In the Supreme Court sitting as a Court of Administrative Appeals

AAA 2975/15

Before: President M. Naor
Justice D. Barak-Erez
Justice A. Baron

Appellants:

1. Ha'aretz Newspaper Publishing
2. Barak Ravid, Ha'aretz Journalist

v.

Respondent:

Ministry of Foreign Affairs

Appeal against the decision of the Jerusalem District Court sitting as a Court of Administrative Affairs, from March 29, 2015 in AP 42750-09-14, handed down by the Honorable Judge D. Mintz.

Date of session: 4th Kislev 5776 (Nov. 16, 2015)

Adv. Tal Lieblich
On behalf of the Appellants

Adv. Moriah Freeman; Adv. Dana Briskman
On behalf of the Respondent

Judgment

Justice D. Barak-Erez

1. Do the freedom-of-information laws require providing a journalist with a list of the guests who participated in a holiday dinner at the residence of an Israeli ambassador to a foreign country? This was the focused question which we were called upon to determine, following a request for the disclosure of information concerning a "second Passover Seder" dinner held at the home of the Israeli ambassador in Washington D.C. In order to answer this question, we were also called upon to consider general aspects regarding the claimed implications of such disclosure on the operation of the Foreign Service.

The Factual Foundation and Proceedings to Date

2. On April 15, 2014, a "second Seder" meal was held at the residence of the Israeli ambassador in Washington, Mr. Ron Dermer, in which members of his immediate family, some members of his extended family, and additional guests participated. The identity of some of these guests is known – since they made their participation public, including the American Secretary of State John Kerry, journalist Andrea Mitchell, and Pastor Gary Bauer. Mr. Barak Ravid, Appellant 2, a journalist who writes for the Ha'aretz newspaper, and Appellant 1 (hereinafter, respectively: the Journalist and Ha'aretz) submitted a request to the Ministry of Foreign Affairs under the Freedom of Information Law, 1998 (hereinafter: the Freedom of Information Law or the Law), for details about the dinner – the names of its participants and additional details, such as costs. This request was rejected, with the exception of details concerning the dishes served at the dinner.

3. As a result, Ha'aretz and the Journalist filed an administrative petition under the Freedom of Information Law in the Jerusalem District Court sitting as an Court of Administrative Affairs (AP 42750-09-14, Judge D. Mintz) demanding the above details. The Respondent continued to object to the disclosure of the details, and maintained that disclosing such information might compromise the foreign relations of the State of Israel, and thus should not be provided, under sec. 9(a)(1) of the Law.

4. The District Court denied the Petition on March 29, 2015, noting that it appeared that the Petitioners had not indicated the reason for which they required the information. It further explained that the Respondent had also failed to indicate what particular harm would be involved in the disclosure, but that under the circumstances of the case, there was no justification to grant the request. It should further be noted that during the hearing, the Respondent agreed to provide the Appellants information as to the cost of the dinner.

The Arguments of the Appeal

5. The Appellants again argue that they are entitled to receive the requested information under the Freedom of Information Law.

6. On November 16, 2015, a short hearing was held before us. Although the original request was more extensive, in the course of the hearing, the request was narrowed to receiving details only as to the identities of the participants in the dinner.

7. The Appellants claim that the District Court erred in shifting the burden of proof as to the disclosure of the information. According to them, they are entitled to receive the information under the provisions of the Law, and the burden of proof falls on the Respondent to demonstrate why the information must not be disclosed. The Appellants argue that the Respondent must show that there is a

near certainty of actual harm to the foreign relations of the state in order to avoid disclosing the information, and that the "concern test" that this Court addressed in the *Shani* case (HCJ 2007/11 *Shani v. Ministry of Environmental Protection* (Feb. 5, 2012)) applies only to disclosing information that may harm public safety or welfare, as opposed to information that may compromise the state's foreign relations.

8. The Appellants further argue that the reasons presented by the Respondent for non-disclosure are general, and do not address the specific matter. The Appellants wish to emphasize that in considering petitions under the Freedom of Information Law, an administrative authority's refusal in principle is unacceptable, for otherwise – they claim – the general rule will become the exception and the exception will become the general rule (referring to HCJ 10271/02 *Fried v. Israel Police*, IsrSC 62(1) 106 (2006) (hereinafter: the *Fried* case). Moreover, the Appellants point to the fact that the existence of the event is a public fact, inasmuch as some of the participants even mentioned their participation on different websites. Under these circumstances, the Appellants argue, the names of all the participants in the event cannot be claimed to be confidential when the event and the identity of some of its participants are a matter of public knowledge.

9. The Appellants argue that the Law does not require that they specify the reason for their interest in the requested information, and in any event, when journalism is concerned, the journalist has no "private" interest in the information and his interest stems from his role – bringing information to the knowledge of the public.

10. The Appellants further argue that the Respondent's refusal to disclose the information was not reasoned as required. They claim that the Respondent did not show that it considered either the public interest in disclosing the information or the possibility of providing the information with certain reservations, or while redacting certain details, as required by secs. 10-11 of the Law.

11. Finally, the Appellants emphasize that even were the argument that the requested information falls within the compass of sec. 9 of the Law (that is, that we are concerned with "information that must not or does not have to be delivered") to be accepted, the Court must, nevertheless, exercise its authority under sec. 17 of the Law, and order the disclosure of the information because of the public interest in it.

12. As opposed to this, the Respondent presents a general, principled approach against the disclosure of information about events held at the homes of Foreign Service representatives, and maintains that the reasons for such non-disclosure are apt in the matter before us, as well.

13. The Respondent claims it is not authorized to provide the requested information given the provisions of sec. 9(a)(1) of the Law. In its view, the probability standard for the disclosure of information under this section, as held in the *Shani*

case, is the "concern test", but even were the "near certainty test" applied in our matter, as the Appellants' argue, the requested information should not be disclosed.

14. The Respondent argues that the residence of the ambassador does not constitute an office, and therefore events held there are of a more personal nature. They must, therefore, be distinguished from public events held by the Respondent, information about which it publishes in an organized fashion. Under its approach, events of the first category serve as a unique platform for the exchange of sensitive messages, and it is, therefore, imperative to protect flexibility in inviting guests to them, without causing concern for these guests that their participation may become public knowledge. The Respondent emphasizes that diplomatic efforts are based on a relationship of trust and mutual assurance, which cannot be established without a promise of discretion even in regard to the contact itself, and that participants in events of this nature have an expectation that their identity will not be published. The Respondent further argues that, aside from this being the accepted norm among diplomats around the world, it is of particular importance in conducting the foreign affairs of Israel, which faces challenges, at times, in meeting with the representatives of various states and organizations.

