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 pursuant to 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. 101/2019), and pursuant to the Guidelines for the Implementation of the Law on Free Access to Information from public character ("Official Gazette of the Republic of North Macedonia" no. 60/20), acting on the appeal stated by Aleksandar Dimitrievski from Skopje filed against the Decision of the Ministry of Defense, on the subject Request for access to public information, on 17.12.2024, passed the following

**DECISION**

1. The appeal stated by Aleksandar Dimitrievski from Skopje filed against the Decision of the Ministry of Defense No. 09-3684/2 of 28.11.2024, filed in the Agency under No. 08-334 on 02.12.2024, in the subject Request for access to public information, **IS UPHELD.**

**2. Decision of the Information Holder no. 09-3684/2 dated 11/28/2024 IS ANNULLED.**

1. **The case is returned to the first-instance authority for retrial.**
2. **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**

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

"Photocopies of the minutes from personnel councils at the brigade level or higher proposing the earlier (premature) promotion of XX 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 upon this Request, on 28/11/2024, the Information Holder submitted to the Requester Decision No. 09-3684/2 of 28/11/2024, which rejects the Requester's Request in its entirety. The Decision states: "According to Article 87 of the Law on Service in the Archives of the Republic of North Macedonia, the Personnel Council is an advisory body to the military elder - battalion commander, an equal or higher military elder, which considers personnel issues for active military personnel and civilian personnel (appointment, referral to work, representation, dismissal from duty due to professional training and improvement, dismissal from duty due to illness and treatment, dismissal from duty due to return to civilian life, relocation, referral to schooling, i.e. professional training and improvement and other relations in the service) and the competent elder's opinion is given on those issues. Considering the fact that the above questions are directly related to the Act of the formation of the Army which is classified with the level of classification "Top Secret", the minutes of the Personnel Council in the General Staff of the Army, the same contain classified information and are classified with the level of classification "Confidential". Note that such an obligation to classify this document derives from the Law on Classified Information."

Dissatisfied with the said Decision, the Information Requester submitted an appeal to the Agency on 02.12.2024, filed in the Agency's archives under No. 08-334. The appeal states that "...the Holder, apart from the narrative explanation, does not provide evidence that the requested document is classified (for example, a facsimile of the document from which it can be unequivocally determined that the requested information is classified, without revealing details about the content of the classified information)..."

The Agency with electronic letter no. 08-334 of 02.12.2024 forwarded the appeal to the Information Holder and requested within 7 days to rule on it and to submit all documents related to the matter to the Agency.

On 12/16/2024, the Information Holder submitted letter no. 09-3684/3 dated 12/10/2024 to the Agency via e-mail, registered in the Agency under no. 08-334. The Answer states: "... In relation to the request from the appointee for access to public information, with which he requests photocopies of the minutes from personnel councils at the brigade level or higher, with which the earlier (premature) promotion of XX from Brigadier General to Major General is proposed, 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, after a repeated and detailed legal assessment of the subject legal question, it has been established that the appointed person requests to be provided with information which according to the law is classified as "Confidential".. Considering the fact that the above questions are directly related to the Act on amendments and additions to the Decision on the organization and formation of the "D" Army number 06-333/2 of 16.12.2022 and the Act on amendments and additions to the Decision on organizational-formation changes in Army "D"...which is classified with the classification level "Confidential", the records of the Personnel Council in the General Staff of the Army, also contain classified information and are classified with the classification level "Confidential"...Regarding the allegations in the appeal where the appellant refers to Article 6 paragraph 4 of the Law on access to public information, where an exception is foreseen and requires the publication of only part of the classified information, we note that in accordance with Article 8 paragraph 3 of the Law for classified information, the disclosure of the information classified as "Confidential" is important for the Army, that is, the defense, and unauthorized disclosure of the same would cause serious damage to the important interests of the Republic of North Macedonia."

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, the same **is UPHELD, the decision is ANNULLED and sent back to the first-instance authority for retrial,** due to the following:

After reviewing the appeal and all documents related to the matter, the Agency determined that the Information Holder did not fully act on the Requester's Request in accordance with the provisions of the Law on Free Access to Public Information for the following reasons:

In Article 6, paragraph 1, paragraph 1 of the Law on Free Access to Public Information, it is established that "information which, based on the law, is classified information with an appropriate degree of classification". But in paragraph 3 of the same article it is said: "As an exception to paragraph 1 of this article, the Information Holders will approve access to information, after the mandatory harmfulness test, which will establish that with the publication of such information, the consequences on the interest that is being protected are less than the public interest established by law that would be achieved by the publication of the information."

This means that the exceptions from Article 6 paragraph 1 are not absolute and in certain cases, 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 would be achieved by the publication of the information.

In the specific case, the Holder of the information with the contested Decision on the basis that the requested information is classified information with a classification level of "confidential" according to the Law on classified information, was obliged to act in accordance with Article 3 point 6 and Article 6 paragraph 3 of the Law on free access to public information, as a mandatory procedure when refusing access to the requested information, which determines that with the publication of such information the consequences on the interest to be protected are greater than the public interest.

Also, if the requested information constitutes classified information during the reconsideration, the Information Holder is obliged to submit to the Agency evidence from which it would be evident that the requested information is an exception to the Law, i.e. that it is marked as strictly confidential in accordance with the Law on classified information ("Official Gazette of the Republic of North Macedonia" no. 275/2019), with a marking that it is strictly confidential and the date of classification and possibly declassification or reclassification thereof.

Due 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**

Delivered to:

- archive of the Agency

- the appellant/information requester

- Information Holder