archival records" was set up.[46] The committee is authorized to sanction the classification of archival material as "secret" and "confidential" by the State Archivist, thereby preventing consultation thereof beyond the restricted period stipulated by the regulations.

This amendment was designed to replace the former arrangement, whereby the Supreme Archive Council (mostly

45. Secondary Regulation 8(d) states that the grounds to request the procedure's implementation pursuant to Section 10(c) of the Archives Law are those specified in secondary regulations 8(b) to 8(c) (see footnote 36 and 37). However, Section 10(c) itself cites far narrower grounds for decisions to extend confidentiality periods: "The State Archivist, with [ministerial committee for permission to access classified archival records'] approval, may cite archival material as secret – on grounds of potential harm to state security or foreign relations, and as confidential – on right for privacy grounds." The archivist is granted authority to declare a material secret or confidential based on "other causes" unspecified – with the Supreme Archives Council's approval.

46. The committee's name may be misleading, as it is its lawful authority to examine whether or not to approve State Archivist's recommendations to prevent consultation of materials past their RAP, and deny consultation of materials that are "classified" or under the RAP stipulated in the Access Regulations.

made up of archiving professionals) was authorized to make decisions that concern, among other things, the consultation of security and foreign relations materials. While drafting the amendment to the law, various officials were proposed for the task of authorizing special restrictions: the Prime Minister, a group of ministers and a Knesset committee chairman.[47] Eventually, it was agreed that a government-appointed ministerial committee should assume this capacity.[48]

During discussions in the Knesset's Education and Culture Committee ahead of the amendment to the section, concerns were voiced about handing over authorities on special restrictions to government elements. One such concern was the involvement of extraneous considerations in decisions. Another was the fear that minister members of the committee might be too busy with their office affairs to meet their committee duties.

And indeed, figures submitted to Akevot by the Prime Minister's Office, pertaining to the activity of the committee for permission to access classified records, show it has not been active since 2008. Not once during this period has the committee convened, nor has it discussed any access requests or made any decisions.[49] Unauthorized by law, alternative ways were devised in government archives, to deny the public its right to access materials past their legal RAP. These ways shall be specified in the following chapters. Akevot's stance is that the Archives Law must be amended so as to have another arrangement in place for decisions on requests to classify archival materials past their RAP.

47. Ziona Raz, see footnote 30, pp 50-51.

48. The committee has been appointed twice since 2008. Its incumbent members are Justice Minister Ayelet Shaked, Minister Yuval Steinitz and Minister Miri Regev. 34th government Resolutions 58, "Ministerial committee for permission to access classified archival records" (7 June 2015).

49. Letter from Ayelet Moshe to Dr. Noam Hofstadter, (18 June 2015). See footnote 26.

Access to Archives: the Case Law

The case law for access to archival materials is still sparse and limited. Most archive users do not resort to legal procedures when denied their request to consult a particular material, whether due to lack of resources, reluctance to fall foul with institutions they rely upon to perform their job, or the typical lingering of legal procedures versus the more pressing need for materials. Yet some High Court petitions of recent years – most notably the Gorenberg and Yedioth Ahronoth affairs – were the driving force behind the necessary 2010 amendments to the Access Regulations. Interestingly, in each of these cases, petitioners were journalists, guided by the professional ethos of the freedom of information and its importance for the freedom of expression. Also, and just as importantly – such petitioners enjoy appropriate legal representation, usually funded by their employers or by organizations advocating human rights.

Gorenberg Case

In 2005, journalist Gershom Gorenberg and the Association for Civil Rights in Israel filed a High Court petition against the IDF and Security Establishment Archive (IDEA). The petitioners demanded access to restricted documents and amendments to procedures: to allow everyone access any archival material that the consultation thereof poses no near-certainty of actual harm to state security, present the full catalogue of materials held at the IDEA, and publicly release all archive procedures for declassifying archival materials and for granting public access to the archive's materials.

Two months after the petition had been filed, Ministry of Defense (MoD) Guidance 59.140 was issued, establishing the procedure for acknowledging an individual as "Authorized researcher" and for handling of their material consultation requests. As discussions lingered, and simultaneously with the drafting work on the Access Regulations, Guidance 59.140 was revised so as to clarify that declassification considerations should be informed by the content of the request, rather than by the applicant's identity. The petition also led to some actions taken by the IDEA: several archive guidelines were merged into a single "criteria document", which included orders concerning document classification based on considerations of protecting the image of the state and its officials and avoiding political divide. A list of archive files available (at that time) for public access was also created.[50]

Following all the above, as well as the declassification of some of the

50. For the IDF and Defense Establishment Archive (IDEA) criteria document and the availability of its materials' catalogue, see chapter 3.

materials required by Gorenberg for his research, the court found that the petition had exhausted itself and imposed the court costs on the state.[51] The verdict numbers and cites the State's promises to complete the IDF Archive materials' cataloguing and open them for public use[52], noting also that the processing period of the petitioners' requests was unreasonable. The ruling expresses the hope that the IDEA and the other respondents to the petition change their ways and significantly reduce declassification time periods.[53]

Yedioth Ahronoth Case

Alongside the ongoing litigation of HCJ Greenberg, a High Court petition was filed in May 2007 by journalist Ronen Bergman and his newspaper Yedioth Ahronoth, demanding that the archives of the GeneraL Security Service (GSS, or Shit Bet), the Mossad and Israel Atomic Energy Commission be subordinated to the Archives Law, after enjoying unlawful autonomy from the State Archivist. Alongside this principal demand, the petition claimed that the security organizations were breaching the law by failing to open for consultation materials past their RAP:50 years at the time.

Following the filing of the petition, the State Archivist officially announced the subordination of these organizations' archives to the ISA.[54] The petition was revoked with no ruling,[55] yet managed to shed light on intelligence services' and other security organizations' disregard for their duties as stipulated by the Archives Law and its regulations. The petition played a part in the 2010 revision of the Access Regulations. By that time, intelligence service archives had for several years been shunning their duty to declassify archival materials created more than 50 years beforehand, therefore the RAP for their materials was extended to 70 years, and the duty to consolidate a mandatory procedure for exposing 50-year-old materials was stipulated.

51. HCJ 2467/05 **Gershom Gorenberg v. IDF and Defense Establishment Archive Custodian and others.** IsrSC 2010 (1), 406 (13 January 2010). For the verdict: http://elyon1.court.gov.il/files/05/670/024/n13/05024670.n13.htm

52. Ibid, paragraph 6.

53. Ibid, paragraph 14.

54. Yossi Melman, "History Reserved for Cronies", **Haaretz, 16 April 2009 (Hebrew).**

55. HCJ 4081/07 **Yedioth Ahronoth Ltd. And Others v. Prime Minister's Office-State Archivist and Others.** The petition was revoked with no verdict.

Deir Yassin Case

In 2007, the High Court of Justice was required to look into the activity of the ministerial committee for permission to access classified archival records: Haaretz journalist Giddi Weitz and his newspaper, along with Neta Shoshani, Bezalel student, asked to gain access a specific IDEA record on the 1948 Deir Yassin massacre. The RAP of the requested material – 50 years – had long since passed. The ministerial committee weighing the request decided to extend consultation restriction on the requested material for further five years, as it was its position that the declassification of such materials might pose harm for the state's foreign relations.

The court studied the material and found no grounds to interfere with the ministerial committee's decision, yet pointed to faults in the committee's decision-making, with one member announcing his decision in advance and failing to attend the discussion.[56] Moreover: in this ruling, delivered in 2010, the court called to convene the committee as soon as possible, so that it might review the prohibition to access the material, extended at the time until 2012. But the committee has held no further discussions since the ruling, to approve or deny the ongoing confidentiality of the material, which remains in place to this day.

Bus 300 Case

In 2011, journalist Giddi Weitz appealed to the State Attorney, requesting the declassification of restricted ISA materials on Bus 300 Affair (the GSS killing of two Palestinian suspects shortly after their arrest for hijacking a bus with its passengers and the ensuing cover-up operation), for the purpose of producing a film on the subject. The request was denied and Weitz and his partners filed a High Court of Justice petition, demanding to receive all relevant archival materials. The litigation continued for over two years, during which petitioners received access to some of the requested material.

As part of the petition, Weitz also sought to declassify the evidence submitted to the Israel Police by former Prime Ministers Shimon Peres and Yitzhak Shamir. "Uncovering all the investigative materials in this affair is of great importance for historical research. It could put an end to the false myths attached to the case, as well as to softened versions of the events,

56. HCJ 10343/07 **Haaretz Publishing House and others v. the ministerial committee for permission to access classified archive records and others.** IsrSC 2010(2) 3635 (24 May 2010). The verdict: http:// elyon1.court.gov.il/files/07/430/103/p08/07103430.p08.htm

which those involved continue to voice to this day," Weitz later wrote.[57] The state's objection rested on two key foundations: the first of which is the RAPs set for the material, of which the court noted that "needless to say that the respondent is aware that this RAP is a default option and may be shortened through the mechanism stated by the law [...]"; the other argument pertained to national foreign relations and was backed by a written opinion of Ithe Ministry for Foreign Affairs. Having studied the material ex parte, the court determined there was no justification to interfere with the Ministry of Justice decision, due to the arguments made and the fact that many materials had indeed been cleared for the petitioners as part of the procedure.[58]

Conclusion: Excersizing the Right for Information Held in Archives

The Archives Law states the universal right of access to the archive and the materials held therein, as well as different arrangements designed to protect legitimate interests of state security and foreign relations, as well as the right of privacy of people who are the subjects of archive records. The main arrangements stated by the law and Access Regulations concern the classification period of the various archival materials ("restriction") and the ways to facilitate archival material declassification. All these inhabit the legal framework outlined by the Freedom of Information Law and the case law for the right for information.

The RAPs are not ones of complete prohibition: once an applicant requests to consult restricted materials, the default option grants their request, unless, after weighing different considerations of concrete concerns in pre-determined areas, it is found that access must be denied. Moreover, the regulations outline that when weighing the request, it should be borne in mind that the right of consultation increases relative to the public interest in the material, and the longer the time elapsed relative to the duration of the RAP. This suggests that the authority that deposited the material must show that having given it a concrete consideration, it is satisfied that the material cannot be permitted for consultation even if restrictions are placed on the consulting party.

57. Giddi Weitz, "New testimonies on Bus 300 Affair reveal how lies protected Israel's secret service", **Haaretz,** 28 February 2013. English version: http://www.haaretz.com/misc/iphone-article/new-testimonies-on-bus-300-affair-reveal-how-lies-protected-israel-s-secret-service.premium-1.513455

58. HCJ 3820/11, **Giddi Weitz and others v. The Ministry of Justice.** IsrSC 3820/11(4), 251 (2 October 2013).

Once the RAP expires, the depositing party loses its precedence status, becoming a mere advisory body for the authorized official: the State Archivist. In this case regulations grant precedence to a professional body that is free, theoretically and practically alike, from inside considerations that may be weighed by the depositing institution. Even when the State Archivist believes, based on the depositor's recommendation, that archival materials must remain classified for concrete considerations of protecting state security or its foreign affairs, the law and regulations dictate that decisions on these subjects can only be taken with the approval of a senior-ranking ministerial committee.

These are the law and regulations. Reality often proves different, and this shall form the object of review in the following chapters.

Chapter 2:
Access to Israel State Archive

Background

The Israel State Archive (ISA) is the country's largest government archive. According to the Archives Law, the ISA is responsible for all archival materials generated in the state institutions and municipal authorities, which are obliged to deposit records of their activity therein. The archive indeed holds extensive records of government activities in Israel, as well as collections that document the British and Ottoman rule of Palestine, and private collections deposited therein by individuals involved in public enterprises, and other collections.

At least 1,800,000 files are deposited in the ISA's storage rooms[59] in roughly 150,000 archive containers.[60] "Thousands of containers with registration so poor that you cannot tell what's in them"[61] are also a part of the archive. A considerable portion of archival materials that should be held in the archives' storage never reaches it, due to the fact that many government offices and state institutions hold multiple archival materials in their offices and private records units, and due to the insufficient space in the ISA storage rooms, which in recent years meant a full halt of material deposition. Several years ago, the State Archivist estimated that 75% of archival materials of the state institutions were held in different sites, out of the ISA's possession.[62] Recent years have seen a program promoted to solve the archives' space issue by setting up a central archiving site in Arad. But this plan was withdrawn, along

59. Akevot's conversation with State Archivist, Dr. Yaacov Lozowick (26 July 2015).

60. Ofer Aderet, "Israel State Archive Admits: a galore of historic items lie waiting in storage rooms, and nobody knows what's in them", **Haaretz** (4 September 2015) (Hebrew). Archive "container" or "box" is a cardboard box holding records files and other archival materials.

61. Akevot's conversation with State Archivist, Dr. Yaacov Lozowick (26 July 2015). See footnote 59.

62. In a 2012 Knesset Finance Committee discussion, State Archivist Dr. Yaacov Lozowick noted: "Whoever comes in today, requesting archive records, can only immediately obtain the first fourth of the record held in Jerusalem, because who knows where the rest of it lies, here, there and everywhere. Most records that should by law be held at the Israel State Archive have never reached the ISA. They are kept in private places, at the storage rooms of offices, found in all manner of places where someone has shove them, because no room could be found in the ISA. " Finance Committee meeting protocol, 18th Knesset, p 6 (Hebrew) (28 February, 2012).

with the plan to establish a permanent home for the archive in Jerusalem.

Public access to archival materials held in the ISA takes place in the institution's reading room, at Jerusalem.[63] In 2009 and 2010, roughly 2,600 archive users a year visited the reading room.[64] For them and for government offices that require archive materials, 20-30 thousand files a year are brought out of the ISA storage. The State Archivist estimates that roughly half of these files are sent to be used by government offices and other state institutions, while the other half is submitted to the consultation of applicants from the public at large in the reading room: roughly 13,500 files a year on average. These files come from those open for public access. As we shall show here, these represent a mere fraction of the archival materials.

[redacted] number of files submitted for consultation in ISA, 2008-2013 (for public and state institution consultation alike)[65]

Year	Files
2013	26,471
2012	29,751
2011	28,415
2010	26,076
2009	20,502
2008	30,932

The ISA is unit of the Prime Minister's Office. Generally speaking, the State Archivist is not subordinate to the Prime Minister, with the exception of cases where the Archives Law confers concrete authorities on the government: in

63. The ISA offices, along with its reading room, were relocated by the end of 2014 from the Talpiot industrial area to the industrial area at Har Hotzvim. During this relocation, the reading room was closed for the public for several months.

64. Prime Minister's Office, **Activity Report pursuant to the Freedom of Information Law** 2009 (2010). P 39; **Activity Report pursuant to the Freedom of Information Law 2010** (2011) p 83 (Hebrew). These are the most up-to-date released statistics on the subject.

65. Letter from Ayelet Moshe, implementation of the Freedom of Information Law, Prime Minister's Office, to Dr. Noam Hofstadter, Akevot researcher (8 June 2015). A figure was further submitted on part of 2014: 20,252 files until "midway through the year".

1955 these authorities were handed directly to the Prime Minister.[66]

Funded by the Prime Minister's Office, the archive employs a staff of[55] manpower slots. The different archive departments instruct state institutions about registration of records in their possession and materials transferred to the archive, archival material restoration, different releases, archival material declassification and user service.[67] Recent years have seen the basic budget of the ISA steadily growing: in 2014 its overall budget stood at 47 million NIS, 22 million NIS (85%) higher than its original budget for that year,[68] while in 2015 the archive ushered in the new year with a 36 million NIS worth of budget.

Declassifying Israel State Archive Materials

The lion's share of materials held in the ISA are closed and inaccessible. State Archivist estimates that a mere 5% of archival materials that no impediment exists for their declassification are indeed declassified and available for the public. The extended digitization of unclassified materials held in the archive should offer a partial solution for that. The above cited augmentation of the archive's budget relies on government resolutions[69] and was designed to finance a significant scanning of archival materials and extended actions to review originally-unclassified materials for public access. As part of the digitation project of archival materials, roughly 150 thousand pages a day are being scanned. But this is no real solution for making archival materials accessible to the public; according to the State Archivist, the current scanning rate means that scanning of existing ISA materials may only be completed

66. The Archives Law document at the ISA website, p 1, footnote 41 (Hebrew): www.archives.gov.il/NR/rdonlyres/DD86DC0B-33B3-47C0-A2E7-0022EACA84DC/0/ArchiveLaw.pdf.

67. For the list of ISA departments at the institution's website: www.archives.gov.il/ArchiveGov/about/department

68. Figures: the Public Knowledge Workshop, budget index: www.obudget.org/#budget/045107/2015/main.

69. 32nd Government Resolution 4473, "Government work documentation reform and the establishment of national archiving site in Arad" (25 March 2012). www.pmo.gov.il/Secretary/GovDecisions/2012/Pages/des4473.aspx ; The Government Secretariat, 33rd Government Resolution 911: "Government work documentation reform and the establishment of a national archiving site in Arad" (17 November 2013)

in about 40 years.[70] The documents scanned should be available for public consultation in a new ISA website, set to be launched in the latter half of 2016.