15. The Respondent additionally relies upon sec. 9(b)(1) of the Law in support of the non-disclosure. This section states that a public authority is not obligated to provide information whose disclosure may compromise its normal course of operation or its ability to perform its duties. Therefore, it was argued, disclosing the names of the participants in events of the type concerned here may create a "chilling effect" that would discourage certain figures from attending such events. The Respondent claims this is akin, to a certain extent, to what is addressed by sec. 9(b)(7) of the Law, which mandates that a public authority is not obligated to provide information whose non-disclosure was a condition for its provision, or the disclosure of which may hinder the ongoing receipt of that information.

16. The Respondent further argues that the fact that the holding of the event was made public, and that some of the participants even made their participation public, does not justify exposing the names of the remainder of the participants. It was also argued that providing a list of participants in events such as this might violate the rights of third parties and, therefore, according to sec. 13 of the Law, the authority must notify them about the request for providing information and of their right to object to it. The Respondent emphasizes that this raises a particular difficulty in the present matter, as many of the participants in events of the Ministry of Foreign Affairs are foreign citizens or residents.

17. According to the Respondent, the public interest in disclosing the information that the Appellants seek does not outweigh the reasons to keep it concealed. In this context, it was argued that the case law expresses different views as to the authority of an administrative body to consider providing information covered by sec. 9(a) of the Law. The section employs the language "shall not deliver

information" as opposed to the permission granted not to provide information under sec. 9(b) of the Law (citing AAA 2820/13 *Rosenberg v. Enforcement and Collection Authority*, paras 12-14 (June 11, 2014)), and in any event, the discretion of a public authority as to non-disclosure of information is broad. The Respondent further claims that although section 10 of the Law does, indeed, require considering the Appellants' interest in obtaining the information, they did not point to a concrete, salient public interest in its disclosure.

18. Additionally, the Respondent maintains that it gave reasons as required for the decision not to provide the information, and even gave partial information (in terms of the menu and costs of the meal), in accordance with sec. 11 of the Law. It argues that the possibility of giving reasons for refusing to provide confidential information is necessarily limited.

19. In the course of the hearing, we again asked whether, under the circumstances, it would be possible to publish the names of some of the participants, but the Respondent's attorney argued that, in her view, the very possibility of disclosure in this case presents problematic, precedential implications. The Respondent's attorney noted that it is possible to disclose – officially – only the fact of the participation of the ambassador and his wife, and of Israel's military attaché in Washington and his wife. It was also stated, in response to this question, that all the participants in the event were Israeli or American citizens, and not holders of any other foreign citizenship. In response to additional questions posed to her, the Respondent's attorney noted that the Respondent's position is that there is no place for establishing criteria (such as the number of participants) to define events in regard to which the identities of participants is subject to disclosure. Thus, for example, she refrained from taking a definitive position even on the question whether the list of participants in an Independence Day celebration at the ambassador's home would be subject to disclosure, although she did acknowledge that the response to this question may be in the affirmative.

20. In her response, the Appellants' attorney noted that she accepted the principle that there are many meetings of the Foreign Service that are best kept confidential, and that those must be distinguished from the dinner under discussion. According to her approach, this cannot justify a blanket exemption of events of this nature, which is tantamount to an exemption from the application of the entire Freedom of Information Law. The Appellants' attorney relied upon the fact that, to date, an order barring the publication of names of a dinner's participants has never been granted, which undermines the Respondent's position that the disclosure of the information may compromise Israel's foreign relations. Additionally, she pointed to the fact that the Respondent has yet to reach out to the event's participants in order to learn their positions as to publishing their participation in it.

21. The Respondent expressed willingness to present details as to the dinner's participants for our review. The Appellant's attorney noted that, in her view, there is no justification for disclosure in this format, but added that she would not

object to it. At this point, we held an *ex parte* hearing in which a complete list of the dinner's participants was presented for our review. We were also presented with a letter from the ambassador, Mr. Dermer, in which he explained the clear importance of the ability to invite people to events at his home without the possibility that this be accompanied by a "shadow" of disclosure. Additionally, we were presented with the opinion of Ms. Liora Herzl, deputy director general and head of the North America Department in the Ministry of Foreign Affairs, in which she presented the general principle of flexibility and confidentiality of meetings of the Foreign Service, and the existence of a "diplomatic code" as to the non-disclosure of the identities of participants in such meetings. A list of examples of meetings in which representatives of the State of Israel participated in other countries over the years was attached to this opinion. The above opinion was presented, at our request, for the Appellants' attorney's review, as well, with the omission of the examples. At this hearing, Mr. Reuven Ezer, the deputy ambassador in Washington also responded to our questions, and he presented the Respondent's position from his perspective.

22. It should also be noted that at this point of the hearing, as well, we presented the State's representatives with the question whether they would be willing to disclose names of additional participants in the event, while redacting certain names for which there may be particular sensitivity, but the response we received was that even such limited disclosure would, in the view of the Ministry of Foreign Affairs, harm diplomatic freedom of operation.

Discussion and Decision

23. The appeal before us is one of those cases that addresses a matter that seems relatively trivial on its face, but that actually reflects principled considerations regarding the laws of freedom of information, on one hand, and public interests that sometimes weigh against disclosure, on the other. After weighing these considerations, I believe the Respondent's approach cannot be accepted as it was presented. I shall explain my position.

