The Agency for the Protection of the Right to Free Access to Public Information in accordance with Article 109 paragraph 13 of the Law on General Administrative Procedure ("Official Gazette of the Republic of Macedonia" No. 124/15), and based on Article 27 and Article 34 Paragraph (1) of the Law on Free Access to Public Information ("Official Gazette of the Republic of North Macedonia" No. 101/19) and 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 Aleksandar Dimitrievski from Skopje against the Decision of the Ministry of Defense, on the subject Request for access to public information, on 07.02.2025 made the following:

**DECISION**

1. The appeal stated by Aleksandar Dimitrievski from Skopje filed against the Decision of the Ministry of Defense number 09-123/2 of 08.01.2025, registered in the Agency with number 08-334 on 21.01.2025, in the subject Request for access to public information, **IS UPHELD**.
2. **IT IS OBLIGATED for the Information Holder to deliver the requested information to the Requester in the manner and the form specified in the Request,**
3. **The decision of the Information Holder number 09-123/2 of 08.01.2025 IS ANNULED.**.
4. **The information holder is obliged to implement this Decision within 15 days from the day of its receipt and to notify the Agency about it.**

**EXPLANATION**

## Aleksandar Dimitrievski from Skopje, on 18.11.2024 submitted a request for access to public information to the Ministry of Defense, with which he requested to be provided the following information by e-mail, a photocopy or an electronic record:

"Photocopies of the minutes from personnel councils at the brigade level or higher proposing the earlier (premature) promotion of S.L.from Brigadier General to Major General, in accordance with the provisions and procedure established in Article 61 of the Law on Service in the Army of the Republic of North Macedonia".

Acting on this Request, on 28.11.2024, the Information Holder submitted to the Requester Decision number 09-3684/2 of 28.11.2024, which rejects the Requester's Request in its entirety.

Dissatisfied with the Decision, the Information Requester submitted an appeal to the Agency on 02.12.2024, filed with the Agency under number 08-334.

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, UPHOLDED the appeal**, annulled the decision and sent the case back to the first-instance authority for retrial.**

The holder of information, acting according to the Decision of the Agency with No. 08-334 of 17.12.2024, on 08.01.2025 passed Decision No. 09-123/2 with the same dispositive as Decision No. 09-3684/2 of 28.11.2024, but with different content in the explanation of the decision.

The holder of the information states in the explanation that "the issue related to the anticipated promotion of S.L.from Brigadier-General to Major-General, before the State Commission for the Prevention of Corruption is open case number 12-2256/1 dated 20.08.2024 which is still ongoing." According to paragraph 1 point 4 of article 6 of the Law on Free Access to Public Information ("Official Gazette of the Republic of North Macedonia" No. 101/2019) "the holders of information can refuse a request for access to information acquired or compiled for investigation, criminal or misdemeanor proceedings, for the implementation of administrative and civil proceedings, the provision of which would have harmful consequences for the course of the proceedings." Pursuant to Article 25 of the Law on Free Access to public information, "the holder of information may reject the request in whole or in part by means of a decision if he determines that the requested information is information from Article 6 paragraph (1) of this law, taking into account the result of the Harm Test". The information holder conducted a Harm Test number 09-123/1 from 08.01.2025, during which it was decided to refuse access to the requested information. Due to the above, access to the requested public information may cause harmful consequences for the procedure conducted before the State Commission for the Prevention of Corruption. After the finality of the above-mentioned procedure, if there is still a public interest in accessing specific information of public interest, we express our full readiness for cooperation. We are at your disposal for the transfer of all necessary information and documents."

Dissatisfied with the Decision, on 21.01.2025, the Information Requester again submitted to the Agency an appeal registered with number 08-334, which states: "...the holder, the Ministry of Defense of the the Republic of North Macedonia, sent me a Decision....The main basis for rejecting my Request is the claim that the requested information is of a classified nature....The holder, the Ministry of Defense of the the Republic of North Macedonia, did not act in accordance with the Agency's Decision number 08-334 of 17.12.2024… namely, instead of submitting proof that the requested information is classified to conduct a Harm Test in connection with the exception referred to, the holder decided to change the reasons… my request is again rejected,...the holder now claims...that the requested information is classified.....For me, as a Requester, this attitude introduces additional confusion and doubt - is the requested information classified at all?"

