

Shanghai Municipal Provisions on Open Government Information

(Adopted by the Shanghai Municipal People's Government on April 7, 2008;
Effective May 1, 2008)

Chapter I. General Principles

Article 1 (Basis)

These Provisions are formulated in accordance with the Regulations of the People's Republic of China on Open Government Information (hereafter referred to as the "Open Government Information Regulations") and other relevant laws and regulations and in light of the actual situation of this Municipality.

Article 2 (Definition)

The term "government information" as mentioned in these Provisions refers to the information produced or obtained and recorded or kept in certain forms by administrative organs in the process of performing duties.

Article 3 (Principles)

Administrative organs should disclose government information, except for information the disclosure of which is, in accordance with the law, not allowed.

Administrative organs should follow the principles of impartiality, justice, convenience to the people and timeliness when disclosing government information.

Article 4 (System for Organizing and Promoting Disclosure Work)

The people's governments at all levels of this Municipality should strengthen efforts in organizing and leading the open government information work.

The Municipal Government General Office is the department in charge of the open government information work of this Municipality and is responsible for promoting, guiding, coordinating and supervising the open government information work of the whole Municipality. The Municipal Information Commission, Supervision Commission, Legal Affairs Office, News Office and State Secrets Bureau and other relevant administrative organs of this Municipality are in charge of carrying out various kinds of promotion work under the unified coordination of the Municipal Government General Office.

The general offices of the district or county-level governments should, together with the relevant departments, promote, guide, coordinate and supervise the open government information work of their respective administrative regions.

Article 5 (Work Office)

An administrative organ should establish and improve the open government information work system and designate an institution to be in charge of its routine work of government information disclosure (hereafter referred to as the “open government information work office”).

The specific duties of the open government information work office of an administrative organ shall be:

- (1) Undertaking the specific government information disclosure matters of such administrative organ, and maintaining and updating the government information disclosed by such administrative organ;
- (2) Accepting and handling requests submitted to such administrative organ for the disclosure of government information;
- (3) Conducting secrecy examination of the government information to be disclosed;
- (4) Organizing the compilation of such administrative organ’s guide on open government information, catalogue on open government information and annual report on the open government information work; and
- (5) Other duties related to open government information as specified by such administrative organ.

An administrative organ should publish the name, business address, business hours, telephone, fax and e-mail address of its open government information work to the general public to make it more convenient for citizens, legal persons and other organizations to make inquiries about issues concerning the disclosure of government information.

Article 6 (Safeguard of Public Interests)

No administrative organ may endanger national security, public security, economic security or social stability in the process of disclosing government information.

Where any administrative organ decides to not disclose certain government information, it should report in writing to the department in charge of open government information work of the municipal or district (county) government.

Article 7 (Secrecy Examination Mechanism)

An administrative organ should set up and improve the secrecy examination mechanism for government information disclosure.

Before disclosing government information, an administrative organ should conduct a secrecy

examination according to law. If it decides not to disclose certain government information upon examination, it should state the reasons therefor. When drafting a document, the administrative organ should examine to determine whether the document should be disclosed proactively, disclosed on request or not disclosed.

The relevant service office of the administrative organ should put forward its opinions on such examination, and such opinions should be submitted to the person in charge of the administrative organ for final decision after being examined and verified by the office for open government information work together with such offices as the secrecy work office and legal affairs office.

Article 8 (Release and Coordination Mechanism)

An administrative organ should set up and improve the government information release and coordination mechanism.

Under any of the following circumstances, an administrative organ should communicate with other related administrative organ(s) to confirm and ensure that the government information disclosed by them is consistent:

- (1) The administrative organ knows that the government information to be disclosed involves other administrative organ(s); or
- (2) The government information to be disclosed involves two or more administrative organs, and the information is inconsistent with that disclosed by other administrative organ(s).

If the relevant administrative organs cannot reach an agreement on the contents of the government information to be disclosed, but such information can be distinguished based on the duties and powers of these administrative organs, these organs shall enjoy the right of decision over their respective information.

If the disclosure of certain government information requires approval as required by relevant national or the municipal government provisions, no administrative organ may disclose it without approval.

Article 9 (Check and Verification of Disclosed Contents)

Before disclosing government information produced based on its authority, an administrative organ should check to ensure the accuracy of the contents of the government information to be disclosed.

Before disclosing government information obtained based on its authority from citizens, legal persons or other organizations, an administrative organ should check to ensure that the contents of the government information to be disclosed are consistent with the contents of the obtained government information.

Article 10 (Handling of Indefinite, False and Incomplete Information)

For government information that is still under investigation, discussion or processing and whose contents are indefinite, if its disclosure may adversely impact the national security, public security, economic security or social stability, its disclosure is prohibited, except for draft documents disclosed to seek opinions.

