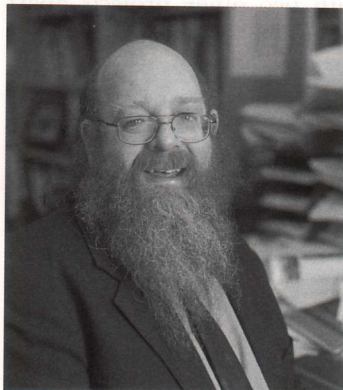


# Freedom of Information Returns to China

*Chinese local governments perceive open government as a precondition for the effective use of government information resources.* Rick Snell and Weibing Xiao



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A strange but intriguing phenomenon is occurring in China. A country, long regarded by outsiders as the epitome of a closed, authoritarian and secretive state, has become the scene of a very rapid and extensive uptake of Freedom of Information (FOI) legislation. Since Shanghai (a special municipality) adopted FOI legislation in 2004 a further nine provinces and another special municipality (Chongqing) on the mainland of China have adopted similar legislation (Qiao, 2006). In 2005 there were around 12 000 FOI requests by Chinese citizens for information from the government of Shanghai. Reform is still progressing with Jiangsu province implementing FOI legislation on 1 September 2006. In December 2006 it was announced that the national State Council is drafting an *Ordinance for Access to Government Information* (Zhang 2006).

This article provides a brief overview of international trends in Freedom of Information and developments within China. These international trends and Chinese reforms further highlight the incapacity of Australian political and bureaucratic leadership to recognise the necessity in an information age to adopt a more sophisticated and cooperative approach to government information access, disclosure and exchange.

## THE INTERNATIONAL CONTEXT

The Swedes, on December 4th 2006, celebrated the 240th anniversary of the world's first Freedom of Information legislation. A major contributor to that legislation was the Finnish enlightenment thinker and politician Anders Chydenius (1729-1803). Interestingly Chydenius was inspired by bureaucratic reforms in China dating back to the Tang Dynasty (Lamble 2002). Until the early 1960s freedom of information remained a largely Scandinavian reform (except for Columbia which introduced the *Code of Political and Municipal Organisation* in 1888).

Freedom of Information, in the two decades after the passage of the FOI Act in the United States in 1966, remained a slow-burning law reform issue in global terms. The 1970s saw the adoption of the legislation in a handful of European countries. In 1983 there was a minor flourish with the adoption of the legislation by Westminster governments—Australia, Canada and New Zealand. Many experts considered that FOI had reached a law reform limit because it was only being adopted by long established democracies which had well trained public services and, in relative terms, efficient record management systems (Bennett 1997).

The rate, reach and driving forces behind FOI adoption changed significantly after 1990. Between 1993 and 2006 the number of governments adopting some form of FOI legislation jumped from thirteen countries in 1993 to seventy-plus countries in 2006 (Privacy International 2006). There are up to fifty other countries examining, debating or drafting FOI legislation (including Botswana, Bermuda and Kyrgyzstan). In early December 2006 a coalition of over fifty civil society groups in Sierra Leone launched the collection of one million



signatures and thumbprints of citizens, in support of a Freedom of Information Bill being made into an Act of Parliament (Kamara 2006). Furthermore, the spread of the law reform has extended to both sub-national and multilateral levels. There are few, if any, examples of a more rapid spread of global law reform.

A rich and varied mixture of factors have made different contributions to this global law reform movement including: globalisation requiring an increased access to information (Blanton 2002), international human rights trends (Privacy International 2006), anti-corruption efforts (Transparency International 2006) and efforts to improve governance and policy development (Stiglitz 2002). Alasdair Roberts in his new book *Blacked Out* argues that there is a global 'right to information' movement (Roberts 2006). Many of the countries have been motivated by the IMF and World Bank using FOI legislation as a means of demonstrating the achievement of transparency, governance or accountability criteria for further funding. In some countries like India, Philippines, Sierra Leone and Mexico the major drivers have been local civic society pressures and agitation that have seized upon FOI legislation as an anti-corruption, social justice and economic development tool.

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## THE SPREAD OF FOI IN CHINA AT THE LOCAL GOVERNMENT LEVEL

Against this international background, the rate and extent of FOI reform in China does not appear exceptional and unusual, except that to date it has largely occurred at a sub-national level and generally been initiated from within the provincial bureaucracy. The trends elsewhere have been driven more by external demands or top-down directives. The Special Administrative Region of Hong Kong has continued the voluntary *Code on Access to Government Information* that was introduced in 1995 under the British Government and Taiwan enacted its FOI legislation in 2005.

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The linkage between Freedom of Information and development of the local economy has been a key driving force behind FOI in China. The theoretical linkage as outlined by information economists like Stiglitz (2002) and the policy imperative that has flowed from the requirements of the World Trade Organization (Guangzhou 2006). Chinese local governments perceive Freedom of Information as a precondition for the effective use of government information resources. A linkage that is almost absent in the official discourse about FOI in Australia. In Shanghai some of the driving forces have also included the goal of enhancing the quality of the public service, strengthening government's social management functions and improving the capacity for government to act legally (Qiao 2006). The adoption of FOI and the construction of E-government are seen as mutually supportive activities rather than divorced and insular projects.

Whilst the Shanghai law has generally been used as a model for other provinces, there have been differences in terms of annual reporting requirements (only required in Shanghai and Hainan), review systems and administrative mechanisms between the provinces.