The budget augmentation also allows to extend declassification activity through roughly hundred-strong Sherut Leumi (National Service) volunteers, recruited for the purpose of performing a proactive declassification of originally-unclassified documents. The reform further allows to commence work on the archiving of government offices' electronic records, materials that have yet to be held in the archive.[71]

The ISA Declassification Department is the element entrusted with reviewing archival materials, particularly classified ones, for their declassification. Modest by scope, the department is headed by a veteran ISA worker, former manager of the archive's reading room. Its three manpower slots are manned by six pensioners of the Ministry of Foreign Affairs and Prime Minister's Office (each in a part-time capacity), who are entrusted with the declassification of materials deposited by their respective offices. Also operating as part of the Declassification Department, though on a much smaller scale, are Israel Police and Ministry of Defense (MoD) representatives. As a rule, the declassifiers' work is funded by the government offices whose materials they are appointed to declassify. One exception to this rule is the Ministry of Foreign Affairs' declassifiers – who make up the majority of the Declassification Department, and are funded by the Prime Ministers' Office. When the respective government office fails to fund a declassifier, this means its classified archival materials are not made public. Thus for instance, Israel Police materials had no declassifier for a long period of time, during which none of its materials was made public.[72] Similarly, after studying the issue of declassifying the materials of the government agency Nativ, State Archivist notified the State Comptroller that these could not be declassified, as "declassification and its budget are the responsibility of the originating organization", adding that Nativ failed to fund the work of the state classifier.[73]

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70. Yossi Hatoni, "ISA has embarked on a Documentum-based digital archiving on tens of millions of NIS." **Anashim uMachshevim**, 3 April 2014. On another occasion, the State Archivist estimated that in 15 years' time, most twentieth century paper documents held in the archive should be scanned. Ofer Aderet, footnote 61.

71. See the Social History Workshop, footnote 1.

72. For a test-case pertaining to declassifying Israel Police materials, see later in this chapter.

73. State Comptroller, Report into Nativ's Inspection – (The Liaison Bureau) (1998), p 111 (Hebrew).

The Archives Law and Access Regulations dictate that for the duration of the RAP, the depositor, having consulted with the State Archivist, shall be authorized to decide on materials' declassification, while by the end of said period, the two shall exchange positions: authority is conferred on the State Archivist, with the depositor's advice. In practice, no such distinction can be found: the same Declassification Department staff are tasked with declassification decision-making during and after the RAP.

Consultation of Catalogues

> Institutions holding archives make known the existence of the archives, including the existence of closed materials, and disclose the existence of restrictions that affect access to the archives.
> Principle 2 of the Principles of Access to Archives

Cataloguing is the basic searching aid of the archive: it is the full list of items found in the archives, on all levels of documentation – files, record series, fonds, collections etc. Good cataloguing allows consulting parties to know which materials can or cannot be found in the archive, and which are missing or restricted for consultation, until what date and for what reason. The catalogue should be edited according to the archive's customary filing hierarchy and allow to sort records and view them by other indices as well. Every record on the catalogue should contain identifying features describing the contents of the catalogued unit, and as far as possible, the materials' historical and archival contexts.

Catalogues open to the public are necessary condition for appropriate access to information. The Principles of Access to Archives state that institutions holding archival materials, including sealed materials, should make it a publicly known fact, and specify the restrictions that may affect access to materials, if such exist; the basic information on the archival materials held thereby should be accessible to the public at large and provided charge-free; archives should ensure this information is up-to-date, precise, and in accordance with international standards for archival description, all in order to improve and encourage the public access to the archive.[74]

74. International Council on Archives, Principles of Access to Archives, 2012. Principle 2.

Access to Catalogues in the Israel State Archive

Applicants to the ISA only enjoy a partial cataloguing of its holdings. The most readily available information can be found in its website, yet file records available online encompass a mere fraction of materials available in the archive itself, including just the files opened for public access.[75] The reading room staff has the printed lists of files that constitute the registered material held by the archive.

The ISA abides by the originally-classified/unclassified material division. Thus for instance, expanding the declassifiers circle into Sherut Leumi volunteers was meant to allow an exclusive review of originally-unclassified materials. According to the State Archivist, it is the archive's intention to publish an "almost full" catalogue of unclassified materials on its website. A more elaborate catalogue is set to be offered at the reading room, including originally-unclassified materials with their RAP yet to expire. Even this future development is not expected to cover the release of a complete catalogue which includes classified material held at the archive.[76]

Classified file-lists are provided to reading room applicants at the reading room staff discretion, and in some cases, after consulting the head of Declassification Department. The fact that a certain file list is classified as "secret" or "top secret" cannot in itself suffice to deny its consultation by an archive user, and researchers – including Akevot researchers –indeed consult classified catalogues. Nevertheless, this is subject to archive staff discretion, and Akevot is unsure whether the discretion practiced on the subject is regulated by any written archive procedure. Thus for instance, in January 2016, following a discussion between the head of public service and the person in charge of declassification at the ISA, Akevot researcher was informed, that he could not consult the catalogue of "files and recordings

75. We must remember that search results on the web or any other interface within the catalogue do not constitute "cataloguing": search results do not encompass the overall archival materials; rather, they are, by nature, a mere partial list of a catalogue, narrowed down by search settings, while the search may include only some of the records in the full catalogue. Allowing the option of searching a list of materials held in the archive, or allowing access to such a list, is not tantamount to granting access to the archive's complete, unabridged catalogue. The ISA website noted that "the [online] database holds hundreds of thousands of records that include descriptions of ISA documents. The full database of these records is available at the archive's reading room." www.archives.gov.il/archivegov/gallery/faq/risum.

76. From Akevot's conversations with State Archivist, Dr. Yaacov Lozowick, 11 May 2015 and 26 July 2015.

of the Commission of Inquiry into the 1990 Events on Temple Mount".[77] Needless to say that failure to provide the file list precludes the option of ordering files for consultation from it, and thereby the material's review for declassification is precluded too. Akevot's request for reasoning to back this denial of access to the file list was met with no reply.[78]

The practice exercised at the ISA cannot guarantee an impartial review of requests to consult files on the classified catalogue, even if said catalogue is submitted for consultation. Thus for instance, 12 files requested by Akevot researcher after consulting classified catalogues provided to him[79] were never ordered from the storage room, under instructions from a senior archive official.[80] Since files were never brought up from the storage room, no declassification review could be performed on them. As Access Regulations state that an applicant's request to consult an archival material shall be reviewed on its own merits and may only be denied based on specific conditions listed by the regulations, there can be no legal ground for the order to avoid bringing files out of the storage room, to be reviewed and possibly declassified.

State Archivist noted in conversation with Akevot that the issue of access to the classified material catalogue "has yet to be resolved".[81] A discussion into the prospect of declassifying the full catalogue of archival materials, held at the ISA on May 2015, concluded with no decision reached to promote its exposure, due to objections voiced by officials present. "As of now, it is impossible to show the catalogue of classified materials, as it is classified itself. This is probably not a mere question of resources," said the State Archivist.

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77. Chaired by Zvi Zamir, the commission was appointed to look into the circumstances surrounding the 8 October incidents, where Israel Police officers' fire left 17 dead at the Temple Mount. See Nadav Shragai, "October Riots. 1990", **Haaretz** (28 September 2004) (Hebrew). www.haaretz.co.il/misc/1.1002836

78. Email correspondence between Akevot's Lior Yavne and ISA head of research and public services (11-12 January 2016, 18 January 2016).

79. Files were ordered from the two following lists: list 90.7/3 of Deputy Minister of Agriculture bureau files from years 1977-1984, classified "top secret", and list 119.8/8, comprising files from the Minister of Police Bureau (1968-1983), classified "secret". The cover of this list bears the hand-written order of "no user or researcher consultation allowed".

80. Email correspondence between Akevot's Lior Yavne and ISA head of research and public services (14 January 2016, 20 January 2016).

81. From conversation with State Archivist Dr. Yaacov Lozowick, 26 July 2015. See footnote 59.

Akevot's recommendation: the Israel State Archive should offer the public a complete, unabridged catalogue of its archival materials, including a catalogue of its classified materials and those under RAP. Inasmuch as some details in the catalogue may disclose confidential details, they can be redacted, so as to avoid risk to protected interests.

Israel State Archive Declassification Criteria

> Institutions holding archives ensure that restrictions on access are clear and of stated duration, are based on pertinent legislation, acknowledge the right of privacy and respect the rights of owners of private materials.
> Principle 4 of The Principles of Access to Archive

The ISA policy on material declassification is largely informed by criteria defined in 1994 in Resolution PUB/37 of the ministerial committee for permission to access classified archival records,[82] adopted by a Government Resolution.[83]

The ministerial committee resolution was made more than 20 years ago, in an age where the constitutional importance of the freedom of information was not as widely acknowledged: in the days before the Freedom of Information Law, the case law that followed it, and the 2010 Access Regulations amendment. Moreover, the ministerial committee resolution was by no means designed to set criteria for declassifying all the different materials held in the ISA; its sole purpose was to set guidelines for the declassification of a specific type of

82. The ISA website cites three references for the Declassification Department work to declassify archival materials: The Archives Law,Access Regulations (see chapter 1) and the "criteria document" to be described below.

83. 25th Government Resolution 3649, "Consulting Government Stenographs and Councils" (25 July 1994). Ayelet Moshe's letter to Dr. Noam Hofstadter (18 June 2016), see footnote 26. For the resolution and criteria, see the archive's website: www.archives.gov.il/NR/rdonlyres/6C0BBB3B-F350-47B5-AF82-54A11A4A3182/0/NohalimHasifa.pdf. Importantly, it is far from clear wherefrom the ministerial committee derives its authority to set criteria: its authority limits are stated in section 10 (c) of the Archives Law, which only includes approval or rejection of the State Archivist's decision to mark a material as secret or confidential. Nevertheless, the resolution made by this ministerial committee was adopted by a government resolution, thereby gaining validity.84 Nevertheless, section A(3) of the introduction to this document excludes stenographs by the Ministerial Committee on National Security Affairs (or the Security Cabinet of Israel) and declares that such criteria "shall be determined later". As part of the Consultation 2010 Regulations amendment, it was stipulated that records of government meetings and committees be under RAPs of 30 years (instead of the 40 years stated by Resolution PUB/37).

records: stenographs of government meetings and government committees.[84]

A custom has come to be in the ISA, whereby criteria for declassifying any material held in the archives are those stated in Resolution PUB/37, for the declassification of a **limited, sensitive** group of documents. Moreover, these criteria serve both for the declassification of documents under and past their RAP.

In a conversation with Akevot, State Archivist noted that using the resolution's criteria for declassifying all documents held in the archive constituted a "time-old unwritten law", adding that he assumed the reason to be the fact that Resolution PUB/37 was in fact the only document in the archive's possession where an authorized element specifies criteria for declassification.

The criteria that instruct when and where the basic right to consult governmental information can be overridden are determined by a secretariat rank of the executive, which defeats the whole purpose of the Archives Law – making archival materials available for public consultation. As stated in the opinion submitted in 2009 to the State Archivist by ACRI, "the declassification criteria belong not in the rules, but within the regulations." Even if archives are authorized to set criteria, this authority should be restricted and stipulate uniform declassification orders for all depositors of materials in the archive, otherwise "each depositor makes a law unto themselves."[85]

Furthermore, the ISA seems to hold a classified document described as "criteria document". Responding to Akevot's inquiry on the ISA criteria for material declassification, the Prime Minister's Office said that the archive's Declassification Department also held "[...]an internal document specifying declassification criteria by a division of security/foreign affair materials. The document is highly classified and cannot be disclosed to the public." Nevertheless, in a conversation with him, State Archivist made it clear that to the best of his knowledge, there were no classified written criteria for declassification beyond Resolution PUB/37, adding that to his understanding, it was a document that contained the knowledge accumulated at the Declassification Department from previous declassification decisions.

84. Nevertheless, section A(3) of the introduction to this document excludes stenographs by the Ministerial Committee on National Security Affairs (or the Security Cabinet of Israel) and declares that such criteria "shall be determined later". As part of the Consultation 2010 Regulations amendment, it was stipulated that records of government meetings and committees be under RAPs of 30 years (instead of the 40 years stated by Resolution PUB/37).

85. Avner Pinchuk, "Comments by the Association for Civil Rights in Israel", see footnote 4, particularly paragraphs 9-13, p 3, and paragraphs 53-61, pp 20-21.

If an additional document does exist – other than Resolution PUB/37 of the ministerial committee for permission to access classified archival records, which informs decisions on requests to consult restricted archival material – it should be open to the public as any administrative guideline, while redacting terms and details when actual justification can be found.[86]

Resolution PUB/37: Internal Procedures Exceeding Regulations

A study of criteria stipulated as part of Resolution PUB/37 reveals that these often exceed the range of restriction stated in the Access Regulations, making an unauthorized extension at the discretion of declassification reviewers.

Whatever tools provided by the resolution for decision-making on restricted material consultation requests can be found in Section 2 of the resolution's introduction chapter. It is stated there that the declassification action should be informed by an approach that reconciles the public right to know with the necessity of safeguarding state security interests and foreign affairs and the right of privacy."

Missing from the criteria document, therefore, are the balancing considerations introduced to the current version of the Access Regulations, 16 years after the document was drafted. These include the historical, research and public interest in any material requested for declassification, the applicant's personal interest, the time elapsed since the material's creation, and the ratio between this time period and the RAP stated for the respective material.[87] The document's wording shows that it was never designed to set yardsticks for consideration to be weighed and balances to be maintained when deciding on declassification and the denial thereof. Rather, it was meant to offer a (open) list of prohibitions –subjects that records pertaining thereto may not be declassified due to potential harm to state security, foreign affairs and the right of privacy.

Indeed, some of the subjects listed do denote well-defined areas of evidently sensitive information.88 But other sections of the document actually extend restriction grounds stated by the Access Regulations, and even place

86. Letter from Ayelet Moshe to Dr. Noam Hofstadter (8 June 2015), see footnote 65; Akevot's conversation with State Archivist Dr. Yaacov Lozowick (26 June 2015).

87. Secondary Regulation 9(e)(1) of the Access Regulations.

88. See for instance section 2: "Information that may compromise sources, agents, collaborators, information collection methods, and activities of the intelligence and security community, in Israel and abroad."

sweeping prohibitions on declassifying archival material of particular interest to the public. The document raises two key problems:

First of all, some sections set general, sweeping prohibitions on consultation. Some criteria determine the range of materials prohibited for declassification, using general terms that may welcome broad interpretation. Accordingly, section 2 prevents declassification of any information "that may cause damage to the state's economic interests", while section 10 is a "basket clause" that may cover any area of the government's activity: "Information that a disclosure thereof goes against the public interest [...]". The meaning of "economic interests"[89] and "public interest" is not demarcated; these general terms can denote any public arena. Even the degree of risk posed by submitting the respective information is unspecified, left to the subjective evaluation of decision makers in the declassification request.

Secondly, some sections impose particular prohibitions on the declassification of information that forms the core of democratic life: the archive should allow individuals and society at large to know the contexts attending their shared life and the governing endeavor.90 However, some criteria exercised by the ISA recommend denying access specifically to those materials that hold particular historical value, materials that exert exceptional influence on social relations. Section 3, for instance, prohibits the declassification of information that may "[...] pose harm for the state's relations with minority and other groups, and constitute an alleged ground for prosecutions of the state." This leaves an opening to prevent any consultation of records concerning the state's relations with its Arab citizens or groups such as ringworm victims, Yemen-born parents whose children disappeared in the 1950's, homosexuals, etc. in other words, this section restricts public access to any record on discriminating and excluding practices. Moreover, this order explicitly seeks to prevent any person affected by an allegedly unlawful action by the state from using archive records so as to obtain judicial relief. Section 7 orders the non-declassification of "government's instructions to IDF, inasmuch as their release may pose harm for state security", thus setting the stage for precluding examination of government actions by the sovereign: the state's citizens. These two sections exempt state authorities from giving account of their policy and actions in the actual important issues of war and peace and the policy that shapes relations between groups in society.

89. Interestingly, criterion 10 also turns around the meaning of "public interest" in the balance of considerations: it shifts "public interest" from the side that affirms declassification to the restriction imperatives: the "public's right to know" makes way for the depositor's duty of protecting the information from being shared with the public.

90. See introduction chapter.

With the freedom of information adopted into the Israel law by legislation and case law, and with the introduction of the 2010 Access Regulations amendment, the criteria document became outdated. There is no reason to view Resolution PUB/37 as a tool to set yardstick guidelines for archival materials declassification, but as a list of subjects whose classification warrants special attention. It then follows that no legal base exists for the ISA's artificial application of this document as a decision-making tool for declassifying archival materials that exceed the narrow, defined scope of government meetings and decisions.

Akevot's recommendation: the ISA should stop exercising Decision PUB/37 as a document that sets criteria for discretion in decisions on declassification. If an internal procedure is required to set yardsticks for materials declassification, it must rely on the Access Regulations and the customary balancing tests for freedom of information, and be open for public access. If another document exists besides Decision PUB/37 to instruct in decisions on requests to consult restricted archival material, it must be made public like any administrative guideline, while maintaining the protection of terms and details where protection is grounded in actual justification.

Access Requests Denied with No Reasoning Provided

> When a request for access to archives is denied, the reasons for the denial are stated clearly in writing and conveyed to the applicant as soon as possible.
> Principle 7 of The Principles on Access to Archives

In November 2015, an Akevot researcher ordered archive file C-5674/6, originated in the Ministry of Justice and titled "Arab Affairs: Inquiry Committee on Arab and Minority Affairs". The documents in this file had been created in 1948-9, which meant that their RAP had long since expired. The file was never submitted and no explanation was provided. It was only after it was re-ordered that a response arrived, declaring the file "confidential". The reply neither cited any grounds for this classification, nor specified any reasoning for it; it never pointed the applying researcher to a possible avenue of appeal.

Akevot's experience, as well as this of all researchers interviewed for this research, show that this is a recurring theme. Typically, denials of access to archival material – during or after the RAP – specify no reasoning for this decision and are marked by laconic, succinct phrasing that cites, at best, the general ground behind the restriction – "security considerations", "foreign relations" and "privacy" (or variations on these terms). The response often consists of a plain "confidential", with no grounds cited.