Where an administrative organ discovers any false or incomplete information that has affected or may affect social stability or has disrupted or may disrupt the social management order, it should report the situation to the government at the same level or the administrative organ at the next higher level and, after obtaining the consent thereof, release within its scope of functions and powers accurate government information to clarify the situation.

Chapter II. Scope of Information to Be Disclosed

Article 11 (Government Information to Be Proactively Disclosed)

An administrative organ should proactively disclose government information satisfying any of the following basic requirements:

- (1) Information that affects the vital interests of citizens, legal persons or other organizations;
- (2) Information that needs to be widely known by or concerns the participation of the general public;
- (3) Information reflecting the organizational structure, functions, work procedures and other matters relating to the administrative organ; and
- (4) Other information that should be proactively disclosed by the administrative organ as required by laws, regulations and relevant national provisions.

An administrative organ should determine its key government information to be disclosed proactively in accordance with the provisions of Articles 10, 11 and 12 of the Open Government Information Regulations.

Article 12 (Government Information Not to Be Disclosed)

The following government information shall not be disclosed:

- (1) State secrets;
- (2) Commercial secrets; and
- (3) Individual privacy.

The government information listed in items 2 and 3 of the preceding Paragraph may be disclosed with the consent of the rightsholder(s) or if the administrative organ believes that non-disclosure might give rise to a major impact on the public interest. If the rightsholders do not respond to the administrative organ about whether they agree to the disclosure, it shall be deemed that they disagree with the disclosure.

Article 13 (Disclosure on Request)

All citizens, legal persons or other organizations have the right to request an administrative organ to obtain government information in accordance with the Open Government Information Regulations and these Provisions.

Article 14 (Scope of Disclosure Responsibility and Jurisdiction)

The responsibility to disclose the government information produced by an administrative organ shall remain with the administrative organ.

The responsibility to disclose the government information obtained by an administrative organ from citizens, legal persons or other organizations based on its authority shall remain with the administrative organ.

Where an administrative organ that has the obligation to disclose government information is cancelled or changed, the administrative organ succeeding to the responsibilities of the former organ should be responsible for disclosing the government information that was to be disclosed by the former administrative organ.

Where there are other provisions in laws, regulations and rules on the scope of responsibility and jurisdiction in the disclosure of government information, such provisions should apply.

Article 15 (Guides and Catalogues on Open Government Information)

Administrative organs should prepare and publish their guide on open government information, catalogue of proactively disclosed government information and catalogue of government information disclosed on request pursuant to the provisions of Article 19 of the Open Government Information Regulations.

Such guides and catalogues should be updated in a timely manner.

Chapter III. Channels for Proactive Disclosure

Article 16 (Government Websites)

An administrative organ should publish the government information to be proactively disclosed by it on its government website, or the website of the government at the same level or at the next higher level if the administrative organ has not established its own government website yet.

Article 17 (National Archives and Public Libraries)

The municipal and district (county) governments should set up government information

reading places at the municipal or district (county) national archives and public libraries and equip them with corresponding facilities for the convenience of citizens, legal persons or other organizations to obtain government information.

An administrative organ should deliver its guide and catalogues on open government information as well as government information that is within the scope of proactive disclosure to the municipal or district (county) national archives and public libraries within 20 business days after they are compiled, formed or updated.

Article 18 (Government Gazettes)

The municipal and district (county) governments should set up a comprehensive government gazette system.

The rules and normative documents formulated by the Municipal Government should be published in full text in the Municipal Government Gazette within 20 business days after they are formulated.

The Municipal Government Gazette should be distributed to the public for free through designated book and newspaper booths, bookstores and post offices, and be available for the public to look up at the municipal or district (county) national archives and public libraries for free.

Article 19 (Press Releases and Spokespersons)

The municipal and district (county) governments should set up the press release system and appoint press spokespersons.

Important public events, public early warning information and other government information that needs to be known by the public in a timely manner should be disclosed through press conferences.

Article 20 (Other Channels for Disclosure)

When conditions permit, administrative organs should set up public reading rooms, materials retrieval sites, information bulletin boards, electronic information screens or other sites and facilities for the convenience of the general public to search, inquire about and copy the relevant government information.

Chapter IV. Procedures for Disclosure on Request

Article 21 (Requests)

Any citizen, legal person or other organization requesting an administrative organ to disclose government information pursuant to the provisions of Article 13 of the Open Government

Information Regulations should submit a request form that set forth the following contents:

- (1) The name or title and contact information of the requester;
- (2) Specific information about the required government information, including the name or number of the document or other characteristic description that can lead to the required government information; and
- (3) The method for obtaining such information and the carrier form of such information.