Protection of Information regarding Foreign Relations: An Important Public Interest but Not One that is "Outside" of the Law

24. The enactment of the Freedom of Information Law represented a shift in our legal system – the premise is now that public information is information which the public has a right to receive (as stated in sec. 1 of the Law), whereas non-disclosure is the exception. The exceptions may sometimes be significant, and even broad, but they are still exceptions, and the burden to prove that they apply is upon the party seeking to rely upon them (see, e.g: LCA 291/99 *D.N.D. Jerusalem Stone Supply v. Director of Value Added Tax*, IsrSC 54(4) 221, 233 (2004); LAA 1786/12 *Julani v. State of Israel –Ministry of Public Security*, para. 45 of my opinion (Nov. 11, 2013) (hereinafter: the *Julani* case)). In doing so, the Law expanded the right to review administrative documents, which was granted

to the individual even before the Law's enactment, and recognized the individual's right to receive information even when he may not have a personal interest in it (LAA 7029/03 *Geva v. Mayor of Herzlia*, para. 11 (June 9, 2006)). This reflects the view that the administrative authority holds information in trust for the public, and that the disclosure of the information advances freedom of expression and allows the public to supervise the administration's activity (see, e.g: LAA 8282/02 *Ha'aretz Newspaper Publishing Ltd. v. State of Israel –State Comptroller's Office*, IsrSC 58(1) 465, 470-72 (2004); LAA 9135/03 *Higher Education Council v. Ha'aretz Newspaper Publishing*, IsrSC 60(4) 217, 230-32 (2006) (hereinafter: the *Higher Education Council* case); LAA 7744/10 *National Insurance Institute v. Mangle*, para. 5 of Justice N. Hendel's opinion (Nov. 15, 2012) (hereinafter: the *National Insurance Institute* case); LAA 3908/11 *State of Israel, Courts Administration v. The Marker Newspaper, Ha'aretz Newspaper Ltd*., paras 20-23 of Justice E. Arbel's opinion (Sep. 22, 2014)).

25. These guiding principles of freedom of information also apply to the Ministry of Foreign Affairs, including its representatives and Israel's embassies abroad. It would not be superfluous to note that certain public bodies are explicitly exempted from the Freedom of Information Law, as stated in sec. 14 of the Law. These bodies include, inter alia, the IDF's intelligence service, the Mossad, the General Security Service, and other bodies (see, e.g., LAA 4349/14 *Association for Civil Rights in Israel v. Prime Minister's Office* (Nov. 3, 2015). Also see and compare: the *Julani* case, paras. 18, 22, and 25 of my opinion). The Ministry of Foreign Affairs is not included among these bodies, and indeed, the Respondent does not claim otherwise. Thus, information that concerns Israel's Foreign Service is information that is not "automatically" exempt from the laws of freedom of information. Indeed, it is reasonable to assume -- and indeed the Appellants do not dispute this – that certain aspects of the Foreign Service's activities should remain under wraps. However, this is not to say that the entire Foreign Service is exempt from the laws of freedom of information.

26. At the same time, an examination of the Freedom of Information Law reveals that the interest of protecting the State's foreign relations was contemplated by the legislature, and this interest was recognized in the framework of a defined exception, alongside other important public interests. Section 9(a)(1) of the Freedom of Information Law mandates that "information, whose disclosure may raise fear of harm to national security, the State's foreign relations, public security or a person's safety or welfare" shall not be disclosed. Therefore, in order to privilege information relating to foreign relations, one must point to a "fear" of harm to foreign relations, and in this context it was already held that a fear that is a remote possibility is not sufficient, but rather only a significant concern relative to the severity of the risk and the likelihood of its realization. And this is what was held on this issue in the *Shani* case:

> The probability test that the legislature established in sec. 9(a)(1) of the Freedom of Information Law is the concern test – when it is met,

> disclosing information that may harm state security or public safety is prohibited. Indeed, this is not a test that amounts to a "near certainty" like the one that serves to limit the infringement of freedom of expression by virtue of censorship (HCJ 680/88 *Schnitzer v. Military Censor*, IsrSC 42(4) 617 (1989)), but neither is it a test that is satisfied by any, even remote, possibility of such harm. In effect, this is a test that evaluates the prospects of harm to public safety or welfare. The product of severity of the risk and its likelihood points to the prospects of harm to public welfare or safety (*ibid*., para. 4. Also see: HCJ 2662/09 *Movement for Freedom of Information v. Prime Minister's Office*, para. 5 (Jan. 4, 2011)).

I would further note in this context that I cannot accept the distinction that the Appellants wish to make between information that concerns the "public's safety and welfare" and information that concerns the state's foreign relations. It is clear that in joining these issues together in sec. 9(a)(1) of the Law, the legislature intended that the same probability test to, even if its implementation is influenced by the relevant contexts and risks.

27. The Respondent's argument focuses on the fact that the diplomatic channels of the State of Israel require preserving the ambassador's residence as a "safe zone" of sorts, if not "extra-territorial," whose visitors may be assured that their identities will not be disclosed. This is the case even if they are citizens of friendly states, and even if the events included many participants. This is because this is the expectation of the participants under the "diplomatic code", even if it was not agreed upon in advance with any of those in attendance. In other words, the primary concern to which the Respondent points is the concern about a chilling effect that would compromise the ability of the officials of the Ministry of Foreign Affairs to meet with representatives of states and foreign organizations that do not wish that the fact of the meeting be revealed. The question is whether this claim of a chilling effect constitutes a "real concern" that tips the scale toward refraining from disclosing information by establishing the blanket rule the Respondent seeks. Before I respond to this question, I wish to expand the framework of our discussion and present it from a comparative perspective.

Comparative Examination: The Foreign Relations Exception and Diplomatic Practice

28. The discussion before us may benefit from a comparative review of the acceptable standards as to disclosure of information regarding foreign affairs in other countries. Ordinarily, the justification for it is connected to the general background of the enactment of the Freedom of Information Law, which was informed, inter alia, by the "wave" of legislation around the world on the issue. However, this justification is stronger in the current context. On its face, the accepted norms of other countries may shed light upon the development of diplomatic practice, as well as upon the shaping of the views of foreign citizens that the State's argument seeks to protect.

29. Although I cannot point to a case that is identical in all its aspects to the one before us, I believe that a comparative review reveals two trends that are highly relevant to our discussion. First, the recognition of an exemption or immunity from disclosing information that may compromise a state's foreign affairs is an acceptable standard in the legislation in this field, but it also becomes clear that this exception is applied to "core" matters of foreign relations – classified information received from a foreign country, deals with foreign entities, secret contacts, etc.. In any event, the exception is not interpreted as exempting entire diplomatic fields from the application of the laws of freedom of information, as opposed to concrete matters. Second, there seems to be a growing trend toward submitting requests for information about meals and other official events. Such requests are considered on their merits – at times they are granted and at times they are rejected, on a case by case basis. Moreover, they led to a practice of "voluntary disclosure" of details concerning official visitors.

