

Research on the Protection of Personal Private Information in Government Information Disclosure *

Yujing Lai *

Zhejiang Sci-Tech University, China

* Corresponding Author Email: jinyf@zstu.edu.cn

Abstract. To address the problem of improper disclosure of a large amount of personal private information generated in the disclosure of government information, through empirical research and relevant literature analysis at home and abroad, it is found that there are some problems in the protection of personal private information in the disclosure of government information, such as unclear administrative discretion standards for the disclosure of personal private information, imperfect management systems for government information disclosure, imperfect supervision and responsibility mechanisms for government information disclosure, and incomplete relief systems after personal private information is violated. This paper studies its protection path from three perspectives, preregulation, in-process management and postrelief, to alleviate the conflict between government information disclosure and personal private information protection and protect citizens' personal private information.

Keywords: Information disclosure, personal and private information, public interest.

1. Background

1.1. The concept of government information disclosure

The definition of "government information" is explained in The Regulations on the Disclosure of Government Information (hereinafter referred to as the Regulations), which refers to the information produced or obtained by administrative organs in the process of performing administrative functions and recorded and stored in a certain form. Government information disclosure refers to the system whereby state administrative organs and organizations authorized and entrusted by laws, regulations and rules, in the process of exercising state administrative functions and powers, take the initiative to disclose government information to the public or to specific individuals or organizations upon application through legal forms and procedures.

To maintain the orderly operation of the government, the disclosure of government information not only protects the public's right to know but also restricts it. The regulations stipulate two types of information that are exempt from disclosure: First, information involving state secrets shall not be disclosed, and second, information related to personal privacy and trade secrets shall not be disclosed in principle, except when the parties voluntarily disclose or the nondisclosure has a significant impact on the public interest.

1.2. The definition of personal private information

The academic community does not have a unified view on the exact concept of personal privacy. Article 1032 of the Civil Code stipulates that "privacy is the private space, private activities and private information that a natural person has a peaceful private life and is unwilling to be known by others", and the concept of personal privacy has a relatively clear definition in law. Personal privacy and personal information are closely related but not identical. Personal information is "all kinds of information recorded by electronic or other means that can identify the personal identity of natural persons alone or in combination with other information". Personal privacy focuses on privacy and nonpublicity, while personal information focuses on the identification of personal characteristics.

Article 1034 (2) of the Civil Code divides personal information into private information and ordinary information according to whether it is private or not. Personal private information not only

involves personal information but also relates to the protection of personal privacy, so personal private information is the intersection of personal information and personal privacy. Personal information such as property information, medical information and other personal information that is not willing to be disclosed, is not willing to be known by others, and has personal identification may constitute personal private information.

2. Conflict between government information disclosure and protection of personal private information

The regulations stipulate that information related to personal privacy and business secrets shall not be disclosed in principle, except when the parties voluntarily disclose it or when nondisclosure has a significant impact on the public interest. When the government considers whether private information involving the public interest should be disclosed, the public interest conflicts with the personal interest, which represents the contradiction between two different values protected by law. The dilemma between the public's right to know and the individual's right to privacy also urgently needs to be solved. The right to know is the basic right of citizens. While satisfying the public's right to know, the government and relevant departments should also protect personal private information and strike a balance between the right to know and the right to privacy.

3. Problems of personal and private information protection

3.1. The administrative discretion standard for disclosure of personal private information is not clear

Article 15 of the regulations makes simple provisions on the administrative discretion standard for disclosure of personal privacy but does not clarify the specific judgment standard of "significant impact on the public interest". At the same time, the connotation and extension of personal privacy are not clear in the regulations, resulting in difficulties for administrative organs in judging whether personal privacy should give way to public interests in the process of information disclosure. Second, administrative organs and courts in different regions have different discretion standards when measuring public interest and personal privacy, which leads to the phenomenon of "different judgments in the same case" in judicial practice. The difference between interest measurement and legal interpretation makes the government's administrative discretion standard for personal privacy unclear when information is disclosed and makes citizens' personal private information not effectively protected.

3.2. The government information disclosure management system is not perfect

1) Poor management of government information

A large amount of personal information collected by government departments for administrative needs covers a wide range of contents and has different degrees of privacy. Once personal private information such as ID card number, biometric information and home address is wrongly disclosed, citizens' privacy will be in danger, while the disclosure of ordinary information is harmless to citizens and conducive to information sharing. The absence of a hierarchical information management system leads to frequent incidents of personal private information being accidentally leaked and wrongly disclosed. In today's rapid development of artificial intelligence and big data, once personal private information is leaked, it will cause irreversible serious consequences, and the extensive management mode for information with different sensitivity and risk levels is not conducive to the protection of personal private information.