How does this situation fare in light of the relevant orders by the law and case law? The Israeli administrative law states that every negative reply by any administrative authority must be accompanied by a reasoning.[91] The case law determines that whenever a decision by a governing authority infringes a basic right or a constitutional value, its reasoning must extend beyond the ground that allows the infringement by law, and explain the required causal link between the case at hand and the existence of said ground.[92]

The court acknowledged the particular importance of complying with these principles of reasoning when the authority's negative reply undermines the right for information. Accordingly, in the guiding ruling on the issue, The High Court of Justice stated:

> The requirement of reasoning decreases the threat of arbitrary or misguided decisions and contributes to the authority–citizen relations in a democratic state [...]. indeed, a public authority is not at liberty to make do with laconic denial of a request for information and must specify the reasons for it, so as to allow the individual who requests the information to study these reasons and consider their moves. Specifying the reasons for such denial may also allow the court to study the considerations weighed by the respective authority and the internal balance exercised between them, while subjecting it to its criticism [...].[93]

The court further added that detailed reasoning was all the more important in denials of freedom of information requests, as such decisions must justify the undermining of the principle of information disclosure, which is a vital public interest.[94] The court further stated that it was the denying authority's duty to clarify the sensitivity of the denied information and which part thereof proved sensitive, and in any case, "the casual statement that the information concerned is sensitive, simply due to the sensitivity of the subject

91. The Administrative Procedure (Statement of Reasons) Law, 5719-1958, Law Book 1526; "Administrative Procedure (Statement of Reasons) Law, 5719-1958" **Attorney General Instructions** 3.1004 (2002).

92. HCJ 953/89, **Indoor v. Mayor of Jerusalem** IsrSC 45(4) 683, particularly pp 685-689.

93. Paragraph 23 of Justice E. Hayut's verdict on APA 9135/03 – **The Council for Higher Education and others v. Haaretz Publishing House and others** 2006(1), 697, (19 January 2006).

94. Ibid.

itself – cannot suffice in itself."[95] Moreover, specific rulings establish these principles time and again, in each classification ground that falls within the Archives Law – safeguarding state security and foreign relations,[96] privacy,[97] and trade secrets.[98]

Following the Case Law, the Ministry of Justice Freedom of Information Unit[99] issued a procedure instructing the appropriate form of reasoning in cases when governemnt authorities deny information requests. The procedure orders that a negative reply should include (among other things):
a. The ground for refusing requested information;
b. The different interests examined and balanced by the respective authority: the expected outcome of the material's declassification and how these measure against the level of certainty required to establish an interest to deny declassification; the personal interests of the applicant (if specified), and the protected interest of any third party, inasmuch as such exists;
c. Why, having weighed the different considerations, the authority decided against the material's declassification – full or partial or under certain conditions;
d. Notification regarding the applicant's right to appeal the decision, and the element to whom an appeal can be submitted.

The procedure's orders far from reflect the replies actually given at the archive, and as clarified by the State Archivist, the reasoning for decisions made by decision-makers on requests to consult archive material are not recorded at all. Moreover, the Access Regulations state the depositor's obligation to seek the advice of the State Archivist when processing requests to consult restricted material.[100] Records of the Archivist-depositor consultation should be made public, but inasmuch as such consultations do take place, they are

95. Administrative petition (Tel Aviv District Court) DCC 2744/09 **Gisha v. The Ministry of Defense and others** 2011(1) 27527 (22 March 2011).

96. Thus for instance, APA 3300/11, **The Ministry of Defense v. Gisha** HCJ 2012(3) 11022 (5 September 2012).

97. See AP (Nazareth) 30204-11-14 **Attorneys for Proper Administration v. Local Council of Dabburiya** TAK- DCC 2015(3), 29005 (1 September 2015).

98. See APA 4757/08 **Klir Chemicals LTD (1994) v. State of Israel – Ministry of Defense** TAK-HCJ 2008(4), 872 (23 October 2008).

99. Freedom of Information procedure 3.1, "Response Requirements for Freedom of Information Request Denials" (23 June 2013). The procedure's description was shortened pursuant to the relevant orders of the Access Regulations.

100. Secondary Regulation 9(a) of the Access Regulations.

not documented in the archive.[101]

As a result, there is no way to review the discretion of decision-makers in rejected file consultation requests, and find out if the necessary balance was exercised at all. The grounds cited in request denials do not constitute reasoning, but rather a laconic mention of the ground – the protected interest to deny the request. A response as such does not allow the applicant to find out whether and to what extent the decision-maker on their request have weighed all relevant considerations, all pertinent data and circumstances, including the option of disclosing selected details of the material requested. In the absence of reasoning for the decision taken, the user's ability to appeal the administrative file consultation denial is seriously compromised: which arguments should they challenge? How are they to challenge their likelihood?

In a conversation, State Archivist backed the custom of failing to provide reasoning for material consultation denials, adding that if every decision were to require recording, this would mean a significant slowing down of request-processing.[102] Yet this can be resolved by the allocation of appropriate declassification resources, similarly to the recent allocation of resources for declassifying unclassified materials at the ISA.

Furthermore, if the reasoning behind the decision is not recorded even by decision-makers, it makes it all the more complicated for them to defend it in appeal proceedings, if filed; the state's ability to defend the decision in court is compromised, when requested to address an unreasoned decision to maintain archival material classification.

Akevot's recommendation: in cases where the Declassification Department decides to deny full or partial consultation of the requested material, decision-makers shall specify in writing the reasons for their decision. The reasoning must follow the outline determined in the freedom of information procedure 3.1: "Response requirements in freedom of information request denials", with particular attention to the ground for the restriction placed, while citing the interests examined, considerations weighed, expected outcomes of the information submission and the balancing barrier that informed the decision. Depositor-Archivist discussions on the matter should be recorded too. Records of the different decisions shall be available for

101. Akevot's conversation with the State Archivist (26 June 2015). See footnote 86. See also the court ruling that "the legal instructions should not only be followed, but also lawfully recorded, so that prospective viewers may learn that the law has indeed been abided." Paragraph 5 of the decision on AP (Tel Aviv) 4947-12-14 **Kremer v. Ramat Hasharon City Municipality** DCC 2015(2) 27600 (31 May 2015).

102. Akevot's conversation with the State Archivist (26 June 2015). See footnote 86.

public consultation. If an elaborate reasoning may in itself disclose details disqualified for disclosure, the gap should be overcome by offering the gist by way of paraphrasing.

The absence of Formal Appeal Procedure

> Users have the right to appeal access denial.
> Principle 7 of the Principles of Access to Archives

In 18 March 2014, Akevot's researcher ordered a Ministry of Interior file titled "Occupied Territories – General", comprising materials from 1967-1968.[103] Following a reminder, the researcher was informed that the file was "confidential".[104] In response to the researcher's request to reconsider the decision to deny access the file and inform him of its reasoningand how it may be appealed, a laconic reply was sent, stating that "the file has been closed as it concerns security matters. This subject can also be found at the Ministry of Interior. The file shall not be reviewed again [for declassification] until 2019."[105]

And so, the notification given to the researcher on the file provided no reasoning for the decision reached, and even when explicitly requesting such reasoning, he received the general statement of "the file concerns security matters", which constitutes no reasoning. The researcher's expressed inquiry of how he might appeal the decision met with disregard.

The ISA makes no clear, methodical procedure known to archive users, to advise of the options to appeal a denial of their request to consult an archival

103. Israel State Archive file GL-12039/16.

104. ISA research and public service's email to Lior Yavne (28 April 2014).

105. Email correspondence between Lior Yavne and ISA reading room worker (5 July 2014).

material.[106] The State Archivist noted that there was an informal option of requesting that he himself review a file denied for consultation and determine whether or not the decision was justified; yet this was no official, orderly procedure, but rather an activity the State Archivist took upon himself. Nevertheless, this option too is not made known to archive users, whether by a signs or in writing, and according to different users interviewed for this research, usually not even verbally. Akevot's request to the ISA to receive the number of appeals filed in recent years was met with the reply that no such data existed at the archive.[107]

Appeals for denying access to files past RAP

In response to Akevot's question, it was officially stated that anyone seeking to appeal the Declassification Department's decision to deny consultation in a file past its RAP might do so: "The appeal request is submitted for another review by the Declassification Department and when necessary, for the Chief Archivist's opinion." That is, the practice described here as an appeal is no more than a referral of requests for re-examination by the Declassification Department.

Even in cases where requests are submitted for the Chief Archivist's review, his judgment is described as mere "opinion", rather than a binding decision, even though the law and Access Regulations declare it is the State Archivist who is authorized to decide on the declassification of files past their RAP.

Appeal on Files under Restricted Access Period

As regarding the option of appealing a denial of access to files that are still under RAP, the ISA notes in its reply that "applicants seeking to appeal the declassifier's decision not to declassify an archival material that is still

106. In a request pursuant to the Freedom of Information Law, a researcher for Akevot raised elaborate questions regarding the options of appealing decisions to deny archival material consultation. Among other things, Akevot asked for a copy of the procedure for submitting an appeal, if such existed. The ISA submitted no such copy and failed to explain this omission on its part, yet never stated that no such procedure existed. Akevot has a copy of a procedure document from 2000, which may not be valid. The last section of this document concerns appeals: "A researcher may appeal before a 'review committee' any declassifies decision to maintain classification of a certain file. The committee's decision shall be final." The document makes no mention of the composition of this "review committee" nor the scope of its authorities. Research, audience and declassification services, "Procedure 7-3: declassification of restricted archival materials". Updated to December 2000. In Nimrod Drori (ed.), **Customary Archival Procedures and Forms** (2012), p 18.

107. Letter from Ayelet Moshe to Dr. Noam Hofstadter (8 June 2015). See footnote 65.

restricted are referred directly to the depositing element, so as to submit an appeal."[108] If in this case, it is determined that the archive user must address another request to the depositor – the same element that denied it in the first place – in a procedure that constitutes no appeal, but rather a request to reconsider the original decision.

The ICA principles of access to archives specify requirements of archives in processing appeals of denied consultation requests:

> [...]When a request for access to archives is denied, the reasons for the denial are stated clearly in writing and conveyed to the applicant as soon as possible. Users denied access are informed of their right to appeal, the procedure to submit an appeal and the time limits, if any. For public archives, several levels of appeal may exist, such as a first internal review and a second appeal to an independent and impartial authority established by law [...] Archivists who participate in the initial denial provide the reviewing authority with information relevant to the case but do not take part in the decision-making on the appeal.[109]

But as specified before, the ISA has now drafted a relevant procedure. The practice of referring appeals (inasmuch as such are received, while the archive, again, holds no relevant data) to the element that made the initial decision agrees with the norm of administrative appeals in Israel and with the international professional principals on access to archives.

Akevot's recommendation: State Archivist should draft clear procedure for submitting appeals of decisions to deny material consultation, during or after the RAP. The procedure shall specify the elements that may discuss the appeal, which shall not include the original decision-makers, while a timetable shall be set for deciding on the appeal. The procedure should be made known as part of any reply denying on consultation request, whether full or partial.

Unauthorized Extension of Restricted Access Period

One order of the Access Regulations stipulates a review to precede the consultation of archival materials past their RAP. If review outcomes suggest a need to avoid public access for the respective material, the Archives Law and Access Regulations determines authorities in this case: a recommendation of

108. Ibid.

109. Principle 7 of the Principles on Access to Archives.

the State Archivist before a ministerial committee for permission to access classified archival records and the approval of said ministerial committee.[110]

In practice, decisions on extending RAP on different materials sought by archive users for consultation are received by people at the Declassification Department of the ISA, who in turn exercise the authority assigned by the law to the Chief Archivist and the ministerial committee. Decisions to extend the material's protection are not limited by time, but it is the custom that a file is not reviewed again unless five years have passed since its last review.

Information provided at Akevot's request as part of this research suggest that the ministerial committee has not convened since 2008, nor has it discussed any State Archivist request to consider an extension of the declassification period on any archival material. Throughout this period, the ISA Declassification Department continued to extend RAPs of archival material, regularly and at its own discretion. As noted above, even in these cases, no arguments are offered that back decisions to extend prohibition on materials already past their RAP; nor is any information provided about the option of appealing the decision, which at any rate is made with no legal authority.

There is no guarantee that a ministerial committee is best-suited to balance considerations pertaining the public's right to know against other interests when it comes to the question of whether to continue denying access to archival material past its RAP. During discussions into the Archives Law amendment which instated the committee, different opinions were voiced on the issue,[111] but as long as the law grants the State Archivist exclusive authority to extend RAPs, with the ministerial committee approval, the practice of the ISA is unauthorized and in breach of the Archives Law. These cases pose an even harsher infringement of the public's right to know, the freedom of information and the freedom of research, due to decisions made to deny archival material consultation. And it may be that the law should be amended to include an alternative arrangement to the current one. During the discussion into the current version of the Access Regulations, ACRI proposed an arrangement similar to the one stated in section 24b of the

110. Section 10(c) of the Archives Law; Secondary Regulation 8(d) of the Access Regulations. See also p 24.

111. Ziona Raz, see footnote 30, pp 50-52.

Committees for Inquiry Law:[112] that authority to deny – for a set period of time – consultation of archival materials past their RAP shall be conferred on an independent public committee.[113]

Akevot's recommendation: section 10 (c) of the Archives Law should be amended so that a similar arrangement to that found in section 24b of the Committees of Inquiry Law is introduced: appointing a public committee authorized to extend declassification prohibition on archival material past its RAP. Until the law is revised, the orders of section 10(c) of the Archives Law should be followed.

Test Case: Access to Archives of Israel Police

Akevot's request to consult an early 1970s Police file held in the ISA[114] was met with the reply "classified until 2042. We were informed by the Declassification Department that the file is confidentaial due to security and privacy consideration." Responding to a request to specify the considerations behind this decision, ISA employee wrote: "having checked with [head of Declassification Department], I was informed that according to archive regulations, materials of security matters are confidential for a period of 50 years, which rendered void all the researcher's complaints."[115] No further explanation was provided.

112. Section 20(d) of the Committees of Inquiry Law authorized the committee to order consultation denial on its report for the duration it may state, in order to prevent actual harm to protected interests specified in section 20(a): "state security, vital economic interests of the state, the wellbeing or privacy of a person, or the classified modes of operation of an authority or body with lawful investigative authorities." Section 24b orders that if the government finds that the committee report must remain classified, a protocol of its discussions or any other material pertaining to its work for an additional time period after the period stated by the committee, the government shall bring the request before a public committee chaired by a retired judge, which shall hear, among other things, the stances of the State Archivist, Military Censor, and "whomever the government requested that the committee hear". The committee is authorized to determine orders on the continuing classification of the material at hand. The Committees of Inquiry Law, 5729-1968, *Sefer* Hahukim (Law Book) 2294 (Hebrew).

113. Avner Pinchuk, **Comments by the Association for Civil Rights in Israel,** see footnote 4, paragraph 23.3, p 12 (Hebrew).

114. File L-524/13 originated in southern district headquarters of Border Police, titled "Lessons and conclusions". The file contains materials from 1972-1973.

115. From email correspondence between Lior Yavne and the ISA reading room staff, from 18 May 2015 and 27 May 2015.

Public access to police archival materials is of particular importance. The archive's role of promoting and protecting human rights is critical when it comes to security bodies and law enforcement. Nevertheless, police material is undoubtedly highly sensitive, with its processing involving significant aspects of privacy. This dictates a careful balance of the different interests and meticulous attention in decisions concerning the material's declassification.

Israel Police archival materials are deposited in the ISA. The Access Regulations place a 30-year RAP on these materials.[116]. While researching for this report, a researcher for Akevot ordered police files for consultation in the ISA, all of which past their restriction access period. [117] Here are the main findings on procedures for processing requests and their ensuing replies.

No catalogue, only file lists. A person requesting to consult Israel Police archival material is required to arrive at the ISA reading room, as the file list on the archive's website does not specify police files. Police file lists are submitted to researchers' consultation by request and as part of the reading staff's user counselling service.[118] This is no unabridged catalogue of police files: the information in this police file list is very limited.[119] Thus for example, a user who is granted access to these lists must look into the relevance of each file for their research, based on the originating police unit, the year range of materials contained in the file, and laconic titles with no specification of the file's contents. Typical titles include: "Relations with the Military", "Israel Border Police Operation, Routine"; " Drugs". The titles of some files specify identifying details, like the name of victim whose murder was investigated or another concrete event (like "Terrorist Attack in Beit Shean, 1974"), but generally, the information available to those consulting these lists is minimal.

Access is invariably conditioned on preliminary review. All police files in the ISA are subjected to review procedure by a police representative. This also applied to files formerly submitted for consultation by other archive users. The practice goes that all police files are reviewed again before any applicant can consult them. The origin of this custom is unclear, having no ground in the law and regulations, which raises concerns that consultation of

116. Item 4 of the first addition to the Access Regulations.

117. It is the ISA custom that in the case of a document file, the decisive date for calculating the RAP is that of the last document in the file. This custom is grounded in neither the law nor regulations.

118. Some of these lists conspicuously classified "secret", even though their cover advises that these lists have already been cleared and declassified.

119. And indeed, some lists are titled "limited report".

documents and files may be denied based on the identity of the user seeking access to them.

