

New Progress of Open Government Information in China (2012-2014)

— With a series of documents released by the General Office of the State Council as a clue

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May 1, 2014, is the sixth anniversary of the implementation of the Regulations of the People's Republic of China on Open Government Information (the "Regulations"). On April 1, 2014, the General Office of the State Council, as the department designated by the Regulations to be in charge of the open government information work, released on the central government's official website the Outlines of Open Government Information Work for 2014 (the "Outlines"), making special plans regarding the open government information work in 2014. It is for the third consecutive year that the General Office of the State Council made special arrangements with regard to the annual open government information ("OGI") work in the form of document release following the release of 2012 Major Work Arrangements for Open Government Information ("2012 Major Work Arrangements") in April 2012 and Current Major Work Arrangements for Open Government Information in July 2013 ("2013 Major Work Arrangements"), demonstrating the steady progress and constant innovation of the OGI work in China. Given that the Opinions of the General Office of the State Council on Further Strengthening Open Government Information and Responding to Social Concerns and Promoting Government Credibility have required that mechanisms for expert interpretation and communication and coordination be established with respect to important documents, this article will analyze and interpret the three documents, two Major Work Arrangements and one Outlines issued year by year, to make them release more positive energy, promote constant development of the practice and institution of open government information, and push forward the improvement of China's modern governance system and promotion of governance capacity.

I. The three documents, two Major Work Arrangements and one Outlines, innovate the working mode of the

competent department in guiding and supervising open government information and enrich and develop China's open government information system

Since the enactment of the Regulations in April 2007 by the State Council after more than five years arduous efforts, the General Office of the State Council, through the adoption and promulgation of a series of guidance documents, has performed its duty of "promoting, guiding, coordinating and supervising open government information work throughout the whole country as the national department in charge of open government information work". For example, at the beginning of the formulation of the Regulations, the General Office of the State Council issued Document No.54 [2007] in August 2007, i.e., Notice of the General Office of the State Council on Preparing Well for Implementing the Regulations of the People's Republic of China on Open Government Information, which provides administrative organs at all levels with guide on preparations for implementing the Regulations. Then on April 30, 2008, when the Regulations are about to become effective, the Opinions of the General Office of the State Council on Various Issues of Implementing the Open Government Information Regulations of the People's Republic of China were released, which made specific arrangements as to the implementation work of the Regulations. In January 2010, the Opinions of the General Office of the State Council on Improving the Work of Disclosing Government Information upon Request were promulgated, which provide special supervision and guidance regarding the work of disclosing government information upon request. In June 2011, the General Office of the State Council and the General Office of the CPC Central Committee jointly issued the Opinions on Further Promoting Open Government and Enhancing Government Services. In September 2011, the General Office of the State Council endorsed Document Guobanfa

[2011] No. 99, i.e., Notice of the National Leading Group for Open Government on Opinions of the Pilot Work of Enhancing Open Government and Government Services at the County Level via E-Government Platform. All these documents have played a positive role in the implementation of the Regulations.