2) The government information disclosure and review mechanism is not perfect

Information disclosure reviews are the last protection of citizens' private information and play a vital role. However, the regulations only make macroguidance provisions on this and do not specify the procedures and standards for review, resulting in great differences in the handling methods of

administrative organs in different places in practice. The lack of specific review procedures leaves the government with too much discretion, resulting in a mere formality of the information disclosure review mechanism. In addition, the scope of information disclosure review subjects stipulated in the regulations is broad, and it is difficult to accurately assign blame when the problem of unreasonable disclosure of personal private information is generated.

3.3. The supervision and responsibility mechanism of government information disclosure is not perfect

First, there are problems of formalization, passivity and delay of supervision in government departments. The regulations do not provide for special supervisory bodies, personnel and responsibilities, and China's supervision of government information disclosure focuses on the results of disclosure and ignores the supervision of the process, resulting in the supervision procedure becoming a mere formality. In practice, due to the constraints of the current system, the supervision power is subject to the decision-making power and the execution power, while the supervision subject is subject to the supervision object in the aspects of economy and personnel, forming the phenomenon of "upside down". Delay means that the public cannot obtain accurate information in time because the information of administrative agencies is not updated in time and the phenomenon of information dislocation is serious.

Second, the regulations only make provisions in principle on the responsibility mechanism of public review and do not make more in-depth provisions on the supervision responsibilities and administrative responsibilities of each link of public review. There are some problems in the accountability system, such as unclear rights and responsibilities, difficulty tracing the subject of responsibility, and the lack of a uniform measurement index for events with different degrees of impact or harm.

3.4. The remedy system after personal private information is infringed upon is not complete

According to the regulations, when citizens' private information is infringed upon during the process of government information disclosure, they can seek relief through reporting, administrative reconsideration or administrative litigation. However, the existing relief measures cannot overcome the problem that once personal private information is disclosed, it cannot be restored to its original state, most of them are for postdisclosure relief, and the predisclosure relief system is not perfect. In the context of the explosion of litigation, it took a long time for the parties to defend their rights from the beginning of knowing that the information was infringed upon until the end of the proceedings. During the period of seeking relief, personal private information continues to be exposed in the public field of view, and the consequences of damage to the rights and interests of the parties continue to expand. By the time the court decides that the government's act is illegal, it has been in a public state for a long time, and it is difficult to return to the original private state.

Second, after personal private information is violated, it is often spiritual damage, and damage compensation is difficult to implement. The Provisions on Several Issues in the Trial of Administrative Cases concerning the Disclosure of Government Information point out that the government has wrongly disclosed personal privacy, and the court can order it to take remedial measures and bear the liability for compensation. Article 35 of the State Compensation Law recognizes "compensation for mental damage", but spiritual damage caused by improper disclosure of private information is not included. The contradiction of the legislative intention of the above laws leads to many disputes on the compensation for spiritual damage of personal private information in practice, and the parties who suffer losses due to the government's wrong disclosure act often cannot obtain any substantive compensation.

4. Solutions

4.1. Clarifying the administrative discretion standards for the disclosure of personal private information

Article 15 of the regulations gives administrative authorities administrative discretion when there is a conflict between public interest and private information. Administrative organs should follow the principle of proportionality and find the balance between "reasonable protection - reasonable restriction" and "privacy - right to know" in the process of government information disclosure. First, the exercise of administrative discretion to disclose personal private information must conform to the justification of the purpose. That is, the administrative organ exercising its discretion to disclose personal privacy must be in line with the purpose of "unfair meetings have a significant impact on the public interest" as stipulated by law. Furthermore, administrative agencies should follow the principle of least harm when exercising discretion to disclose personal and private information. Finally, to minimize the damage suffered by the right holder, the administrative organ should exercise its discretion according to realistic conditions. That is, when administrative organs exercise discretion, they should measure the impact of disclosure on individual interests and public interests according to the actual situation.

4.2. Improving the management system of government information disclosure

1) Establishing a hierarchical management model for personal information

Guided by the principle of separate protection of personal private information and ordinary personal information in the Civil Code, personal information can be classified into risk-free level, low-risk level, general risk level and high-risk level according to the degree of association with the subject, identification possibility and closeness. Information with different risk levels should be carefully managed and protected to different degrees. For example, high-risk personal private information should be strictly managed, and risk-free and low-risk information should be basically managed.

2) Establishing a special review body for information disclosure

Japan has established an Information Disclosure Review Committee as an advisory body for administrative reconsideration cases involving privacy. China can learn from Japan's original initiative and set up an information review body with independent status in administrative organs to be responsible for the review of government information disclosure. First, the organization needs to be staffed by people with professional knowledge and relevant experience and regularly organize training to enhance professional capabilities to cope with the changing definition of personal information as the times evolve. For information exempted from disclosure, at least two independent reviews should be arranged to ensure the scientific nature of the decision and protect the privacy of citizens. Second, an expert group is set up within the information review body to deal with difficult and complex issues, and information with ambiguous review results is publicly decided by all members. Finally, the whole process of information review is recorded to form a complete review record in case of subsequent disputes.

