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

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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

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

Source:
Volume of FOI Lawsuits and Litigation Rate

16 Provincial Units (2008-2014)

- **Number of OGI Requests**
  - 2008: 117210
  - 2009: 298727
  - 2010: 155080
  - 2011: 156562
  - 2012: 180249
  - 2013: 184485
  - 2014: 215314

- **Number of OGI Lawsuits**
  - 2008: 307
  - 2009: 434
  - 2010: 603
  - 2011: 984
  - 2012: 1119
  - 2013: 2191
  - 2014: 3669

- **Litigation Rate (per 100,000)**
  - 2008: 262
  - 2009: 145
  - 2010: 389
  - 2011: 629
  - 2012: 621
  - 2013: 1188
  - 2014: 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
### 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’

<table>
<thead>
<tr>
<th>Hierarchical Level</th>
<th>‘Privacy’*</th>
<th>‘Personal information’</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law</td>
<td>10*/21**</td>
<td>4/7</td>
</tr>
<tr>
<td>Administrative Regulation</td>
<td>5/12</td>
<td>1/3</td>
</tr>
<tr>
<td>Local Regulation</td>
<td>0/11</td>
<td>6/44</td>
</tr>
<tr>
<td>SPC Interpretation</td>
<td>2/18</td>
<td>0/1</td>
</tr>
<tr>
<td>Departmental Rule</td>
<td>9/21</td>
<td>1/5</td>
</tr>
<tr>
<td>Local Rule</td>
<td></td>
<td>9/20</td>
</tr>
<tr>
<td>SUM</td>
<td>26/83</td>
<td>21/80</td>
</tr>
</tbody>
</table>

* Statutes that contain provisions regulating public authorities only or together with private bodies.
** Statutes that use the term of ‘privacy’ or ‘personal information’.
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)*
<table>
<thead>
<tr>
<th>ALL Info Network Operators</th>
<th>Telephone/Internet access Operator</th>
<th>Microblogging Provider</th>
<th>IM Provider</th>
<th>APP Provider</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Collection</strong></td>
<td>Require subscribers to provide real ID info</td>
<td>Acquire prescribed ID docs</td>
<td>Acquire ID docs 'real name background'</td>
<td>Same as left</td>
</tr>
</tbody>
</table>
| **Verification**          | • Verify the realness of info  
                           • Register it | Ensure the realness of ID | Same as left | Same as left |
| **Protection**            | • 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 | | | |
| **Others**                | • Internal annual check  
                           • Train staffs | Train staffs | | |
| **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 | | | |
|                           | • Warnings,  
                           • Fines between 10,000 and 30,000 Yuan,  
                           • Misconducts announced to the public | | | |
| **Agency**                | 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
部门规章

- 外国机构在中国境内提供金融信息服务业管理规定
- 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
- 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

2016-07-20

公安部发布第25号公告 互联网文化单位各从业者应严格自律

2016-07-12

山西：两人利用媒体公众号传播被行政拘留

2016-07-10

湖北一公众号发布“天门市屡查”谣言 负责人被警方训诫

2016-07-10

维护和稳定秩序活动 湖北警方严打网络谣言

2016-07-07

朋友圈内传播谣言 湖南一自媒体运营者被行政拘留

2016-07-01

维护和稳定秩序活动 湖北警方严打网络谣言

2016-07-07
5. Disclosure Initiatives of Administrative Punishment

- State Council’s initiatives since 2012
  - Contents and stats of administrative punishment decisions
  - Administrative authorities with regulatory powers
    - 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 Portal
  - No response

- **Surveillance**
  - Social activist in 2014
  - Regarding the legal basis of the Great Fire Wall
  - No response