However, it was not until 2012 to 2014 that the General Office of the State Council gradually formed the convention to issue annually “Major Work Arrangements” or “Outlines” on open government information to guide and supervise the OGI work nationwide. This newly-formed “convention” has the following merits. First, it is beneficial to the competent department supervising OGI work on a regular and standardized basis. The competent department and administrative organs at all levels can arrange, inspect and summarize OGI work annually in light of the central work of the Communist Party and the country, build on their achievements, identify and address existing problems in a timely manner, and keep the OGI work updated. Second, it may correspond to and interact with the annual OGI work reports submitted and published on the internet by the administrative organs at all levels in accordance with the Regulations and is beneficial to the solution to the problems existed with some annual OGI work reports, such as rigidity in form, abstractness and emptiness in content, or mutual plagiarism and self-plagiarism. It is beneficial to the improvement of the annual OGI work reports so as to improve the overall quality of OGI work and the construction of OGI system. Third, following the release of the Major Work Arrangements in 2012 and 2013, the 2014 Outlines further states that “By the end of 2014, all regions and departments should file with the General Office of the State Council reports on the implementation of the Outlines and the General Office of the State Council shall in due time supervise and inspect the implementation work and report the result.” Such requirements enrich and expand the connotation of the annual OGI work reports provided in Article 32 of the Regulations and enrich the contents of Article 29 of the Regulation, i.e., “People’s governments at all levels should establish and perfect inspection, social appraisal and accountability systems for open government information work to carry out periodic inspection and appraisal of open government information work.” It is beneficial to continuously expanding the channels of public participation and supervision. Fourth, among the three OGI documents, i.e., two Major Work Arrangements and one Outlines, released during the three consecutive years, with the exception that the 2012 Major Work Arrangements were formulated in April and promulgated in May, the other two documents, i.e., 2013 Major Work Arrangements and 2014 Outlines, were marked specifically that “This document is for publication”. In addition, some documents regarding strengthening administrative enforcement of law and market

supervision issued before or after the above documents, such as the Opinions of General Office of the State Council on Further Strengthening Open Government and Responding to Social Concern and Promoting Government Credibility, and the State Council’s Notice on Endorsing the Trial Opinions of the National Leading Group for Combating IPR Infringement and Counterfeiting on Disclosing in Accordance with Law Information Concerning Administrative Penalty Cases of Manufacturing and Selling Counterfeit and Substandard Goods and Infringement of Intellectual Property Rights, also follow the mode that “This document is available to the public”. This move gives the public access to the guidance documents on open government information work and some documents relating to strengthening administrative enforcement and market supervision, ends the phenomenon that “open government information documents are not open enough”, and becomes a new highlight of the OGI work and system construction. This is undoubtedly an innovation in constructing OGI system, demonstrating the government’s sincerity and genuineness in promoting OGI in a proactive and integrated manner and accelerating the construction of a law-based and good faith government, which is beneficial to winning the trust of the people.

II. The three documents, two Major Work Arrangements and one Outlines, expand the scope of voluntary disclosure year by year and achieve the stride leap from disclosure of information in key areas to overall disclosure

Looking back on the OGI work since the formulation of the Regulations in 2007, it is not difficult to find that the competent department’s guide on OGI work experienced three stages, namely, from the relatively cautious guidance on general work to guidance on major OGI work and then to the promotion of entire disclosure. First, seen from the three guidance documents released by the General Office of the State Council from 2007 to 2010, the guidance on OGI work is relatively cautious and general. For example, it is believed by courts that paragraph 2 of Article 2 of the Opinions of the General Office of the State Council on Improving the Work of Disclosing Government Information upon Request narrows the scope of information to be disclosed as provided in the Regulations, which is in conflict with the Regulations. Hence, paragraph 2 of Article 2 thereof cannot be used as a basis for determining whether government information should be made public, and the provisions of the Regulations should be applied instead.

However, in the 2012 Major Work Arrangements and 2013 Major Work Arrangements, the subject headings of the name of the two documents are the same, i.e., the current year’s “Major Work Arrangements for Open Government Information”. Additionally, the two documents consist of two parts respectively, i.e., “Vigorously push forward information disclosure in some key areas; make efforts to improve