The Interpretation of the Foreign Affairs Exception in Comparative Law

30. As noted, exceptions concerning protection on a state's foreign relations are accepted, in various formats, in the freedom of information laws of other states. Thus, for example, the United States' Freedom of Information Act, 1966, establishes an exception in the framework of what is termed "Exemption One", which authorizes the executive branch to classify documents as secret for reasons of protecting national security or foreign relations (as detailed in Executive Order 13526). Section 27 of the British Freedom of Information Act 2000 provides for an exemption from disclosure for reasons of foreign relations. Section 13(1) of the Canadian Access to Information Law 1985 permits the refusal to disclose information acquired in confidence, inter alia, from a foreign government or an institution thereof, or an international organization or an institution thereof, and section 15(1) provides that the state may refuse to disclose information the disclosure of which could reasonably be expected to be injurious to the conduct of international affairs . The Australian Freedom of Information Act 1982 regulates the matter in sec. 33, and exempts disclosing information that would, or could reasonably be expected to cause damage to the international relations of the Commonwealth (subsection (3)(a)) or any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization (subsection (b)). However, the important question revolved not only around the manner in which the exception is defined in legislation, but primarily around the accumulated judicial and practical experience as to the types of cases in which it was applied.

31. I believe that the cumulative experience demonstrates that the foreign relations exception is primarily applied in situations that are at the *core of the area of foreign relations*. Thus, it is often applied to *information concerning cooperation with foreign governments on intelligence or security issues*. In the United States, for example the application of the exception can be seen in regard to documents in which a foreign government that had assisted the FBI was identified (*Summers v.*

U.S. Department of Justice, 517 F. Supp. 2d. 231 (2001)); documents concerning the detaining of a person in incarceration in Yemen in order to protect information given by government personnel there (*Mobley v. CIA*, 924 F. Supp. 2d 24 (2013)); as well as information concerning the involvement of the United States in developing Iraq's energy policy (*Muttitt v. Department of State*, 926 F. Supp. 2d 284 (2013)). Similarly, in Canada, the exception was applied to information regarding activity in Afghanistan (*Attaran v. Minister of Foreign Affairs* 2009 FC 339). In Great Britain, the use of the exception was permitted in relation to discussions and correspondence between that country and the United States about receiving naval vessels from the American Navy, a matter that was considered a controversial environmental issue (EA/2006/0065 *Foreign and Commonwealth Office v. Information Commissioner and Friends of the Earth* (2007) (hereinafter: the *Friends of the Earth* case)); information about the sales of military equipment to Saudi Arabia (A/2007/0071, EA/2007/007, EA/2007/0079 *Glibly v. Information Commissioner* (2008) (hereinafter: the *Glibly* case); EA/2011/0109 *Campaign Against Arms Trade v. Information Commissioner* (2011); and in regard to a request to disclose minutes of Cabinet meetings in which it was decided to deploy British military forces to Iraq (EA/2008/0024, EA/2008/0029 *Cabinet Office v. Information Commissioner* (2008). In Australia, too, it was held that there is justification not to disclose correspondence between Australian authorities and the United States about a person held in detention in Australia and suspected of being an Al-Qaida operative (*Re McKinnon and Secretary of Foreign Affairs and Trade* 40 AAR 255 (2004)).

32. Indeed, the foreign affairs exception was not only applied to security information, but also in other instances where the disclosure of information *received from a foreign country* was concerned. In Australia, for example, the non-disclosure of details concerning information of cooperation by Australian authorities with Costa Rica, which facilitated the prosecution of the requester of the information, was approved (*Maksimovic v. Attorney General's Department* [2008] AATA 1089). In another case, it was held that the exemption from disclosure applies to information that was received from the government of Vietnam and was used to preparation of a document on the situation in the requesters' state of origin for the purposes of considering their request to be granted refugee status in Australia (*Van Xinh Bui v. Department of Foreign Affairs and Trade* [2005] AATA 97 (hereinafter: the *Van Xinh Bui* case)).

33. Even in cases where the exception was applied because of the sensitivity of the requested information, its application *was limited according to the public interest that weighed in favor of the disclosure*. This was the case, for example, in the British *Gilby* decision, where it was clarified that the exception would not apply to information concerning possible involvement of British government personnel in payments of an illegal nature, such as bribery, in relation to sales of military equipment to Saudi Arabia, based on the view that the public interest in disclosing this prevails.

34. Another consideration taken into account is the *culture of freedom of information of the country the relationship with which or whose people the disclosure concerns*. Thus, in Great Britain, it was held that the fact that a request concerned relations with a state where governmental transparency is not practiced is a consideration that may be factored in, whereas, when the foreign state (the United States) is a constitutional democracy with developed legislation in the area of freedom of information, the point of departure is that it will express understanding for the consequences of local freedom of information laws (see: GIA/150/2011, GIA/151/2011, GIA/152/2011 *All Party Parliamentary Group on Extraordinary Rendition v. Information Commissioner* (2011), para 65).

35. As a general rule, cases where it was argued that the exemption applied were examined *in accordance with the totality of their circumstances, while refraining from general statements*. In the Canadian case of *Bronskill v. Minister of Canadian Heritage*, 2011 FC 983, it was held that rejecting a request to disclose documents that concerned a public figure, who had died many years earlier, due to the fact that they contained intelligence materials was overly broad and that the claim of exemption from disclosure should have been examined in regard to each document independently, while taking into account the amount of time that had elapsed. The decision mentioned, inter alia, the words of the Canadian Supreme Court that exemptions established by law are not intended to be used to prevent "embarrassments" (*ibid*., para. 131 of the decision). In the Australian *Van Xinh Bui* case, it was ruled that the claims for exemption must be considered in light of the nature of the information, the circumstances in which it was received, the nature and scope of the relationship between the two countries, and the facts of the concrete case (*ibid*., para. 23).

36. Another question at issue was the weight that should be attributed to opinions of professionals in Foreign Service. In Great Britain, it was held that while such opinions are important, they must be examined on the basis of their content and merits, rather than taken as gospel (see: *Friends of the Earth*, para. 39).

37. The balanced approach for examining the exemption is reflected not only in the case law, but also in the decisions and instructions as to the manner of implementation. In Great Britain, instructions were published in this regard by the Information Commissioner's Office, who is charged with implementing the Freedom of Information Act. Inter alia, it was decided that the exemption for foreign affairs should not be applied and prioritized over the public interest in disclosure where the claimed harm to foreign relations is trivial (*Freedom of Information Act Awareness Guidance No. 20* (2004), section B, and that the exemption should be implemented while considering the characteristics of the specific relationship between Great Britain and the other relevant country or organization, as well as the changes to it, as the case may be (*Freedom of Information Act Awareness Guidance No. 14* (2004), section B).

