

**The Supreme People's Court Provisions on Certain Questions
Concerning the Trial of Open Government Information Administrative
Cases**
Doc. *Fashi* [2011] No. 17

(Adopted at the 1505th Meeting of the Adjudication Committee of the Supreme People's Court on December 13, 2010; effective August 13, 2011)

In order to correctly try administrative cases about open government information, these Provisions are formulated in accordance with the provisions of the Administrative Litigation Law of the People's Republic of China, the Open Government Information Regulations of the People's Republic of China, and the provisions of other laws and administrative regulations, and in light of actual practices in administrative trials.

Article 1. When citizens, legal persons or other organizations believe that the following concrete administrative actions in the course of open government information work have infringed their lawful rights and interests, and bring administrative lawsuits in accordance with the law, the people's courts should accept the cases:

Where they have requested to obtain government information from administrative organs and the administrative organs have refused to provide the requested information or failed to respond to the requests within the time limits;

Where they believe government information provided by administrative organs does not conform to the requested content or is not in an appropriate format as stipulated by laws and regulations;

Where they believe government information disclosed proactively or upon request by other persons infringes their commercial secrets or personal privacy;

Where they believe that government information records concerning themselves provided by administrative organs are not accurate and have requested corrections by such administrative organs, but such administrative organs have refused to make the corrections, failed to respond to the request for corrections or failed to transfer the request to the organs that have the authority to handle the matter; and

Where they believe other concrete administrative actions of administrative organs in the course of their open government information work have infringed their lawful rights and interests.

When citizens, legal persons or other organizations believe that the open government information administrative actions have infringed their lawful rights or interests and have caused injury, they may bring a joint or independent administrative compensation lawsuit.

Article 2. When citizens, legal persons or other organizations do not agree with the following actions and bring administrative lawsuits, the people's courts shall not accept the cases:

Where the action is a notice by an administrative organ requiring a requester to amend or supplement a request the contents of which are not clear and it does not produce a practical impact on the rights and obligations of the requester;

Where an administrative organ refuses a request for it to provide open publications such as government gazettes, newspapers, magazines, and books;

When an administrative organ refuses a request to formulate or collect government information for the requestor, or to summarize, analyze or process certain government information;

Where an administrative organ notifies parties and interested persons in an administrative proceeding who request to consult case file materials, in the name of open government information, that they should handle the matter in accordance with the provisions of relevant laws and regulations.

Article 3. When citizens, legal persons or other organizations believe that an administrative organ has not fulfilled its obligation to proactively disclose government information in accordance with the law and bring a lawsuit directly in the people's courts, the courts should inform them to first request the administrative organ to obtain the relevant government information. If they are not satisfied with the response of the administrative organ or the administrative organ does not respond within the time period, they may bring a lawsuit in the people's courts.

Article 4. When citizens, legal persons or other organizations bring lawsuits because they are not satisfied with administrative actions related to disclosing government information upon request by State Council departments, all levels of local people's governments and local people's government departments at the county level and above, the organ that made the response shall be the defendant; in cases where no response has been made within the time period, the organ that received the request shall be the defendant.

When citizens, legal persons or other organizations bring lawsuits because they are not satisfied with administrative actions related to proactively disclosing government information, the organ disclosing such government information shall be the defendant.

When citizens, legal persons or other organizations bring lawsuits because they do not agree with an action related to disclosing government information by organizations that are authorized by law or regulations to exercise the functions of administering public affairs, such organization shall be the defendant.

Under any of the following circumstances, the organ that signed the document having external legal effect¹ shall be the defendant:

¹ 对外发生法律效力文书

Where a response on whether or not government information should be disclosed has been submitted in accordance with the law to an authorized organ for approval;²

Where whether government information should be disclosed is determined by the state administrative departments in charge of the work of safeguarding secrecy or by the administrative departments in charge of the work of safeguarding secrecy at the level of the province, autonomous region or municipality directly under the central government;³ and

Where prior to disclosing the government information, an administrative organ has communicated and confirmed with relevant administrative organs.⁴

Article 5. When it has refused to provide the plaintiff with government information, the defendant should present evidence⁵ to show the basis of the refusal, and how it has fulfilled the legal obligation of informing and explaining the reasons for the refusal to the requestor.

When the decision to disclose government information involving commercial secrets or personal privacy is based on the public interest, the defendant should present evidence and an explanation of how the public interest was determined⁶ and the reasons for claiming that non-disclosure might give rise to a major impact on the public interest.

When it has refused to correct government information records concerning the plaintiff, the defendant should present evidence and an explanation of the reasons for its refusal.