The review procedure: limited scope of operation: the police representative is a retired, legally-trained major general, who, to the best of our knowledge, performs this duty voluntarily. Attending the archive once a week, he reviews the files piled during the previous week due to the public's requests to consult them.[120]

The review process: potential institutional and personal bias. The reviewer, again, is a police retiree, reviewing his institution's materials as part of exercising discretion in whether or not to approve them for public consultation. This procedure involves an actual risk of institutional or personal bias, which may lead to an ongoing restriction on files that given an appropriate interest balance, may be declassified. As regards materials under RAP, this bias is built into the Access Regulations, yet due to the customary practice at the ISA, the declassification review remains, in practice, at the hands of the police, even when it comes to prolonging classification by the end of the RAP.

No representative, no consultation: the appointment of a police representative is in fact a necessary condition to allow consultation of these files, even if these have been declassified before. In the course of 2015, the police representative was absent for about six months, but was never replaced by another, and no police files could be obtained for consultation during this period. Even when the representative resumed his position after his absence, the reading room staff informed Akevot of a roughly six months' worth of police material review delay, and therefore "there is no guarantee we can resume ordering new materials any time soon."[121]

No written comments, no reasoning, no appeal. As a rule, archive users receive no written reference to the files they are denied, bar a hand-written "confidential" or a similar worded inscription (if any). The police representative provides no reasoning for their decision to deny access to the files, and therefore the balances exercised in the decision-making process cannot be reviewed. Furthermore, the official making such decisions, that is, to prolong the RAP, is not specified: was it the police representative alone?

120. To cite reading staff room during their conversation with Akevot, in the past, no police representative was assigned to the ISA, which meant that no police files were declassified. The representative's current limited scope of activity is referred to as major improvement.

121. Email correspondence between ISA reading room staff and Akevot's researcher, Lior Yavne, from 6 December 2015.

Were the ISA staff involved? Was the State Archivist informed? Nor does the ISA refer applicants whose request to consult a file is denied to any procedure of appeal.

Unauthorized denial of consultation: in some cases, Akevot's representatives were informed in person, by the reading room staff, that some requested police files were not provided as they contained "military material" – a general reasoning that has no grounds in the Access Regulations. The police representative or State Archivist may indeed consult other elements in deciding on the request to access the material, but there is no legal ground to avoid submission of the file for consultation just because it included archival material from sources other than the depositor.

Unauthorized extension of restricted access periods. The authority to deny consultation of archival material after the RAP is the State Archivist's by law, in a process he initiates and with the approval of the ministerial committee for permission to access classified archival material. In practice, the restriction on police files that a decision was made not to submit to an archive user is autonomously extended, without referring them to the State Archivist and ministerial committee through the procedure stated by the law, and therefore with no legal authority.

Between 19 April 2015 and 27 May 2015, Akevot's representative ordered 64 police files, on different subjects, all past their RAP. Of these, 39 were submitted for Akevot's consultation. The remaining 25 files – roughly 40% – were withheld.

Two of the files denied were said to be "classified". No explanation was provided regarding the remaining 17, but in person, it was said that a few of these had not been submitted as they "contained military material". One such file was not submitted as it was borrowed by the police at the time, while five others were not submitted, as they could not be found in the ISA's storage. Borrowed file and those that couldn't be found aside, about 30% of police files ordered by Akevot were not submitted, with no sufficient reasoning or legal authority.

Let it be stressed here that Akevot has no reason to question the discretion of the reviewer for the police or that of any other official at the ISA. But the high percentage of files barred for consultation in this sample, despite being past their RAP (at times by many years) with no legal authority, the absence of any reasoning for the decisions made by the reviewer and Declassification Department, and the lack of any accessible, clear procedure to appeal the department's decisions mean that the entire process is far from transparent, and therefore suspected of ulterior motives, even if such suspicion in unjustified.

Conclusion: Right for Information and New Access Regulations not Internalised in ISA

Five years after the Access Regulations amendment, some gatekeepers of archival materials have yet to adapt to the new legal reality. Classification periods cannot constitute the final answer to consultation requests, and "security", "foreign relations" or "privacy" cannot in themselves suffice to deny consultation. It is the archive's role to review applicants' requests individually, balance the considerations dictated by the regulations, and in the absence of any other choice – including partial consultation – deny access to the requested material. Even in this case, reasoning must be provided for this decision and a channel to appeal it must be opened, before an uninvolved element.

The law and regulations point to different elements authorized to make declassification decisions, during and after the RAP. It is the archive's Declassification Department staff that make the decisions, but they provide no reasoning, nor do they refer applicants whose requests are denied to an appeal procedure – which is informal at any rate. In addition, the mechanism determined by the law for cases where materials past their RAP must not be declassified is not implemented, partly because its incompatibility with reality: it is unreasonable that every decision to deny archival material consultation should require the involvement of three minsters.

The State Archivist estimates that the overwhelming majority of archival materials held in the ISA – roughly 85% of nearly 2 million files – comprises originally-unclassified materials which no impediment exists to make public. Nevertheless, 60 years after the Archives Law legislation, no more than 5% of materials that should be open for public access are indeed open.[122] This is due to the fact that some state institutions refrain from depositing their materials in the ISA, as well as the practice for reviewing files past their RAP. The prospective move in the ISA, which shall rely on Sherut Leumi volunteers to review and release originally-unclassified documents, is poised to largely enhance declassification rate, to thousands of files a day, thereby gradually closing the great gap.

Expanding the release of originally-unclassified materials and raising the large resources required for the purpose are welcome steps, but they are no solution for the declassification of classified archival material past its RAP, as long as regulations condition each declassification upon a material

122. According to the State Archivist, in his conversation with Akevot, this is a mere estimate while the exact figure is likely even lower. Akevot's conversation with the State Archivist, 26 June 2015. See footnote 86.

review procedure, and so long as resources channeled for this review remain as limited. These materials' declassification depends on the willingness of the various state institutions to allocate resources to declassify and make public their archival materials.

These significant barriers are coupled by the fact that the large majority of materials that should be taken in by the ISA never make it there: about three quarters of the archival materials of government offices and different state institutions are held in the government offices and in private records units, funded by the public but allowing it no access to their materials. Until a solution is found that allows to place these materials under the State Archivist's control and for the public's consultation, the greater part of the State of Israel's recorded history shall remain out of sight.

Chapter 3:

Access to the IDF and the Defense Establishment Archive

Background

The IDF and Defense Establishment Archive (IDEA) is the largest in Israel. Each year, roughly 3,000 IDF and Ministry of Defense (MoD) units hand their accumulated records over to the archive: document files, maps, charts, photographs, etc.[123] The IDEA also holds quite a few materials predating the IDF and the state. Thus for example, the archive holds records pertaining to the Jewish undergrounds operating in the country in pre-state times, and records on fighting Jewish forces around the worlds. It also holds the personal archives of former senior officials with the Defense Establishment, by their request. The archive collections transcend the strictly security-military gamut, subjects that due to the centrality of the IDF and Defense Establishment in the Israeli public life, hold considerable importance. over the years, diverse materials have accumulated in the archive, pertaining to all aspects of life in the State of Israel: education, medicine, settlement endeavors and economics, to cite but some.

The IDEA is formally part of the ISA and as such subordinate to the State Archivist,[124] but in reality, the archive enjoys great autonomy from both State Archivist and the ISA in all its undertakings. Funded by the MoD budget,[125] as of 2013, the institution it is assigned to the MoD Computer and Information Management. It employs 61-strong staff, 34 of whom academically

123. The Ministry of Finance, "Defense Budget – Unclassified Subjects (issue L)", in **Budget Proposal for Fiscal Year 2013-2014: Commentaries** (2013), p 98 (Hebrew).

124. The Archives Law acknowledges the"Israel State Archive", to the exclusion of other government archives. As a rule, all government archives, even those administratively subordinate to other bodies, are officially considered part of the ISA and fall under the professional authority of the State Archivist.

125. The archive's budget is not disclosed to the public, and a question referred to the archive by Akevot on the matter received no response.

educated, covering its different professional areas.[126] The archive resides in Tel Hashomer, in a building that also hosts its reading room. Branches of the archive operate as part of the unit for pre-IDF archives outside it: the Haganah Archives, located in Tel Aviv, and the Palmach Archive at the Palmach Museum in Ramat Aviv.

Apart from its capacity as an historic archive, the IDEA also serves as IDF's records unit. Every year sees ample records from the different army units transferred to the archive, where they are held and taken out for routine usage at the depositing units.[127] In addition to providing records unit services to IDF units, the archive mainly views itself as service provider to the Defense Establishment. Indeed, the overwhelming majority of material consultation requests referred to the IDEA – 86% of which in recent years – come from Defense Establishment bodies, for the purpose of its work.[128] The other requests to the archive come from either the public at large (researchers, students, and others seeking information for different reasons) and government bodies outside the Defense Establishment, including the Custodian of Absentee Property, The Ministry of Foreign Affairs, and the Prime Minister's Office.[129]

126. The other archive's employees: 13 staff in administrative positions, as well as 14 female and male soldiers. These are regularly joined by about 20 volunteers. The figures were shared during Akevot's conversation with Ilana Alon, director of IDEA, 30 June 2015.

127. Thus for example, in 2013-2014, roughly 85% of the files transferred to the archive were "item files" (personal files, IDF conscription dates files, legal files, and others), most of which of little historical value. The Ministry of Defense, **Annual Report pursuant to the Freedom of Information Law 2013** (2014), p 108; Ministry of Defense, **Annual Report pursuant to the Freedom of Information Law 2014** (2015), p 116 (Hebrew).

128. Letter from Shai Lev, head of Public Inquiries Desk, MoD, to Dr. Noam Hofstadter, Akevot Researcher (3 June 2015).

129. The Ministry of Finance, "Defense Budget – Unclassified Subjects". See footnote 123, pp 98-99.

[redacted] access requests at IDEA, 2008-2014[130]

Year	Material consultation requests	Defense Establishment requests		Requests from the public at large and other government bodies	
		In percentages	Number	In percentages	Number
2014	10,206	8,648	85%	1,558	15%
2013	9,820	7,969	81%	1,851	19%
2012	11,034	9,337	85%	1,697	15%
2011	11,151	9,271	83%	1,880	17%
2010	11,590	9,988	86%	1,602	14%
2009	12,136	10,667	88%	1,469	12%
2008	14,375	13,043	91%	1,332	9%
Total	**80,312**	**68,923**	**86%**	**11,389**	**14%**

The twofold capacity of records unit and historic archive in one organization affects the task focus of the archive and the internal allocation of its resources.[131] Despite the vast scope of materials held within, of subjects that they pertain to and their historic importance, only a negligible fraction of IDEA materials is open for public consultation: of roughly 12 million files held at the archive (along with about million and quarter other documentation items: audio and video tapes, photographs, maps, etc.),[132] only several dozen

130. Figures source: letter from Shai Lev to Dr., Noam Hofstadter (3 June 2015), see footnote 128. It should be clarified that the data submitted by the MoD in reply to questions submitted by Akevot pursuant to the Freedom of Information Law, a discrepancy was found in the figures submitted concerning the number of material consultation requests during 2010 and 2012 (11,098 in 2010; 10,437 in 2012) and the calculation of the overall requests from the public and Defense Establishment as submitted in the reply (11,590 and 11,034 respectively).

131. Following two IDEA audits, State Comptroller recommended that the operations of IDF records unit and historic archive be divided into separate organizational and administrative frameworks. The recommendation was not implemented. State Comptroller, **1999 and Fiscal Year 1998 Annual Report 50b** (2000), p 723 (Hebrew).

132. Ministry of Defense, **Annual Report 2014,** see footnote 127, p 116. In 2015 there were 4,515,000 "substance" files at the IDEA; 1,345,000 "case" files (investigative and legal proceeding files); and 5,845,000 "item" files. The figures were shared in Akevot's meeting with Ilana Alon, director of IDEA, 24 February 2016.

thousands are open, most of them containing records created in the state's early years.[133] The scope of files open for public consultation at the IDEA stands at 56,662, at best, (including files scanned for institutional consultation only, withheld from the public): a mere 0.5% roughly of the overall archive files.[134] According to a senior archive official, roughly 44,000 of the open files pertain to the 1948 War period.[135] The overwhelming majority of historic material held at the IDEA remains barred for public access.

Rate of Material Declassification

One key barrier for consulting IDEA files is their prohibitively slow rate of declassification and digitization,[136] especially given the multiple archival materials that though past their RAP, still await their declassification.

The internal process at the archive also delays consultation of files that had their restricted access period reduced by the agency committee (see hereinafter). For those seeking to consult materials at the reading room, the scanning process means weeks of delay, even if the agency committee has already made a decision on their request.

133. Ibid, p 118. In late 2014, there were 56,662 scanned files at the IDEA, but it was not specified how many of them were designed for public consultation and how many were scanned to be used by the Defense Establishment exclusively. Figures we have obtained, presented in table 3, show that at least in recent years, roughly half (46%) of all files scanned in the IDEA were designed for institutional consulting parties, rather than for public consultation. A 2013 Ministry of Finance document from notes that the number of files open for public consultation in the IDEA stands at roughly 35,000. The Ministry of Finance, "Defense Budget", see footnote 123, p 99.

134. Akevot's conversation with the Director of the IDEA, 24 February 2016; State Archivist's conversation with Akevot, 26 June 2015. These figures coincide with figures released over the years, in the State Comptroller reports, among other platforms.

135. From a talk by Yoav Ben David, head of declassification team at the IDEA, "Declassifying security material at the IDEA", in an Association of Israeli Archivists seminar titled **The Passion for Information at the Archive – between Censorship and Declassification,** 25 December 2013.

136. It is the IDEA policy to allow consultation of archival materials only in digital files scanned from the original documents and displayed on the computer screens at the archive's reading room. This allows to classify materials as well as to delete details that according to reviewers' opinion should be redacted out of the copy displayed to the public.

[redacted] numbers of IDEA files deposited and files scanned, 2012-2014[137]

		2014	2013	2012
Files deposited in the archive	Substance files	26,538	22,927	25,270
	Item files	160,098	131,191	115,943
	Total	**186,636**	**154,118**	**141,213**
Files scanned for consultation	For public Access	1,416	1,190	1,518
	For institutional Access	933	883	1,497
	Total	**2,349**	**2,073**	**3,015**

It was the archive's estimation that in 1998, it held roughly 2 million files from years 1948-1967 intended for declassification. The archive further estimated that in years to come, RAP was to expire on 200-400 thousand files a year.138 despite the huge scope of files past their RAP, the rate of their declassification and scanning for public consultation is low: recent years have seen the number of files scanned for public consultation standing at no more than about 1,500 files annually – a rate similar to that customary in the 1990s, of which the then State Comptroller noted that "as things stand now, when this method allows the scanning of 2,500 files a year, and given the hundreds of thousands of files due for declassification [...], the MoD should look into rapid declassification methods."[139] The archive has recently launched a project set to scan 500,000 files over the next few years. Nevertheless, the rate of file declassification is expected to remain the same: in the course of the five-year period, 10,000 files are set to be declassified: an average of 2,000 files a year, similarly to the current rate.[140]

Akevot's recommendation: the Ministry of Defense should assign the IDEA resources that may allow it to implement its duty of proactively declassify materials past their RAP. If this proves impossible, and given that significant material declassification was frustrated in the IDEA due to lack of appropriate budgeting by the Ministry of Defense, the State Archivist should consider systematic solutions for storing archival materials of such significant scope by a government office that avoids budgeting their restoration to the public.

137. Figures from the MoD annual reports pursuant to the Freedom of Information Law, 2012-2014.

138. State Comptroller, **Comptroller Report 50b,** see footnote 131, pp 712-713.

139. Ibid, p 715.

140. Akevot's conversation with Ilana Alon, director of the IDEA, and Avi Tzadok, head of documentation and cataloguing at the archive, 30 June 2015.

Catalogues at the IDF and Defense Establishment Archive

An applicant from the public seeking to consult a full, up-to-date catalogue of materials held in the IDEA enjoys no such option. The archive's website, open to the public, offers a limited list of archival materials. Even the archive's reading room – which can only be visited by a pre-arrangement – has no complete, up-to-date catalogue of its archival materials. Pursuant to HCJ Gorenberg, the State took the obligation to make a full file list of the archive's inventory available to the public,[141] and indeed, 2009 saw the printing out of several volumes of file lists declassified to date. These include basic information on every file, with no abstract of its contents. The volumes were placed on shelves at the reading room, but have not been updated or replaced since their printing in 2009. Thus, the state's obligation before the High Court of Justice remains unfulfilled. The volumes do not constitute an up-to-date, comprehensive tool that may allow archive users to select files for consultation.

Archive users can use the reading room computers to search a gradually-growing database that currently numbers 360,000 file titles, out of the 12 million files held in the archive. Some of these files offer the visitor direct access to declassified, scanned materials.. In response to Akevot's request, these databases were described as archive catalogues available to the public, but as stated above, they do not constitute a full catalogue that allows applicants to search all materials found at the archive and corresponding to their subjects of interest.

In conversation, the archive director noted the existence of a complete, unabridged catalogue of all collections and materials deposited therein, which served the archive's staff.[142] It was stated that this cataloguing was undergoing a declassifying process – withholding classified details or redacting them so as to avoid disclosure of classified facts, in order to make the list public. Nevertheless, thedeclassification project started seven years ago, at the latest. The archive management can point to no estimated date for the complete catalogue's declassification, and clarified that many resources are required for this task, which were not currently available.

141. Letter from Shai Lev to Dr. Noam Hofstadter (3 June 2015), see footnote 128. In a conversation with the director of the IDEA and its computerization project coordinator, Yossi Levy (24 February 2016), Akevot was told that it was their intention to upload to the archive's website in the upcoming months the list of files with their titles cleared for the public, but there was no intention of allowing the website's users to retrieve the full list of titles or consult the files' abstracts.

