

# GUIDE

## ON DELEGATION OF AUTHORITY

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## INTRODUCTION

To consistently apply and act in accordance with the provisions of the Law on Free Access to Public Information (Official Gazette of the Republic of North Macedonia No. 101/2019, hereinafter referred to as LFAPI), every holder of public information has the obligation to designate one or more officials to mediate public information (hereinafter: officials), taking into account the principle of delegating the authority to resolve administrative matters to an official within the authority that leads and completes the procedure, according to the complexity of the relevant administrative work (Article 13 and Article 24 of the Law on General Administrative Procedure, Official Gazette of the Republic of Macedonia No. 124/2015).

### Art. 3 Paragraph (1) Item 5

#### LFAPI

„Public official" is a person employed by the holder of information indicated by the act of the responsible person, which mediates public information that is created or with which the holder of information has, in accordance with their competencies, that is, activities

The purpose of this Guide is to help the responsible and managerial persons among the holders of

information in the determination of the officials for mediation with public information and specifying their obligations in the direction of the correct application of the Law on Free Access to Public Information, which on the other hand leads towards building open and transparent institutions and strengthening democratic processes in society. Taking into account the above and Article 21 paragraph 1 of the LFAPI, which states that: The holder of the information is due **immediately**, to respond at the request of the requester, and no later than within 20 days from the day of receipt of the request.

### **Art. 3 Paragraph (1) Item 2**

#### **LFAPI**

**“holders of information”** are the bodies of the state government and other bodies and organizations established by law, municipal bodies, the city of Skopje and municipalities in the city of Skopje, institutions and public services, public enterprises, legal and natural persons exercising public powers established by law and activities of public interest and political parties in the revenue section and the expenses.

**“public information”** is information in any form that is created or with which the holder of the information disposes in accordance with his competencies

Hence, the correct application of the principle of delegation of authority in the area of free access to public information has a dual purpose

**It enables the official to information brokering successfully to implement its legally established duties. It positively reflects on the work environment and of the general functionality of the holder of information, as well as the degree of legal security that the holder enjoys in public.**

Consequently, when delegating the authority to mediate public information, and to achieve the above-mentioned goal, the holder should follow the following guidelines:

### **I. THE OFFICIAL PERSON SHOULD HAVE PRECISELY DETERMINED OBLIGATIONS IN THE ACT WHICH AUTHORIZE THEM TO PROVIDE PUBLIC INFORMATION**

According to the Law on Free Access to Public Information, the official has a series of obligations, which can be grouped into **two categories**:

1. The official provides **proactive transparency** with the holder of information by maintaining, updating and publishing a list of public information;
2. The official acts according to **requests for free access**, which leads to a **separate record**, which is subsequently integrated into **the annual report** which is submitted to the Agency once a year;

Regardless of the number of authorized officials for mediating information in a given institution, the person in charge of the information holder is obliged to provide **full implementation of the above categories** of obligations.

**NOTE:**

The delegation of authority is most appropriately applied by an administrative act (Decision) which brings the responsible person to the holder of information (Attachment No. 1 to this Guide).

As a rule, the delegated obligations and duties of the official should be specified in the act by which the person is authorized, together with the legal provisions from which any specific delegated obligation arises.

**Blank authorization (authorization in which only Article 8 is stated as the legal basis from LFAP) should be avoided!**

**A. Proactive transparency (Art. 9 and Art. 10 of LFAP)**

The obligation for proactive transparency should be delegated to a person who has adequate knowledge in the operation of the institution - holder of information, as well as the documents/public information that that institution creates, in accordance with Article 10 of the Law on Free Access to Public Information.

As a rule, at the moment when certain public information is created in the institution, if it falls under the provisions of Art. 10 of the Law, the same **in the fastest possible term** it must be submitted to the official who is responsible for updating the list of information, in order for the information to be published.

**B. Acting upon a request for free access (Art. 20 and Art. 21 ZPIJK) and keeping records of received requests (Art. 8 paragraph (3) ZPIJK)**

In the Republic of North Macedonia, access to public information is carried out within the framework of an administrative procedure, consequently, when delegating the obligation to act upon a request for free access, the responsible person the holder of the information is obliged to adequately know the provisions of **The Law on the General Administrative Procedure (LGAP)**.