When the defendant can prove that government information involves state secrets, and requests⁷ to not submit the information during the lawsuit, the people's court should approve the request.

When the defendant takes the position that the government information requested does not exist, if the plaintiff can provide relevant clues⁸ that the defendant formulated or stores such government information, the plaintiff may request the people's court to obtain the evidence.⁹

When the defendant did not provide government information on the basis that it is not related to the special needs of such matters as the requester's own production, livelihood or scientific research,¹⁰ the people's court may request the plaintiff to explain the particulars of its special needs.

² See, OGI Regulations, Article 7.

³ See, OGI Regulations, Article 14.

⁴ To confirm that the information is accurate and consistent. See, OGI Regulations, Article 7.

⁵ 举证

⁶ 认定

⁷ 请求

⁸ 线索

⁹ 调取证据; see, ALL, Article 34.

¹⁰ See, OGI Regulations, Article 13.

When the plaintiff is suing the defendant for not correcting government information records, it should provide the request for correction it submitted to the defendant and the factual basis [for the claim that] the government information is related to it and the record is inaccurate.

Article 6. When the people's courts are trying open government information administrative cases, they should adopt appropriate trial methods in light of the circumstances in order to avoid leaking government information involving state secrets, commercial secrets, personal privacy or other government information required by law to be kept confidential.

Article 7. The provisions of the Open Government Information Regulations apply to government information that is under the management of the defendant's archive office or its archive work personnel.

The laws, administrative regulations and relevant national provisions concerning archival management shall apply to government information that has already been transferred to the national archives at different levels.

Article 8. When government information involves state secrets, commercial secrets or personal privacy, the people's court should determine¹¹ that it falls within the scope of information that shall not be disclosed.

When government information involves commercial secrets or personal privacy, but the rightsholder consents to disclosure, or where non-disclosure might give rise to a major impact on the public interest, disclosure shall not be subject to the restrictive provisions of the preceding paragraph.

Article 9. When the defendant should disclose certain government information in accordance with the law but refused or refused in part to disclose it, the people's court should cancel or cancel in part the challenged decision not to disclose, and order the defendant to disclose the government information within a certain time limit. Where the defendant still needs to investigate or deliberate, the court shall order the defendant to respond again within a certain time limit.

Where the government information provided by the defendant does not conform to the content requested by the requester or is not in an appropriate format as stipulated by law or regulation, the people's court should order the defendant to provide the government information in accordance with the requester's requested content or in an appropriate format as stipulated by law or regulation.

After trial, where the people's court believes that the contents of the government information the defendant has refused to disclose may be handled through segregation,¹²

¹¹ 认定

¹² 作区分处理

it should order the defendant to disclose the part of the content that can be disclosed by a set time.

Where the defendant should, in accordance with the law, correct a government information record concerning the plaintiff that is not accurate but has not corrected it, the people's court should order the defendant to correct the record within a certain time limit. Where the defendant still needs to investigate or use its discretion,¹³ the court shall order the defendant to respond again within a certain time limit. If the defendant does not have the authority to correct the record, the court shall order it to transfer the record to the administrative organ with the authority to handle the matter.

Article 10. Where the defendant failed to respond to the plaintiff's request to disclose or correct government information within the time limit without any justification, the people's court should order the defendant to respond within a certain time limit. If the plaintiff jointly seeks an order for the defendant to disclose or correct the government information concerned and establishes the justification¹⁴ for making that request, the matter shall be handled with reference to the provisions of Article 9.

Article 11. Where the government information disclosed by the defendant involves the commercial secrets or personal privacy of the plaintiff, and no legal justification such as the public interest exists, the people's court should rule to confirm that the defendant's action of disclosure is unlawful, and may order the defendant to adopt corresponding remedies; if injury has been caused, the court shall, based on the plaintiff's request¹⁵ and in accordance with the law, order the defendant to bear liability for compensation. If the government information concerned has not yet been disclosed, the court should rule that the administrative organ may not disclose it.

During the period of litigation, where the plaintiff requests suspension¹⁶ of disclosure of government information relating to its commercial secrets or personal privacy, and the people's court after examination believes that disclosure of such government information could cause irremediable¹⁷ injury and that suspending disclosure would not injure the public interest, it may rule¹⁸ to temporarily suspend disclosure in accordance with the provisions of Article 44 of the Administrative Litigation Law of the People's Republic of China.