38. In light of all of the above, it appears that an exemption for the protection of foreign affairs is accepted in freedom of information law. However, it can be seen that the exemption from disclosing information is supposed to be based on a specific, material justification that concretely addresses the harm that may be caused as a result of the disclosure. A mere concern is insufficient. The application of exemptions in this area is based upon an examination of the nature of the information, the circumstances in which it was received, the nature and quality of the relationship between the two countries concerned, the character of the foreign country to which the information relates, and similar factors. As is readily seen, all the above examples address information of a highly sensitive nature, as in another case that was addressed by this Court (see AAA 615/15 *Oron v. Director of Security Exports Supervision Department* (April 11, 2016)), in which the exemption from disclosure was applied to a request for information about security exports to Rwanda at a time when there was an international embargo on such exports. These are very different from the case before us, both in the nature of the information and in consideration of the existence of a concrete expectation (rather than merely a general one) for secrecy.

Requests Concerning Guests and Meals and a Policy of Voluntary Disclosure in Comparative Law

39. By its nature, the expectation for protecting confidentiality is also influenced by accepted standards of disclosure. Therefore, examples from similar cases, as reflected in the policy or common practice of other countries, should be examined. At this stage, I will move from the general discussion of the exemption for foreign affairs to cases where requests for disclosure address meetings of government representatives with guests, including in events of a social nature.

40. I should begin by stating that examining the practice in other countries reveals that requests by private individuals, organizations or media outlets to government offices for "guest lists" or details of a social event are becoming commonplace. Such routine requests do not always lead to a judicial hearing, and they often end up being fully or partially granted by the office charged with implementing the freedom of information law in the relevant authority. However, we cannot suffice in pointing to requests that have been granted without judicial review. Moreover, there is no doubt that not all the requests are granted to the extent expected by the applicant. However, the practice of submitting requests for "guest lists" in different places around the world indicates that the submission of a request of this type should not be considered surprising. I will present several examples. The British Information Commissioner's Office instructed that requests to disclose the names of heads of state to whom the Prime Minister sent Christmas cards must be granted (see FS50080115 Decision Notice 26 March 2007.) Another example worthy of mention concerns the decision of the above Commissioner to partially grant a request concerning a dinner held by the British Foreign Secretary in honor of then United States Secretary of State Hillary Clinton, including details of the dinner's budget. The request was partially granted as concrete details that created

a concern for risk to British interests were omitted, along with information about the process of the production of a video prepared for the event (see: FS50504224 Decision Notice 4 February 2014).

41. Second, in this context, a policy of voluntary disclosure of details and documents by authorities, regardless of the question whether they are required to disclose them under the freedom on information laws, is of importance. American case law held that information concerning visitors of the President of the United States is not subject to the Freedom of Information Act since it does not constitute "agency records" in their ordinary meaning (for reasons that go to the constitutional aspect of the institution of the Presidency in the United States. See: *Judicial Watch v. United States Secret Service*, 726 F. 3d 208 (2013)). Nevertheless, the White House adopted a policy of voluntary disclosure in in regard to official dinners and White House guest lists (see White House Press Office, White House Voluntary Disclosure Policy Visitor Access Records). This is an initiative of disclosing the details of all guests to the White House, other than purely personal guests of the President's family members or of the Vice President's family members, who have no professional link. Similarly, there is an exception for "small group" visits – appointments and meetings that have been defined as particularly sensitive (while referencing the example of meetings with potential candidates for Justices of the Supreme Court). In this context, it should be noted that reports will be given on the number of such meetings, and that their details would be provided in the future, when they are no longer "sensitive" (see also: Ronald J. Krotoszynski, *Transparency, Accountability, and Competency: An Essay on the Obama Administration, Google Government, and the Difficulties of Securing Effective Government*, 65 U. MIAMI L. REV. 449, 464-465 (2011)). It is important to note that this is merely an example, but it is of great interest precisely because it does not revolve around considering specific requests, but rather around a policy of active, serial, ongoing disclosure of all the guests to the White House, subject to exceptions. I believe that this particular example demonstrates the "expectation" as to the level of confidentiality of meetings held at the Ambassador's official residence. This gains further support when the facts of the case before us are examined – a dinner where only citizens of Israel and of the United States were present.

42. Third, the decisions by United States courts tend to permit disclosure of lists of visitors to governmental facilities or participants in ceremonies, rather than deem them to be private information (see: *Sikes v. United States*, 987 F. Supp. 2d 1355 (S.D. Ga. 2013); *Cameranesi v. United States DOD*, 941 F. Supp. 2d 1173 (M.D. Cal. 2013).

Towards a Decision: The Set of Factors in regard to Protecting Information about Foreign Relations

43. It is time to return to the discussion of the Freedom of Information Law and the exception it establishes in regard to information concerning foreign relations.

44. The point of departure necessary for the decision in this case must be the examination of each request for information disclosure on its merits, in the absence of prior "immunity" for a matter argued to be related to foreign affairs, while adopting a careful approach in cases where a concrete claim is raised as to the protection of foreign relations. The solution for preventing a chilling effect is not establishing a blanket rule that prohibits the disclosure of information. The Freedom of Information Law sought to establish a starting point for disclosure. As noted, in order to realize the purpose of the Law, the authority must examine whether, in a *concrete* case, there is a real concern for harm to the state's foreign relations (see and compare: the *Higher Education Council* case, pp. 245-46; the *Fried* case, pp. 127-28.) It should be emphasized that as long as the authority has not presented a good reason for non-disclosure of the desired information, other than concerns *of a general nature*, the reason for the request to disclose the information is not, in itself, material (see: the *Julani* case, para. 29 of my opinion; the *National Insurance Institute* case, para. 5 of Justice Hendel's opinion).

45. The representatives of the State of Israel abroad are public servants. Their activity should be subject to public scrutiny and public debate. Indeed, at times such a veil of secrecy that is guaranteed in advance may be convenient. However, it may also hide – and this is said on a general level alone, and with no allusion or relation to the facts of the case before us – matters that ought to be subjected to public scrutiny. One of the possible uses of the laws of freedom of information is exposing the meetings of government personnel with private entities, meetings that may be of benefit or assistance, but may, at times, reveal conflicts of interests or inappropriate considerations that are irrelevant.

Incidentally: Is there also a Violation of the Dinner Guests' Privacy?

46. As was already noted, the Respondent also relied on the "expectations" of participants of the dinner. To the extent that the expectation argument concerns the claimed risk to the State's foreign relations, this is a factual argument that is informed by the acceptable norms in other countries as well, as was discussed above.

