

Regime(s) of Access to Information in China: Implications for Transparency Report



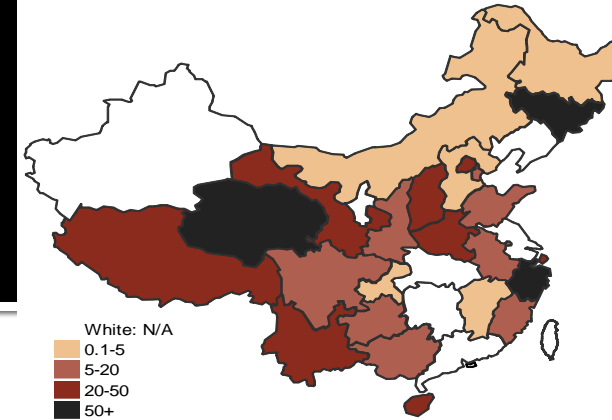
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PArIGF 2016
27 July 2016, Taipei

1. Quasi-FOI Regime

- Regulation on Open Government Information (2007)
 - Implicit Right to Information
 - Steady increase of request volume
 - per capita comparable to mature FOI regimes
 - Broad exemptions
 - Privacy, trade secrets
 - Stat secrets, social stability
 - Special needs in the access
 - Judicial remedy through administrative litigation
 - Sharp increase of FOI litigation, low success rate

Intensity of FOI Request



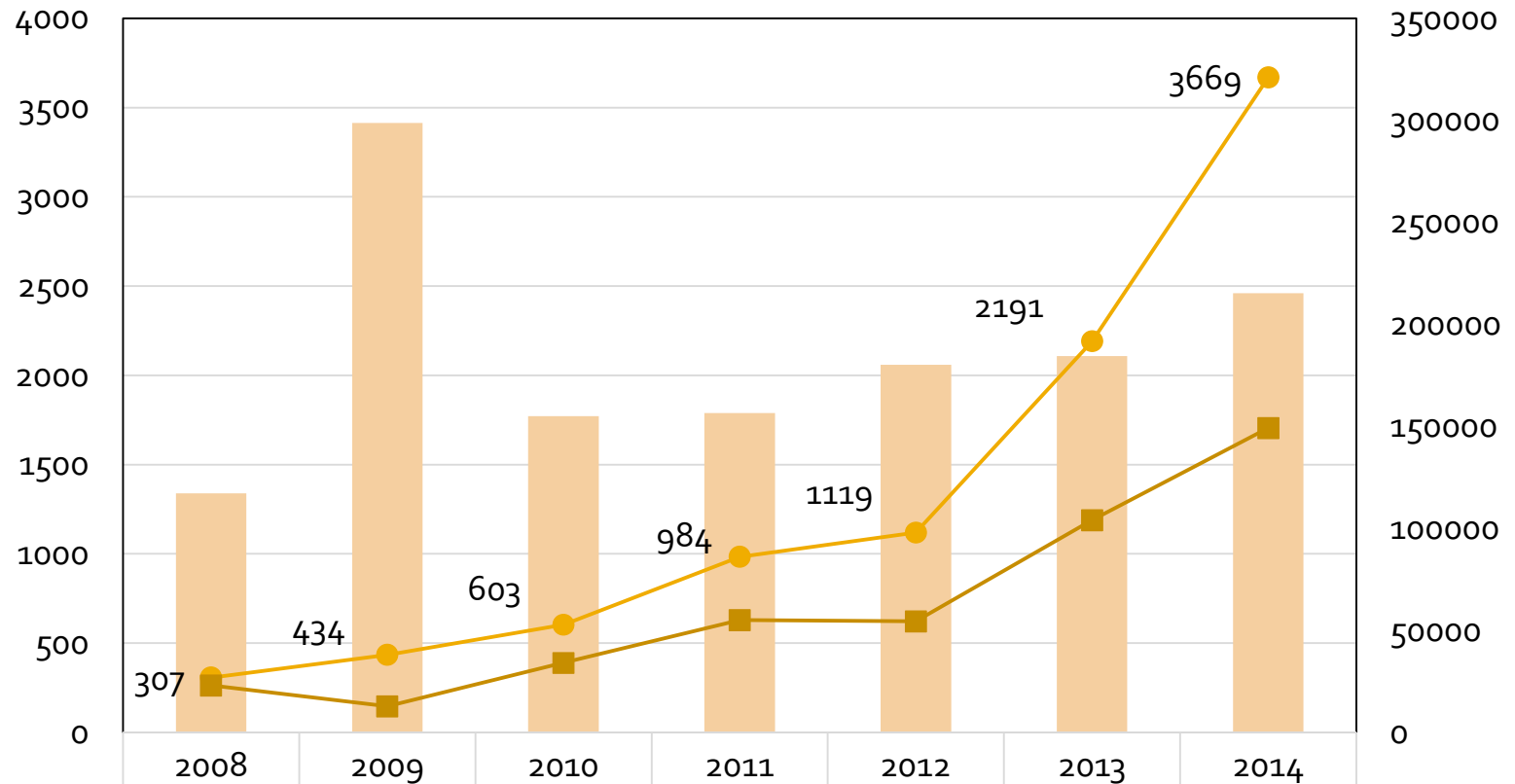
Country	Year when the FOI law came into effect	The second Full Year	The Third Full Year	Population (100,000)	Average Rate (request per 100,000 population)
Canada	1983	2,228	3,607	/	10
Australia	1983	32,956	36,512	/	245
United Kingdom	2005	105,688	113,978	/	183
Mexico	2003	94,723	105,250	1112	90
Germany	2006	1,265	1,548	823	1.7
Switzerland	2006	221	234	76	3
24 Provincial Units in China	2008	288,396	198,549	8892.5	27.4

