

Regulation of Open Government Information in China: Practice, Problems and Prospects

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中国的政府信息公开制度：实践、问题与前瞻
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Content 目录

- The practice of Regulation of Open Government Information
- The current major problems
- Prospects of Regulation of Government Information Publicity
- 中国政府信息公开制度的实践
- 目前面临的主要问题
- 中国政府信息公开制度的展望

The practice of China's Regulation of Open Government Information

- The range of open government information includes the publicity of village affairs, factory management affairs, school affairs, legislation, trial, inspection, police administration, and taxation; all of which deal with almost every aspect of society.
- Publicity in several of the most common fields are included in this brief introduction.
- 中国政府信息公开制度的实践
- 中国政府公开的实践范围非常广泛，从村务公开、厂务公开、校务公开，到立法公开、审判公开、检务公开、警务公开、税务公开等，几乎涉及到社会生活的每个方面。这里只选择几个有代表性的领域加以简单介绍。

An exploration of the openness of villages' affairs

- In the late 70's China's rural reform initiated its national economic reform. Similarly, the present practice of open village affairs in the rural areas has led to the practice of open government on a national level
- This is undoubtedly another pioneering undertaking of the villagers.
- It has experienced four stages:
- 1. 村务公开的探索
如同70年代末期的农村改革启动了整个中国的经济改革进程，村务公开也是中国政府公开制度的开端，是农民在实践中的又一项创举。它大致经历了以下四个阶段：

The First Stage

- The period from 1982, when the Constitution legitimized The Villagers' Self-government, to 1987, when the *Organizational Law of the Villagers Committee*, was the self-development period for the openness of villages' affairs.
- In this era, with the reform of political system in rural areas, People's communes (which mingled with politics and society) were abandoned. The Production Brigade System and self-governed Villagers' Committee flourished in certain villages where the household contract responsibility system was successfully adopted. Thus, the openness of villages' affairs began to emerge.
- 从1982年宪法确立农村实行村民自治制度，到1987年《村委会组织法》(试行)颁布，为村务公开的自发产生时期。这一时期，随着农村政治体制改革，废除政社合一的人民公社、生产大队体制，建立自治的村民委员会，在联产承包搞得较早的个别村，村务公开开始萌芽。

Main characteristics of this era include:

- 1. The organizers being the party branches and committees of the villagers
- 2. Only a few villages adopted the openness of villages' affairs;
- 3. The names, contents and procedures that were opened to the public were different from each other. However, the proscribed article in the *Organizational Law of the Villagers Committee* states that "The fees the Villagers' Committee used for the village's public affairs and social charity affairs should be disclosed to the public on the due date; should be monitored by villagers and the village's financial organizations", provided a legal support and protection that significantly promoted the openness of villages' affairs.
- 这一时期的主要特点，一是公开的组织者是村党支部和村民委员会；二是只是个别的村推行村务公开；三是公开的名称、内容、程序各异。但是，由于《村民委员会组织法》规定“村民委员会办理本村的公共事务和公益事业所需的费用，收支账目应当按期公布，接受村民和本村经济组织的监督”，它为村务公开提供了法律依据和保障，极大地推进了村务公开的发展。

The Second Stage

- The period from 1988, when the *Organizational Law of the Villagers Committee* was implemented nationally, until 1994 when the Central Committee of the Communist Party convened the special meeting for the construction of grass-roots organizations in rural areas, was the defining period for the openness of villages' affairs.
- In this period, with deepened implementation of the *Organizational Law of the Villagers Committee*, 24 provinces, autonomous regions, and Directly Governed Cities set forth their local regulations.
- The majority of the regional regulations have decreed that the Villagers' Committee should timely publish the expenditures used for the village's public and social charity affairs.

The Second Stage cont.