transparency and effectiveness” in the 2012 Major Work Arrangements, and “Push forward information disclosure in key areas; push forward system construction, and improve work quality and effectiveness” in the 2013 Major Work Arrangements. Under the subtitle “Vigorously push forward information disclosure in key areas” in 2013 Major Work Arrangements, the following arrangements are made: push forward information disclosure related to administrative examination and approval; push forward information disclosure on financial budgets and final accounts and the three public consumptions (i.e., government spending on receptions, vehicles and overseas trips); push forward information disclosure on indemnificatory housing; push forward information disclosure concerning food and drug safety; push forward information disclosure related to environmental protection; push forward information disclosure on safety production; push forward information disclosure on price and collect fees; push forward information disclosure on land requisition and demolishing; push forward information disclosure on public enterprises and institutions with emphasis on education. In sum, information in nine key areas should be disclosed. Compared with the information disclosure in eight key areas as stated in 2012 Major Work Arrangements, 2013 Major Work Arrangements add the information disclosure on administrative examination and approval. In addition, 2013 Major Work Arrangements change “pushing forward information disclosure on food safety” into “pushing forward information disclosure on food and drug safety”, and “pushing forward information disclosure on tendering and bidding” into “pushing forward information disclosure on public enterprises and institutions with emphasis on education”. This indicates that China’s OGI work in 2012 and 2013 is mainly at the stage of disclosing information in key areas, emphasizing “information disclosure in key areas” and “vigorously pushing forward information disclosure in key areas” respectively. In addition, the focus of the annual OGI work arrangements by the General Office of the State Council in 2012 and 2013 is to implement the basic requirements of the Regulations. Reading seriously the 11 items of government information to be emphasized for disclosure by the people’s governments at the county level and above and their departments as provided in Article 10 of the Regulations, 4 items of government information by the people’s governments at the level of cities divided into districts and the county level people’s governments and their departments, and 8 items of government information by the people’s governments at the township (town) level, it is not difficult for us to find that on the basis of doing a good job in disclosing basic government information as required in Article 9 of the Regulations, doing well the open government information work in some key areas respectively by administrative organs at all levels

as provided in the Regulations is one of core norms in implementing the Regulations.

Yet in the 2014 Outlines, we may see that there is no use of such words as “information disclosure in key areas” in both the document name and style. Rather, the emphasis is put on: (1) strengthening the initiative in information disclosure and comprehensively implementing the Regulations; (2) pushing forward information disclosure on administrative power operation; (3) continuing to push forward disclosure of information on financial fund; (4) enhancing information disclosure on public resource allocation; (5) strengthening information disclosure related to public services; (6) pushing forward information disclosure on public regulation; (7) seriously do a good job of information disclosure work upon request; (8) enhance the construction of system and infrastructure. Hence, the Outlines highlight the contents and style of OGI work, i.e., comprehensively pushing forward open government information work. In Part I, the 2014 Outlines emphasize that “each region and each department shall exploit proactive disclosure of government information as the important means to push forward administration by law, constantly expand the disclosure scope, and detail the contents to be disclosed. Administrative organs should complete disclosure work in a lawful, comprehensive, accurate and timely manner with regard to the government information newly obtained and made as long as it involves the rights and interests of the general public and social concern and needs to be extensively known by the general public.” In Part II to Part VI, the 2014 Outlines re-integrate the government information to be disclosed proactively and divide it into five aspects, which is more generalized and more specific in terms of content and closely echoes “seriously doing a good job of disclosure work upon request” in Part VII thereof and “enhancing system and infrastructure construction” in Part VIII thereof, and forms a new pattern from voluntary disclosure to disclosure upon request, from doing a good job in specific areas to strengthening system and infrastructure construction, marking that China’s open government information construction has moved from disclosure of information in key areas in the past to the new stage of full disclosure at present.

III. Other unique contributions of the 2014 Outlines

On the basis of fully affirming that the 2014 Outlines have pushed China’s OGI work from “pushing forward information disclosure in key areas” and “vigorously pushing forward information disclosure in key areas” to the new stage of full disclosure, it should be further pointed out that the 2014 Outlines also make other unique contributions to China’s OGI system.