142. Akevot's conversation with Ilana Alon, director of the IDEA, and Avi Tzadok, head of documentation and cataloguing at the archive, 30 June 2015.

In Absence of a Catalogue: Archive Staff Filtering Research

In the absence of a catalogue, IDEA applicants are referred to the institution's website, where they are required to send an online form with the details of their request. An archive employee selects materials at their discretion and without consulting the applicant.

If the request pertains to subjects already declassified, the applicant is invited to consult them at the reading room. The MoD response to an inquiry on the matter suggests that in cases where open material is available at the archive, no attempts are made to locate further material that has yet to be declassified.[143] In other cases, the archive worker selects materials to bring before the Agency Committee for Reducing Restricted Access Period (see below).

At no time can applicants tell which materials have been "filtered" and denied from them, even at this preliminary tracing stage. Shortage of resources and personnel means that material tracking may be very partial. The State Comptroller has alerted to this issue in the past,[144] and his follow-up audit several years later found no revision of this conduct.[145] Akevot's research too shows that to this day, no actual revision has been introduced.[146]

143. Letter from Shai Lev to Dr. Noam Hofstadter (3 June 2015). See footnote 128.

144. "Files are submitted to researchers in the following manner: the researcher specifies the subject of their research to the archive, and the archive staff track and determine the files that may be of interest to them,
in their opinion. In tracking the files, the staff rely on subject indices, computerized lists and deposition lists. It is uncertain whether they can track the most files from periods approved for declassification that may interest the researcher, as some files cannot be tracked down, due to errors in the computerized lists, failures to update deposition lists, and other reason. For example: a file of this unit or another requested by the applicant cannot be tracked down if computerized lists fail to specify the depositing unit… […]." State Comptroller, **Annual Report 47 (1996) and the Accounts of Year 1995** (1997), pp 899-900 (Hebrew).

145. The State Comptroller advised the archive that this constituted a serious fault in the institution's work procedures, adding that it was inappropriate by archival professional standards; it may constitute a ground to deny material consultation based on extraneous considerations. The follow-up suggested that no relevant revision had been introduced." **Annual Report 50b,** see footnote 131, p 713.

146. In response to a request pursuant to the Freedom of Information Law, the MoD noted that applicants might request lists of files by subject, unit or period, and the lists shall be declassified for the applicant to consult. Inasmuch as the option existed, it was not made known to applicants seeking the archive's services whom Akevot had spoken to, nor is it mentioned at the IDEA website, which instructs applicants on how to file a request to consult restricted materials.

The existing search procedure deprives applicants of the right to search and select the materials they wish to consult, subjecting archival material search results to the discretion of the archive and its staff. This in turngreatly compromises the autonomy of the research conducted by applicants. Not only do they enjoy no access to the list of restricted and yet-to-be-classified materials (which constitute the overwhelming majority of archival materials), they also have no way of knowing which materials they are denied, due to how discretion is exercised and the archive's time resource allocation. In fact, researchers cannot tell what it is that they do not know.[147]

Akevot's recommendation: the IDEA must complete declassification of its catalogue and produce a complete and unabridged catalogue for public consultation. In cases where file titles could disclose classified information, classified expressions may be redacted, but the catalogue must reflect the file's existence. Even independently of the full catalogue's production, the IDEA should offer applicants who submit consultation requests the list of files corresponding to their subject, including classified files, so that they may request their opening.

147. Principle 2 of the Principles of Access to Archive states that "Users have the right to know whether or not a specific series, file, item or portion of an item exists, even though it is withheld from use, or if it has been destroyed. Archivists reveal the fact that closed archives exist through accurate description and insertion of withdrawal sheets or electronic markers. Archivists provide as much information as possible about restricted material, including the reason for the restriction and the date the materials will be reviewed or become available for access, so long as the description does not disclose the information that is the reason for the restriction or violate a binding law or regulation."

Declassification and Access Restrictions in the IDEA

A. Declassification of materials under RAP: the Agency Committee

> Archivists provide users with just, fair and timely access to archives without discrimination. Access determinations are made as rapidly as possible following receipt of the access request.
> Principle 5 of the Principles of Access to Archives

The discussion and determinations regarding the declassification of archival materials before the end of Restrictied Access Periods, by requests from applicants from the public, are at the hands of a committee of the MoD and IDF officials: "the Agency Committee for Reducing Restricted Access Period", appointed pursuant to MoD Guidance 59.140, entitled "Handling Requests to Consult Restricted Archival Material".[148]

The committee is chaired by the director of the IDEA, and is manned by the head of the archive's declassification team, and representatives of Ministry of Defense' Head of History, IDF History Department, MoD Legal Advisor, Director of Security of the Defense Establishment, and IDF Information Security Department. The State Archivist's representative is not a member of this committee, whose members are appointed by the MoD, but Guidance 59.140 states that the Archivist's representative shall be invited to every meeting held by the committee, along with representatives of "other relevant bodies", at the chair of committee's discretion.

The committee convenes two-three times a year, and receives requests from public applicants and corresponding materials identified by archive staff. The committee reviews requests and materials by criteria determined (see below) and decides whether or not grant the request and declassify materials brought before it for consultation by the applicant and the public – fully or in part.

Between 2008 and 2014, when over 11,000 applicants outside the Defense

148. MoD Guidance 59.140, **Handling Requests to Consult Restricted Archival Material,** 6 July 2011, at the Ministry's website: www.mod.gov.il/Guidances/DocLib/h059140m.pdf. It seems the MoD has further guidances pertaining to archival material declassification, but these cannot be found at its website, nor were they submitted to Akevot following a request filed by the organization pursuant to the Freedom of Information Law. These are guidances numbered 59.05 and 59.06, which alongside Guidance 59.140 regulate the procedure for classified material consultation procedure at the IDEA. Ministry of Finance, "Defense Budget", see footnote 123, p 99.

establishment turned to the archive. Mere 402 different requests to consult classified materials were discussed. The paucity of requests to consult restricted material relative to the number of applicants to the archive is probably not due to lack of public interest in materials under RAP; it is more likely down to the IDEA's customary practice for making materials available for consultation. An applicant requesting to consult materials on certain subjects receives materials already declassified, if such exist.[149] Declassification of other materials is only considered in cases when the consulting party requests to consult further material, or in cases when no material on the subject has been classified before. Alongside other obstacles (see hereinafter), this mode of operation contributes to thwart regular declassification of archival materials past their RAP: the different applicants consult the same, long-since-declassified material, time and again, rather than other materials that are due for declassification, often many years after the RAP expired.

[redacted] the agency committee for approving consultation of restricted access archival material: scope of activity 2008-2014[150]

Year	Session	Restricted access materials consultation requests brought before the committee
2014	2	48
2013	2	46
2012	3	78
2011	3	73
2010	3	69
2009	3	52
2008	2	36
Total	**18**	**402**

Every meeting of the agency committee discusses 25 requests on average.[151] As described in table 5, most requests discussed are granted, fully or partially. Nevertheless, there is no telling if the material approved for full (or partial) declassification is the full material held at the IDEA on the subject requested, or whether it is only the portion selected to be brought before the committee

149. Letter from Shay Lev to Dr. Noam Hofstadter (3 June 2015). See footnote 128.

150. Ibid.

151. Beside the 402 declassification requests, 40 re-consultation requests were discussed by the committee's sessions.

by the archive's staff. The work procedure at the IDEA leaves a great mist over the scope of materials considered for declassification.

[redacted] results of the agency committee discussions, 2008–2014[152]

Discussion results	Number of requests discussed	Scope of total requests discussed
Request approved	244	61%
Request partly approved	94	23%
Request denied	56	14%
No material tracked from IDEA material	3	1%
Requests transferred to another element	5	1%
Total	**402**	100%
Requests brought for re-discussion by the committee	40	

Akevot's recommendation: IDEA staff must inform those requesting to consult restricted access material of the scope of material available for their request, provide as many details as possible on the material, and offer their estimates regarding the existence of further relevant material which they could not track down. The information shall be made known to applicants before the committee discussion, so that applicants may direct archive staff to further materials they estimate to be held by the archive.

B. Declassification after Restricted Access Period: The Declassification Team

The MoD operates in its archive under two capacities – the archival material depositor and an extension of the ISA. By the end of the RAP, IDF and MoD authority to decide on material declassification expires, but physical control over the material remains in their hands. The IDEA staff is appointed therefore to make and execute decisions on the declassification of materials past their RAP.

This practice has no legal grounds. The authority to extend consultation

152. Letter from Shai Lev to Dr. Noam Hofstadter, 3 June 2015, see footnote 128.

restriction on materials past their RAP is not the depositors' (in this case, IDF and the MoD), but rather the State Archivist's; it requires the special ministerial committee's approval, which should discuss requests brought before it by the Archivist to prolong the RAPs, from among the different RAP prolongation requests brought before him.[153]

The declassification team at the IDEA was set up in the late 1980s, when the archive started declassifying some of its materials for the public. It is a very small team: of the 61-strong archive staff, it is assigned a 2.5 positions worth of manpower.[154]

With this limited scope, the team is required to perform regular declassification of all materials nearing the end of their RAP, as well as address declassification requests from the public and state civil servants outside the Defense Establishment. One consequence of this is that no current, regular declassification of the archive's materials past their restriction access period takes place, while the archive's declassification activity consists almost entirely of addressing requests.[155]

The declassification of materials past their RAP – performed, again, with no legal authority – is informed by procedures determined by the MoD for

153. In a conversation with Akevot (30 June 2014), the IDEA director said that the legal basis for this activity was Regulation 8 of the Access Regulations, which stated (in Secondary Regulation 8(a)) the obligation of reviewing materials before their declassification by the depositor, even if the RAP quoted by regulation had expired. But the orders of Section 8 of the Access Regulations – or any other section of the regulations or the law itself – cannot in themselves authorize any IDF or MoD element (including IDEA) to approve the classification of archival materials past their RAP; regulations 8(b) and (c) of the Access Regulations authorize the depositor to avoid declassification of specific materials reviewed during the RAP, while Regulation 8(d) explicitly states that this does not apply to materials past their RAP. In cases as such, the depositor must turn to the State Archivist, requesting that he exercise his authority by Section 10(c) of the Archives Law and turn to the ministerial committee to approve (or deny) the Archivist's request to prolong the restriction – if the latter decides to embrace the depositor's request.

154. Declassification works at the IDEA started as early as 1988, but to this day, the declassification teammembers are no staff, constituting rather outside "advisers" and paid by the hour, with their employment contracts occasionally renewed. According to the archive's director, despite willingness on the part of MoD to increase the number of declassification workers, employment conditions make it hard for the institution's administration to hire suitable advisers. IDEA director's conversation with Akevot, 24 February 2016.

155. Akevot's conversation with the director of the IDEA and head of documentation and cataloguing, 30 June 2014.

declassifying restricted access materials (see below), and according to IDEA Director, while factoring the time elapsed into the array of considerations involved in the decision-making process.

Akevot's recommendation: the IDEA should follow the orders of the Archives Law, which stipulates that the authority to deny archival material consultation for set periods of time is the preserve of the Archivist, with the ministerial committee's approval, and at any rate not the depositor's to exercise.

C. Declassification Yardsticks: the Criteria Document

The yardsticks for decisions on the declassification of materials still under RAP, and practically (and in contrast to the Archives Law orders) even for those past this period, can be found in the MoD Guidance 59.140, "Handling Requests to Consult Restricted Access Archival Materials" (hereinafter: "the guidance" or Guidance 59.140). The guidance almost fully adopts the portions from the Access Regulations that pertain to grounds to deny requests to consult restricted access material.[156]

Appended to this guidance is a document titled "Criteria for the Declassification of Restricted Access Material in the IDEA" (hereinafter: the "criteria document").[157] The document also makes it clear that albeit the guidance was designed to handle declassification within the RAP (Section 7 (c) of the

156. Section 14 of the guidance follows Secondary Regulations 8(b) and 8(c) of the Access Regulations, almost to the word. The guidance sets grounds to deny the declassification ("not to declassify") of RAPs, where classification poses "potential harm" to protected interests: state security and foreign affairs, public or an individual's well-being, as well as a person's privacy. As part of reviewing requests that the committee is "permitted" to reject, there are grounds to deny declassification associated with trade secret disclosure or possible harm to economic interests and the right of privacy. The guidance was issued on 6 July 2011 and amended on 18 August 2011, replacing a former version of Guidance 59.140 – "Handling an Authorized Researcher's Request to Consult Restricted Access Archival Material" – following the legal litigation in HCJ Gorenberg.

157. It seems the criteria document appended to the guidance has not been updated in recent years: the introduction to the document still refers to the 1966 version of the Access Regulations, rather than to their current 2010 version. Guidances and standards for declassification decisions can be found in both documents, and yet the "criteria document" was granted marginal weight by the guidance, which states in Section 18 that the agency committee shall abide by the criteria document, "among other things".

guidance), its criteria also apply to declassification after this period.[158]

The introduction notes that the document and criteria therein were last updated on June 2002, then approved by the Minister of Defense. Accordingly, the document relies on the older version of the Access Regulations (before their 2010 amendment) and refers to them. However, in some cases, the balancing test determined by the criteria document for considering requests to consult restricted access material is that of "high probability of actual harm". This test is more in line with the freedom of information principles than the "balancing test of concern" found in the Access Regulations and criteria document used by the ISA.[159]

The exhaustive part of the criteria document appended to Guidance 59.140 lays out the protected interests and a list of subjects included in each one of them, which must not be declassified. Accordingly, in regards to "archival material, the declassification of which entailing high probability of actual harm to state security",[160] "archival material, the declassification of which entailing high probability of actual harm to national foreign relations and affairs of the State of Israel",[161] and "archival

158. Letter from Shai Lev to Dr. Noam Hofstadter (3 June 2015). See footnote 128: the archive director's statements in her conversation with Akevot, 30 June 2015.

159. For explanation regarding the "balancing test of concern", see p 22.

160. The specification of subjects under this title includes subjects that pertain to intelligence sources and operation methods. For example, "intelligence information that the declassification thereof constitutes disclosure of sensitive intelligence sources in Israel or abroad, or their mode of activation"; "information on security and national infrastructures and damages to systems and facilities that is yet of security importance"; "Information that the declassification thereof may place an individual or their family in immediate danger", and others. The introduction to the criteria document states that the IDEA shall declassify archival material created by 1967. Separate guidance were dedicated to the declassification of archival material in the exhaustive part of the document, most of which engaging with protection of actual national interests. Subjects like "IDF forces order" "names and numbers of units or facilities", "location of units or facilities that have yet to be declassified and the declassification thereof may cause actual harm to state security"; "Equipment repertory levels designed to serve the IDF", etc. are cited here. These also have a "basket section" that includes "any other information that may still be of security importance, where declassification may pose actual harm to state security, foreign relation, or privacy."

161. These include: "Information on confidential international relations that both the State of Israel and theother side have pledged to keep confidential"; "Foreign state information where declassification may undermine relations with said state"; "Information that may damage diplomatic activity in front of said state"; and "Information where declassification may constitute breach of conditions of a contract, pact, agreement, or international contracts."

material, the declassification of which can infringe the right of privacy."[162]

The Criteria Document lays out a long list of subjects, some of which indeed warranting special attention during the declassification process. But some sections of the criteria document may severely compromise the ability to make any research use of the archival materials. Section 13 in the category of "Archival Material, the Declassification of which Entailing High Probability of Actual Harm to State Foreign Relations and Affairs" numbers "information that may in high probability assist Arab Countries or the Palestinian Authority in negotiations for peace arrangements and compensation claims". One difficulty arising from Section 13 stems from the fact that it allows to avoid declassification of every action exerted by Israel towards any state, group or individual that may pertain to the Arab-Israeli conflict. There is some concern that this section, speculative by nature, is designed to replace the criteria formerly disqualified for the protection of national image by denying the declassification of materials on significant human rights violations.[163]
A further difficulty stems from the fact that protecting the state from compensation claims and stances that may be expressed as part of future negotiations is not within the archive's remit.[164]

Two further orders added to the document after its completion (between Sections 14 and 15)[165] deflect the archive from its designated role; these orders are not part of the categories specified by the document (generally relying on the Access Regulations). Nor are they numbered

162. "Personal information, including criminal records, verdicts given behind closed doors, disciplinaryproceedings, reports by committees of inquiry and Military Police Criminal Investigation Division, medical records, letters, personal public addresses to officials that contain personal information or any information marked as personal in the Protection of Privacy Law 5741-1981." Nevertheless, Section 16 states that "personal information of potential interest for public declassification shall be declassified with no identifying details."

163. See p 87.

164. Following Akevot's question on this subject during a conversation with the director of the IDEA, the lattersent the organization the following clarification: "Section 13 of the Criteria: the information referred to is one that holds high probability of actual harm to future negotiations/peace arrangements with Arab States and/or the Palestinian Authority, and pertains to defense and foreign relations." Email from Ilana Alon, IDEA director, to Dr. Noam Hofstadter, Akevot, 5 July 2015.

165. The original version of the criteria document, prepared following HCJ Gorenberg, 2005, did not includethese two orders, which were later to be added. This version of the document was submitted as part of a statement made by the state on 29 March 2007, and it is available at the Association of Civil Rights website: www.acri.org.il/pdf/petitions/hit2467meshiv0407.pdf

as part thereof. One order calls to deny declassification of information with "self-incrimination potential" on individuals that have taken part in "operational activity", while the other order concerns "any information that links the personal details of an officer/soldier, whether directly or indirectly, to operational activity."