Article 12. Under any of the following circumstances where the defendant has already fulfilled its statutory obligation of informing or explaining the reasons, the people's court should reject the plaintiff's litigation claim:

¹³ 裁量的

¹⁴ 理由

¹⁵ 请求

¹⁶ 停止

¹⁷ 难以弥补

¹⁸ 裁定

Where the item requested does not fall within government information, where the government information does not exist or falls into the category of government information that in accordance with the law shall not be disclosed, or where in accordance with the law, the defendant is not responsible for the disclosure of the government information requested;

Where the government information requested to be disclosed has already been disclosed to the public and the defendant already notified the requester of the methods and channels for obtaining such government information;

Where the reason for suing the defendant for having failed to respond within the time limit has not been established;

Where the reason for objecting to the disclosure of the government information on the basis that the government information infringes the plaintiff's commercial secrets or personal privacy has not been established;

Where the reason for requesting the defendant to correct a government information record concerning the plaintiff has not been established;

Where the plaintiff cannot reasonably explain that the request to obtain the government information refused by the defendant is based on the plaintiff's own production, livelihood, scientific research or other special needs and the defendant did not provide it on that basis;

Where it is impossible to provide the government information in accordance with the format requested by the requester and the defendant has already provided the requested government information by means of arranging for the requester to consult relevant materials, providing copies or in another appropriate way;

Other circumstances under which the litigation claim¹⁹ should be rejected.

Article 13. Wherever there are discrepancies between these Provisions and previous judicial interpretations and normative documents issued by the Supreme People's Court, these Provisions shall be executed.

¹⁹ 请求

最高人民法院

关于审理政府信息公开行政案件若干问题的规定

(2010年12月13日最高人民法院审判委员会第1505次会议通过)
法释〔2011〕17号

《最高人民法院关于审理政府信息公开行政案件若干问题的规定》已于2010年12月13日由最高人民法院审判委员会第1505次会议通过，现予公布，自2011年8月13日起施行。二〇一一年七月二十九日

为正确审理政府信息公开行政案件，根据《中华人民共和国行政诉讼法》、《中华人民共和国政府信息公开条例》等法律、行政法规的规定，结合行政审判实际，制定本规定。

第一条 公民、法人或者其他组织认为下列政府信息公开工作中的具体行政行为侵犯其合法权益，依法提起行政诉讼的，人民法院应当受理：

- (一) 向行政机关申请获取政府信息，行政机关拒绝提供或者逾期不予答复的；
- (二) 认为行政机关提供的政府信息不符合其在申请中要求的内容或者法律、法规规定的适当形式的；
- (三) 认为行政机关主动公开或者依他人申请公开政府信息侵犯其商业秘密、个人隐私的；
- (四) 认为行政机关提供的与其自身相关的政府信息记录不准确，要求该行政机关予以更正，该行政机关拒绝更正、逾期不予答复或者不予转送有权机关处理的；
- (五) 认为行政机关在政府信息公开工作中的其他具体行政行为侵犯其合法权益的。

公民、法人或者其他组织认为政府信息公开行政行为侵犯其合法权益造成损害的，可以一并或单独提起行政赔偿诉讼。

第二条 公民、法人或者其他组织对下列行为不服提起行政诉讼的，人民法院不予受理：

(一) 因申请内容不明确，行政机关要求申请人作出更改、补充且对申请人权利义务不产生实际影响的告知行为；

(二) 要求行政机关提供政府公报、报纸、杂志、书籍等公开出版物，行政机关予以拒绝的；

(三) 要求行政机关为其制作、搜集政府信息，或者对若干政府信息进行汇总、分析、加工，行政机关予以拒绝的；

(四) 行政程序中的当事人、利害关系人以政府信息公开名义申请查阅案卷材料，行政机关告知其应当按照相关法律、法规的规定办理的。

第三条 公民、法人或者其他组织认为行政机关不依法履行主动公开政府信息义务，直接向人民法院提起诉讼的，应当告知其先向行政机关申请获取相关政府信息。对行政机关的答复或者逾期不予答复不服的，可以向人民法院提起诉讼。

第四条 公民、法人或者其他组织对国务院部门、地方各级人民政府及县级以上地方人民政府部门依申请公开政府信息行政行为不服提起诉讼的，以作出答复的机关为被告；逾期未作出答复的，以受理申请的机关为被告。