Within the framework of the public authority, the authority to resolve administrative matters, according to **Art. 13 LGAP, Art. 24 Art. (1) LGAP, Art. 24 Art. (3) LGAP rule, is delegated to officials** within the authority, respectively the complexity of the corresponding administrative work.

In the administrative procedure, the public authority acts **through the authorized official person** appointed in accordance with the rules specified in this article.

The authorized official **and leads and completes the procedure**, if by law not otherwise specified.

The term "resolving administrative matters" includes all actions taken by the official during the procedure, including:

1. Receipt of the request and its entry into the records
2. Providing assistance in identifying the requested information
3. Giving directions to the applicant for supplementing the application
4. Forwarding the request
5. Carrying out the Harm Test, independently or in a wider composition with other employees of the information holder
6. Drafting of an administrative act (Decision), which contains the elements of Article 88 of LGAP
7. Signing (**not initialling**) of the administrative act (the person leads and completes it the procedure).

**The above actions, as a rule, should be specified in the act authorizing the official.**

**The application of the "silence of the administration" when acting upon a request for free access to public information is excluded and should be avoided.**

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### **C. Preparation of Annual Report (Art. 36 LFAPI) and its delivery to the Agency**

To most effectively implement the actions taken by the official during the procedure, it is appropriate that the persons in charge of handling requests for access to public information should be authorized to keep records of each received request and to integrate the records in the Annual Report, which is submitted to the Agency no later than January 31 of the current year for the previous year.

## **II. THE OFFICIAL PERSON SHOULD HAVE APPROPRIATE TITLE, KNOWLEDGE AND POSITION IN THE INSTITUTION – HOLDER OF INFORMATION**

The official should be in a **position** in the institution where he will have no difficulties in performing their duties, in particular:

- Obtaining the necessary information (from any organizational unit of the information holder) when

- acting on requests for free access to public information;
- Ensuring support from his colleagues at the holder during the implementation of the Harm Test;

At the same time, the official, as a rule, should have an appropriate **degree of knowledge** to:

- The law on free access to public information
- The law on the general administrative procedure, as well as the
- The legal regulations that govern the operation of the holder of information, to properly interpret these regulations when implementing their obligations.

To optimally and smoothly fulfil the obligations of officials, the Agency proposes two possible solutions for the delegation of competence:

**1. The official should have a management title, in accordance with the systematized levels on jobs determined in Article 24 of the Law on Administrative Officers, which would sign the real and administrative acts that come from the exercise of the right to free access to public information. In this case, it is recommended determination of another official from category C who technically would carry out the procedure with the holder of information, and**

**1a. Optionally, a person with the title B1 - professional can also be designated as an official administrative officer of the first-level Adviser, who will lead and complete it<sup>1</sup> the procedure for exercising the right of free access to public information.**

**2. If it is a Holder of information whose employees are not administrative officers, it is desirable that the person is employed by the management structure of the institution, which will satisfy the above criteria from point I of this Guide.**

### **III. THE OFFICIAL SHOULD HAVE AN APPROPRIATE SYSTEM OF COMMUNICATION WITH OTHER EMPLOYEES IN THE INSTITUTION, A SYSTEM PROVIDED AND MAINTAINED BY THE HOLDER OF THE INFORMATION.**

As a rule, the person in charge of the information holder has to establish and maintain a **system of smooth, effective communication** between the official and other employees of the holder of information, especially with the management officers.

Such a system of communication is relevant for each separate obligation that is delegated to the official.

Namely, one of the most common problems of officials is the difficulty in getting a response from the appropriate organizational unit when acting on requests for free access to information. This practice has an extremely negative impact and must be avoided.

Taking into account the deadline for acting on a request for free access to public information (20 days),

as well as the nature of this type of request, which aims to ensure the transparency of institutions, the Agency proposes electronic communication between the official and the relevant sector/department that created or disposes of the requested information.

#### IV. THE OFFICIAL IS ENTITLED TO SUPPORT FROM THE HOLDER OF THE INFORMATION

The official must not be left alone when performing their duties for mediation with public information. The holder of information, as a rule, should authorize at least one person as a **replacement** of the official, to ensure continuity in the work in the area of free access to public information. If, due to justified reasons, the official is unable to perform his duties, their replacement will perform these duties until the circumstances cease.