First, the Outlines add specific information to be disclosed. The most remarkable is the two contents newly provided in the part subtitled “pushing forward disclosure of

information on the operation of administrative powers. The first content is “pushing forward disclosure of information on administrative examination and approval. Disclosing the list of administrative examination and approval matters by all departments of the State Council, gradually establish power list system in local governments at all levels and their working departments, disclose power operation process in accordance with laws, and accept the supervision of society.” It reflects that the 2014 Outlines are active in implementing administrative examination and approval reform advanced by the current State Council and also the strong support of the OGI system construction to major administrative reform matters. What is more encouraging is that the State Council has already taken the initiative in issuing on the central government’s official website the list of matters to be approved by its 60 departments in March 2014, and implemented before local governments at all levels and their departments the requirement of the newly added item to be disclosed in the Regulations. It indicates that “the State Council took the lead in releasing government information”. Making public the list of administrative examination and approval matters by all departments of the State Council and gradually establishing the power list system of the local governments at all levels and their departments embody that exercising public power should follow the principle of “No legal authorization, no government’s power”. It is of great significance to the realization of the goal of constructing a law-based government and country that “put power in the cage of system”.

Another remarkable content newly added in the Outlines is “pushing forward disclosure of information on administrative penalties, and stepping up efforts to disclose information concerning administrative penalty cases of manufacturing and selling counterfeit and substandard goods and infringement of intellectual property rights.” This newly added content has its origin in the Notice of Opinions on Disclosing in Accordance with Law Information Concerning Administrative Penalty Cases of Manufacturing and Selling Counterfeit and Substandard Goods and Infringement of Intellectual Property Rights adopted at the Executive Meeting of the State Council (the “Meeting”) on 20 November 2013. According to the Meeting, fair competition is the basic requirement for developing market economy. Making open in accordance with law information concerning administrative penalty cases of counterfeiting and infringement and accepting supervision of the masses are effective prescriptions for promoting quality improvement, increasing consumers’ confidence, protecting intellectual property rights and encouraging innovations. The Meeting requires that we should take disclosing information concerning administrative penalty cases of counterfeiting and infringement as the important content of open government information. Except for information

involving commercial secrets and individual privacy, information concerning administrative penalty cases of counterfeiting and infringement applying general procedures should be disclosed voluntarily. Administrative enforcement organs should, within the prescribed time period as of the date of making or modifying a penalty decision, disclose in accordance with law information regarding the case including the major facts about violation of laws, regulations or rules; the category of, basis for and result of the penalty, and ensure to be open and transparent, and timely respond to social concern. Thereby, on February 4, 2014, the State Council endorsed the Notice of Trial Opinions of the Leading Group for Combating IPR Infringement and Counterfeiting on Disclosing in Accordance with Law Information Concerning Administrative Penalty Cases of Manufacturing and Selling Counterfeit and Substandard Goods and Infringement of Intellectual Property Rights in the form of Document Guobanfa [2014] No. 6. Writing “stepping up efforts to disclose information on administrative penalty cases of manufacturing and selling counterfeit and substandard goods and infringement of intellectual property rights” into the Outlines is the implementation of the State Council’s important decisions and also an important addition to the open government information content this year. It also demonstrates that open government information not only is of value in protecting citizens’ legitimate rights and interests, restraining and monitoring abuse of administrative power but also has the value and function of protecting fair competition, maintaining the order of market economy, and promoting the modernization of a country’s governance system and governance capacity.

Second, the Outlines re-regulate disclosure upon request. To address the prominent issue of failure to properly respond to the public’s requests for information, the Outlines put forward six requirements. They are as follows: (1) Regulate the handling of disclosure upon request, perfect the procedures for each step in handling the cases, such as the acceptance, examination, handling of and responding to the applications, and keeping relevant records for reference, in order to meet the masses’ special needs for information in accordance with the laws and regulations. (2) Improve service capacity for information disclosure upon request, keep acceptance channels open and smooth, perfect work mechanisms, improve work efficiency, and make it convenient for the public to file a request. (3) Improve and perfect the way of handling requests, strengthen communications with requesters, do a good job in eliminating doubts and confusions, guide the public to rightly exercise their rights to request and remedy. (4) With respect to government information that needs to be extensively known by the general public upon examination and approval, the relevant departments, in replying requesters, should disclose such information on