The Agency, by electronic letter number 08-334 dated 01.21.2025, forwarded the appeal to the Information Holder and requested within 7 days to issue a ruling on it and submit all the documents related to the subject to the Agency.

On January 28, 2025, the holder of the information electronically submitted a ruling following an appeal filed in the Agency with number 08-334 dated January 29, 2025.

In the ruling, the holder of the information states, "...after a repeated and detailed legal assessment of the legal issue in question, it has been determined that the named person requests to be provided with information that does not exist in the legal circulation and according to the law, it should not exist. ...The legal issue, the promotion of S.L. from Brigadier-General to Major-General does not fall under the provisions of paragraph 2 of Article 61 of the Law on Service in the Army of the Republic of North Macedonia, because the named person was promoted to the rank of Major-General by Decree of the President of the Republic of North Macedonia no. 06-428/1 of 15.08.2024 published in the "Official Gazette of the Republic of North Macedonia" no. 171/2024 as Head of Section J-5, in the General Staff of the Army "A". "The minutes are kept in a book with a certified number of pages and a registered number of the ledger marked with an appropriate level of classified information".... The procedure for the appointment of the Chief of the General Staff of the Army was started on the basis of Article 27 of the Law on Defense, i.e., due to the expiration of the second term of the then Chief of the General Staff... That procedure was carried out in accordance with Article 18, paragraph 1, point 11, where it was established that the President of the Republic of North Macedonia and commander-in-chief of the Army, appoints elders to formation posts generals and promotes and dismisses generals...”

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 all documents in the case, the same **respected, annulled the Decision of the Holder of information and obliged the Holder of details to the Requester to provide him with the requested information from the Request 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:

The Agency states that the Information Holder did not fully implement the Agency's Decision with no. 08-334 of 17.12.2024 and during the re-decision made Decision No. 09-123/2 of 08.01.2025, by which he refuses access to the requested information in its entirety. Instead of providing proof that the requested information is classified, he made a decision by which he declined the request of the requester but refused it on a completely different basis.

 During the reconsideration, the holder of the information refers to the exception from the free access to information from Article 6 paragraph 1 point 4 of the Law on Free Access to Public Information, in the conducted Harm Test reported that the protected interest is "...case number 12-2256/1 of 20.08.2024 has been opened before the State Commission for the Prevention of Corruption, which is still ongoing and the provision of the above information would have harmful consequences for the course of the procedure...".

If the holder of Information considers that the requested information is an exception stipulated in Article 6 paragraph 1 of the Law on Free Access to Public Information, after conducting the mandatory Harm Test, as a compulsory procedure, he should determine what the interest is that is being protected, determine what are the harmful consequences that would occur with the publication of the requested information.

The above-mentioned duty derives from Article 6 paragraph 3 of the Law on Free Access to Public Information, which states that: "With the exception of paragraph 1 of this Article, the holders of information will approve access to information, after the mandatory Harm Test, which will determine that the consequences of the publication of such information on the interest being protected are less than the public interest determined by law that the publication of the information would achieve".

This means that the exceptions from Article 6, paragraph 1 are not absolute. In some instances, after conducting a Harm Test, it can be determined that with the publication of such information, the consequences on the interest being protected are less than the public interest determined by law that the publication of the information would achieve.

The Agency for the Protection of the Right to Free Access to Public Information, when adopting this Decision, also appreciated the allegations contained in the Response to the appeal submitted by the Information Holder, in which it states that it was established that the named person requests to be provided with information that does not exist in the legal circulation and according to the law, it should not exist. But he does not take these allegations into account in his decision-making, because they are in complete contradiction with the allegations contained in the explanation of the Decision, number 09-3684/2 of 28.11.2024 and the Decision, number 09-123/2 of 08.01.2025, by which the Request for access to information is entirely rejected on two completely different grounds provided for in the Law on Free Access to Public Information.

 In accordance with 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**

Delivered to:

- archive of the Agency

- the appelant/information requester

- information holder