- During this period, thanks to the Central Committee, State Council and Ministry of Civil Affairs, the construction of village-level organizations was enforced. Furthermore, the listing of the openness of villages' affairs as an important element of strengthening village-level organizations forcefully promoted the openness of villages' affairs.
- Especially, in October 1994, the central committee of Chinese Communist Party distributed *Notification on Building Villages' Grassroots Organizations*, thus raising, for the first time, the problem of duly "constructing the system of open village affairs"

The main characteristics of this period include:

- 1. The opening of villages' affairs increased from a few villages to all the villages in some counties. Furthermore, the village leaders for organizing openness of villages' affairs had risen to the Party Committee of the Counties, County Governments and Department of Civil Affairs of the Counties;
- 2. Openness to villages' affairs became standardized, resulting in consistent openness regarding content, time, procedure and formulas
- 这一时期的主要特点，一是实行村务公开的村已经从个别村发展到1个县范围内的所有村，领导组织村务公开已经由村党支部、村委会上升到县委、县政府及民政部门；二是村务公开制度开始向规范化发展，基本上做到了公开的内容、时间、程序、形式的规范化。

The Third Stage

- The period from 1995 when the Ministry of Civil Affairs held the National Villagers' Self-Government Experience Exchanging Reception, until April 1998, when the General Office of the CPC and State Council distributed *Notifications on Implementation of Openness of Village Affairs and Democratic Management Regulation*, was the rapid development period for the openness of villages' affairs.
- During these years, thanks to the reward for 31 "National Village Self-Government Model Counties", 16 "National Best Counties", 150 "China's Star Counties", 200 "National Model Villagers' Committee" issued by Ministry of Civil Affairs, villagers' self-government rapidly expanded in the country.

The Third Stage cont.

- The Central Commission for Discipline Inspection of the CPC and the Ministry of Supervision held a “Working Conference on Openness of Village Affairs and Democratic Management” at Baodi County, Tianjing City in April 1997.
- This conference further promoted the development for the opening of village affairs, identifying it as an effective method for ensuring a non corrupt village government.

The main characteristics of this period include:

- 1. The positive influence of open village affairs expanded from the village level to the provincial administrative level, while the village leaders had become leaders in provincial party branch, provincial government, provincial commission for Discipline Inspection and other relevant government agencies and organizations;
- 2. The localities enhanced the standardized and systemized administrative regulations, systems and file management.
- 这一时期的主要特点，一是开展村务公开的范围已经扩展到省级行政区域，领导者已经上升到省委、省政府、省纪律检查委员会及相关部门；二是各地加强了村务公开工作的行政规章、制度和档案管理等规范化、制度化建设。

The Fourth Stage

- The *Organizational Law of the Villagers Committee* was enacted and implemented in 1998, which marked the beginning of the period when openness of villages' affairs was being largely and widely promoted.
- During this period, the Third Plenary Session of the Fifteenth Central Committee of the Communist Party of China made *Decisions on Certain Important Issues Concerning Agricultural affairs and Village affairs*, which emphasized that "...to widely promote village-level democratic supervision. The major issues in the village and problems generally concerned by villagers should be publicized to all the villagers. The emphasis of open village affairs shall be placed on open financial affairs."

The Fourth Stage cont.

- The amended *Organizational Law of the Villagers Committee* clarified the system of open of village affairs, as well as the contents, timing, requesting, public observation and legal liabilities.
- In 1998, the General Office of Central Committee of the Party and the Office of the State Council pushed forward the national promotion for open political affairs on a town and county level.

The main characteristics of this period include:

- 1. The practice of open village affairs has been universally adopted throughout the country, and a network of laws, regulations, guidelines and the principle system has formed, which guaranteed that the practice of open village affairs is exercised on a legal basis;
- 2. Government departments closely worked together, assumed respective responsibilities and formed an excellent, opened working system;
- 3. The openness of village affairs directly promoted and facilitated other forms of openness of government affairs.
- 这一时期的特点，一是村务公开已在全国普遍推行，并形成了法律、法规、规章、制度网络体系，保障了村务公开工作依法实施；二是各级政府有关部门密切配合，各司其职，形成了村务公开的良性运行机制；三是村务公开直接推动和促进了其他各种形式的政府公开。