Source:

- Canada, Australia and UK: Robert Hazell and Ben Worthy, "Assessing the Performance of Freedom of Information" (2010) 4 *Government Information Quarterly*, p 354.
- Mexico, Germany and Switzerland: Martial Pasquier and Sarah Holsen, "Case Closed or Not yet Open? Exploring the Reasons Behind Negligible Use of the Swiss Law on Transparency and German Freedom of Information Act" *The Crisis: Challenges for Public Management, 14th IRSPM* (Berne, Switzerland, 7-9 April 2010), p 5.

Volume of FOI Lawsuits and Litigation Rate

16 Provincial Units (2008-2014)



■ number of OGI requests	117210	298727	155080	156562	180249	184485	215314
● number of OGI lawsuits	307	434	603	984	1119	2191	3669
■ litigation rate (per 100,000)	262	145	389	629	621	1188	1704

2. Data Protection Regimes: Subject Access Rights

- Introduction of OECD guidelines-like data protection principles in civil law
 - *NPCSC Decisions on Strengthening Network Info Protection 2012*
 - *Provisions on Protection of Personal Information of Telecommunications and Internet Users 2013*
 - Collection limitation, use limitation, “channel of access and correction”
 - Data security, transparency
 - *Consumer Rights Law (2013 amendment)*
- Asymmetric protection
 - Insufficient regulation of public authorities
 - Lack of limits on collection (necessity) and use (consent-based or statutorily allowed)
 - Obscure subject access right
 - Art. 25, ROGI: access to one’s personal data concerning public services

Imbalanced protection

Hierarchical Level	'Privacy'*	'Personal information'
Law	10*/21**	4/7
Administrative Regulation	5/12	1/3
Local Regulation	0/11	6/44
SPC Interpretation	2/18	0/1
Departmental Rule	9/21	1/5
Local Rule		9/20
SUM	26/83	21/80

* Statutes that contain provisions regulating public authorities only or together with private bodies.

** Statutes that use the term of 'privacy' or 'personal information'.

- Asymmetric regulation of PD use
 - More on private bodies (>69%)
 - Much more comprehensive requirements for private bodies
 - Only abstract instructions for public authorities
- No general framework or overarching principles
- No definition of '(right to) privacy' or 'personal info'

3. New Rule-making concerning Surveillance

- Online: Real Name Registration
 - *NPCSC Decisions on Strengthening Network Info Protection 2012*
 - Mandatory collection of personal data
 - Removal of information whose publication is forbidden by laws and regulations
 - Transfer of relevant information to authorities
 - *Draft Cybersecurity Law 2015*
- Offline: Unification of real-world IDs
 - *Opinions on Strengthening the System of Social Security Control 2015* (State Council and CCPCCC)
- Online and Offline: Credit Rating
 - *Planning Outline for the Construction of a Social Credit System 2014-2020* (State Council)