##### NOTE:

**If the Holder of information has a large number of public information<sup>1</sup> and/or if the institution counts a large number of received requests for free access to public information, the person responsible for the holder of the information is appropriate to authorize more officials to mediate information of a public nature, in proportionality with the needs of the institution.**

#### APPENDIX 1 – MODEL DECISION FOR AUTHORIZATION OF AN OFFICIAL PERSON TO PROVIDE PUBLIC INFORMATION

Based on Article 34 of the Law on Public Sector Employees<sup>2</sup>(Official Gazette of the Republic of Macedonia No. 27/2014, 199/2014, 27/2016, 35/2018 and 198/2018 and Official Gazette of the Republic of North Macedonia No. 143/2019 and 14/2020) and Article 24 of The Law on General Administrative Procedure (Official Gazette of the Republic of Macedonia No. 124/2015) and in accordance with Article 8 of the Law on Free Access to Public Information (Official Gazette of the Republic of Macedonia No. 101/19)<sup>3</sup>, the official of the institution, issues the following:

##### DECISION <sup>4</sup>

- I. The Administrative Officer \_\_\_\_\_ - at the workplace - \_\_\_\_\_, **is nominated** for an official for mediating public information<sup>5</sup>.
- II. The official is obliged to lead and complete the procedure of receiving requests for access to public information within the deadline and in a manner in accordance with the provisions of the Law on Free Access to Public Information, whereby:
  - contacts and provides the necessary information and helps the requester of information, for

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<sup>1</sup> 1 See point IV of this Guide.

which he keeps a separate record of receiving requests for information, storing and providing the information;

- in cooperation with the rest of the employees, conducts a harm test as a mandatory procedure before refusing access to requested information, in accordance with Article 6 paragraph (1) of the Law on Free Access to Public Information, and with which it checks the consequences on the interest being protected, that is, the public interest that would be achieved by publishing the information or by which it will be determined that with the publication of such information the consequences on the interest being protected are less than the public interest established by law that would be achieved by the publication of the information;
- has decided to reject a request that has not been supplemented in accordance with Article 17 of the Law on Free Access to Public Information and

<sup>2</sup>This solution model applies to employees / administrative officers, for other employees who are not administrative officers, the provision of Article 30 of the Law on Labor Relations applies (Official Gazette of the Republic of Moldova No. 62/2005, 106/2008, 161/2008, 114/2009, 130/2009, 149/2009, 50/2010, 52/2010, 124/2010, 47/2011, 11/2012, 39/2012, 13/2013, 25/2013, 170/2013, 187 /2013, 113/2014, 20/2015, 33/2015, 72/2015, 27/2016 and 120/2018 and Official Gazette of the RSM No. 110/2019). <sup>3</sup>The holder of information can and should refer to their legal and by-laws.

<sup>4</sup>In Article 34 of the Law on Public Sector Employees, the term "obligation" is used, while in Article 24 of the Law on General Administrative Procedure, the term "authorized official" is used, but starting from the glossary (Article 4 paragraph 1 paragraph 6 of the LGAP) and the definition of "administrative act", as well as taking into account the fact that the action of the official according to the LFAPI is an administrative procedure, we think that it is most appropriate for the act of his appointment to be a "decision".

<sup>5</sup>It is recommended to hire several people from different organizational units depending on the subject of the information holder's work and their deputies.

- brings a decision by which it positively responds to the request or partially or completely rejects the request, in accordance with Article 20 of the Law on Free Access to Public Information.

III. The official is obliged to regularly maintain and update the list of information available to the holder of the information and to publish it in an appropriate way, available to the public (website, bulletin board, etc.).

IV. The official prepares an Annual Report on the implementation of the Law on Free Access to Public Information and submits it to the Agency for the Protection of the Right to Free Access to Public Information no later than January 31 of the current year for the previous year and takes necessary actions for publication of the same on the website of \_\_\_\_\_.<sup>6</sup>

V. This Decision enters into force on the day of its adoption.

VI. On the date of entry into force of this Decision, \_\_\_\_\_ ceases to be valid.<sup>7</sup>

**Signature**

\_\_\_\_\_

Delivered to:

- The named person
- Archive



- Personal file

Prepared by:

<sup>7</sup>Previously given Decision / Obligation / Authorization (if there is no previous Decision, this point is deleted)

## APPENDIX 2 – MODEL OF MINUTES WHEN ACTING UPON AN ORAL REQUEST

### MINUTES

Pursuant to Article 13 of the Law on Free Access to Public Information (Official Gazette of the Republic of North Macedonia No. 101/2019), following an oral request from the applicant [name and surname of the applicant], [address of the applicant] submitted to the information holder [name of the information holder] on [DD.MM.YYYY] year, in the presence of the official [name and surname of the official] is done [inspection/transcript/photocopy/electronic record] of the requested information: [the name of the requested information] at the premises of the information holder [title of the holder of information].