Open village affairs have three aspects

- Financial Affairs
- Autonomous Affairs
- Government Affairs
- The range for open financial affairs covers the financial income, financial outcome, property conditions, assets and liabilities situation, and fulfillment of contracts. Autonomous affairs mainly include economic construction, social charity enterprise, peasants' debts situation, and village cadres' tenure goals and fulfillment of the goals. Open government affairs includes family planning, examination and approval of living places, national construction under government expropriation, and the use of relief supplies.
- 村务公开的内容，大致包括三个方面：一是财务、二是自治事务、三是政务。
- 财务公开的范围包括财务收入情况、财务支出情况、财产情况、债权债务情况、合同兑现情况。自治事务主要包括经济建设情况、兴办公益福利事业情况、农民负担情况、村干部的任期目标和完成情况。政务公开主要包括计划生育、宅基地审批、国家建设征用土地和救灾、救济款物的发放等。

Strong Promotion by the Central Government

- The practice of open village affairs and other forms of open government affairs were promoted by the government. The Central Committee of the Communist Party and the State Council seriously promoted open government affairs. The Fifteenth and Sixteenth Central Committee of the Communist Party of China clearly favored openness.
- In Dec. 2002, the General Office of Central Committee of Communist Party and the Office of the State Council distributed *Notifications on Promoting the Openness of Government Affairs in the Country's County and Town Level Departments (2000, Number 25)*, which regulated the opening of government affairs on a county (town) level and brought forward guidelines for the opening of government affairs on a city level.

Strong Promotion by the Central Government cont.

- In March 2004, the State Council printed and distributed *Guidelines for Promoting Government Affairs on Legal Basis*, which gave decision making in government affairs, government affairs management and the opening of government information a legal basis.
- In January 2005, the Central Committee of the Party printed and distributed *Guidelines for Building a Complete Educational, Systematic and, Monitorial Punishment and Anti-corruption System*, clearly stating "Complete Openness of Government affairs, openness of factory affairs, and villages' affairs"

One thing is especially worth mentioning:

- On March 24th 2005, under the consent of the Central Committee of the Party and State Council, the General Office of Central Committee of the Party and the Office of the State Council distributed *Opinions on Further Promoting the Openness of Government Affairs*, which brought forward many clear requests.
- The *Opinions* states that promotion of open government affairs teaches “Three Representatives”,
 - The proof of governance ability, demonstrated by a party ruled by the people, for the people,
 - The realization of a rule of law, the requirement for developing socialistic democracy, for constructing socialistic civilization actualization
 - An important foundation for building a complete punishment and anti-corruption system, molding a ordered, just, and efficient government administrative system.

The Opinions Continued

- We should make administrative management and social service available to the public (except personal privacies, business secrets and national security), while strictly following laws and rules.
- We should use convenient, swift methods to make things publicized.
- Promoting the goal--openness of government affairs, we should widen our reform on administrative management system and broadly operate administrative work while respecting the law. After persistent work, we should make the opening of government affairs a basic ruling principle for all levels of government. The openness of government affairs should be increased, contact between the government and its people become more smooth, and people’s rights of information, participation and monitoring should be protected.

The Opinions Continued

- The Opinions specifically stated that we should strengthen systematic construction, strictly follow the ruling principles, and secure the opening of government affairs. We should positively explore and promote the legal affairs for open government affairs, and draft the *Government Information Publication Act*. Some well-prepared regions and departments should study how to draft regional regulations and rules, and gradually take the opening of government affairs onto a legal track.
- 意见特别提出，要加强制度建设，严格按制度办事，保障政务公开规范运行。要积极探索和推进政务公开的立法工作，抓紧制定《政府信息公开条例》。条件成熟的地区和部门要研究制定地方性法规或规章，逐步把政务公开纳入法制化轨道。

The Legal Exploration of Open Government Information

- In all forms and practices towards open government affairs, the first step is from local governments, by conducting an legal exploration of the field.
- On January 1st 2003, Guang Zhou was the first city in China to conduct *The Openness of Government Information Rules*, which provided an excellent model for the rest of the country. Following that the cities of Shenzhen, Shanghai, Hangzhou, Chengdu, and Kunming, and the Provinces of Hubei and Hebei and all other local-level governments enacted similar laws, promoting open government affairs onto a new stage.
- According to these rules, the system of government information publication had well developed in terms of names, principles, organizations, ranges, procedures and relief efforts.

The Legal Exploration of Open of Government Information cont.