	ALL Info Network Operators	Telephone/Internet access Operator	Microblogging Provider	IM Provider	APP	Agency
Collection	Require subscribers to provide real ID info	Acquire prescribed ID docs	Acquire ID docs 'real name background'	Same as left	Same as left	Nil
Verification		<ul style="list-style-type: none"> Verify the realness of info Register it 	Ensure the realness of ID	Same as left	Same as left	Nil
Protection		<ul style="list-style-type: none"> Take security measures, Forbid use unrelated to services delivery, Report to authorities in case of leakage 				No divulgence, deletion or modification
Retention		2 years after termination of service				Nil
Others		<ul style="list-style-type: none"> Internal annual check Train staffs 	Train staffs			Nil
Punishment	warnings, fines, confiscating illegal gain, cancellation of licenses or of archivist filing, closure of websites, prohibition of responsible personnel to engage in business; punishments entered into social credit files and published	<ul style="list-style-type: none"> Warnings, Fines between 10,000 and 30,000 Yuan, Misconducts announced to the public 				Nil

4. New Rule-making concerning Censorship

- Establishment of Cyberspace Administration in 2013
 - Integration of the power of regulating Internet contents
 - Occasional publication of decisions of enforcement of law
- MPS: “Internet Police Patrol”
 - Declared by MPS in May 2015: scope and purpose of Internet police:
 - To discover in a timely manner online information that violates the law or is otherwise harmful
 - To receive reports from netizens about speeches in convention of the law
 - Jan-April 2015: 758,000 pieces of info that violates the law, and finished investigation of over 70,000 cases



遏制网络诈骗犯罪高发势头 全国公安机关半年破电信诈骗案5.7万起

今年上半年，全国公安机关共破获电信网络诈骗案件5.7万起。这是记者从20日在南京召开的全国打击治理电信网络新型违法犯罪专项行动推进会上了解到的。

2016-07-20

文化部公布第二十五批违法违规互联网文化活动查处结果

2016年4月8日，文化部下发第二十五批违法违规互联网文化活动查处名单，重点整治含有宣扬暴力、色情和危害社会公德内容的网络表演活动。北京、上海、江苏、浙江、湖北、广东等6个省（市）的文化市场综合执法机构迅速开展查处工作，依法查处23家网络文化经营单位共26个网络表演平台。

2016-07-12

山西：两人利用媒体公众号传谣被行政拘留

记者从山西省公安厅获悉，日前，太原市两名市民利用媒体公众号发布虚假信息被行政拘留。

2016-07-10

湖北一公众号发布“天门胡市溃口”谣言 负责人被警方训诫

7月8日晚间，湖北天门一微信公众号发布题为《网传天门胡市溃口现场拍摄图》的文章，引发网民热议。据公安机关调查，该内容不实，警方对该微信号所属网媒负责人彭某某作出训诫处理。

2016-07-10

维护抢险救灾舆论环境 湖北警方严打网络谣言

湖北网警巡查执法账号已发布题为《防汛抗灾，我们共同努力！》的警示文章，提醒广大网民依法文明上网，对网络信息仔细甄别、谨慎转发。

2016-07-07

朋友圈中捏造车祸 湖南一自媒体运营者被行政拘留

29日，湖南省新晃县自媒体微信公众号“新晃新锐网络科技”运营者朱某因发布虚假信息，扰乱公共秩序，被予以行政拘留处罚。民警提醒广大网民应自觉抵制网络谣言，做到不造谣、不信谣、不传谣。

2016-07-01

部门规章

- 外国机构在中国境内提供金融信息服务管理规定
- 电信和互联网用户个人信息保护规定
- 规范互联网信息服务市场秩序若干规定
- 互联网文化管理暂行规定
- 互联网视听节目服务管理规定
- 互联网新闻信息服务管理规定
- 互联网等信息网络传播视听节目管理办法



法律



行政法规



部门规章



司法解释



规范性文件



政策文件

5. Disclosure Initiatives of Administrative Punishment

- State Council's initiatives since 2012
 - Contents and stats of administrative punishment decisions
 - Administrative authorities with regulatory powers
 - IP, Press and Publication: *Opinions [on] Disclosing Information on Administrative Punishment Cases Involving the Sale of Counterfeits and Infringements on Intellectual Property Rights* [Feb 2014]
 - Public order administration, custom, food and drug safety, production safety, securities regulation, **environmental pollution monitoring**, etc.
 - Not including censorship decisions and related punishments

6. FOI Requests

- Censorship
 - By a rights-defending (weiquan) lawyer in June 2015
 - Regarding the legal basis of the initiatives and remedy channels for Internet Potral
 - No response
- Surveillance
 - Social activist in 2014
 - Regarding the legal basis of the Great Fire Wall
 - No response