The Agency for the Protection of the Right to Free Access to Public Information, based on Article 109 Paragraph 9 of the Law on General Administrative Procedure ("Official Gazette of the Republic of Macedonia" No. 124/2015), and in accordance with Article 27 and 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 the appeal filed by the Association of Citizens Center for Civic Communications CGK-Skopje, submitted through attorney German Filkov, President of the Association against the Decision of the Ministry of Finance, on the case Request for access to public information, on 03/25/2024, brought the following

**DECISION**

1. The appeal filed by the Citizens' Association Center for Civic Communications CGK-Skopje, submitted through attorney German Filkov, president of the Association, against the Decision of the Ministry of Finance No. 03-3288/7 of 11.03.2024, registered in the Agency under No. 08- 56 on 13.03.2024, on the case Request for access to public information, **IS UPHELD.**
2. **The Decision of the Holder of Information No. 03-3288/7 dated 11.03.2024 IS ANNULLED.**
3. **The case is returned to the first-instance authority for retrial.**
4. **The holder of the information is obliged to implement this Decision within 15 days from the day of its receipt and to notify the Agency about the same.**

**EXPLANATION**

The Citizens' Association Center for Civic Communications CGK-Skopje, as stated in the appeal, on 19.02.2024 via e-mail submitted a request for access to public information to the Ministry of Finance, with which it requested to submit an electronic record of the following information:

"1. Name and surname/title of lawyers and law firms whose services you used during 2023.

2. For each lawyer/law firm, provide us with the amounts of payments made and the basis for each payment during 2023.

3. How were each of the lawyers/law firms whose services you used selected?"

Acting upon this request, on 11.03.2024, the holder of information issued Decision No. 03-3288/7, which rejects the Requester's Request in its entirety. The Decision states that: "The Ministry of Finance, in its capacity as the holder of information, determined that in accordance with Article 6 paragraph 1 point 1 of the Law on Free Access to Public Information, the requested information is an exception to free access to information... By implementation of the Harm Test by the holder of the information, it was determined that the provision of the information would jeopardize the integrity of the procedure, which in itself leads to the appearance of legal consequences concerning the interest being protected… which acts if given there will be a violation of Article 6 paragraph 1 point 1 and point 4 of the Law on Free Access to Public Information, because the data requested by the requester are of a confidential nature, i.e. classified information, and the provision of data would have harmful consequences and the specific procedures because they are still ongoing and not completed. Namely, the agreements that have been concluded have a confidential nature and they do not have the nature of a public document."

Dissatisfied with the above Decision, the Requester of information filed an appeal within the legally stipulated period in the Agency's archive under No. 08-56 on 03.13.2024. The appeal states: "...The holder of the information allegedly conducted a Harm Test..."

The Agency, with letter No. 08-56 dated 13.03.2024, forwarded the appeal to the Holder of Information via e-mail and requested within 7 days to rule on it and to submit to the Agency all the documents related to the matter.

On 03/20/2024, the holder of the information submitted to the Agency a Response to appeal no. 03-3288/9 dated 03/20/2024, filed with the Agency under no. 08-56. With the Answer, the Holder of Information remains on the allegations of the contested decision, stating, among other things, that "Article 12 of the contract concluded with a law firm refers to the confidentiality of the contract itself, as well as all matters and documents that arise and are related to the contract". and "in Engagement letter-terms of Business, clause 5 refers to confidentiality. Following the above, we report that the requested data is of a confidentiality classification level", they submitted the specified article 12 with the definition of classified information from the contract, as well as point 5 of this article, but in English.

The Agency for the Protection of the Right to Free Access to Public Information, acting in accordance with the provisions of the Law on Free Access to Public Information, reviewed the appeal filed by the Information Requester and **UPHELD IT**, **ANNULLED the Decision of the Information Holder and sent the matter back to the first-instance authority for further proceedings,** due to the following:

After reviewing the appeal and the files related to the case, the Agency concludes that the Information Holder did not act in accordance with the provisions of the Law on Free Access to Public Information by not providing the Requester with the requested information in the manner and form specified in the request.

With the disputed Decision, the holder of the information refuses access to the requested information on the grounds that the requested documents "represent classified information in the sense of Article 6 paragraph 1 point 1 of the Law on Free Access to Public Information", with the level of classification of information "confidential" ", that the procedure in question is still ongoing and only mentions the harm test, without explaining what the harmful consequences are if the requested information is provided.

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 their competences", and according to article 10 paragraphs 1, 8, 18 and 22 of the same Law, they are 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.

The Agency considers that the requested information belongs to the order of information of public interest, which prevails over the interest of the same being protected by the Holder, that is, of being unavailable to the public. According to Article 3 paragraph 1 point 7 of the Law on Free Access to Public Information, "public interest" in exercising the right to access to information implies but is not limited to, an interest in information with which publication, i.e. access is granted: abuse of official position and corrupt behaviour is discovered; illegal acquisition of budget funds will be revealed; a potential conflict of interest will be revealed; it will prevent and detect environmental threats and help understand the issue for which public policy is being created...

Otherwise, only in accordance with Article 6 Paragraph 1 Item 1 of the Law on free access to public information, the holders of information can refuse a request for access to information **which based upon law** represents classified information with an appropriate degree of classification.

According to Article 6 paragraph 1 point 3 of the Law on classified information "classified information" is information from the scope of work of a body of the state and local government established in accordance with the Constitution of the Republic of North Macedonia and by law, a legal entity established by the Republic or by the municipalities, the city Skopje and the municipalities in the city of Skopje or other legal entities that relate to public safety, defence, foreign affairs or security or intelligence activities of the state which, according to law, must be protected from unauthorized access and is marked with an appropriate degree of classification in accordance with this law. Classified information may also represent documents, technical means, machines, equipment, i.e., separate components or weapons or tools that have been produced or are in the process of production, as well as confidential inventions that relate to defence and are of interest to the security of the state.

The information holder in their Decision only states that it is classified information, without providing proof of this.

Due to the above, the Agency for the Protection of the Right to Free Access to Public Information decided as the dispositive 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**