47. As opposed to this, to the extent that the argument concerns a violation of the rights of those participating in the dinner, the matter was raised by the Respondent only incidentally. However, before making our ruling, it is, nevertheless, our duty to examine whether there is a concern here for harm to third parties, as the Law states, because at the end of the day, the desired information concerns them, as well. This is a question that is distinct from the question of harm to foreign relations, as it could also arise in regard to similar requests submitted in regard to an official dinner at the home of a minister or a director general of a government ministry in Israel.

48. When a request to disclose the names of participants in an event (as opposed to a more comprehensive request, such as requesting details as to the information exchanged during the event) is concerned, the issue of harm to third parties, to the extent it arises, focuses on their right to privacy. Section 9(a)(3) of the Freedom of Information Law prohibits providing information whose disclosure would constitute a violation of privacy as defined in the Protection of Privacy Law, 1981 (hereinafter: the Protection of Privacy Law), unless the disclosure is permitted by law.

49. I believe that in regard to an event that was held by an authority, including a formal dinner, a party or a large reception, the assumption of the participants ought to be that their names will not remain secret, and thus, in any case, it cannot be said that exposing their names causes them harm. In effect, it could be said that there is a presumption that participants in a publically held event of an official or formal nature consent to the disclosure of their participation. This, of course, according to the nature of the event. An event to which only a few people were invited, or where it was made clear that only "cleared" participants would be invited, would be an event for which such consent would not be presumed. In American law, a test of "expectation" was previously proposed for the purposes of defining the scope of protected privacy. As noted, this test raises difficulties since there is a "circular" aspect to its implementation, as the expectation itself stems from the scope of the law's protection of privacy (see further: Michael Birnhak, PRIVATE SPACE – THE RIGHT TO PRIVACY, LAW AND TECHNOLOGY, 197 (2010) (Hebrew)). It seems more appropriate to rely upon the presumption of consent in such cases. As we know, sec. 1 of the Protection of Privacy Law, prohibits violating a person's privacy in the absence of consent ("No person shall infringe the privacy of another without his consent").

50. This has dual significance. First, there is no need to ask the participants in such events in advance as to their position in regard to disclosure under the provisions of sec. 13 of the Freedom of Information Law, because they are presumed to consent to the provision of information as to their participation (see and compare: AAA 398/07 *Movement for Freedom of Information v. State of Israel – Tax Authority*, IsrSC 63(1) 284, 318-19 (2008) (hereinafter: the *Tax Authority* case); AAA 9341/05 *Movement for Freedom of Information v. Government Corporations Authority*, para. 42 of Justice E. Arbel's opinion (May 19, 2009) (hereinafter: the *Government Corporations Authority* case)). Second, the Court is not required to join them into the proceedings and hear their arguments under sec. 17(c) of the Law for the very same reason. This, as opposed to cases concerning small events held under conditions that are not public (see and compare: AAA 49/16 *Regev v. Drucker* (February 10, 2016)).

51. This conclusion that there is no need to inquire of participants in publically held events is consistent with the purposes of the Freedom of Information Law, as well as with the practical aspects of its implementation. In truth, it necessarily derives from them. As is well known, under sec. 8(1) of the Freedom of Information Law,

a request for information may be rejected if "its handling requires unreasonable allocation of resources." Were every large event to require reaching out to each and every the guest in order to permit them to raise arguments challenging the disclosure due to a potential privacy violation, and thereafter to be joined in the legal proceedings, the entire point of the mechanism of supervising and scrutinizing authorities through the Freedom of Information Law would be foiled. This is not a case of acting beyond the letter of the law in the sense that "if it does not help, it cannot hurt." In this context, what does not help and is not required (because there is no violation of privacy) is actually harmful, because it unnecessarily complicates the process that allows the flowing of information to the public arena, and increases its cost.

From the General to the Specific

52. From all the above it appears, in my view, that we cannot accept the Respondent's argument for an exemption as broad as the sea in regard to meetings in the ambassador's residence, whatever their nature and the identity of their participants. The arguments presented by the Respondent are such that, were we to accept them as a whole, might lead to a conclusion that no disclosure is to be permitted in regard to the "unofficial" meetings calendar of high-ranking officials of the Ministry of Foreign Affairs. Such an outcome cannot stand. Indeed, it is conceivable that there are meetings that are best kept secret, and there are even meetings for which it is agreed in advance that the identities of the participants will remain confidential. But an exemption as broad as the one claimed might create an enclave entirely concealed from public view.

53. I have no doubt that the Respondent's arguments were presented in good faith and out of the sincere belief and conviction that they present the best interests of the State of Israel's Foreign Service. However, I believe the convenience of activity under a cloak of secrecy and confidentiality is insufficient. Public servants often believe that conducting meetings away from the spotlights will be conducive to quiet, undisturbed discussions that will advance the public interest. That belief is not enough.

54. In truth, my view is that the facts of the case before us cannot be considered "borderline" at all. Among the relevant circumstances, I find it appropriate to reiterate the following facts, which were already revealed or permitted for disclosure: there were also journalists among the attendees, various guests publicly discussed their participation in internet posts, all the attendees were citizens of the United States or of Israel, and none of them was promised that the identities of the event's participants would be kept secret. In fact, every one of the participants in the event could have anticipated, at any time, that their participation in the event might be mentioned on one social network or another. On the other hand, the Respondent did not point to any concrete circumstances that might indicate that there was a real concern that disclosing the information would lead to any harm to the state's foreign relations. Therefore, the Respondent

failed to demonstrate that the exception for non-disclosure of information established in sec. 9(a)(1) of the Law applies. In light of this, there is no need for me to address the issue of balancing this exception against the public interest in disclosing the information. Those characteristics of the event also indicate that there was no reason to delay the disclosure for reasons related to the privacy of the event's participants.