their own initiative through open channels so as to reduce repeated requests for the same government information. (5) If a request involves multiple regions or departments, coordination and consultation among relevant regions or departments should be strengthened so that the request is handled properly in accordance with the laws and regulations. (6) Pay attention to summarizing the work experience and practice in information disclosure upon request, and constantly improve information disclosure system of that region and department. It is another relatively normative and complete special guide issued by the General Office of the State Council on the work of information disclosure upon request after the issuance of Opinions of the General Office of the State Council on Improving the Work of Disclosing Government Information upon Request in January 2010. It is a relatively normative and complete guide.

Third, the Outlines further strengthen the system and infrastructure construction of open government information. As an organic component for comprehensively pushing forward open government information work, the Outlines put forward the following six mechanisms and systems to strengthen the construction of OGI system and infrastructure. Specifically, they are: (1) Establish regular education and training programs, give play to the role of the department in charge of information disclosure work of that region or that department, strengthen information disclosure training, and make the scope of information disclosure training programs cover administrative agencies at all levels and their personnel. (2) Strictly implement the mechanisms for recognizing the source of the nature of information being disclosed. With respect to the government information made or obtained in the performance of their duties, administrative organs should clarify the nature of the disclosure and give explanations for disclosure or non-disclosure on request. (3) Strengthen the construction of mechanisms for examining for secrecy the government information to be released, and conduct in accordance with the laws and regulations examinations for secrecy of government information to be disclosed. When releasing government information that involves other administrative organs, an administrative organ should communicate and confirm with the administrative organ concerned to ensure the government information released is accurate and consistent and avoid the occurrence of inaccurate information or even "official rumors" (i.e., inaccurate and contradictory information released by different department). (4) Establish mechanisms for updating and perfecting open government information guides and open government information catalogues, further optimize open government information guides, detail open government information scope and catalogues, make it convenient for the public to inquire and obtain government information. (5) Strengthen inspection,

social appraisal, accountability, report, investigation and handling systems, establish and perfect mechanisms for supervising and guaranteeing information disclosure. (6) Strengthen the construction of institutions and staffing, specify responsible institutions, consolidate their capacity and guarantee necessary working fund.

Fourth, the Outlines further expand the contents of annual reports on open government information. As is well-known, Article 31 of the Regulations provides that administrative organs at all levels should publish their annual reports on open government information work before March 31 each year. It is an important system innovation in China's current legal systems and has made a prominent contribution to pushing forward the implementation of the Regulations and has drawn attention and won recognition in both theoretical and practical circles. The Outlines further develop the unique system advantage of the Regulations. The Outlines in the last part state that "Each region and each department shall make a decomposed and detailed plan and work schedule in light of the work of that region or department, and formulate the outline of information disclosure work for its own region and department in accordance with the reality, and timely submit to the General Office of the State Council for record." If this requirement has appeared in the 2012 and 2013 Major Work Arrangements, then the 2014 Outlines further requires that "By the end of 2014, each region and each department should file with the General Office of the State Council a report on the implementation of the outlines of information disclosure work. The General Office of the State Council will supervise and inspect the implementation of the outline in due time and report the result thereof." This broadens the contents of the annual reports submitted and published by administrative organs at all levels about the information disclosure work in these administrative organs as required in Article 31 of the Regulations, and further enriches and develops the annual reports on open government information work, and is a new requirement for OGI work.

IV. The reasons why China's open government information work makes greater progress between 2012 and 2014

The reason why Chinese government makes greater progress in the information disclosure work and system construction between 2012 and 2014 is that Chinese government's awareness of information disclosure has reached an unprecedented new level. Take the Outlines as an example, the document at its beginning points out that "The overall requirement for doing well the open government information work this year is: closely center on the central task of the Communist Party and the government as well as the public's expectation, insist on taking open and transparency as the basic system of government work and the guarantee of the masses' right to be informed, to

participate and supervise as the goal.

