The Agency for the Protection of the Right to Free Access to Public Information, pursuant to Article 109 Paragraph 13 of the Law on General Administrative Procedure ("Official Gazette of the Republic of Macedonia" No. 124/2015), and by 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 following 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 the Citizens' Association Center for Civic Communications CGK, submitted through attorney German Filkov, president of the Association against the Decision of the Ministry of Finance, on the subject Request for access to public information, on 22.04.2024 brought the following

 **DECISION**

1. The appeal filed by the Citizens' Association Center for Civic Communications, submitted through attorney German Filkov, president of the Association, against the Decision of the Ministry of Finance No. 3288/13 of 04/15/2024, registered in the Agency under no. 08-56 on 15.04.2024, on the subject Request for access to public information **IS UPHELD**.
2. The Decision of the Ministry of Finance No. 3288/13 of April 15, 2024, **IS ANNULLED.**

3. The information holder **IS OBLIGED** to provide the requested information to the Requester in the manner and in the form specified in the Request.

4. The information holder is obliged to implement this Decision within 15 days from the day of its receipt and 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 they requested 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 on 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.

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 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 submit all the documents related to the matter to the Agency.

On 03/20/2024, the holder of the information submitted to the Agency a Response to appeal no. 03-3288/9 of 03/20/2024, filed with the Agency under no. 08-56. With the Response, the Holder of information remains on the allegations of the disputed Decision.

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, with Decision No. 08-56 of 03/25/2024 **UPHELD** the appeal,annulled the Decision of the Holder of Information and sent the matter back to the first-instance authority for further proceedings.

The information holder did not notify the Agency of whether they acted according to the Agency's above-mentioned Decision.

On April 15, 2024, the information requester electronically submitted to the Agency an appeal against the Information Holder's Decision No. 3288/13 of April 15, 2024, which the Requester rejected in its entirety. In the Reasoning of the disputed Decision, it is stated: "As can be seen from the submitted subject request, the applicant requests to receive all the legal services that the Ministry of Finance has used during 2023, specifying the name and surname of the lawyers/law firm, the basis for each payment, the number of payments made and how they were chosen, which acts if given, would 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 that requested by the applicant are confidential, that is **classified information,** as well as the provision of data would have harmful consequences for the specific procedures because they are still in progress and have not been completed. Namely, the contracts that have been concluded have a confidential nature, and they do not have the nature of a public document... The Ministry of Finance, in its capacity as the holder of the information, must carry out a Harm Test procedure while determining that, in the specific case, it is for the request of data that have a confidential nature and procedures that are still in progress… In the retrial, the Ministry of Finance addressed a letter to the Department for Central Financing and Conclusion of Contracts for the submission of a response in accordance with the guidelines given in Decision no. 08-56 of 03/25/2024 of the Agency. The answer states that it is about arbitration proceedings abroad for a dispute that is still ongoing and for which law firms have been hired with agreements that contain provisions for the confidentiality of the agreements and other documents that will result from them...". The appeal states that: “None of the information we are seeking in our request relates to the aspects that the holder states and explains are 'classified', 'confidential', etc. In the request, we are asking for the names of the lawyers, how much money was paid to each lawyer, the basis for the payment, and how the lawyer was selected..."

The Agency, by letter, via e-mail registered under No. 08-56 dated 16.04.2024, forwarded the appeal to the Information Holder and requested within 7 days to rule on it and submit all related documents with the object to the Agency.

On April 17, 2024, the holder of information submitted to the Agency Notification No. 03-3288/14 dated April 15, 2024, with which it remains on the allegations of the disputed Decision.

On April 19, 2024, the holder of information submitted to the Agency a response to appeal no. 03-3288/16 dated April 19, 2024, in which they state: "...once again we state that in the contracts concluded with the law firms, Article 12 refers of the confidentiality of the contract itself, as well as all matters and documents that arise and are related to the contract, and also the letter from the foreign company in point 15 has a section that refers to confidentiality, conflict of interests and relations with others clients.

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 filed by the Information Requester and the other available documents, the same respected **and obliged the Holder of information to the Requester to provide them with the requested information in the manner and the form specified in 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 Information Holder did not implement the Agency's Decision No. 08-56 of 03.25.2024 and did not provide the Requester with the requested information in the manner and form specified in The request.

The owner of the information and during the retrial, made a Decision by which he completely refuses access to the requested information on the grounds that it is classified information and information acquired or compiled for investigation, criminal or misdemeanour proceedings, for the implementation of administrative and civil proceedings, and the provision of which would there were harmful consequences for the course of the procedure. At the same time, they did **not provide proof of their classification** to the Agency, with a stamp, date for classification or their possible reclassification. It also did not provide evidence that the requested information was compiled for investigation, criminal or misdemeanour proceedings.

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 owner of the information in accordance with their competences", and according to article 10 paragraph 1, 8, 18 and 22 of the same Law, they are obliged to inform the public by publishing data from his competence which he carries 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 Owner, 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 of the Law on free access to public information can the holders of information refuse a request for access to information that, based on 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 of North Macedonia 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 unauthorised 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, 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.

In the specific case, the information holder is obliged to act in accordance with the agency's instructions to make a correct, law-based Decision, respecting the Request and giving the requested answer **in the manner and form specified** in the Request.

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**