55. From a broader perspective, it is important to note that in light of the Respondent's comprehensive position, which did not attribute sufficient weight to the framework of the Freedom of Information Law and its purposes, preparations for establishing a proper policy on the issue have yet to be made. At this stage, we can therefore suffice by holding that it would appear proper that the Respondent establish its own criteria for distinguishing between events that are "disclosable" and events that are not, which would apply in the future where requests for disclosure of this type may be submitted. Relevant factors may include, for example, the number of participants in the event, their countries of citizenship, the nature of the participants (diplomats or people from the private sector), the presence solely of "cleared" participants in the meeting, the location of the meeting, and so forth. Indeed, these criteria cannot exempt the Respondent from examining each request for disclosure on its merits, but they may assist in the review of such requests. It should be noted: the Respondent's claim that it voluntarily publishes information regarding certain events cannot justify the broad exemption that it claims in this case. In effect, not only is the Respondent permitted to set standards for distinguishing between events for which it would appear that details should not be disclosed and events that are not subject to the "secrecy" rules, it is preferable that it does so. The existence of such an advance classification would facilitate handling similar requests submitted in the future, to the extent that they are submitted, and would also make clear to participants in such events in which circumstances they may assume that their participation will be kept secret.

56. Therefore, should my opinion be heard, the appeal would be granted. The Respondent will provide the Appellants with the names of all the participants in the dinner, with the exception of any minors, within 30 days of this decision. During that time, the Respondent will be able to update the United States Department of State as to the outcome of these proceedings, as it may deem fit. Under the circumstances, the Respondent will bear the Appellants' costs in the amount of NIS 10,000.

Justice A. Baron:

In her comprehensive opinion, my colleague Justice D. Barak-Erez thoroughly analyzed the exception established under the Freedom of Information Law, which addresses protecting information that concerns foreign relations, and I concur with her reasoning and in her conclusion.

President M. Naor:

1. The Appeal before us concerns the decision of the Jerusalem Administrative Court (AC 42750-09-14, Judge D. Mintz) rejecting the Appellants' petition challenging the Respondent's decision not to provide the Appellants with the list of guest who attended a second Passover Seder dinner held at the residence of the Israeli ambassador to the United States, Mr. Ron Dermer, in April 2014.

2. In her opinion, my colleague Justice D. Barak-Erez discussed at length the main facts and arguments in the Appeal, and I do not find it necessary to repeat them. The Appeal addressed two issues: *first*, and primary, was whether the exception regarding protecting the foreign relations of the state under section 9(a)(1) of the Freedom of Information Law, 1998 (hereinafter: the Law), which allows refraining from providing information, applies in this case. Assuming that the exception does not apply, the *second* issue is whether the Court should permit third parties who may be harmed by the provision of the information to make arguments to the Court before its decision is handed down, as stated by sec. 17(c) of the Law.

3. In her opinion, with which my colleague Justice A. Baron concurred, my colleague Justice D. Barak-Erez found that both questions must be answered in the negative. As to the first question, my colleague found that the Respondent argued only generally that the provision of the guest list may compromise Israel's foreign relations, and did not point to concrete circumstances that would justify refraining from providing the information. In her view, "we cannot accept the Respondent's argument for an exemption as broad as the sea in regard to meetings in the ambassador's residence, whatever their nature and the identity of their participants … an exemption as broad as the one claimed might create a zone entirely concealed from public view" (para. 52 of her opinion).

4. My colleague further noted that there were also journalists among the invited guests at the dinner; that various guests gave public expression to their attendance at the event through internet postings; that all guests were either citizens of the United States or of Israel; that none of the invited guests was guaranteed that their identities would be kept secret; and that each of the attendees could have expected, at any time, that their attendance at the event might be mentioned on one social network or another. Based on the above, my colleague held that the scales clearly tip toward providing the information.

5. Having found that the exception for not disclosing information by reason of protecting the State's foreign relations does not apply, my colleague turned to examine the second issue that arises in this appeal: whether relevant third parties, who are not parties to the proceeding – that is, guests at the dinner – must be

permitted to make arguments before the Court before granting an order to provide their names. This question arises in light of the provision in sec. 17(3) of the Law, whereby: "The Court shall order delivery of information that is liable to harm a third party's rights only after it has given the third party an opportunity to present his arguments in the manner in which the Court shall prescribe". In this regard, my colleague held that there was no need to allow the guests at the dinner to argue before the Court, as in any event, their rights would not be violated as a result of the disclosure.

6. According to my colleague, when a request to reveal names of participants at an event is concerned, the question as to harm to third parties centers on their right to privacy, and in the case at hand, there is no such concern. My colleague based her conclusion on the public, official nature of the event, which establishes a presumption that the participants at the dinner consented to revealing the fact of their participation. In the words of my colleague: "in regard to an event that was held by an authority, including a formal dinner, a party or a large reception, the assumption of the participants ought to be that their names will not remain a secret, and *thus, in any event, it cannot be said that exposing their names causes them harm*. In effect, it could be said that there is a *presumption* that participants in a publically held event of an official or formal nature *consent to the disclosure of their participation*…" (para. 49 of her opinion) (emphasis added – M. N.). Therefore, my colleague held that there is no such risk that the rights of the participants in the event would be harmed as a result of disclosing the information, and there is no obligation to seek their position as required by sec. 17(c) of the Law.

7. The view of my colleague Justice D. Barak-Erez that the Respondent in this matter has not demonstrated that the exception under sec. 9(a)(1) of the Law applies has its merits. However, I believe it would be appropriate to make a final decision as to the disclosure of the information only after we permit the relevant third parties to voice their arguments on the matter before the Court. To the extent that any of the third parties elects not to respond, this would express their consent to disclosing the information, and the need to continue the deliberation on this point would become moot.

8. The point of departure for my position is the provision of sec. 17(c) of the Law, which provides, as may be recalled, that "[t]he Court shall order delivery of information that is liable to harm a third party's rights only after it has given the third party an opportunity to present his arguments in the manner in which the Court shall prescribe". The purpose of sec. 17(c) of the Law is intertwined with the purpose of sec. 13(a) of the Law, which stipulates that a third party must be granted the opportunity to voice its arguments before the authority when the authority *considers* the request under the Freedom of Information Law, and *before* it has made its decision.

The purpose of the above sections is to promote two related purposes: procedural justice and procedural efficiency. Procedural justice, as an expression of the principles of natural justice, means that third parties must be given proper opportunity to present their arguments before a decision that harms their rights is made. Procedural efficiency means that the proceedings should not be complicated unnecessarily in order to realize the rules of procedural justice, such as granting a hearing to anyone who may be harmed by providing the information (AAA 49/16 *Regev v. Drucker*, para. 15 of my opinion (February 10, 2016) (hereinafter: the *Regev* case). In any event, sec. 13(a) of the Law is irrelevant to this case, since the authority did not consider releasing the information.