When a citizen, legal person or other organization requests an administrative organ to disclose government information, the administrative organ may ask the requester about the purpose for obtaining the government information.

Article 22 (Assistance and Facilitation)

Where it is indeed difficult for a requester to request disclosure of government information in writing, he/it may do so verbally. In this case, the staff of the administrative organ accepting the request should fill in the request form for the requester and have the request form affixed with the signature or seal of the requester for confirmation.

Where it is indeed difficult for a requester to describe the name, number or specific characteristics of the document containing the required government information, when he/it consults with the administrative organ, the administrative organ should provide the assistance he/it needs.

For government information to be disclosed by a district or county government and the departments under it, the township or town governments or the sub-district (street) offices, the district or county government may set up a window for accepting requests for the disclosure government information of that administrative region in a centralized way so as to make it more convenient for citizens, legal persons or other organizations to request disclosure of government information.

Article 23 (Responses)

The administrative organ accepting a request for the disclosure of government information submitted by a citizen, legal person or other organization should respond respectively light of the following different circumstances:

- (1) If the requested government information falls within the scope of disclosure, the requester should be informed of the methods and channels for obtaining that government information.
- (2) If the requested government information falls within the scope of information that should not be disclosed, the requester should be informed that such information cannot be disclosed, together with an explanation of the reasons.
- (3) If the requested content does not fall within the scope of government information under these Provisions, the requester should be so informed, together with an explanation of the relevant situation.

(4) If the requested government information falls within the responsibility and jurisdiction of the organ but the organ has not produced it or obtained it, the requester should be informed that such government information does not exist.

(5) If the requested government information does not fall within the responsibility and jurisdiction of the organ, the requester should be informed of that fact; if the organ that should disclose that government information can be determined, the requester should be informed of the name of that administrative organ and the method to contact it.

(6) If the requested government information contains some contents that should not be disclosed but that can be handled through differentiation, the requester should be informed that a portion of the government information can be disclosed and the methods and channels for obtaining it; and, for the portion that cannot be disclosed, given an explanation of the reasons therefor.

(7) If the requested government information involves any commercial secret or individual privacy but satisfies the provisions of Paragraph 2 of Article 12 of these Provisions and can be disclosed, the requester should be informed of the methods and channels for obtaining such government information and the rightsholder should be informed in writing of the contents determined to be disclosed and the reasons therefor.

(8) If the content of the requested government information is not clear and fails to conform to the provisions of Paragraph 1 of Article 21 of these Provisions, the requester should be notified to amend and supplement the request within a reasonable time limit; a requester that fails to do so within the prescribed time limit shall be deemed to have relinquished the request.

(9) If a requester makes repeated requests to the same administration organ for disclosure of the same government information without any legitimate reasons, and if the administrative organ has already provided a response, the requester may be informed that the organ will not handle the requests.

Article 24 (Methods for Obtaining Information and Carrier Forms)

For government information to be disclosed on request, the requester may choose to obtain it by such methods as mail, delivery, fax or in person, and choose the carrier form (paper, CD or magnetic disk) for such information.

The administrative organ should provide government information in the manner and carrier form required by the requester. If it cannot do so, it should make arrangements for the requester to consult the relevant material or provide such information in other appropriate manners or carrier forms.

Article 25 (Obtaining and Correcting One's Own Information)

Where a citizen, legal person or other organization requests an administrative organ to provide government information on such matters as tax payments, social security, medical care and registration that relates to himself/itself, the requester should produce a valid identity certificate or certifying documents.

If such government information is formulated by the administrative organ and the citizen,

legal person or other organization has evidence to prove that the government information record provided that relates to himself/itself is inaccurate, he/it has the right to request the administrative organ to correct the information. If the administrative organ does not have the authority to carry out the correction, it should forward the request to the competent administrative organ and so notify the requester.

Article 26 (Time Limits)

If it is feasible to give a response to a request for disclosure of government information on the spot, an administrative organ should provide a response on the spot; if not, it should give a response within 15 business days from the date when the request is received. If it needs to extend the time limit for response, upon the consent of the person in charge of the open government information work office, the time limit may be extended by a maximum of 15 business days, and the extension should be notified to the requester.

The administrative organ should provide the government information required by the requester on the spot after the requester finishes handling the relevant formalities. If it cannot provide the information on the spot, it should provide it within 10 business days after the requester finishes handling the relevant formalities.

Article 27 (Fees)

When providing government information to citizens, legal persons or other organizations upon request, administrative organs may charge only the retrieval, copying and mailing fees and other actually incurred costs.

The charging rates of the above-mentioned fees should be governed by the relevant provisions of the price administration department and the public finance department of the State Council. All fees collected should be turned in to the public finance department.