The requested information is provided to the information requester [immediately/within 5 days from the submitted request].

Public Official

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Requester [name and surname of the applicant]

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Date

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## APPENDIX 3 – MODEL OF A COVER LETTER FOR DELIVERY OF A RESPONSE UPON REQUEST

Date: [DD.MM.YYYY]

TO [name and surname of the applicant],

[address of the applicant]

(requester of the information)

**SUBJECT:** Delivery of a response to a Request for Information in accordance with the Law on Free Access to Public Information to the holder of the information [the name of the information holder]

**LINK:** [archive number of received request]

Pursuant to the Law on free access to public information (Official Gazette of RSM No. 101/2019), a Decision on the requested information is attached.

*If it is a question of more extensive information with attachments, the following paragraph is also entered:*

In the Annex, you will also find:

1. [name of attachment 1]
2. [name of attachment 2]
3. ....

With respect,

[name and surname of the official], Public Official

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## APPENDIX 4 – MODEL DECISION BY ORAL REQUEST

Pursuant to Article 13, paragraph 3 of the Law on Free Access to Public Information ("Official Gazette of the Republic of North Macedonia" No. 101/2019), acting on the request for public information from the applicant [name and surname of the applicant], [address of the applicant] submitted to [DD.MM.YYYY] year, the holder of the information [the name of the holder of the information] brought the following

## DECISION

[The Request/Objection] from [name and surname of the applicant] on the subject Request for access to public information: [name of the requested information]

[UPHELD/REJECTED].

## EXPLANATION

Based on the Public Information Request submitted by [Name and surname/title of the applicant], [address of the applicant] the holder of the information [the name of the information holder]

### ***IF UPHELD:***

It provides you with the information: [name of the requested information]

*The rationale for the decision is described in the decision.*

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*If it is a question of more extensive information with attachments, the next paragraph is also entered*

In addition:

1. [the name of attachment 1]
2. [the name of attachment 2]
3. ....

### ***IF REFUSED:***

rejects the Request due to the following:

*The rationale for the decision is described in the decision.*

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**LEGAL REMEDY:** An appeal can be filed against this Decision to the holder of the information [name of the holder of the information] to the Agency for the Protection of the Right to Free Access to Public Information within 15 days from the receipt of the Decision.

Solved by [name of the holder of the information] on [DD.MM.YYYY] year, under no. [archive number].

By authorization of [position of the responsible person]  
Official Person for mediating public information  
[name and surname of the official][position]

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## APPENDIX 5 – MODEL DECISION FOR A WRITTEN REQUEST

Pursuant to Article 20, paragraph 1 of the Law on Free Access to Public Information ("Official Gazette of the Republic of North Macedonia" No. 101/2019), acting on the request for public information from the applicant [name and surname of the applicant], [address of the applicant] submitted to [DD.MM.YYYY] year, the holder of the information [the name of the holder of the information] brought the following

### DECISION

The request from [name and surname of the applicant] on the subject Request for access to public information:[name of the requested information]

*One is chosen* [UPHELD/REJECTED (in whole or in part)].

### EXPLANATION

Based on the Public Information Request submitted by [name and surname/title of the applicant], [address of the applicant] the holder of the information [title of the holder of the information]

#### **IF UPHELD**

It provides you with the information:

*The rationale for the decision is described in the decision.*

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*If it is a question of more extensive information with attachments, the next paragraph is also entered*

In addition:

1. [the name of attachment 1]
2. [the name of attachment 2]
3. ....

(if it is a question of complex information/documents)

***IF REJECTED***

rejects the Request due to:

*The rationale for the decision is described in the decision.*

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**LEGAL REMEDY:** An appeal can be filed against this Decision to the Agency for the Protection of the Right to Free Access to Public Information within 15 days from the receipt of the Decision.

Solved by [name of the holder of the information] on [DD.MM.YYYY] year, under no. [archive number].