9. My colleague found, as noted, that the participants in the event implicitly consented to publishing the fact of their participation. Therefore, in her view, there is no need to obtain their positions before publishing their names. My view is different. First, I have doubts as to whether there was implicit consent for publication. My colleague held that we are concerned with an official event held in public circumstances, but according to the opinion of the Respondent, it is customary that the identity of the participants in such events is not disclosed to unauthorized entities. Indeed, in the case at hand, there are circumstances that are inconsistent with such custom, particularly the fact that some of the attendants posted the fact of their attendance on their own initiative. However, although this fact carries some weight, it is insufficient to deny the other participants, who chose not to publicize the matter, the opportunity to express their position. In addition, although the dinner was held over two years ago, to date the list was not published in its entirety. Even the fact that journalists were also in attendance does not point conclusively to the participants' consent to have their names revealed, because in light of the privilege that exists between journalists and their sources, we cannot rule out the possibility that the guests assumed that the their attendance itself was not to be disclosed, and that conversations were not to be quoted. It should be emphasized that this is not a determination of the question whether the information is to be provided or not. It is possible that, at the end of the day, even under my approach, there would be no reason not to provide the information. All I hold here is that the position of third parties should first be heard.

10. Even were I to assume that there is a presumption that the participants granted their consent to publicizing their participation in the event, I do not believe there is justification to revoke their right to be heard. My colleague raises various considerations in this context, but I believe that, under the circumstances, they do not justify circumventing the legislature's instructions in sec. 17(c). In my opinion, the finding that a third party is not entitled to present arguments based on the assumption that they consented to the disclosure of the information limits the scope of the right to be heard as established in sec. 17(c). Even if it is conceivable that there are cases where revoking the right to be heard on this basis would be justified, and I am not setting anything in stone in this regard, this case is not among them.

11. My colleague notes that the "the Freedom of Information Law sought to establish a starting point for disclosure" (para. 44 of her opinion), and that the authority must not be permitted to circumvent fulfilling its duty by relying on the difficulty of obtaining the position of third parties. I share this approach, but this is not the case here. There were 34 participants in the dinner, some of them minors whose names the Appellants agreed should not be publicized in any event (see p. 8 of the protocol). In other words, we are concerned with only a few dozen relevant third parties, rather than hundreds of guests (compare, e.g.: AAA 1386/07 *Hadera Municipality v. Shenrom Ltd.* (July 16, 2012) (hereinafter: the *Hadera Municipality* case); AAA 11120/08 *Movement for Freedom of Information v. Antitrust Authority* (November 17, 2010)). Regardless, this Court has already discussed in the past the issue of balancing the right to receive information and the interest of public authorities in proper functioning and the right to privacy, and even created practical solutions designed to reach an optimal balance in complex situations that include a large number of third parties (see, e.g., the *Hadera Municipality* case, paras 14-17 of Justice H. Melcer's opinion). As noted, in our case we are not concerned with a large number of third parties. Additionally, as opposed to other cases, we can identify those third parties, and there is no need for an unreasonable investment of resources in order to locate them.

12. Moreover, the Respondent addressed the issue of [the lack of] consent or expectation by participants to disclosing their names during oral arguments, as well: "as to the list – as we noted, in regard to the United States ambassador, *he did not wish to disclose the participants*" (the statement of the State's attorney, p. 8 to the protocol of the hearing of November 16, 2015); "The accepted norm for such events is that *the very fact of participation not be publicized*" (*ibid*., p. 9 of the protocol); "This was an *intimate event*, as the ambassador told us. This is the *accepted norm* in the diplomatic world for such events" (*ibid*.) (emphases added – M. N.). Beyond this, in its summation, the Respondent addressed the need for the positions of all of the dinner's participants before disclosing their names (see para. 42 of the Respondent's summation).

13. As a result, it appears from the material before us that there is, at the very least, a *concern* that such parties may be harmed by disclosing the information. It should borne in mind in this context that sec. 17(c) of the Law does not require certain harm to third parties as a condition for its application, but rather possible or probable harm suffices: "The Court shall order delivery of information that is *liable* to harm a third party's rights only after it has given the third party an opportunity to present his arguments " (emphasis added – M. N.). Therefore, my opinion is that, under the circumstances, there is no place for a "presumption" of consent by the participants for the publicizing of their names and the fact of their participation in the event. Indeed, I agree with the general assumption of my colleague Justice D. Barak-Erez whereby it is reasonable to attribute to attendees at events with a large number of guests, which are of a formal and official nature, a presumption of consent to disclosing their participation. However, this

presumption is not absolute and it may be rebutted. I believe that under the circumstances of the case at hand, and in light of what was described above, the presumption of consent that may be attributed to participants appears to have been refuted, and its true test would be in hearing the positions of the participants.

14. Given my position whereby there may a violation of third parties' rights in this case, the language of sec. 17(c) of the Law requires that the Court grant the third parties an opportunity to be heard before ordering the disclosure of the information.

15. In my view, the question arises as to how the third parties may present their arguments. In the *Regev* case, we found that once the District Court considered *ordering* the provision of information that may harm third parties, the best practice would have been to follow sec. 17(c) of the Freedom of Information Law, and to grant those parties the opportunity to be heard in a manner decided by the court before handing down a decision in the case. The lower court did not act in such a manner, and thus, in those circumstances, we saw no alternative but to go back to the best practice, that is, that the case be remanded to the Administrative Court for the purposes of hearing the third parties. We held that following the renewed hearing, the Administrative Court would hand down a new decision, after having considered the arguments by all parties. Under the circumstances, we also saw no place to consider the arguments on the merits raised in the State's appeal challenging the disclosure of the information, and we expressed no opinion regarding them.

16. The lower court in this case did not consider ordering the disclosure of the information in the belief that the exception under sec. 9(a)(1) of the Law applied. Therefore, it did not address the application of sec. 17(c) of the Law, at all. Under these circumstances, I believe it would be proper that we permit third parties to provide this Court with their positions, through the Respondent, similar to what was done in CA 7759/01 *Ha'aretz Newspaper v. Ministry of Justice*, IsrSC 55(5) 150, 154 (2004). I would have ordered that their positions be submitted initially for the Court's eyes only.

Conclusion

17. In my opinion, before issuing a decision on the merits of this appeal, it would have been appropriate to obtain the positions of third parties that participated in the event, through the Respondent, and only after reviewing them, it would have been appropriate to decide the fate of the proceedings before us.

Decided by a majority of the Court in accordance with the opinion of Justice D. Barak-Erez.

Given this day, 29 Iyar 5776 (June 6, 2016).