If the requester is under the urban or rural minimum living standard or has other economic difficulties, the aforesaid fees should be exempted.

No administrative organ may provide paid service with government information through other organizations or individuals.

Chapter V. Supervision and Remedies

Article 28 (Annual Reports)

The municipal government department in charge of open government information work should compile and publish an annual report on open government information work of the entire Municipality before the end of March each year.

Other administrative organs of this Municipality should compile and publish their respective

annual reports on open government information work before the end of February each year, and submit such reports to the department in charge of open government information work of the municipal or district (county) government.

The annual report on open government information work should include the following contents:

- (1) The situation concerning the proactive disclosure of government information by the administrative organs;
- (2) Statistics on the requests of citizens, legal persons or other organizations for open government information;
- (3) Statistics by category on the government information that government organs agree to disclose, disclose in part or do not disclose;
- (4) The situation concerning administrative reconsideration applications and administrative litigation cases that arose from open government information work, and the results thereof;
- (5) The situation concerning fees collected for open government information, and the exemption of such fees;
- (6) The main problems existing in the open government information work and improvements thereof; and
- (7) Other major important matters that need to be reported.

Article 29 (Inspection)

The municipal and district (county) governments should inspect the open government information work of the governmental departments at the same level and the government at the next lower level. The specific inspection work shall be organized and implemented by the departments in charge of open government information work of the municipal and district (county) governments together with the supervision organs, informatization departments and personnel departments at the same level.

The inspection work should be conducted on an annual basis.

The inspection results should constitute one of the bases for performance evaluation of administrative organs and shall be published.

Article 30 (Social Appraisal)

The departments in charge of open government information work of the municipal and district (county) governments should, together with the supervision organ and the informatization department at the same level, conduct social appraisals of the open government information work of each administrative organ.

The social appraisal results should be published.

Article 31 (Supervision and Inspection)

The department in charge of open government information work and the supervision organ of the municipal and district (county) governments shall be responsible for periodic supervision and inspection of the administrative organs' open government information work.

Citizens, legal persons and other organizations that believe that government organs have failed to fulfill their open government information obligations in accordance with the law may file a complaint with the next higher level government organ, the supervision organ or the department in charge of open government information work. The organs that receive complaints should investigate and handle them..

Article 32 (Responsibility Investigation)

If an administrative organ fails to establish and perfect as stipulated a secrecy examination mechanism for releasing government information, the supervision organ or the administrative organ at the next higher level shall order that administrative organ to correct the situation. If the circumstances are serious, administrative penalties shall be imposed in accordance with the law on the principal responsible person(s) of that administrative organ.

If an administrative organ has engaged in any one of the following behaviors, the supervision organ or the administrative organ at the next higher level shall order that administrative organ to correct the situation. If the circumstances are serious, administrative penalties shall be imposed in accordance with the law on person(s) directly in charge of the administrative organ, as well as other persons who are directly responsible. If the behavior constitutes a crime, criminal responsibility shall be investigated in accordance with the law:

- (1) Failure to fulfill, in accordance with the law, open government information obligations;
- (2) Failure to timely update the contents of government information that has been disclosed, the guide to open government information and the catalogue of open government information;
- (3) Failure to submit guides to and catalogues of open government information or government information falling within the scope of information to be proactively disclosed to the national archives and public libraries;
- (4) Collecting fees in violation of provisions;
- (5) Providing government information as a paid service through other organizations or individuals;
- (6) Disclosing government information that should not be disclosed; and
- (7) Concealing or fabricating matters in the course of open government information work.

Article 33 (Administrative Reconsideration and Administrative Litigation)

If citizens, legal persons or other organizations believe a concrete administrative action of an administrative organ in its open government information work has infringed their lawful rights and interests, they may, in accordance with the law, apply for administrative reconsideration or file an administrative lawsuit.

Chapter VI. Supplementary Provisions

Article 34 (Organizations Authorized by Law)

These Provisions shall apply to disclosure of government information by organizations that are authorized by laws or regulations to exercise the functions of managing public affairs.

Article 35 (Transferring Government Information to the National Archives)

The relevant provisions of laws and regulations on national archives shall apply to disclosure of archives that involve government information that are transferred by administrative organs to the national archives.

When administrative organs transfer archives involving government information to the national archives, the administrative organ should notify the national archives in written whether the government information should be disclosed proactively, disclosed on request or not disclosed.

Article 36 (Expenses Safeguard)

Administrative organs should enter the expenses for open government information work into their annual departmental budget to safeguard the normal operation of open government information activities.

Article 37 (Effective Date)

These Provisions shall go into effect on May 1, 2008. The Shanghai Municipal Provisions on Open Government Information issued by the Municipal Government of Shanghai on January 20, 2004 shall be abolished simultaneously.