3) Refining information review procedures.

The censorship of government information disclosure should be reviewed step by step to reduce the risk of private information being compromised. First, the administrative organ conducts a formal review of whether the disclosed information is a state secret based on the conclusions made by the relevant confidentiality departments and determines that the government information is a state secret and that the government information that may endanger national security, public security, economic security, and social stability after disclosure shall not be disclosed. Second, determine whether the information involves personal private information. For personal private information that can be deidentified, after processing, the "identifiable" information can be disclosed if it is unable to identify a specific personal state. If it cannot be deidentified, it may be disclosed with the consent of the parties concerned. Finally, for the personal private information that the parties do not agree to be disclosed,

the interest should be measured. If the public interest is less than personal privacy, it should not be disclosed. Otherwise, it should be made public.

4.3. Improve the supervision and responsibility mechanism of government information disclosure.

First, special organs should be set up to supervise and hold information disclosure accountable, and a sound information disclosure assessment mechanism should be established to conduct random checks on the information disclosure of government departments from time to time. The evaluation indexes of multiple levels, wide fields and various aspects should be set up to comprehensively assess the work of information disclosure.

Second, government departments should monitor themselves and each other. Self-supervision can review and screen personal information at the source, discover and solve problems in time, and prevent damage from expanding. The mutual supervision of various departments can enhance the vigilance of various departments on information disclosure and guarantee the legality and efficiency of information disclosure. Second, the government can make use of the supervision of the masses and the media to set up special consultation hotlines and complaint platforms to respond to and solve the problem feedback of the masses in a timely manner and improve administrative transparency.

Finally, for the behavior of leaking or wrongly disclosing personal private information in information disclosure, the specific responsibility for information disclosure should be implemented to the individual to avoid the phenomenon of unit responsibility. At the same time, corresponding administrative punishment measures should be provided for illegal and disciplinary behaviors, and supervisory organs at the same level should be empowered to investigate their corresponding responsibilities. Serious criminal behaviors should also be investigated for corresponding criminal responsibility.

4.4. Improving the litigation suspension system

1) Establish flexible subject of proof and burden of proof

At present, the main body of the burden of proof in our country's administrative cases is only the administrative counterpart and the administrative organ, the distribution of the burden of proof is monotonous and centralized, and it is not flexible enough in the face of different cases. China can learn from Germany's cross-liability distribution system, that is, in administrative litigation or administrative compensation cases, the subject of the burden of proof is not limited to the original defendant; the judge has part of the burden of proof distribution. When it is difficult for the infringed to obtain evidence or the administrative organ deliberately evades the adverse evidence, the judge may obtain evidence according to his or her powers. For cases of spiritual damage compensation that are difficult for the infringed to prove, the judge can assign the burden of proof to the administrative organ to supervise and urge the administrative organ to treat the information disclosure prudently.

2) Improving the system of suspension of litigation

In the administrative procedure law of our country, the principle of litigation not stopping execution is the exception of litigation stopping execution. Although the "Administrative Procedure Law" and the "Regulations" both provide for the suspension of litigation, it is difficult to identify the conditions of "causing irreparable losses" and "not harming public interests" in judicial practice. The United States established the advance injunction system while adopting the principle of nonsuspension of execution. China may stipulate in the legislation that when a party brings an administrative lawsuit against a decision made by an administrative organ involving the disclosure of personal private information, it may file an application to stop the disclosure of information, and the administrative organ shall conduct a preliminary review of the application within 3 days and make a ruling to stop the disclosure of relevant information after the review is passed.

3) Improve legislation on damage compensation

China should include the cases of mental damage suffered by citizens as a result of government actions in the State Compensation Law, specify specific standards for applying for compensation in

the legislation and formulate specific amounts of compensation according to the severity of personal privacy violations so that there are standards for measuring mental damage. At the same time, China can learn from the experience of Britain and the United States and implement the minimum compensation system, which first gives a certain amount of compensation to the infringed party. After the infringed party lists the damage in detail, the judge decides that if the damage listed by the infringed party is true and higher than the previous compensation amount, the administrative organ should pay compensation again. This kind of double compensation method can protect the legitimate rights and interests of the infringed to the greatest extent and make the examination and supervision of the government's disclosure of information strict.

5. Conclusion and future works

After sorting out and analyzing China's current relevant laws and regulations, basing on China's national conditions and existing legislation, and drawing lessons from foreign legislation and judicial experience, the author finally proposes improvement suggestions from four aspects: clarifying administrative discretion standards for the disclosure of personal private information, establishing a hierarchical management mode for personal information and information disclosure review institutions, and improving judicial relief paths for the infringement of personal private information. To make a modest contribution to the research on the improper disclosure of personal private information existing in the disclosure of government information in similar emergencies in the future.

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