公民、法人或者其他组织对主动公开政府信息行政行为不服提起诉讼的，以公开该政府信息的机关为被告。

公民、法人或者其他组织对法律、法规授权的具有管理公共事务职能的组织公开政府信息的行为不服提起诉讼的，以该组织为被告。

有下列情形之一的，应当以在对外发生法律效力的文书上署名的机关为被告：

(一) 政府信息公开与否的答复依法报经有权机关批准的；

(二) 政府信息是否可以公开系由国家保密行政管理部门或者省、自治区、直辖市保密行政管理部门确定的；

(三) 行政机关在公开政府信息前与有关行政机关进行沟通、确认的。

第五条 被告拒绝向原告提供政府信息的，应当对拒绝的根据以及履行法定告知和说明理由义务的情况举证。

因公共利益决定公开涉及商业秘密、个人隐私政府信息的，被告应当对认定公共利益以及不公开可能对公共利益造成重大影响的理由进行举证和说明。

被告拒绝更正与原告相关的政府信息记录的，应当对拒绝的理由进行举证和说明。

被告能够证明政府信息涉及国家秘密，请求在诉讼中不予提交的，人民法院应当准许。

被告主张政府信息不存在，原告能够提供该政府信息系由被告制作或者保存的相关线索的，可以申请人民法院调取证据。

被告以政府信息与申请人自身生产、生活、科研等特殊需要无关为由不予提供的，人民法院可以要求原告对特殊需要事由作出说明。

原告起诉被告拒绝更正政府信息记录的，应当提供其向被告提出过更正申请以及政府信息与其自身相关且记录不准确的事实根据。

第六条 人民法院审理政府信息公开行政案件，应当视情采取适当的审理方式，以避免泄露涉及国家秘密、商业秘密、个人隐私或者法律规定的其他应当保密的政府信息。

第七条 政府信息由被告的档案机构或者档案工作人员保管的，适用《中华人民共和国政府信息公开条例》的规定。

政府信息已经移交各级国家档案馆的，依照有关档案管理的法律、行政法规和国家有关规定执行。

第八条 政府信息涉及国家秘密、商业秘密、个人隐私的，人民法院应当认定属于不予公开范围。

政府信息涉及商业秘密、个人隐私，但权利人同意公开，或者不公开可能对公共利益造成重大影响的，不受前款规定的限制。

第九条 被告对依法应当公开的政府信息拒绝或者部分拒绝公开的，人民法院应当撤销或者部分撤销被告不予公开决定，并判决被告在一定期限内公开。尚需被告调查、裁量的，判决其在一定期限内重新答复。

被告提供的政府信息不符合申请人要求的内容或者法律、法规规定的适当形式的，人民法院应当判决被告按照申请人要求的内容或者法律、法规规定的适当形式提供。

人民法院经审理认为被告不予公开的政府信息内容可以作区分处理的，应当判决被告限期公开可以公开的内容。

被告依法应当更正而不更正与原告相关的政府信息记录的，人民法院应当判决被告在一定期限内更正。尚需被告调查、裁量的，判决其在一定期限内重新答复。被告无权更正的，判决其转送有权更正的行政机关处理。

第十条 被告对原告要求公开或者更正政府信息的申请无正当理由逾期不予答复的，人民法院应当判决被告在一定期限内答复。原告一并请求判决被告公开或者更正政府信息且理由成立的，参照第九条的规定处理。

第十一条 被告公开政府信息涉及原告商业秘密、个人隐私且不存在公共利益等法定事由的，人民法院应当判决确认公开政府信息的行为违法，并可以责令被告

采取相应的补救措施；造成损害的，根据原告请求依法判决被告承担赔偿责任。政府信息尚未公开的，应当判决行政机关不得公开。

诉讼期间，原告申请停止公开涉及其商业秘密、个人隐私的政府信息，人民法院经审查认为公开该政府信息会造成难以弥补的损失，并且停止公开不损害公共利益的，可以依照《中华人民共和国行政诉讼法》第四十四条的规定，裁定暂时停止公开。

第十二条 有下列情形之一的，被告已经履行法定告知或者说明理由义务的，人民法院应当判决驳回原告的诉讼请求：

（一）不属于政府信息、政府信息不存在、依法属于不予公开范围或者依法不属于被告公开的；

（二）申请公开的政府信息已经向公众公开，被告已经告知申请人获取该政府信息的方式和途径的；

（三）起诉被告逾期不予答复，理由不成立的；

（四）以政府信息侵犯其商业秘密、个人隐私为由反对公开，理由不成立的；

（五）要求被告更正与其自身相关的政府信息记录，理由不成立的；

（六）不能合理说明申请获取政府信息系根据自身生产、生活、科研等特殊需要，且被告据此不予提供的；

（七）无法按照申请人要求的形式提供政府信息，且被告已通过安排申请人查阅相关资料、提供复制件或者其他适当形式提供的；

（八）其他应当判决驳回诉讼请求的情形。

第十三条 最高人民法院以前所作的司法解释及规范性文件，凡与本规定不一致的，按本规定执行。