

# Point of Access: Barriers for Public Access to Israeli Government Archives

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## עקרונות עקיפות Akevot

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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 regulations 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.