The Agency for the Protection of the Right to Free Access to Public Information, based on Article 109 Paragraph 13 of the Law on General Administrative Procedure ("Official Gazette of the Republic of Macedonia" No. 124/2015) and in accordance with Article 27, Article 34 Paragraph 1 from the Law on Free Access to Public Information ("Official Gazette of the Republic of North Macedonia" No. 101/2019), and in accordance with the Guidelines for the Implementation of the Law on Free Access to Public Information ("Official Gazette of the Republic of North Macedonia" no. 60/20), acting on an appeal filed by D. M. from Skopje, filed against the Decision of the Ministry of Environment and Spatial Planning, in the matter of Request for access to public information, on 20.03.2024 brought the following

 **DECISION**

1. The appeal filed by D. M. from Skopje, submitted against the Decision of the Ministry of Environment and Spatial Planning no. 09-801/3 of 20.02.2024, registered in the Agency under no. 08-51 on 07.03.2024, in the subject Request for access to public information **IS** **UPHELD.**
2. The Decision of the Holder of Information No. 09-801/3 of 20.02.2024 **IS ANNULLED under points 12, 15, and 26 of the Request.**

2. The information holder **IS OBLIGED** to provide the requested information to the Requester in the manner and in the form specified in the Request, **under points 12, 15 and 26 of the Request.**

3. The information holder is obliged to implement this Decision within 15 days from the day of its receipt and notify the Agency about it.

 **EXPLANATION**

D. M. from Skopje, as stated in the appeal, on 20.12.2023, submitted a request for access to public information to the Ministry of Environment and Spatial Planning, with which he requested that an electronic record of the following information be delivered to them by e-mail:

“1. Your reasoned proposal was submitted to the Government, according to which a decision was made to start the procedure for awarding the concession;

2. The water management base of the Republic of North Macedonia, according to which the proposal from point 1 was to be developed;

3. The plan for the management of the river basin of the Crna River, according to which the proposal from point 1 was to be developed;

...

12. Based on the definition of public-private partnership from Article 5 of the Law on Concessions and Public-Private Partnership, and considering that the public service for end-users in the area under the jurisdiction of the public partner (ESM) is continuous and stable production of electricity, we are looking for an explanation, how is it even possible to establish a Public Private Partnership with a private partner (PPC-Archirodon), which instead of the obligation to ensure continuous and stable electricity production for end users... will produce electricity for sale on the European market of electricity;

....

15. The environmental impact assessment act of the concession of goods of general interest or the public-private partnership...

...

26. The act in which the indicators are explained based on which the period for which the concession is granted is determined;

........

38. When is the deadline for deciding on any appeal submitted by the State Commission for Public Procurement Appeals."

The holder of information, acting on the stated request, sent an e-mail to the Requester on 26.12.2023.

Dissatisfied with the aforementioned Notice, the Information Requester submitted an appeal to the Agency on January 23, 2024, within the legally stipulated deadline, filed with the Agency under No. 08-15.

Acting on the appeal, the Agency for the Protection of the Right to Free Access to Public Information, in accordance with the provisions of the Law on Free Access to Public Information, **UPHELD** the appeal with Decision No. 08-15 of 02/05/2024 **and sent the matter back to the first-instance authority for further proceedings,** with indications and directions for further action.

Acting according to the Agency's Decision, the Information Holder submitted to the Requester Decision No. 09-801/3 dated 20.02.2024, which partially rejects the Requester's Request. The Agency did not submit a notification about the Agency's implemented decision.

The Decision of the Ministry states: "During the evaluation of the merits of the Request, the Ministry of Environment and Spatial Planning determined that the requested documents specified in point 2 of this Decision are public information, and they are delivered to the Requester in accordance with their request. ...The Ministry ...determined that the other documents requested by the Applicant Engineers of the Republic of RM-D. M. represent classified information in the sense of Article 6 paragraph 1 of the Law on Free Access to Public Information and is not available to the public, for which, in accordance with the Law on Free Access to Information, a Harm Test has been conducted. Namely, it is about classified information with the level of classification of information "confidential", the publication and sharing of which constitutes a violation of the provisions of the Law on classified information, for which criminal liability is foreseen."

