

AN INTRODUCTION ON FREEDOM OF INFORMATION REGULATION IN CHINA

*Ben Wei, Lecturer at Shanghai University of Political Science and Law
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China's State Council published its final version for Freedom of Information Regulation (FOI Regulation) on 24 April 2007 which was approved in principle by the Council on 17 January. This Regulation will come into effect on 1 May 2008. China finally has its own national FOI legislation, although the influence of this Regulation is still limited as it should not override the laws or acts in accordance with China's legal system.

The Regulation creates a general right of access by citizens, legal persons and other organizations to government information held by government agencies and organizations that exercise administrative powers and provide public services in accordance with the laws and regulations. Public corporations or institutions that are highly related to the benefits of the public, including those undertaking education, health, family planning, water, electricity, gas, heating, environment protection, public transportation, refer to this Regulation when they disclose information.

Requests can be sent in written, oral and electronic. Fees for access should be limited to the cost for searching, photocopy, postage and others based on the costs actually incurred in providing the information. Fee waiver is allowed. Government agencies should give a response immediately to the requesters. If a response cannot be given immediately, government agencies should reply to the requesters in 15 working days after they received the requests. The time period for responding may be extended, but 15 working days at most. Partial disclosure is permitted and reasons for refusals should be provided. Third party consultation is required. Individuals can request their personal information and can amend the personal information that is incorrect.

This Regulation differs from the laws in other jurisdictions as it puts emphasis on the duty to publish. In general, all government agencies should proactively disclose the information which has one of the following features: Information affecting the immediate interests of citizens, legal persons or other organizations; Information which is needed to be broadly known or participated by the public; Information regarding an agency's institutions, functions, and procedures of handling administrative affairs; and other information which is needed to disclose in accordance with laws, regulations and other rules. In order to clarify the duty to publish, the Regulation has a long list for government agencies to fulfil their responsibilities.

Normally, the People's Government at or above the county level should publish the information regarding government expenses, administrative permissions, government procurements, sudden public incidents, specific fees for public services and results of investigations into environmental protection, public health, food and drugs safety and others. Government agencies at the district and county level are required to publish information on land acquisitions, residence relocations and related compensation and others. Government agencies at the town level should publish information on land use, financial accounting, the operation of rural collective enterprises and others. Otherwise, each government agency should compile and publish its information guidance and directories in a timely basis. Government agencies should disclose the information to be published not later than 20 working days after its generation or renewal by government Gazette, government websites, news conferences, newspapers, radio, television and the like.

Government agencies should not disclose the information regarding state secrets, business secrets and personal privacy. Government agencies can only disclose the information regarding business secrets and privacy with the consent of the rightful persons or when the agencies believe that the nondisclosure would seriously harm the public interest. However, there is an article requiring that government agencies should avoid actions that may harm state security, public security, economic security, and social stability when they disclose government information.

An Annual report for FOI is required and it should be published by each government agencies before 31 March of each year.

The public that believe that the concrete administrative behavior of government agencies regarding FOI has infringed their lawful rights and interests, may require administrative reconsideration or administrative lawsuit in accordance with the law. There is no internal review and it is not necessary to exhaust administrative reconsideration before an appeal to the court.

There are sanctions available against government officials for failure to fulfill their duties of disclosing government information, update information in a timely basis, illegally collect fees, disclose the information which should be exempted and others.

Government agencies should establish a sound system for examining secrets in the government information for disclosure, and clarify examining procedures and responsibilities. Government agencies should exempt the secrets from the government information prior to its

disclosure in accordance with Keeping Secrets Act, other laws, regulations and national rules. Government agencies did not establish a sound system for examining secrets in accordance with this Regulation, The major responsible person in the agencies that did not establish a sound system for examining secrets may bear administrative punishments in accordance with the law if the disobedience is expected to be serious.

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