By authorization of [position of the responsible person]  
Official Person for mediating public information  
[name and surname of the official] [position]

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**APPENDIX 6 – MODEL DECISION FOR REJECTION AFTER INCOMPLETE REQUEST**

Pursuant to Article 17, paragraph 3 of the Law on Free Access to Public Information (Official Gazette of the Republic of North Macedonia No. 101/2019),/or/Based on Article 17, paragraph 5 of the Law on Free Access to Public Information (Official Gazette of the Republic of North Macedonia No.

101/2019) acting on the request for information of a public nature from the applicant [name and surname of the applicant], [address of the applicant] submitted to [DD.MM.YYYY] year, the holder of the information [title of the holder of the information] brought the following

### DECISION

The request from [name and surname of the applicant] on the subject Request for access to public information:[name of the requested information]

Was REJECTED.

### EXPLANATION

Based on the Public Information Request submitted by [name and surname/title of the applicant], [address of the applicant] the holder of the information [title of the holder of the information] within the legal deadline requested to supplement the information with [description of supplementing a request]

*the reasons why the holder of the information could not act upon the Request are stated, as a result of which the Request is rejected*

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**LEGAL REMEDY:** An appeal can be filed against this Decision to the Agency for the Protection of the Right to Free Access to Public Information within 15 days from the receipt of the Decision.

Solved by [name of the holder of the information] on [DD.MM.YYYY] year, under no. [archive number].

By authorization of [position of the responsible person]

Official Person for mediating public information

[name and surname of the official][position]

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### APPENDIX 7 – MODEL DECISION FOR REQUEST REJECTION

Pursuant to Article 6, Paragraph 1 and Article 25 of the Law on Free Access to Public Information ("Official Gazette of the Republic of North Macedonia" No. 101/2019), acting on the request for public information from the applicant [name and surname of the applicant], [address of the applicant] submitted to [DD.MM.YYYY] year, the holder of the information [the name of the holder of the information] brought the following

## DECISION

The request from [name and surname of the applicant] on the subject Request for access to public information:[name of the requested information]

REJECTED [partially or completely]

## EXPLANATION

Acting upon the Public Information Request submitted by [name and surname/title of the applicant] the holder of the information [name of the holder of the information] states that the requested information according to Article 6 paragraph 1 of this Law is

*It is mandatory to explain the Harm Test*

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**LEGAL REMEDY:** An appeal can be filed against this Decision to the Agency for the Protection of the Right to Free Access to Public Information within 15 days from the receipt of the Decision.

Solved by [name of the holder of the information] on [DD.MM.YYYY] year, under no. [archive number].

By authorization of [position of the responsible person]

Official Person for mediating public information

[name and surname of the official][position]

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## APPENDIX 8 – MODEL OF REQUEST FOR THE PREPARATION OF INFORMATION ACCORDING TO LFAPI (INTERNAL COMMUNICATION)

Date: [DD.MM.YYYY] year

TO [name of competent service/ name and surname of person with the holder of the information]

**SUBJECT:** Request for preparation of information in accordance with the Law on free access to public information

Pursuant to Article 8, paragraph 3, of the Law on Free Access to Public Information ("Official Gazette of RSM" No. 101/2019) and the Procedure for Action Upon Receiving a Request for Free Access to Public Information, it is necessary, within five (5) days to submit the requested information to the official electronically at the same electronic address.

In Attachment: Request for access to public information submitted to [the name of the holder of the information] from [name and surname of the applicant], [address of the applicant] on [DD.MM.YYYY] year.

[name and surname of the official], Public Official

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#### APPENDIX 9 – MODEL OF RESPONSE TO A REQUEST FOR THE PREPARATION OF INFORMATION ACCORDING TO LFAPI (INTERNAL COMMUNICATION)

Date: [DD.MM.YYYY] year

**TO:** [name and surname of the official]

**SUBJECT:** Response to the request from the official for the preparation of information in accordance with the Law on free access to public information

Based on your request for information, in accordance with Article 8, paragraph 3, of the Law on Free Access to Public Information ("Official Gazette of RSM" No. 101/2019) and the Procedure for handling a request for free access to public information, we provide you with the information following the Request submitted to [title of the holder of the information] from [name and surname of the applicant] on [DD.MM.YYYY] year.

[name of the requested information]

*If it is a question of more extensive information with attachments, the next paragraph is also entered*

In addition:

1. [the name of attachment 1]
2. [the name of attachment 2]
3. ....



Responsible service/person

[name of competent service/ name and surname of the person with the holder of the information] \_\_\_\_\_