Dissatisfied with the aforementioned Decision, the Requester of information filed an appeal within the legally stipulated period, filed in the Agency's archives under No. 08-51 on 03.07.2024. The appeal states: "...the Government, based on Article 35 of the Law on Concessions and Public-Private Partnerships, at the session held on September 14, 2023, made a Decision on the selection of the most favourable offer for granting a concession for the use of water for the production of electricity from hydroelectric power plants on Crna Reka... It turns out that the factual situation was wrongly determined. The submitted solution does not answer questions 12, 15 and 26..."

Through an e-mail registered under No. 08-51 dated 08.03.2024, the Agency forwarded the appeal to the Holder of Information and requested within seven days to rule on it and submit all the documents related to the matter to the Agency.

On March 13, 2024, the holder of the information submitted to the Agency a Statement of Appeal No. 09-2112/2 dated March 13, 2024, filed with the Agency under No. 08-51. The Pronunciation states: "On March 8, 2024, the Ministry of Environment and Spatial Planning submitted an appeal registered under No. 08-51 by the Information Requester D.M…” Given that the appeal is untimely, i.e. the legal deadline for filing an appeal has been missed, the procedural obstacles, the false allegations and the failure to submit any evidence for them, the Ministry of Environment and Spatial Planning submits this Response to the appeal, with the following: ...focuses on two essential omissions on the part of the Applicant, one of which is procedural and legal in nature, and the second refers to the very content of the appeal, which is entirely general and untrue..."

The Agency for the Protection of the Right to Free Access to Public Information, in accordance with the provisions of the Law on Free Access to Public Information, reviewed **the appeal** stated by the Requester of the information and other available documents, the same **respected and obliged the Holder of information to the requester to deliver the requested information in the manner and the form specified in the Request, under points 12, 15 and 26 of the Request, within 15 days from the day of delivery of the Decision**, due to the following:

After reviewing the appeal and the files related to the case, the Agency concludes that the Holder of the information partially acted on the Requester's request in that part of the requested information, i.e., as stated in the appeal, points 12, 15, **and 26 of the Request** have not been delivered to the Requester**.**

With the disputed Decision, the Holder of the information refuses access to the requested information on the grounds that "it represents classified information in the sense of Article 6 paragraph 1 of the Law on Free Access to Public Information and is not available to the public", with the degree of classification of information "confidential", and only mentions the harmfulness test, without explaining what the harmful consequences are if the requested information is provided to him, on the other hand, the Holder of the information neither submitted to the Agency notice of a previous Decision of the Agency nor submitted evidence that the information is classified according to Law or by-law.

The Agency points out to the holder of the information that according to Article 3 paragraph 1 paragraph 2 of the Law on Free Access to Public Information, it is established that: "public information is information in any form created by or available to the holder of the information in accordance with his competences", and according to article 10 paragraph 1, 8, 18 and 22 of the same Law, he is obliged to inform the public by publishing data from their competence which they carry out, i.e. determined by law, overall documentation for public procurement, concessions and public-private partnership agreements.

Pursuant to Article 6 paragraph 1 of the Law on Free Access to Public Information, holders of information can refuse a request for access to information that, based on law, represents classified information with an appropriate degree of classification.

In the specific case, the information holder was obliged to submit to the Agency proof that part of the requested information is classified with an appropriate degree of classification, with a stamp and term of the classification, possibly reclassification or declassification according to the Law on Classified Information. Considering that they did not confirm the classification of the information, they are obliged to provide the requested information to the Requester under the points of the Request listed above **in the manner and form specified in the Request**.

As for the allegations of the Pronunciation after the appeal of the Holder of Information that the appeal is untimely, the Agency indicates to the Holder of Information that the Requester of Information received the contested Decision on 20.02.2024 electronically, while on 06.03.2024, the appeal was submitted to the Agency, which means on the last 15th day of the legal deadline for filing an appeal.

According to the above, the Agency for the Protection of the Right to Free Access to Public Information decided as in the operative part of this Decision.

This Decision is final in the administrative procedure, and there is no room for appeal against it.

LEGAL REMEDY: Against this Decision, the party can initiate an administrative dispute before the Administrative Court within 30 days.

 **Director,**

 **Plamenka Bojcheva**