- From the initial opening of some government affairs to the complete opening of government affairs; opening through applications; and the creation of an official system to aid opening, saw the adoption of openness as the ruling principle. Un-openness is admitted as a special principle, signifying a shift of the conventional wisdom

The Legal Exploration of Open of Government Information cont.

- Those legislation activities mentioned above significantly promoted the openness of government affairs. For instance, there was the first lawsuit in Shanghai caused by a government department's refusal to provide information.
- For the month beginning May 1st 2004, when Shanghai began publishing information, the monthly visiting number of "China Shanghai"—the major cell phone network was up to 12,195,000, and the daily visiting number was 393,000—an increase of 118% compared to the preceding 'closed' period.

The Legal Exploration of Open Government Information cont.

- Within the website's *openness of government information* section, *Appointment and Promotions* interested people the most. While in other specified informational sections, people cared about real estate, social security, transportation, certificate issuances, labor and jobs, and residence management respectively.
- A survey conducted by Shanghai Archives & Records Administration demonstrated that real estate information was the most widely read section of paper edition; followed by information on labor and job security, city planning and management, education, medicine and health, and human resource policies respectively.

The Legal Exploration of Open Government Information cont.

- In the central government, the framing of Regulation on Openness of Government Information has for two years (2004 and 2005) been brought to the legislative proposal of the State Council, which has widely solicited advice and suggestions for the drafts. This is an important stage in establishing the judicial system of information.
- In the meantime, the Tenth National People's Congress has also brought it into consideration regarding its legislative proposal.
- 在中央政府层面，作为信息化法律体系建设的一个重要环节，制定政府信息公开条例2004、2005也被连续两年纳入到国务院的立法计划之中，并对草案进行了广泛的征求意见。同时，十届全国人大的立法规划也将制定政务信息公开法纳入其中。

Inconsistency caused by not having a unified open information law

- At present, the specific regulations relating to government openness are seen in a variety of laws. For example, *the Act of Archives* covers the administration and publication of government information; *The Act of National Classified Information* governs the determination, protection, and removal of information from classified status; *The Act of Anti-Trust* involves the protection of commercial secrets; *The Act of Statistics* regards the regulation and the openness of the statistical data in the government; *The Act of Securities* concerns the propriety of corporate information of listed companies.

The inconsistency in the implementation resulting from not having a unified information publication law

- As a result of the lack of a single legislation for open governmental information that regulates various relevant issues, there is a lack of cooperation and coordination in the reform between different locales and different departments, delaying some of the reform measures from being put forth.
- For instance, as to the openness of village affairs, the current governmental entities that are in charge are the Department of People's Affairs, the Bureau of Discipline Inspection and Supervision, also cooperated with some other government branches. The same system also applies to the openness in county and town levels.

The inconsistency in the implementation resulting from not having a unified information publication law

- However, the opening of government affairs is poorly organized and is overly complicated as it involves several departments including the judicial, people's affairs, civil administration, discipline inspection and supervision, and even the department of propaganda in Chinese Communist Party.

The transformation of social conception is still a tough task

- There are many concepts in Chinese traditional culture that go against the opening of governmental information. For instance, in *Tao Te Ching*, it says:
- 65. VIRTUOUS GOVERNMENT
*Knowing it is against the Tao
to try to enforce learning,
the early sages did not contrive
to teach the way of the Tao.
There are two ways of government.
One is to be cunning, to act with guile,
and to contrive to cheat the people.
When this way is used to rule,
the people grow in cunning,
and contrive to cheat the ruler.
The second way to govern the land,
is to do so without contriving.
People so governed are truly blessed,
for they are governed with virtue,
and virtuous government is fair to all,
thus leading to unity. (Stan Rosenthal's translation)*

- And in the Analects 8:9, “Confucius said, ‘The people may be made to follow, but may not be made to know.’” These concepts are deeply rooted in some government officials even nowadays. They believe that the openness of some governmental information would impair executive management among many other aspects of their work. Therefore, the transformation of these traditional notions is necessary.
- 中国传统文化中不利于推行政府信息公开的观念并不少，诸如“古之善为道者，非以明民，将以愚之。民之难治，以其智多。故以智治国，国之贼；不以智治国，国之福”（《道德经》六十五章）。“民可使由之，不可使知之”（《论语》泰伯第八）。这些观念在一些政府机关工作人员中仍然根深蒂固，认为信息公开会影响行政管理和其他各个方面的工作，因此，需要不断进行观念变革。

The vague borderline caused by the lack of relevant laws or regulations

- The implementation of the system of governmental information publication needs to clear up its relations with various other matters, such as publicizing or keeping national security information classified, protecting personal information, protecting business-related information, etc.
- However, due to the fact that the relevant laws are either non-existent or outdated, the coordination of interests is not sufficient in its scale and standard, constraining the progress of open governmental information.

