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 against the Decision of the Ministry of Environment and Spatial Planning no. 09-801/2 of 20.02.2024, registered in the Agency under no. 08-50 on 07.03.2024, in the subject matter, Request for access to public information **IS UPHELD**.
2. The Decision of the Holder of Information No. 09-801/2 of 20.02.2024 **IS ANNULLED.**

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

 **EXPLANATION**

D.M. from Skopje, as stated in the appeal, on 22.12.2023, submitted a request for access to public information to the Ministry of Environment and Spatial Planning, with which they requested to be provided by e-mail an electronic record of the following information:

"To submit to us in electronic form the Answer to the appeal of the appellant Public Power Corporation S.A Greece stated against the Decision on the selection of the most favourable offer for the awarding of a concession for the use of water for the production of electricity from hydroelectric plants on the Black River No. 41- 9282/4 of September 14, 2023 (Official Gazette of the RSM No. 192/2023 adopted by the Government of the Republic of North Macedonia).

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 filed an appeal with the Agency on January 23, 2024, within the legally stipulated deadline, filed with the Agency under No. 08-14.

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, with Decision No. 08-14 of 02/05/2024 **UPHELD the appeal 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. 09-801/2 dated 20.02.2024, which rejects the Requester's Request. The Agency did not submit a notification about the Agency's implemented decision.

The Ministry's decision states: "...When determining whether there are exceptions from Article 6 of the Law on Free Access to Public Information, the Ministry of Environment and Spatial Planning determined that the documents requested by the requester, Engineers of the Republic of Moldova, represent classified information in terms of Article 6 paragraph 1 of the Law on Free Access to Public Information... the procedure in question and other related procedures are still ongoing, and they represent confidential information regarding a project of state interest. Therefore, the Ministry of Environment and Spatial Planning establishes that the Harm Test has been met, that is, the need for confidentiality of the documents in question is emphasised...".

Unsatisfied with the Decision, the Requester of information filed an appeal within the legally stipulated period in the Agency's archives under No. 08-50 on 03.07.2024. The appeal states: "...The Ministry of Environment and Spatial Planning determined that the document: "Response to the appeal of the complainant Public Power Corporation S.A Greece" stated against the Decision on the selection of the most favourable offer for the award of a concession for the use of water for the production of electricity from hydroelectric power plants on Crna Reka No. 41-9282/4 of 14.09.2023 ... adopted by the Government of the Republic of North Macedonia, is classified information in the sense of Article 6 paragraph 1 of the Law on Free Access to Public Information; notes that the procedure in question and other related procedures are still ongoing; notes that the procedure in question and other related procedures represent confidential information regarding a project of state interest and that the Harm Test has been met; emphasises the need for the confidentiality of the documents in question… Unsatisfied with the Decision adopted in this way, I submit this appeal within the legally stipulated period, with which I refute the contested Decision in its entirety due to an incompletely and incorrectly determined factual situation..."

The Agency, through an e-mail registered under No. 08-50 dated 07.03.2024, forwarded the appeal to the Holder of Information and requested that a ruling be issued on it within 7 days and that all documents related to the matter be submitted to the Agency.

On March 13, 2024, the holder of the information submitted to the Agency a Proclamation on appeal no. 09-2112/2 dated March 13, 2024, filed with the Agency under no. 08-50. The Pronunciation states: "On March 7, 2024, the Ministry of Environment and Spatial Planning submitted an appeal filed under No. 08-50 by the Information Requester Deniz Mustafaoglu. Given that the appeal is untimely, that is, the legal deadline for filing a 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: “The appeal is untimely, i.e. the Requester of information missed the legally provided deadline for submitting a appeal ... The Ministry of Environment and Spatial Planning fully implemented the legal procedure when classifying the relevant documents, making all decisions and respecting all legal and by-laws for the procedure..."

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** lodged by the Requester of the information and other available documents, which **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 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 information holder refuses access to the requested information on the grounds that the requested documents "represent classified information in the sense of Article 6 paragraph 1 of the Law on Free Access to Public Information", with the level of information classification "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, on the other hand, the Information Holder has neither submitted a notification to the Agency about a previous Decision of the Agency nor submitted proof that the information is classified in accordance with the Act or by-law.

The Agency points out to the information holder 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 his competences", and according to article 10 paragraph 1 paragraph 1, 8, 18 and 22 of the same Law, they are obliged to inform the public by publishing data from their competence which he carries 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, information holders 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 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 **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 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**