“Insist on open and transparent government work” positioned in an unprecedented new way open government information in the construction of a law-based government. “Take the guarantee of the masses’ right to be informed, to participate and supervise as the goal” is an unprecedented new statement and new generalization on the value and function of open government information in the construction of a country under the rule of law. These expressions are quite different from those in the 2012 and 2013 Major Work Arrangements about the importance of open government information and even exceed the positioning of open government information in law or regulation set by the Regulations. Article 1 of the Regulations, in stating the legislative intent, merely states that “In order to ensure that citizens, legal persons and other organizations obtain government information in accordance with the law, enhance transparency of the work of government, promote administration in accordance with the law, and bring into full play the role of government information in serving the people’s production and livelihood and their economic and social activities, ...”. It did not provide that open and transparency are the basic system of government work, let alone take “the guarantee of the masses’ right to be informed, to participate and supervise” as the legislative intent of the Regulations. This reflects the competent department’s perception of the value and function of democracy and rule of law embedded in open government information has reached an unprecedented new height.

This new perception and positioning are undoubtedly derived from the new background against which the Outlines were formulated and released. The first sentence of the Outlines is “2014 is an important year for implementing the spirit of the Third Plenary Session of the 18th Central Committee of the CPC and comprehensively deepening the reform.” The Decision of the CCCPC on Some Major Issues Concerning Comprehensively Deepening the Reform (the “Decision”) systematically states the spirit of the Third Plenary Session of the 18th Central Committee of the CPC. It contains at least 16 new decisions on the construction of the system of open government and open government information based on the author’s statistics. These new decisions constitute a roadmap for constructing an open and transparent system in many areas in China. For example, Part III of the Decision: Accelerating the Improvement of the Modern Market System, contains the following: Make market rules that are fair, open and transparent. Perfect a mechanism where prices are determined by the market. Any price that can be affected by the market must be left to the market. Prices which are determined by the government will be limited to important public utilities, public-welfare services and network-based natural monopolies while

raising transparency and accepting social supervision. In Part X thereof: Strengthening Check and Oversight System of Exercise of Power, the Decision states that the fundamental solution to keeping power under control is to put power, government operations and personnel management under institutional checks to ensure that the people oversee the exercise of power and that power is exercised in a transparent manner. Also in Part X (35): Forming a scientific and effective mechanism to check and coordinate power, the Decision states that “We will introduce a list of the powers of local governments and their working departments at all levels, and publicize the power-exercise process in accordance with the law. We will improve information disclosure in Party, government and other fields, so as to promote transparency in decision-making, management, services and results.” It can be seen that the decision on comprehensively deepening the reform made at the Third Plenary Session of the 18th Central Committee of the CPC is the direct thought and policy source of the new conclusion that “insist on taking open and transparency as the basic system of government work and the guarantee of the masses’ right to be informed, to participate and to supervise as the goal.” Meanwhile, the aforementioned important decisions in the Decision are made into specific contents of the Outlines.

Of course, to do a good job of OGI work, 10% efforts should be made in deployment and 90% in implementation, because active implementation of OGI work by both administrative organs at all levels and the general public to form a benignly interactive OGI practice are impetus for continuous development and constant innovation of OGI system.

All in all, the annual Major Work Arrangements or the Outlines published for the three consecutive years let us know the Chinese government’s sincerity in pushing forward open government information, demonstrate objectively the expanding scope and areas of government information to be opened year after year, exhibit the inevitable gradualness and stages that the development of open government information went through in China, and also reflect that conditions for formally making law on open government information in China are not ripe. Rather than making a law in haste, it is better for us to enrich the contents of open government information in a well-knit and item-by-item manner, and regulate the manners of and procedures for information disclosure to create mature conditions for China’s OGI legislation. This may conform more to the development reality of China’s OGI legal system. 

(Translated by Zhang Meichang)