The vague borderline caused by the lack of relevant laws or regulations cont.

- For instance, in China, the currently effective law on protecting classified information in national security was passed more than ten years ago.
- It is too outdated for the current development in various important regulations such as the procedures of determining classified information, removing classified information, punishment upon releasing classified information, or coping with emergency, etc.
- Sometimes the information that should be classified is not classified, while some other that is classified really should not be; once classified it becomes permanent, but some highly-classified does not get protected, while those that are not that important are all well-protected—this still happens.
- This situation has not only restricted the development of the publication system of governmental information, but also compromised national security.

Information blockade and monopoly caused by different information value

- Due to the flaws of Chinese Administrative Law, the government departments could always abuse powers and gain interests and benefits through forfeiting, charging fines and issuing permits. Furthermore, before the Internet age and the openness of government information system, people rarely used government information or, more plainly, they had little or no chance to use government information.
- With the steady development of the Administrative Law, the conducts of “using powers in exchange for interests” have been significantly reduced. At the same time, people’s needs for using government information increases.

Information blockade and monopoly caused by different information value cont.

- We can therefore predict that, due to the financial situation, the exchanges between government information and benefits will inevitably become a new way for some departments to gain extra profits. In fact, this phenomenon has already existed in many different places and departments through a variety of forms, which has raised the price of government information, and inhibited the disclosure and free floating of the government information.

Limitations and Influences of the Current System

- Although the openness of government information is an old issue, it has many new characteristics in this information age such as flatness, multiple proxies, double/multiple sides and interaction.
- However, the current government management systems are relics of the traditional Chinese society, reflecting the hierarchical structure and unilateral information floating. That causes many realistic problems regarding to the openness of governmental information.

Limitations and Influences of the Current System cont.

- The Chinese government has shown its delayed reactions at the beginning of SARS in 2003, which actually reflects that the traditional management system is not suitable for the conditions of information floating and the openness of information in the information age.
- Therefore, if the necessary reform is not conducted upon the administrative management system, the process of opening the information to the public will be impeded.

The rapid change of social recognition

- Just in the past few years, the openness of information was still a totally new concept. However, it has now become a hot social issue. In addition, many government officers have noticed the importance of the openness of government information. The change of recognition is a fundamental impetus for the openness of government information.
- 短短几年以前，信息公开还是一个全新概念，现在，已经成为全社会的一个热门话题。许多政府官员也开始意识到政府信息公开的重要意义。这种观念的变化，是政府信息公开制度的深层推动力。

The acceleration of the legislation process

- Not only is the Regulation of Openness of Government Information being legislated, but the *Personal Information Protection Act* is also being drafted.
- Furthermore, the enactment of *Official Secrets Act*, *Trade Secrets Act*, *Information Security Act* and the *Personal Information Management Act*, will lay a solid legal foundation for the openness of government information.
- 不但政府信息公开条例在制定之中，个人信息保护法也在起草过程中，另外，诸如保密法的修改，商业秘密保护法的制定，信息安全条例的制定，个人征信信息管理方法的制定等，都会为政府信息公开奠定坚实的法律基础。

The deepened development of system reform

- The high attention the country paid to information and exploitation of information resources, the furthering of reform of the economic system and the administrative system, the growth of information services, the popularization of the Internet, the practice of democratic government rule of law and the enforced protection of civil rights, will all further promote the process of the governmental information publication.
- 国家对信息化尤其是信息资源开发、利用的重视，经济体制与行政体制改革的逐步深入，信息服务业的发展，互联网的继续普及，法治政府目标的实践，公民权利保护的加强等，都会进一步推动政府信息公开的进程。