These two orders, jointly and severally, hurt the value of the historic archive, certainly that of the military archive. If archive users are barred from access to names of those cited in materials (unlike orders on the release of names when such release can infringe the right of privacy), the researcher is denied the option of tracking events and people associated with them. In another order, the criterion of "self-incrimination potential" is as sweepingly phrased as to allow the barring of significant archival materials on first-hand records of significant events. Section 13 and the two additional orders stand out as an exception in the overall landscape of the criteria document. They entrust the archive with protecting different interests that neither stem from those protected by the Access Regulations nor are within its remit, and are furthermore alien to its spirit. Together they may foil both historic research at the archive and the archive's role of promoting human rights.[166]

Akevot's recommendation: the criteria document of the IDEA should be updated so that the yardsticks stipulated therein do not permit a more extensive classification of materials than that allowed by the Access Regulations' provisions. More specifically, Section 13 should be struck out of the document, along with the two additional orders, while the archive's declassification people about should be instructed about their revocation.

166. "Meetings are summarized in protocols where committee decisions are written down by requests." Shai Lev's letter to Dr. Noam Hofstadter, 30 June 2015, see footnote 128. The obligation of administrative authorities to keep full records of their meeting protocols was determined by ruling: "Keeping a full protocol allows a full review of decision-making process, for the Central Committee is a body that makes decisions and is subjected to review for them. Full record is rendered all the more important if we remember that the Central Commission gained authority to make decisions that affect the rights, liberties, and status of lawyers" (HCJ 954/97 **Cohen v. President of Israel Bar Association,** IsrSC 52(3) 486; "Pursuant to proper administration procedures, any committee must keep a protocol that may reflect the gist of information brought before it and decisions made based on this information […] the public and candidates have the right to know how and based on what information decisions are made […] it is the committee members' right to have the public and candidates know how they conducted themselves and fulfilled their obligation; it is the right of all those to have the truth disclosed, a disclosure that may allow public and judicial review. And above all these: the pressing need to expose the truth and guarantee that the tender has indeed fulfilled its purpose of granting full equal opportunity to all its contenders." (HCJ 3751/03 **Ilan v. Tel Aviv-Jaffa Municipality, IsrSC 59(3), 817).**

D. No Reasoning Provided for Access Denials

As we have shown, decisions on the declassification of materials under RAP, as well as on denying consultation of materials past their RAP, are made at a discretion informed, if only theoretically, by certain criteria, and while balancing important national interests against the historical, research and public interest in the respective material, time elapsed since its creation, etc.

Records are kept of meetings held by the agency committee that reviews the material declassification requests in a protocol, but this protocol is not submitted to the applicant (even with sensitive details omitted) so that they may learn of the considerations informing the committee in its decision. It emerges from the MoD reply to Akevot's question that the existing protocol constitutes a summary of the committee's decisions, rather than a record of the different positions voiced during discussion, in contrast with Israeli case law that orders to produce elaborate protocols of decisions on the fulfilment of rights.

A written reply to the applicant's request is sent about a month after a discussion was held by the agency committee and a decision was made in their request. In the case of a denial, the reply specifies the relevant ground, but not its reasons. In response to the question, MoD stated:

> The reasons for the committee's decision to refuse requests to consult restricted access material or allow partial consultation appear in both protocols and letters sent to applicants. These mostly comprise harm to state security, foreign relations or the right of privacy.[167]

As is the custom at the ISA, replies referred here as "reasons" are no more than grounds, cited from the Access Regulations. Their citing constitutes no specification of reasons for the decision taken, in a manner that clarified the balance made at the committee's session between the different interests. The applicant denied their request to consult restricted access material (be it a material past its RAP, its declassification denied, or material still under RAP) has no way of telling how and if different considerations were factored in, or how necessary balances were exercised in deciding on their request. Here too, as in the ISA, replies to deny archival material consultation requests must provide reasons, pursuant to the Freedom of Information Procedure 3.1.[168]

167. Letter from Shai Lev to Dr. Noam Hofstadter (3 June 2015). See footnote 128.

168. See p 44.

Akevot's recommendation: in cases where the agency committee or declassification team decide to deny full or partial consultation of the material requested, the ruling official shall specify in writing the reasons that led to their decision. The reasoning must pursue the outline determined by Freedom of Information Procedure 3.1 – "Response Requirements for Freedom of Information Request Denials". If an exhaustive reasoning may in itself disclose details prohibited for release, the gap must be bridged by offering the gist of the matters, worded by way of paraphrase.

E. Appealing an Access Denial

The existence of a procedure for appealing a denial of a request to declassify restricted access material is not made known to applicants as part of the written reply that to inform about the full or partial denial of their request. But an appeal process is cited, theoretically at least, in the introduction to the Criteria Document: "A consulting body may appeal the decision to restrict consultation of a specific archival material." The document states that "the custodian at the IDEA shall review the appeal, lest consultation was unlawfully restrict.[169]

Nevertheless, the practice in reality seems to be different, because according to the MoD reply to Akevot's question, the agency committee appeal is submitted as a request for another discussion by the very same committee, in its next meeting.

Despite the fact that the course of appealing is not conveyed to applicants, it seems that at least some of them are aware of the option to request another discussion into their request, if not an actual appeal. According to figures submitted, 40 requests for another discussion into the committee's decisions were submitted to be studied again by the committee itself:[170] approximately 10% of all requests discussed. This rate suggests the need for a regulated,

169. The authority of IDF and Defense Establishment on the matter and the scope of its possible auditingpower regarding the decision made are unclear. The criteria document clearly states that the only elements authorized to change the archive documents' classification to "unclassified" (and thereby allow to consult them) are the heads of IDF Information Security Department and Director of Security of the Defense Establishment.

170. The MoD submitted to Akevot some ambiguous figures on the matter: Section 9 of the MoD reply to therequest pursuant to the Freedom of Information Law states that in 2008-2014 "40 requests for re-discussion" were brought before the agency committee. Section 14 notes that during this period, 6 appeals were filed. The MoD did not clarify the differences between appeal and request for a re-discussion, nor did it give any details on the outcomes of re-discussions held or appeals submitted. Letter from Shai Lev to Dr. Noam Hofstadter (30 June 2015), see footnote 128.

recognized appeal procedure. Whether this "appeal" is submitted to the archive's director (who also chairs the agency committee) or whether it is brought for re-discussion by the committee, these two cases represent a procedure unlike that of an appeal, as it is arbitrated before the same elements that made the original decision appealed by the applicant. This is another policy criticized by the State Comptroller, which nevertheless remained unrevised.[171]

We are aware of no separate arrangement for appealing denials of requests to consult materials past their RAP (and in practice, the continuation of the RAP beyond the duration quoted by the Access Regulations).

In addition to all the aforesaid, the MoD noted in its reply to Akevot's inquiry that "like any decision by a public authority [...] it remains the citizen's right to take their dispute with the regime to the High Court of Justice."[172]
It may not be the MoD's intention to offer the High Court of Justice as a first authority for appealing any declassification decision, but this is its implication nonetheless. The practice in place at the IDEA allows no procedure of appeal before an element independent of that which made the original decision.

Akevot's recommendation: a clear procedure for appealing decisions to deny material consultation should be drafted and determined, during and after RAP. The procedure shall specify the elements to discuss the appeal, which may not come from among the original decision makers. A timetable for reaching a decision on the appeal shall also be set. The existence of the procedure should be made known through clear signs at the IDEA reading room, and as part of every reply on a consultation request denial, whether partial of full.

171. The State Comptroller, addressing the appeal option, wrote that "recommendations by the differentcommittees, the MoD guidance and General Staff's commands determined no procedures that allow to submit an appeal on decisions made by depositors and those acting on their behalf, to deny material from applicants, and there is no option of appealing such decisions before elements outside or even within the MoD. Even if in practice, one can appeal before the archive's custodian, an option unregulated by procedures, the benefit of such move is doubtful, as the body appointed to discuss it is the same body who partook in the decision appealed." State Comptroller, **Annual Report 47**, see footnote 144, p 900 (Hebrew).

172. Letter from Shai Lev to Dr. Noam Hofstadter (3 June 2015). See footnote 128.

Copying Costs: a Further Access Barrier

The financial barrier is a significant impediment for using materials held at the IDEA.[173] Public access to these materials takes place in documents scanned and displayed on computer screens. Original documents cannot be consulted or photocopied by personal means;[174] the only other option is to purchase copies of the documents, in digital files or on paper.

Anyone requesting copies of the files (already scanned, by the archive's considerations) is required to pay no small a fee: a printed page or a digital file cost 2 NIS per page for the public at large (0.70 NIS for students, 1 NIS for IDF units). This sum comes with extra 5 NIS for the CD onto which the material is scanned. Scanned photocopies prices are set much higher: consulting parties from the public who require photocopies from the IDEA for non-commercial use must pay 80 NIS per CD and 20 NIS for each photograph.[175]

Researches encompassing hundreds and more archive pages are not uncommon; the accumulating cost is high and regressive; it is those who have no wherewithal to pay high sums for multiple document copies that this policy affects, as well as those who have not the leisure to consult documents which are only available on computer screens in the archive's reading room.[176]

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173. The authority to charge fees for archival material copies can be found in the Archives Law regulations of consultation and copying fees (Collection of Regulations 4354, p 1071, 24 May 1982) (Hebrew) (Hereinafter: "fees regulations"). Regulations were last updated on 18 October 2001.

174. Until a few months ago, the archive staff used to inform of the option of taking camera pictures of computer screens, free of charge (previously, a fee was charged for this action), but recently a new policy has been introduced, whereby no cameras or mobile phones can be taken inside the reading room, so this option too is out of the question. At any rate, taking camera pictures of computer screens (when this was allowed) meant a fairly blurred result and offered no practical solution for those who needed to consult a large volume of material.

175. The IDF and Defense Establishment Archive, "Photocopying services at the IDF and Defense Establishment Archive – basic tariffs" (a document found at the IDEA reading room). The tariffs also set fee exemptions for bereaved families seeking to commemorate their loved ones, and determines that IDF disabled veterans shall be charged by IDF tariffs, 50% to 90% of the non-commercial use tariff for applicants from the public at large.

176. For comparison, the ISA charges no fees for photocopying documents by camera or for their scanning using a private scanner. Those seeking to use a photocopying machine are required to pay 0.35 NIS per page. Fees are charged for specific services provided by the archive, pursuant to fees regulations.

The trend in recent years is to reduce and even cancel all together the fees charged from the public for public information deposited in authorities' hands. Thus for example, a government resolution cancelled the fee (20 NIS per photocopy) once charged for digital copied of photographs held in the "National Photo Collection" at the Government Press Office.[177] Then, in December 2013, an amendment to the regulations of the Freedom of Information Law (Fees), 5759-1999 was introduced, so that fees charged for information requests, processing and production pursuant to the Freedom of Information Law were dramatically reduced, and in some cases cancelled all together.[178]

In reply to Akevot's question regarding IDF and the Defense Establishment Archive's willingness to consider fee tariffs reduction,[179] the institution's director said that "tariffs are coordinated with the ISA and Government Press Office and approved by the Defense Establishment economic adviser.[180]

The archival material held at the IDEA is a public property. The current fee system, placing as it does a high cost on existing digital files of archival material, relies on regulation last updated in 2001, contrast to the trend of recent years, which strives to make information accessible as possible to the public.[181]

Akevot's recommendation: the IDEA and State Archivist should reconsider the fees regime, so as to remove the significant barrier in the form of high cost for obtaining archival material copies by users. The practice shall thereby be made consistent with the trend of avoiding collection of high fees for materials that are the public estate; materials that their consultation – including copying – fulfils the right for information.

177. 32ND Government Resolution 3199, "Opening the National Photo Collection to the Public Free of Charge" (8 May 2015). http://www.pmo.gov.il/Secretary/GovDecisions/2011/Pages/des3199.aspx

178. The Government Freedom of Information Unit, **Change to the Fees System** index.justice.gov.il/Units/YechidatChofeshHameyda/Hakika/Pages/AgrotChanges.aspx

179. Email from Dr. Noam Hofstadter, Akevot Researcher, to Ilana Alon, director of the IDEA, 1 July 2015.

180. Email from Ilana Alon, director of the IDEA, to Dr. Noam Hofstadter, Akevot's researcher, 5 July 2015.

181. Another way to make materials accessible with no cost entailed for users is uploading materials to a website with an appropriate online consultation interface. The digital availability of materials already scanned renders their accessibility a relatively simple, low-cost task, but no significant revision to the online accessibility of IDEA materials is planned for the near future.

Conclusion: Ongoing Flaws in the IDF and Defense Establishment Archive

The IDEA is the largest archive in the State of Israel, with a number of files six times that held in the ISA. Given the Defense Establishment dominance of life in the state since its early days, it is no wonder that materials held in it comprise many items that are not, "purely" speaking, military and security-related by nature, but rather pertain to all domains of society and economics in Israel. It is therefore all the more regretful that archival materials are almost completely barred for the public.

The acute accessibility problems can be traced back, in part, to the fact that the power of declassifying materials past their RAP is left in the depositor's hands – IDF and the MoD bodies, against the orders of the law. The procedure for deciding on archival material declassification in the IDEA, like in the ISA, is neither transparent nor backed by reasoning. The criteria document meant to dictate yardsticks for decision-making features orders that could be too sweeping. This state of affair does not make it any easier for anyone wishing to hold in good faith decisions to deny material declassification for the public. In 1997, State Comptroller released an audit report, revealing serious faults in the archive and its mode of operation.[182] Few years later, State Comptroller released a follow-up report, showing that most faults were neither righted nor satisfactorily redressed.[183] The findings of this report show that some of these faults remain un-redressed to this day.

Despite the size of the IDEA and the importance of materials held in it, only a small portion of its activity pertains to services for the public. The IDEA mainly functions as an IDF records unit and service provider for the MoD bodies, while the resources it allocates for providing services to the public are minimal. As long as the MoD's approach to the archive's role persists, so will access to its materials continue to be denied from the public, the due owner of this archival material.

182. State Comptroller, **Annual Report 47,** see footnote 144, p 889-900 (Hebrew).

183. State Comptroller, **Annual Report 50b,** see footnote 131, pp 711-723 (Hebrew)

Chapter 4:
Access to Intelligence Services' Archives

The Archives Law acknowledges a single government archival body in the State of Israel –the ISA, headed by the State Archivist. Other government archives formally constitute "extensions" of the ISA, even if their activity is very much autonomous: they are subordinate (in varying degrees) to the Archivist's professional supervision in all aspects pertaining to the preservation of materials held therein, but the Archivist takes no practical part in their management, including decisions on the declassification of materials and making them accessible to the public. Such is the case for the IDEA, as well as for the archives of the intelligence services – General Security Service (GSS, or Shin Bet) and Mossad – and other confidential bodies, like the Israel Institute for Biological Research in Ness Ziona and Israel Atomic Energy Commission.

These bodies, by dint of their nature, generate archival records unique to their area – irreplaceable evidence of the government action. Thus for example, materials held at the GSS archive contain extensive personal and political information, collected over the years on the citizens of the state and population of the Occupied Territories, as well as records pertaining to the agency's important part in shaping policy and decisions concerning the state's relations with the Palestinian population within it and in the territories under its control. The GSS archive, like any other archive of a secret police force, is of high importance when it comes to understanding human rights violations perpetrated by the state and its institutions over the years, and therefore also for protecting and promoting human rights at the state and the Occupied Territories.

The cloud of secrecy shrouding the GSS, Mossad and other confidential agencies, precludes public supervision of their activity. These bodies are under governmental, and to a certain degree, parliamentarian supervision, and yet the discourse superstitiously held between the secret agencies and the ministerial and parliamentary echelon is neither transparent nor reviewed by the public. The act of opening the intelligence archives is therefore also significant as an important accountability mechanism. Acknowledgment on the part of the parties involved that in due course, their decisions and actions shall be subjected to scrutiny through public access to documents may encourage action that is compatible with the orders of the law and the rules of proper administration; more so than can be vouched by the existing mechanisms.

The archives of intelligence services and other state agencies of fully or partially secretive nature – Nativ,[184] Israel Atomic Energy Commission, the Biological Institute, and so forth – are under lock and key. Independent researchers and consulting individuals from the public at large cannot enter their gates and consult their archival materials. The research use of them was restricted to the institutions' staff and their veterans, and has served for researches on behalf and for the institutions.[185]

Regularization of Security Organization Archives

In his audits of the IDEA, State Comptroller noted that the security organization archives assumed full autonomy within their respective organizations:

> Most Ministry of Defense branches, units engaged with security-related areas at the Prime Minister's Office, in the Ministry of Defense, security industrial plants, the Israel Atomic Energy Commission, and other bodies, transfer none of their documents to the IDF and Defense Establishment Archive. For this reason, no documents belonging to these bodies are declassified and interested parties are denied access to a huge amount of archival material of great importance to historic research as well as other fields of study.[186]

As the last decade drew to an end, a process was set in motion, designed to partialy regularize the activity of security organizations' archives in line with the Archives Law. One key factor in this move was a HCJ petition filed by Yedioth Ahronoth daily newspaper and journalist Ronen Bergman.187The petition sought to revoke the autonomy of the GSS, Mossad, and Atomic Energy commission archives, and commit them to the ISA, pursuant to the Archives Law. "How can we be sure", Bergman asked at the time, "that these private archives don't destroy files that are a source of embarrassment for them, on killing prisoners of war, for instance? The very fact that it is the organization's staff who decide on what is to be released and how, and who is to guard the paperwork, that's the outrageous thing. People do not realize

184. For the Nativ archive issue, see State Comptroller Report on Nativ – The Liaison Bureau, footnote 73.

185. In some cases, these closed archives served for researchers with academic institutions, that in contrast to academic practice, remained confidential and were not subjected to peer review or public consultation. Yossi Melman, see footnote 54.