The legislative objectives vary but four kinds of objectives can be found in Chinese FOI legislation including increasing transparency, protecting the right to know, monitoring administrative power and making government information routinely available. All of the FOI laws grant a legal right of access to citizens but not to foreigners. The coverage of the legislation is usually extended to government agencies and bodies that perform administrative functions according to law.

Chinese FOI laws strongly emphasise the proactive disclosure of administrative and planning regulations, major matters of public interest, the use and supervision of public funds and personnel matters. This type of disclosure is enforceable, or can be complained about, by citizens. Many of the FOI laws have a provision to allow pre-decisional access by citizens—access to draft plans or policies that involve major decisions which affect the interests of citizens.

About half of the FOI laws require reasons for refusal and some allow for a review where access has been denied. In sharp contrast to Australian practice, most of the FOI laws require a response time of three to fifteen working days (often with a capacity for an extension in some specific circumstances).

Chinese FOI laws at the local government level have restricted exemptions to a total of six including:



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state secrets, commercial secrets, privacy, internal deliberation, law enforcement and exemptions in other legislation. Harm or public interest tests apply to the exemption claims based upon commercial secrets, privacy, internal deliberations and law enforcement. Only in Shanghai are processing fees charged, in all the other legislation only the actual cost for printing and delivery is charged. Several of the laws waive charges for the poor. Only about half of the FOI laws provide for a formal review system.

Most of the laws provide for the establishment of an Access to Government Information Joint Conference which is jointly chaired by the General Office, Information Agency and the Legislative Affairs Office.

The Joint Conference is responsible for research, coordinating and promoting FOI.

## SHANGHAI—SETTING THE PACE

In the first two years of operation, examining the 2004 and 2005 Annual Reports, the Shanghai government has received about 20 000 requests for information under the FOI law with a 30 percent refusal rate. The applications primarily relate to citizens' daily life, including average wages and benefits, traffic management, industrial inspection, social security, management of the cultural market, labour and employment, land acquisition, housing relocation and compensation standards, city planning and development,

**Table 1:** FOI legislation in China 2004–2006

Provinces or Special Municipalities	Name of Legislation	Passed	Implemented
Shanghai	Provisions or Measures on Access to Government Information	19 January 2004	01 May 2004
Chongqing	Interim Measures on Access to Government Information	21 May 2004	01 July 2004
Hubei	Provisions or Measures on Access to Government Information	18 May 2004	01 July 2004
Jilin	Provisions or Measures on Access to Government Information	22 July 2004	05 September 2004
Guangdong	Provisions or Measures on Access to Government Information	29 July 2005	01 October 2005
Hebei	Provisions or Measures on Access to Government Information	18 March 2005	01 July 2005
Hainan	Provisions or Measures on Access to Government Information	15 August 2005	01 October 2005
Shaanxi	Provisions or Measures on Access to Government Information	10 December 2005	10 January 2006
Liaoning	Provisions or Measures on Access to Government Information	06 December 2005	01 February 2006
Heilongjiang	Provisions or Measures on Access to Government Information	30 December 2005	01 April 2006
Jiangsu	Interim Measures on Access to Government Information	7 August 2006	01 September 2006
Hong Kong	Code on Access to Government Information	1 March 1995	Applied to the whole of the Government since 23 December 1996
Taiwan	Act on Access to Government Information	28 December 2005	28 December 2005



education information, medical allowances, low-cost housing policy and social assistance.

Whilst 100 percent of requests were dealt with on time in 2004 this had dropped to 94 percent in 2005—in part associated with a 50 percent increase in requests in 2005 and a 10 percent drop in officials allocated to FOI tasks. A total of just over 3 000 officials had received FOI training by the end of 2005.

### *Australia has surrendered a twenty year policy lead by letting FOI rust away as an unwanted gift from another era.*

Although there are several achievements to be found in the practice of FOI in Shanghai some problems have occurred. In the last two years, administrative non-compliance has been detected, public awareness is still low and the quality of requests is often poor, causing difficulties in the timely processing of requests. Qingpu, Changning and Jinshan Districts have commented that several agencies have placed too much emphasis on local interests and social impacts and failed to exercise the principle of maximum disclosure. Huangpu District concluded that there were some agencies which did not recognise the importance of freedom of information, such as failing to update information promptly and delaying online responses. Xuhui District found that several agencies had not proactively disclosed government information which should be done, according to the provisions of the legislation. Some agencies did not provide government information on time with an excuse of 'busy' and have needed many reminders. The Municipal Bureau of Justice, Agriculture Committee and Foreign Affairs Office have experienced the same problem of some officials disregarding the importance of Freedom of Information.

### FINAL OBSERVATIONS

An English academic colleague, after recently visiting Shanghai, marvelled at the combination of FOI and China and remarked 'It's FOI but not as we know it.' She may have been right but Chinese bureaucrats, maybe remembering the lessons of the Tang Dynasty, are prepared to use FOI as a tool in developing a modern information polity. Bellamy and Taylor (1997) observed in relation to information resources that the systems legacies 'which contemporary government organisations have inherited can be a major obstacle to the delivery programmes aimed at reinventing and re-engineering government'. In contrast to China which is prepared to actively

experiment and deploy FOI to re-engineer government practice, Australia has surrendered a twenty year policy lead by letting FOI rust away as an unwanted gift from another era.

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