186. State Comptroller, **Annual Report 50b,** see footnote 131, p 720 (Hebrew).

187. HCJ 4081/07, **Yedioth Ahronoth Ltd. And others v. Prime Minister's Office – Israel State Archive and others**. See footnote 55.

what thunderous potential these materials hold."[188]

Following the petition filed, the then State Archivist sent letters to the heads of GSS, Mossad, and Atomic Energy Commission, where it had been stated that the archives of these organizations constituted "extensions of the Israel State Archive, where archival material depositing is concerned."[189]

2010: RAPs Extended, Declassification Procedure Demanded

Following public pressure in the form of Yedioth Ahronoth and Gorenberg petitions, a need arose to update the Access Regulations so as to provide a legal cover for the inaccibility of security organizations archives. During the Supreme Archive Council meeting on March 2010, which discussed the summary draft of the new Access Regulations, the Archivist said that he had been overseeing the security organizations archives for several years, and was not concerned by the physical condition of materials held therein:

> [...] unlike statements in the media... it could be that our supervision over these archives is better than the one exercised by us over the other archives [...] generally speaking, these archives meet the customary standards of archival material holding... I have never noticed an attempt made there to damage or conceal material or destroy materials, heaven forbid, so I reckon that once these archives reach the date set by the new regulations, i.e. 70 years, which is not that far – 8 years from now, these archives shall be opened to the public."[190]

These statements were made over 60 years after the state's establishment, and upwards of 50 years into the RAP stated for "archival material on foreign and security affairs of the MoD, IDF or any other Defense Establishment Extension."[191]

188. Oren Persiko, "Who is Stealing Our Past", **Haayin Hashviit,** 12 March 2009.

189. Yossi Melman, see footnote 54.

190. Supreme Archive Council meeting protocol, 9 March 2010. The protocol was submitted to Ayelet Moshe,in charge of the Archives Law execution at the Prime Minister's Office on 18 June 2015, following to a request under the Freedom of Information Law.

191. Regulations of consultation of archival material deposited in the archive, 5726-1966, Collection of Regulations 5619.

The consultation denial for these materials, therefore, was exercised with no legal authority.

The new Access Regulations stipulated a RAP of 70 years for "materials of the Prime Minister's Office security support units, MoD and IDF units and support units, stated in the second supplement or pursuant thereto, and archival material on the activity of these units held in other state institutions."[192] The bodies specified in the second supplement include, among others, the GSS, Mossad, Atomic Energy Commission, and Biological Research Institution.[193]

Declassification Procedures at the GSS and Mossad

In order to allow public access even to some materials that can be declassified, and following, among other things, the state's obligations in the Gorenberg Case,[194] Access Regulation 8(e) was determined, whereby security organizations that RAP on their materials was prolonged to 70 years shall prepare, on the Archivist's advice, a special procedure for the declassification of "certain" archival materials that 50 years had elapsed since their creation. The regulation states that the procedure shall adopt the balancing formula of the Access Regulations: "the orders of the procedure shall address, among other things, the types of archival materials to be declassified, with attention to the historic, research and public interest in the material, and considering requests to consult it."[195]

In April 2015, Akevot approached the GSS and Mossad with questions regarding possibilities of accessing their archival material, and their preparedness for the declassification of their archival materials, with the impending expiration of the 70-year RAP. Among other issues, the questions addressed the option

192. Item 6 of the first supplement to the Access Regulations.

193. It was further determined that other security bodies would enjoy a RAP of 70 years, yet their identity was to remain secret and would not be released: these are the IDF units and MoD units and support units that the Minister of Defense determined by an order, with the approval sub-committee of the Knesset Foreign Affairs and Defense Committee (hereinafter: the committee), that in order to prevent harm to state security, it is necessary that a RAP of 70 years be set for them; the committee is authorized to determine that a relevant order, approved by it, is not to be published in the records, whether fully or partially; the committee stated that the order be deposited at the Archivist's." Item 5 of the 2nd amendment to the Access Regulations.

194. Section 4 of the responders' statement ahead of the HCJ Gorenberg discussion, 26 May 2008.

195. Secondary Regulation 8 (e) of the Access Regulations.

of consulting the archival material catalogue held by either organizations; the options of consulting the actual archival material and procedures on requests to do so, as well as the preparation of special declassification procedures for materials with 50 years elapsed since their creation (as stated in Regulation 8(e) of the Access Regulations). In light of lessons learnt from material declassification delays at the IDEA and State Comptroller's relevant findings, Akevot asked the organizations whether a work plan had been devised for preparing these procedures, if these were not prepared yet, and whether other actions had been taken ahead of the anticipated declassification work by the end of the restricted access. Other than the matter-of-factly replies, Akevot sought to obtain copies of the organizations' procedures on these matters.[196]

Mossad Procedure for Archival Material Declassification

The Mossad's reply to Akevot's inquiry cites the existence of a procedure that deals with public access to the organization's archival material. A copy of said procedure was not submitted as requested, and there is no telling to what extent the procedure elaborates on the types of materials to be declassified, as stated in Regulation 8(e) of the Access Regulations. The Mossad's reply mentioned Prime Minister's Office branches that could be addressed with a request to consult Mossad archival materials,[197] and it was said that the inquiry shall be handled according to the procedure determined by the Mossad and in line with the Access Regulations. As for preparations for the end of the 70-year RAP, the reply on behalf of the Mossad noted:

> It is the office's [sic] intention to address this matter to the authorized elements and arrange with them the resources to be allocated to the archive's declassification activity, when 70 years have elapsed since the creation date of the archival material requested for declassification.[198]

This reply indicates that the Mossad has yet to commence preparations for the declassification set to take place by the end of the RAP. Moreover, the reply ("requested for declassification") suggests that the Mossad has no

196. Letter from Dr. Noam Hofstadter, Akevot's researcher, to Ayelet Moshe, in charge of the Freedom of Information Law at the Prime Minister's Office, "Request under the Freedom of Information Law regarding the GSS and Mossad archives", 30 April 2015.

197. The elements cited are the Public Inquiries Department and the National Communications, both part of the Prime Minister's Office.

198. Letter from Ayelet Moshe, Freedom of Information Implementation, Prime Minister's Office, to Dr. Noam Hofstadter, Akevot's researcher, 13 August 2015.

intention of performing proactive declassification of its materials after the RAP, but rather to make do with addressing inquiries. The reply on its behalf further stated:

> A decision on archival material declassification 70 years after its date of creation is to be made by an intra-organizational declassification committee and with the Mossad's head approval. Such decision shall be made after considering the position of all Mossad units to which requested material pertains, after it is clarified that the archival material's declassification poses no harm to any of the following: the state security, its foreign relations, public or an individual's well-being, privacy, and the right of privacy.[199]

The Mossad did well when defining in its own internal procedure the grounds for denying material declassification as stated in the Access Regulations. And yet this Mossad procedure collides head-on with the orders of the Archives Law and Access Regulations, which state that after the RAP, the authority to deny archival material declassification – even material that compromises the aforementioned protected interests – lies with the State Archivist, rather than with the Mossad, by the request of the Mossad (the depositor) and with the ministerial committee's approval. If the Mossad's reply indeed describes the orders of the procedure, these do not correspond with the law.

GSS Procedure for Archival Material Declassification

The General Security Service was addressed with similar questions. For 3.5 months it grappled with them, until finally informing Akevot that it was yet to complete preparations on the procedures and orders pertaining to public consultation at the organizations archive:

> In reply to your inquiry, we would like to say that the specifics pertaining to the service conduct in the subjects specified have yet to be fully agreed upon. Therefore, we cannot submit an exhaustive reply at this stage.200

GSS reply suggests that five years after the institutionalization of the declassification procedures obligation in Regulation 8 (e), and after RAP was preemptively prolonged so as to cover up the hitherto GSS and others' violation of the Access Regulations, the organization has yet to complete

199. Ibid.

200. Letter from Ayelet Moshe, Freedom of Information Law implementation, Prime Minister's Office, to Dr.Noam Hofstadter, Akevot's researcher, 16 August 2015.

preparations to allow public accessto its archive. Similarly, GSS' reply shows that the organization has thus far refrained from making preparations for the commencement of significant declassification of the majority of its archival materials, by the end of the RAP, in a few years' time.

Conclusion: Intelligence Agencies Shunning Their Duty of Allowing Access

It is not only the archives of security organizations themselves that were barred for the public. The Access Regulations state that archival materials of the security organizations specified in the second supplement to the regulations shall not be declassified even in cases where they arrive at other archives.[201]

On December 1970, Lieutenant Colonel Dov Shefi of the IDF Military Advocate General HQ addressed GSS head of Investigations Department. In a letter classified "restricted", Colonel Shefi requested information about 12 cases of alleged torture and abuse of Palestinian detainees, as well as alleged cases of detainees' death in custody. Colonel Shefi required the details in a bid to refute these allegations, brought before an international committee of inquiry.[202] The GSS head of Investigations Department's letter was sent to the Lieutenant Colonel four months later and filed in the ISA. But as part of the file's declassification process, the GSS's reply was redacted out, to be replaced by a form attesting to its removal, with neither further details on the grounds to deny public consultation of the document, nor a date cited for the relevant classification decision.[203]

To this day, results of GSS examinations into allegations of serious torture and detainee death are withheld – from the public as well as from victims of

201. Item 6 of the first supplement to the Access Regulations.

202. Letter from Dov Shefi, head of Advisory and Legislation Branch at the Military Advocate General Command, "Refutation of testimonies given before the UN Special Legislative Committee on our conduct in the Occupied Territories" (27 December 1970). ISA file MFA-5/4443.

203. Form "individual document removal form" is inserted to the document file to replace documents removed from it, in cases where the file's reviewer decides to classify a specific document but not the file as a whole. The forms allow to specify details such as the document's author, its addressee, its date and type (letter, memo, protocol, etc.). The forms used by the ISA do not cite the ground for the decision to deny consultation of the document or at what date it was reached. These forms provide no reasons for the decision to deny consultation of documents removed from the file. The information offered in these "references" is often partial, with some sections inappropriately filled in. Often, a single form is used to note the redaction of many documents out of the file.

the alleged actions and their families.
Clearly, the core of intelligence organizations and other government security organizations is highly sensitive to the public eye, requiring protection by increased classification of other government material. It is for this reason that the Access Regulations set very long periods of restricted consultation for materials: until a few years ago, it was 50 years from the date of creation, while in 2010 this period was extended to 70 years. The restriction access period was extended when it emerged that albeit the previous duration – 50 years – had long since passed, intelligence and security organizations had done nothing to allow public consultation of the material that is its property.

With the impending end of the extended RAP, it seems both organizations examined for this report have failed to make sufficient efforts to meet the Access Regulations demands. Indeed, the Mossad have a procedure in place for archival material consultation, but it seems at least some of the procedure's orders endow the organization with authorities not conferred on it by law. It further emerges from the above that the Mossad has yet to make preparations for a systematic course of proactive, orderly declassification of its materials once RAP expires, and it may be that the organization has no intention of making any proactive classification, but rather to make do with responding to public inquiries. This means that no lessons have been learnt following the IDEA and ISA's failure to declassify their materials and make them public. Matters are even worse at the GSS, and its reply suggests that the organization has not used the time it enjoyed so far, since the amendment to the new Access Regulations (and even before), to do the minimum required to allow public access even to some materials that pose no consultation impediment.

Past experience suggests that when no preliminary preparation work takes place, and with no appropriate resource allocation for the complex task of reviewing materials ahead of their declassification, the public is deprived of its right to consult archival materials. The state of affairs at hand raises a concern that an attempt be made to extend the RAP on these organizations' materials even further, to 90 years and more. The ongoing (and so far, nearly absolute) denial of materials held by security organizations – particularly the GSS – has serious consequences as far as fulfilling the public's right to know, as well as the archive's fulfilment of its role in promoting and protecting human rights. This shall form the subject of the next chapter.

Akevot's recommendation: the State Archivist must ensure that intelligence and security organizations as a whole meet their obligations by the Access Regulations, including the obligation of publishing procedures for consulting their archival materials and preparation works for proactive declassification, by the end of the RAP, at the very latest.

Chapter 5:

Human Rights Documentation at the Government Archives

> Institutions holding archives ensure that victims of serious crimes under international law have access to archives that provide evidence needed to assert their human rights and to document violations of them, even if those archives are closed to the general public.
> Principle 6 of the Principles of Access to Archive

The lion's share of archival material that allows to understand the policy and actions that pertain to human rights respect by state authorities in Israel can be found in the government archives, i.e. the Israel State Archive and its extensions: the IDF and Defense Establishment Archive (IDEA), General Security Service (GSS) Archive, and others. Beside the State Archivist, and usually in lieu thereof, different elements operate as part of the government archives that have been authorized to determine and implement the declassification – or non-declassification – policy, in each of these archives. These declassification elements dictate which archival materials are to be released from their lockup in storage rooms and handed to their due owners – the public – and when.

In the early 1980s, the Arab Affairs adviser at the Prime Minister's Office sought to seal all files by the Ministry of Minorities, which had operated at the state's early years, where "mention is made of the expulsion of Arab Population, confiscation of its property, or acts of cruelty perpetrated against it by soldiers."[204] The then State Archivist objected this request: he did not find the disclosure of the records to pose a threat to state security or foreign relations. The Archivist further stated that information in these files suggested that the material therein pertained, among other things, to "the expulsion actions (which the government, according to him, strongly objected) and things done by local commanders, often highly important ones, persons of high standing in our political landscape."[205] The ministerial committee determined, against the Archivist's position, that the files remain classified for fear of possible harm to the state's foreign relations. Following another request by the Archivist, this time in his capacity as chair of the Supreme Archive Council, a committee was appointed at the MoD which

204. Ziona Raz, see footnote 30, p 51 (Hebrew).

205. Quoted in Ziona Raz, ibid.

ordered the declassification of 80 files. The Ministry of Foreign Affairs' objection caused 40 of these to remain classified.[206]

The Ministry of Minorities files' affair, like other affairs, illustrates the need for healthy criticism when grounds of "state security", "foreign relations" or "right of privacy" are wielded to justify the ongoing confidentiality of files and documents that should by law be declassified.

Extraneous Considerations in the Declassification Policy: State Comptroller Findings

The Access Regulations, and later the criteria documents at the ISA and IDEA, cite three main grounds for restricting consultation of archival material: security considerations (national, public, or individual); national foreign relations, and considerations pertaining to privacy protection. But the absence of a full catalogue, the lack of any reasoning to back decisions to deny consultation of materials requested, and a very partial mechanism of appeal, all undermine the ability to hold in good faith the decision-making on requests to consult materials yet to be declassified, including those that may shed light on policies and actions involving human rights violations, even years after the event.

For many years, the criteria informing declassification decisions at the government archives (first in the IDEA, and later in the ISA as well) included expressed orders on protecting the image of the state, IDF and its commanders. In 1987 the IDEA began making use of a criteria document (referred to at the time as the "pivots document"), designed to prevent the declassification of documents "where release may compromise the image of the state or IDF, particularly documents that contain details on IDF people's handling of minorities and infiltrators."[207] In 1990, the IDEA management updated the criteria so as to ban declassification of materials concerning, among other matters "[...] the image of IDF and its commanders, as well as the state and its leadership; IDF's ethics of combat; maintaining purity

206. Ibid, 52-53.

207. The State Comptroller, **Annual Report 50b,** see footnote 131, p 714. The Comptroller notes that the "pivots document" was employed by the initiative of the IDEA, despite the fact that the document had been previously rejected by a relevant professional committee and disqualified by the Minister of Defense.

of arm; [...] and others."[208] In 1995 the State Archivist adopted the "pivots document" so that at least some of its criteria informed the declassification work at the ISA.[209] In June 1996, the IDEA Criteria Document was amended, removing the order pertaining the need to protect the image of the state institutions and eleadership, only to be replaced by the order stating that "no special affairs and classified subjects that it is in the state's interest to prevent the declassification thereof" were to be declassified."[210] The State Comptroller noted that the vague wording of this order "leaves an opening to deny declassification for inappropriate reasons."[211]

Indeed, the State Comptroller's findings rely on audits performed at the IDEA a long time ago – mid-late 1990s; but some of the practices that led to the findings hold true to this day and have not been revised, despite criticism. The government archives' practice of providing no reasons for denials of requests to consult materials, and neglecting to create a regulated, transparent appeal mechanism, leaves a wide opening for mistakes and for extraneous considerations to seep into declassification decisions. In 1999 the State Comptroller Office reviewed dozens of documents and excerpts of documents that the IDEA had banned for declassification. Following the review, the comptroller noted that the archive had denied the declassification of many documents without specifying the damage expected to be caused thereby. The examples cited by the comptroller included documents on: "names of beehive theft suspects; the 1951 accidental killing of a civilian by IDF officers; debt on equipment purchased by the Irgun ['Etzel']: the monetary cost of dismantling the ship Altalena," as well as what comptroller ambiguously referred to as "an issue of infiltrators in a military facility". A short while later the custodian of the IDEA informed the State Comptroller that a review performed by the archive itself of the documents found

208. The State Comptroller, **Annual Report 47,** see footnote 144, p 895. The State Comptroller cites further instances of documents prohibited for declassification: "Circumstances surrounding military people's injury that were not made known to their families; the inter-underground struggle; trials held behind closed doors; security-related offence trials; issues that may stir political disputes." In the follow-up report, the comptroller elaborately quoted a researcher's appeal to the IDEA custodian, complaining that dozens of archive documents that he had sought access to were left partially or fully classified for grounds beside the point, and that "a trend clearly emerged, of censuring every document that contained unsavory details from the state's past, even when their declassification no longer posed state security threat nor infringed the right of privacy." State Comptroller, Annual Report 50b, see footnote 131, p 716 (Hebrew).

209. Ibid, p 714.

210. State Comptroller, **Annual Report 47,** see footnote 144, p 896.

211. Ibid.

that the grounds provided for refusing to declassify IDEA documents were found to be unjustified in roughly half the cases. Comptroller further found that "there were hardly any cases" where public access to the documents prohibited for declassification on security grounds indeed posed possible harm for the state's security.[212]

Classification of Documents on Human Rights Violation: "A Bid to Control an All-Too-Familiar Story"

Following the State Comptroller's observations, the pivots document was revoked, to be replaced by other criteria documents at the ISA and the IDEA. Nevertheless, it seems that even under the new criteria, the practice remains put: classifying archival materials on significant affairs in the state's history or the state's relations with its Arab citizens, or may compromise the image of institutions and leadership.

Researchers who spoke with Akevot recounted how they had been denied access to materials held in the ISA and IDEA on human rights violations. The access denial for materials that may shed light on policies and actions that pertain to human rights protection and the violation thereof is facilitated thanks to a broad interpretation of consultation restriction grounds stipulated in the Access Regulations.

Even materials already cleared in the past for public access are not exempt from being re-sealed. 2012 saw the publication of *Footnotes in Gaza,* a graphic novel by Joe Sacco. Among other things, the book engaged with testimonies of alleged killings of civilians by IDF soldiers after the 1956 occupations of Gaza Strip. Following the publication, journalist Amira Hass wrote of the book and events described in it: the killing of cvilians in Khan Younis on November 3, the day after IDF occupied it, and in Rafah on November 12, a week after combat there has ended."[213] Military historian Yagil Henkin, of the IDF History Department, commented on Hass's piece with an article where he noted that IDF inspection report on the issue could be found in the IDEA, available for all to see for many years. Henkin's article reviewed the findings of said report, pointing that IDF soldiers had killed roughly forty civilians (other reports place this figure higher, between 48 and 111) and committed

212. The State Comptroller, **Annual Report 50b**, see footnote 131, p 712.

213. Amira Hass, "The Thin Black Line", **Haaretz,** 5 February, 2012.

pillage.[214] Historian Shay Hazkani turned to the IDEA, seeking access to the file containing the inspection report referred to by Henkin,[215] only to find that the document had been removed from the file and classified. The form specified the date of removal – two days after Amira Hass's article had run in Haaretz – and the ground cited: security.[216]

Hazkani's assertion that government archives were re-sealing "embarrassing" files, their contents already written about at length by researchers[217] was examined by incumbent State Archivist, Dr. Yaacov Lozowick, who found it to be true. In his personal blog, the Archivist wrote that based on his examination, there "have been cases", indeed, where Declassification Department staff at the ISA had re-sealed files already open for consultation, when "directives have been sharpened." The IDEA Declassification Department personnel confirmed to the Archivist that they had re-sealed open files due to their "content".

Dr. Lozowick did not specify the instructions "sharpened" in the ISA or the contents warranting the sealing of files at the IDEA, but made known his criticism of what he referred to as "a bid to control an already all-too-familiar a story."[218] It further transpires that the policy of sealing "embarrassing" files is not the preserve of government archives: Intelligence services' veterans, self-proclaimed "ISA declassifiers", conduct periodic audits of different archives, ordering the sealing of files and documents and,

214. Yagil Henkin, "Rafah Massacre – What Really Happened?" **Fresh** website, 25 February 2010 (Hebrew).
http://www.fresh.co.il/vBulletin/showthread.php?t=505283#post3635748

215. IDEA file 8-776-1958.

216. Shay Hazkani, Paper presented at "Declassifying Israel: Archives, Declassification and the Academia" Roundtable, Conference of Association for Israel Studies, 23 June 2014.

217. In an article run by **"Haaretz Weekend Magazine"**, Hazkani wrote: "In the past two decades, following the powerful reverberations triggered by the publication of books written by those dubbed the "New Historians," the Israeli archives revoked access to much of the explosive material. Archived Israeli documents that reported the expulsion of Palestinians, massacres or rapes perpetrated by Israeli soldiers, along with other events considered embarrassing by the establishment, were reclassified as "top secret." Researchers who sought to track down the files cited in books by Benny Morris, Avi Shlaim or Tom Segev often hit a dead end. Hence the surprise that file GL-18/17028, titled "The Flight in 1948" is still available today." **Haaretz,** 16 May 2013.

218. Yaacov Lozowick, "Have Israeli archives been hiding files?" Yaacov Lozowick Ruminations (21.5.2013). yaacovlozowick.blogspot.co.il/2013/05/have-israeli-archives-been-hiding-files.html

revocation of other records' confidentiality. Thus for instance, Dudu Amitai, director of Hashomer Hatzair Archive (Yad Yaari) in Givat Haviva, said that every couple of years, those "declassifiers" arrived at the archive, seeking to review certain files. The files requested in this archive typically pertain to "abandoned villages" and "1948 events", as well as materials that may undermine the state's diplomatic relations with certain countries. Materials from the personal archives of ministers and former Knesset's Foreign Affairs and Defense Committee members, deposited in the archive, are also reviewed and sometimes classified.

As decisions for these records are made by officials outside the archive, it is unclear how, and from whom, one may request to revoke colfidentiality and be granted access to them. The archive's administration does not deem itself authorized to grant material consultation requests. Staff at the Yad Yaari archive remember how once, after a renowned historian made public the contents of a classified document held in the safe, officials threatened to shut down the institution.

The source for the authority to classify and declassify at the non-government archives is unclear: the Archives Law and its different regulations confer no authority on the Archivist, ISA or any other element to deny public access to documents outside the ISA and its extensions.[219] The description of materials that "declassifiers" order to classify shows that alongside records pertaining to the protected interest of security and foreign relations, materials are also withheld that pertain to human rights, including the refugee issue ensuing after the 1948 war.

Conclusion: "Materials are Not Fit for Public Access"

In the government archives of Israel, references of human rights violations do not constitute an incentive to declassify records, but rather a justification to continue their suppression. This is also suggested by the frank statements of the person who served as State Archivist when the Access Regulations were last updated. Speaking before the Supreme Archive Council, the Archivist noted that one consideration in the decision to extend the RAP on security organizations' material was the wish to avoid "in the present situation, at this present time", engagement in subjects that pertain to international law, i.e. to human rights:

219. Furthermore, when materials created around the 1948 war are concerned, the RAP – inasmuch as one existed in the first place – has long since passed.

> I examined the materials, I went up to people and spoke to them. I was satisfied that in the present situation, at this present time, these materials are as yet unfit for public access. The lion's share of them, almost all of them, pertain to the right of privacy **while others have consequences regarding the respect of international law**. Much as I wish – being on the public's side, the academy's side, rather the establishment, I'm no GSS man, nor am I connected to them in any way – I am satisfied that presently, it is impossible to make these materials public.[220]

The then Archivist's statement concerning the wish to prevent access to records that hold" consequences regarding the respect fof international law" shows that the archive shuns its mission of promoting and defending human rights. Barring the public from the GSS archive and the archives of other security organizations, and the denial of public access to materials in purportedly "open" archives, like the ISA, IDEA, or even non-governmental archives, further compounds the blurring of the State of Israel's history: myths are made and shuttered based on partial or missing sources; clerks are not held to account for their flawed actions, sheltered by years-long secrecy. Victims of human rights violations and their families, on the other hand, are denied their right to obtain the truth as relief, or at least the information held by the state about their grievances.

This is not to contend that government archives universally withhold all information on serious human rights violations. The IDEA and ISA both provide access to documents on serious events and grave incidents, as well as discussions into the drafting and execution of policies detrimental to the rights of individuals and groups. Nevertheless, it seems many materials on human rights violations throughout the state's years are denied from the public on grounds of safeguarding protected interests. With no reasoning provided for decisions to deny access, the arguments of protecting foreign relations and security must inevitably be regarded with skepticism, particularly when records on decades-old events are concerned.

Akevot's recommendation: the State Archivis should order that internal criteria documents at the different government archives include clear orders that encourage the declassification of archival materials on serious violations of human rights. Procedures in the archives should guarantee rapid, prioritized processing of requests by victims of human rights violations to access archival materials pertaining to their grievances. The criteria documents and other relevant internal procedures shall include expressed

220. Protocol of the Supreme Council Meeting, see footnote 190, p 7. Our emphasis.

orders stating that considerations of protecting the image of establishment figures, organizations and the state with its institutions are invalid when it comes to deciding on archival material declassification.

Conclusion

> The historic information, not least – information on the recent history of the State of Israel, nourishes public discourse on a variety of current affair issues and affects their course. Debates into decades-old events resonate on around the public arena […].[221]

The "memory" of state institutions in the form of government records – protocols, recordings, correspondences, reports and such like documents and certificates – is stored in the government archives. This information has been created, collected and held thanks to public money, and for the public's benefit; it should be restored to the public and serve it for research and discussions; it should enrich our knowledge of events and the processes that brought us so far and lay a foundation to continue building our future.

The government archives betray their duty of opening the state's archival material for public consultation, and only a fraction of materials is available for all: about 0.5% of IDF and Defense Establishment Archive materials; less than 5% of Israel State Archive materials; none of the materials held in the General Security Service Archive. Roughly a single percent of all archival materials held in the ISA and IDEA put together is open for public access. Most materials closed for consultation are such that can be opened with no legal impediment.

The key barrier to access to the government archives is conceptual. The archives' operation has yet to catch up with the changes generated by the 2010 new Access Regulations as far as how discretion is exercised in decisions to declassify archival material. It seems that in some cases, the view of RAPs as periods of absolute prohibition of accessing materials still prevails, accompanied by obliviousness to the fact this period plays a very limited role in the overall weave of considerations to be taken on board when discussing a request to consult restricted material.

The laconic replies to deny access requests, accompanied by no reasons that can be assessed and protested against, if necessary, through a procedure of appeal or in court, and the failure to inform archive users of the option of appealing the decision, allow to continue denying archive users, and thereby society at large, access to important, significant archival records. And so the archive becomes a sealed safe.

221. Paragraph 49 of the HCJ petition 2467/05 **Gershom Gorenberg and others v. Custodian of the IDF and Defense Establishment Archive and others.** The petition: www.acri.org.il/he/1062

Archive users are usually limited in their ability to defy the system. The rules of the Archives Law, its regulations and the case law that pertains to the right of information are intricate and complex. Most archive users are not familiar with them and cannot use them to assert their rights in appropriate cases, particularly as they are misled to believe that RAPs are period of absolute confidentiality. Regular archive users – researchers and others – rely on the good will of the archive staff in order to gain access to materials they require, often hesitant of contesting negative responses. It seems to be no accident that the handful who did appeal the High Court of Justice following decisions to deny them consultation of materials are almost invariably journalists, who have the right for information and the freedom of expression etched in their professional ethos, in workplaces that, for the most part, fund the costly legal process entailed.

The findings of this report regarding government archives have been largely summarized throughout it, in chapters concerning the ISA, IDEA, and security organizations' archives. Some findings apply to all the archives reviewed here, and are as follows:

a. **Archives' catalogues are partial and lacking**. An improvement is expected to be introduced in catalogue access at the ISA as early as 2016. The IDEA has seen a slow expansion in the scope of files with titles permitted for consultation, but the old obligation made to declassify the catalogue is not expected to be fulfilled any time soon. These two key archives do not find it in their duty to provide the public with the full catalogue of materials held in them, including classified materials. With no full, open catalogues, it is hard to assess which parts of our history are omitted from the body of research, as we are denied acquaintance with events, contexts and ideas. With whole swaths of the archive left unmapped, choices made by archive staff gain more sway over the history rendered accessible to the consulting audience. Meanwhile, the option of maintaining control over their considerations and actions is reduced.

b. The ISA and IDEA alike have separate documents in place, their titles suggesting they are designed to set yardsticks for decisions on material declassification. More than a tool for drawing these standards, the two documents constitute a list of subjects forbidden for declassification and **invite those entrusted with the task of declassification to restrict consultation of materials of special interest for the public and for human rights**. The current criteria documents predate the Access Regulations in their updated version, which specifies both protected interests and clear criteria for the balancing thereof. Inasmuch as a need exists for internal procedures to further elaborate on standards for declassification decisions (during and

after RAP), procedures must draw on the regulations as a reference point and be made available for public consultation themselves. The internal procedures of the archives in question cannot prevent the release of public information beyond what the law itself allows.

c. **Declassification bodies at the Government Archives lack transparency, and for some practices, authority**. The arrangement set by the law on continuing prohibition on material consultation beyond the RAP is not implemented, and in its absence, archives deny to such records, routinely and with no authority. This practice is facilitated by disregard of basic orders stipulated by Israeli administrative law: the duty of providing reasons for denials of requests to consult materials and having a mechanism in place for appealing administrative decisions.

The various barriers to public access to government archives presented in this report combine to paint a gloomy picture. The ISA and IDEA seem to open their gates for the public, welcoming it to use their services. The ISA is even poised to launch a website soon, allowing easy, quick access to hundreds of thousands of scanned documents. But whoever seeks to rely on these archives for access to records held therein about our life here, the processes that have driven Israeli and Palestinian societies to the present point, is set up for a disappointment: a negligible percentage of the archival material is open to the public. The seemingly open archives are in fact closed.

A profound, thorough reform is required if this situation is to be redressed, informed by a deep understanding that records of the work performed by the government and its clerks is the public's property, rather than a secret to be kept from it. The recommendations included in this report are only some of the initial steps that must be taken towards restoring this public property to the public's hands.

Epilogue: One Step Forward, Two Steps Back

As preparations were underway for printing this report, State Archivist, Dr. Yaacov Lozowick, announced during a meeting with several researchers (22 March 2016) some key changes to be soon introduced to the access policy in the Israel State Archive. Some important changes include subjecting access to ISA records to the Military Censor (on top of the many other barriers imposed on public access to the archive, as reviewed here) and the re-sealing of many other archival materials declassified in the past, yet considered too sensitive to be publicly released online.

The new restrictions placed on access to ISA materials are the culmination of a move that was actually designed to expand access thereto: in the course of April 2016, the ISA's new website is set to be launched, with the aim of making digitized materials accessible to the public. According to the State Archivist, some 10% of all the institution's materials have been scanned so far, and if scanning rate proceeds as planned, all its unclassified materials shall be scanned and uploaded to the website within the next 30 years.

However, browsing ISA's materials using an open-to-all website, is designed to be the **exclusive consultation channel offered by the ISA**: according to the plan, no paper files shall be brought to the archive's reading room, excluding exceptional cases and with the special approval of the State Archivist. According to him, this decision is his way of resolving the difficulty recently brought to his attention by ISA storage room staff, stating they would struggle to keep up with the planned pace of material delivery for both reading room and digitation. The decision to repeal the option of consulting archival materials at the reading room, restricting it to the website, was made by the Archivist alone, having consulted neither archive users nor the Supreme Archive Council, and with no public discussion. Records of the considerations that informed this decision, as well as of possible alternatives proposed for the resource problem at hand, the estimated benefit and damage of the different courses of action, and the balancing performed of the administrative need versus the public purpose of the archive – are all sealed from the public, for the time being.

One outcome of this new access policy is **the re-sealing of many materials already declassified in the past, though too sensitive to be released for online access**, as opposed to private browsing in the reading room. As the Archivist admits, the absence of any alternative channel to online access shall mean no consultation of this material, lawfully declassified and considered open for public consultation though it is. Similarly, archival materials of comparable sensitivity which might have been opened for consultation at the reading room following a specific request shall remain confidential.

Alongside the Archivist's decision to shut the reading room, restricting consultation to materials that had been publicly released and uploaded to the website, it was also decided to **make archival material consultation subject to the Military Censor review and approval** – in addition, rather than instead, of the existing review and declassification procedures. The criteria for archival materials to be submitted for the Censor's approval are listed in a Military Censor document, which at the time of writing is not public. The changes in the ISA shall confer on the Military Censor, which acts pursuant to the Defense (Emergency) Regulations (1945) and enjoys sweeping authorities on all publications in Israel, the actual power to prevent all public access of any ISA material, as it sees fit.

We welcome the considerable effort invested in making a large amount of scanned archival documents available for the public through the website, but the argument that the storage room staff's position forces the State Archivist to deny consultation of written materials in the reading room is questionable. The Archivist's decision holds serious implications for access to ISA materials, requiring that he re-considers them. The Archivist, who takes pride – for good reason – in the large budget supplement for the digitation efforts' sake, must allocate the resources required for the ongoing operation of the reading room, while providing wide accessibility for the scanned archival materials at the ISA website.

The Israeli Archives Law stipulates that "Every person may consult archival materials deposited in the [Israel State] Archive." Nevertheless, the overwhelming majority of materials held in government archives is closed for public access, with a large portion thereof past the restricted access period stated by regulations. Other important government archives are completely closed for public access. The report presents the barriers that prevent consultation of the majority of archival materials held in Israeli government archives, offering recommendations to redress some of the identified failures.

Akevot explores the Israeli-Palestinian conflict, past and present. We study the mechanisms, actions and policies leading to the human rights violations that attend this conflict. Looking into events whose narratives and collective memories play a part in the development of the conflict, we also serve as a human rights archive: Akevot tracks down, digitizes and catalogues relevant records held in government and private archives. This report is published as part of Akevot's efforts to further open government archives to public use and remove barriers hindering public access to them.

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